Federal Register
Vol. 91, No. 143
Tuesday, July 28, 2026

Rules and Regulations

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

[CIS No. 2851–26; DHS Docket No. USCIS–2026–0199]

RIN 1615–AD18

Affirmative Asylum Referrals Without Interview

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations to permit U.S. Citizenship and Immigration Services (USCIS) to refer certain affirmative asylum applications to the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) without interview. USCIS still offers an interview prior to a grant or denial of asylum. DHS is also removing the requirement that a letter communicating the basis for referral of asylum include an assessment of the alien's credibility.

DATES:

Effective date: This interim final rule (IFR) is effective July 28, 2026.

Comment due date: Written comments on this interim final rule must be submitted on or before September 28, 2026. The electronic Federal Docket Management System will accept comments prior to midnight eastern time at the end of that day.

ADDRESSES: You may submit comments on the entirety of this rulemaking package, identified by DHS Docket No. USCIS–2026–0199 through the Federal eRulemaking Portal: *http://www.regulations.gov.* The summary of this rule may also be found at *http://www.regulations.gov.* Follow the website instructions for submitting comments. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS in implementing these changes will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Comments submitted in a manner other than the one listed above, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the rule and may not receive a response from DHS. Please note that DHS and USCIS cannot accept any comments that are hand-delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using *http://www.regulations.gov,* please contact the Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721–3000 for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Asylum Division, U.S. Citizenship and Immigration Services (USCIS), DHS, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone (240) 721–3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 711.

SUPPLEMENTARY INFORMATION:

Table of Contents

Table of Abbreviations

AAF—Annual Asylum Fee
AO—Asylum Officer
ASC—Application Support Center
BIA—Board of Immigration Appeals
BLS—U.S. Bureau of Labor Statistics
CDAO—Chief Data and Analytics Office
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOJ—U.S. Department of Justice
E.O.—Executive Order
EOIR—Executive Office for Immigration Review
ERO—Enforcement and Removal Operations
Form I–589—Application for Asylum and for Withholding of Removal
FY—Fiscal Year
HSA—Homeland Security Act of 2002
HSI—Homeland Security Investigations
ICE—U.S. Immigration and Customs Enforcement

IIRIRA—Illegal Immigration Reform and Immigrant Responsibility Act of 1996
IJ—Immigration Judge
INA—Immigration and Nationality Act
INS—Immigration and Naturalization Service
NEPA—National Environmental Policy Act
NTA—Notice to Appear
NVC—National Vetting Center
OMB—Office of Management and Budget
OYFD—One-Year Filing Deadline
PRA—Paperwork Reduction Act
RFA—Regulatory Flexibility Analysis
RFE—Request for Evidence
RIA—Regulatory Impact Analysis
SBREFA—Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
TVPRA—William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
UAC—Unaccompanied Alien Child
UMRA—Unfunded Mandates Reform Act of 1995
UPAX—Unified Passenger
U.S.C.—United States Code
USCIS—U.S. Citizenship and Immigration Services

I. Public Participation

DHS invites all interested parties to participate in this rulemaking by submitting written data, views, comments and arguments on all aspects of this rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS in implementing these changes will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Comments submitted in a manner other than the one listed above, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the rule and may not receive a response from DHS.

Instructions: If you submit a comment, you must include the agency name (U.S. Citizenship and Immigration Services) and the DHS Docket No. USCIS–2026–0199 for this rulemaking. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at *http://www.regulations.gov.*

Docket: For access to the docket and to read background documents or comments received, go to *http://www.regulations.gov,* referencing DHS Docket No. USCIS–2026–0199. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

II. Executive Summary

DHS is amending its regulations to permit an AO to refer an affirmative asylum application to an immigration judge (IJ) without conducting an interview. USCIS still conducts an interview prior to a grant or denial of asylum, or where an asylum interview with USCIS complies with other legislation or settlement agreements.[1] The Asylum Division had a long-standing practice of offering an interview to all aliens who file a Form I–589, Application for Asylum and for Withholding of Removal (asylum application) within the agency's jurisdiction prior to adjudication despite there being no statutory right to an interview or requirement to conduct one. Through this rule, DHS is amending regulations to permit an AO to refer certain asylum applications to EOIR without conducting an interview. DHS is removing references to a ''right'' to an interview, and language that an AO shall review and determine any prohibitions on filing ''in an interview,'' while retaining the interview procedures outlined in the regulations if an asylum interview is offered by USCIS. *See* 8 CFR 208.4(a); 208.10; *see also* 8 CFR 208.14(c). DHS is also removing the requirement that a letter communicating the basis for referral of asylum include an assessment of the alien's credibility. *See* 8 CFR 208.19. Lastly, although it does not necessitate a change in regulatory provisions, DHS is modifying its processes so that an AO may determine that the alien does not merit a grant as a matter of discretion without first making an eligibility determination.

This rule does not impact USCIS interviews for cases where the alien is not barred from applying for or receiving asylum, not ineligible on the merits of the claim, and may merit a grant as a matter of discretion. This rule also does not impact USCIS interviews where the alien maintains a lawful basis to remain in the United States.[2]

A. Purpose of the Regulatory Action

The purpose of this rulemaking is to amend existing regulations to permit an AO to refer certain asylum applications to EOIR without conducting an interview. In order to reduce the affirmative asylum backlog, improve efficiency of operations, safeguard national security and public safety, and ensure consistency with agency priorities, USCIS will no longer offer interviews to all affirmative applicants prior to referral to EOIR. Through this rule, USCIS provides long-needed updates to regulations and agency practice regarding asylum interviews. *See* 8 CFR 208.4(a), 208.10, 208.14(c). This change ensures that aliens understand what to expect throughout the affirmative asylum process, from filing to adjudication, and that their filing of an asylum application does not guarantee an interview with USCIS. Explicitly authorizing USCIS to refer an asylum application to EOIR without interview also allows USCIS to more efficiently manage its affirmative asylum backlog by reducing adjudicative resources expended on processing non-meritorious claims, free up interview slots for cases based on scheduling priorities[3] and where USCIS determines an interview is needed, and focus its limited resources on applications within its jurisdiction that require eliciting testimony for adjudication. Through the rule, USCIS is also able to more quickly identify aliens that pose a danger to public safety

[1] This rule establishes a process that permits, but does not require, USCIS to refer certain asylum applications to EOIR without an interview. Accordingly, this rule will not hinder USCIS' ability to comply with any legislation or settlement agreement in litigation that would require USCIS to schedule interviews for certain aliens and/or populations of aliens.

[2] *See* 8 CFR 212.5(e)(2)(i); *see also* Memorandum from USCIS Office of the Director, Policy Memorandum, re *Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens* (Feb. 28, 2025), *https://www.uscis.gov/sites/default/files/document/policy-alerts/NTA_Policy_FINAL_2.28.25_FINAL.pdf; see also* USCIS, *Affirmative Asylum Procedures Manual,* sec. III.N (last updated Feb. 2025), *https://www.uscis.gov/sites/default/files/document/guides/AAPM.pdf* (stating that asylum offices have the discretion to terminate parole through the service of a charging document, for instance, when the record clearly indicates that the sole purpose of parole was to allow the alien to apply for asylum and that purpose has been accomplished through the adjudication of the asylum application).

[3] The Affirmative Asylum Interview Scheduling web page lists USCIS' current scheduling priorities. *See USCIS Affirmative Asylum Interview Scheduling* (last updated Mar. 29, 2024), *https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/affirmative-asylum-interview-scheduling.*

or national security and place those aliens in removal proceedings, where his or her claim for asylum or other forms of relief can be more appropriately heard in an adversarial setting by an IJ.

B. Legal Authority

The Secretary of Homeland Security (Secretary) has authority to issue these regulatory amendments pursuant to various sections of the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.,* and the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135 (codified in part at 6 U.S.C. 101 *et seq.*). General authority for issuing this rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws and establish such regulations as the Secretary deems necessary for carrying out such authority, as well as section 102 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations.[4] *See also* 6 U.S.C. 202.

Additional authority for this rule is found in:

• Paragraphs (d)(1) and (d)(5)(B) of section 208 of the INA, 8 U.S.C. 1158(d)(1) and (d)(5)(B), which authorize the Secretary to establish regulations concerning the procedures and conditions on asylum applications; and

• Section 271(a)(3) of the HSA, 6 U.S.C. 271(a)(3), which confers authority on the Director of USCIS to establish ''policies for performing [immigration adjudication] functions.''

C. Summary of Major Provisions of the Regulatory Action

This rule includes the following provisions:

• Updating 8 CFR 208.4(a) to remove language stating that an AO ''in an interview'' shall review the application and give the alien the opportunity to present any relevant and useful information bearing on any prohibitions on filing.

• Adding 8 CFR 208.9(a)(2) to permit an AO to refer an affirmative asylum application to EOIR, without conducting an interview, based on the record and other relevant evidence.

• Updating 8 CFR 208.10 to remove language referring to ''right to an'' interview.

• Updating 8 CFR 208.14(c) to include that an AO can refer an asylum application to EOIR without interview, and to remove language referring to ''applicant's right to an'' interview.

• Updating 8 CFR 208.19 to remove the requirement that a letter communicating the basis for referral of asylum include an assessment of the alien's credibility.

D. Summary of Costs and Benefits

DHS is amending its regulations to permit an AO to refer an affirmative asylum application to EOIR based on the record and other evidence. Consistent with this change in practice, DHS is removing conflicting language in pre-existing regulations that reference a ''right'' to an interview and language that an AO shall review and determine any prohibitions on filing ''in an interview.'' DHS is also removing the requirement that a letter communicating the basis for referral of asylum include an assessment of the alien's credibility. Lastly, although it does not necessitate a change to regulatory provisions, DHS is modifying its processes so that an AO may refer an application as a matter of discretion without first making an eligibility determination.

The interim final rule impacts affirmative asylum application processing. The rule permits USCIS to refer an asylum application to EOIR in various situations, including but not limited to, when the alien is barred from applying for asylum due to the one-year filing deadline, is barred from a grant of asylum, does not merit a grant as a matter of discretion, or is not eligible on the merits of the claim. The rule also gives USCIS flexibility to issue future policy guidance about which categories of cases should be prioritized by the agency for referral without interview based on evolving trends and agency priorities. For future applications filed after the effective date of the rule, DHS estimates that approximately 132,167 aliens seeking affirmative asylum annually may be referred without interview due to a bar to applying for asylum, a bar to a grant of asylum, or where the alien does not merit a grant, and uses this estimate as the population of future filings that could be impacted by this rule.[5] The rule also impacts aliens with pending affirmative asylum applications. Potentially, up to 444,724 (31 percent) of the 1,434,145 cases in the affirmative asylum backlog may be impacted by this rule.[6] DHS does not have an estimate for how many pending or future asylum applications may be impacted as cases where the alien is not eligible on the merits of the claim.

In the regulatory impact analysis (RIA), USCIS evaluates the potential impacts of the rule against a no action baseline describing what the world would be like if the rule had not been adopted. A primary benefit of no longer interviewing all applicants prior to the referral of an affirmative asylum application to EOIR is the increased operational efficiency of the affirmative asylum process within USCIS. In changing its long-standing practice of offering an interview on all asylum applications, even where USCIS may not approve the application due to obvious statutory ineligibility for asylum or where the alien does not merit a favorable exercise of discretion, the agency is eliminating duplicative work that will likely be repeated before an IJ. Further, USCIS can prioritize the allocation of scarce resources including the AO, interpreter, and administrative staff towards timely adjudication of meritorious cases. The reallocation of these limited adjudicatory resources could facilitate faster scheduling, improve the timeliness of adjudication for aliens with meritorious cases, and accelerate the resolution of non-meritorious claims. As a result, this rule may reduce the growth of the affirmative asylum backlog that, as of the end of Fiscal Year (FY) 2025, exceeds 1.4 million cases, enhance the agency's ability to respond to emergent humanitarian needs presented by aliens with meritorious applications, and strengthen system integrity by limiting opportunities for strategic delay of removal proceedings through prolonged affirmative application pendency.

DHS acknowledges that while the rule may reduce USCIS' affirmative asylum backlog, it will initially increase the volume of USCIS referrals to EOIR annually, which could then increase EOIR's pending cases backlog. DOJ may incur costs to develop certain elements of a case during removal proceedings where USCIS no longer performs an interview. DHS asserts that while these impacts may increase operational demands for EOIR, many of the associated costs reflect a redistribution of responsibilities from USCIS to EOIR.

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

[5] This estimate is based on the average number of receipts of untimely filed affirmative asylum applications each year over the past five fiscal years (*see* Table 2) plus an approximate number of cases where a mandatory bar other than the filing deadline could potentially apply to affirmative cases; *see also* section of V.A.3 of this preamble for further analysis of affected population estimates.

[6] *See* Table 1 for details on the number of pending affirmative asylum applications that are untimely filed; *see also* Table 5 for details on the total number of pending affirmative asylum applications.

USCIS also acknowledges the possibility that some applications may be referred under this rule that USCIS could have granted. This could cause some aliens to experience increased wait times and slower case resolution, and DOJ could incur new costs processing these claims. However, DHS believes this will be a rare occurrence because an AO still reviews the record and evidence before a final adjudication and USCIS still retains the ability to offer an interview on any application, including where there is evidence of overcoming a bar. Therefore, the overall number of aliens who will ultimately be referred to EOIR will not necessarily increase because the rule is intended to refer applications without interview where the application would have been referred even if an interview had been conducted. DHS accordingly does not believe that the impact to EOIR's backlog will be significant in the long term.

Another meaningful benefit of no longer interviewing all affirmative asylum applicants is the enhancement of national security and public safety. Moving dangerous aliens who are ineligible for a grant of asylum or do not merit a grant as a matter of discretion due to serious criminal conduct or involvement in terrorism more quickly through the removal process will decrease the overall exposure risk to the public because it will reduce the amount of time during which dangerous aliens can remain at large within the United States while awaiting adjudication of their asylum application. The national security and safety benefits also extend to DHS personnel as well as other aliens who appear at USCIS facilities. Prompt referral to EOIR, without interview, for ineligible aliens who also present a danger to others will reduce the number of in-person encounters in USCIS facilities, thereby lowering the exposure risk for other aliens, AOs, interpreters, attorneys, and other government staff working in public-facing interview spaces.

Removing the requirement that a letter communicating the basis for referral of asylum include an assessment of the alien's credibility produces operational efficiencies for USCIS by giving AOs the ability to focus a decision letter on the reason(s) for referral, where credibility does not form the basis for referral. Eliminating this requirement reduces drafting time and streamlines the preparation of referral decision letters, allowing AOs to focus more directly on threshold eligibility issues or statutory bars to asylum. Similarly, permitting AOs to refer an application as a matter of discretion without first making an eligibility determination allows adjudicators to pinpoint and analyze the ultimate basis for referral in cases where negative factors found in the course of the adjudication outweigh any positive factors.

Asylum applicants will also experience sustained benefits as a result of this rule. With improvements in the affirmative asylum system at USCIS, aliens with strong or meritorious claims could see reduced waiting times and faster adjudication of their cases. Aliens who are ultimately destined to be placed in removal proceedings before EOIR will no longer spend several years waiting for an interview in the affirmative asylum queue before receiving a referral but will instead enter the more appropriate adjudicatory forum sooner, thereby escaping prolonged legal limbo. Earlier placement into removal proceedings allows aliens to apply for other forms of relief before an IJ—forms of relief that USCIS does not have authority to grant—and to receive a final decision with less delay and prolonged uncertainty.[7] This quicker resolution to the same outcome reduces emotional and psychological strain and preserves the quality of evidence that may deteriorate during multi-year waits. Moreover, aliens will be spared the burden of preparing for a duplicative proceeding with USCIS that will have no substantive effect on the final adjudication of their claim in immigration court. Lastly, all asylum applicants will benefit from the change to affirmative asylum interview procedures as it results in aliens' improved understanding of the asylum process and improved application quality and completeness.

III. Background and Purpose

A. Legal Framework

The Refugee Act of 1980, Public Law 96–212, amended the INA by adding section 208 to require the Attorney General to establish a procedure to allow certain aliens who are present in the United States to apply for asylum. *See* INA 208, 8 U.S.C. 1158. Congress subsequently amended Section 208 of the INA in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, div. C, 110 Stat. 3009–546 (Sept. 30, 1996), to, among other things, create a one-year filing deadline for applicants to file an asylum application after their arrival in the United States. INA 208(a)(2)(B), 8 U.SC. 1158(a)(2)(B); authorize the Secretary and Attorney General to establish requirements and procedures for the consideration of asylum applications, INA 208(b)(1)(A), (d)(1), 8 U.S.C. 1158(b)(1)(A), (d)(1); establish aspirational timeframes for commencing initial interviews (if provided) and completing final adjudications, INA 208(d)(5)(A)(ii)–(iii), 8 U.S.C. 1158(d)(5)(A)(ii)–(iii); and conferring authority to establish by regulation ''any other conditions or limitations on the consideration of an application for asylum not inconsistent with [the INA],'' INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B).

Under 8 CFR part 208, USCIS has initial jurisdiction over a Form I–589, Application for Asylum and for Withholding of Removal, filed by an alien physically present in the United States or seeking admission at a port of entry. *See* 8 CFR 208.2. The Asylum Division has had a long-standing practice of conducting an interview for asylum applications where USCIS has jurisdiction prior to adjudication.[8] However, there is no explicit statutory right for an asylum applicant to receive an interview before USCIS. The INA does not state that USCIS must conduct an asylum interview, specify the mechanics of an interview, or address whether an interview needs to be conducted in all circumstances. Instead, the INA designates general authority to DHS to ''establish a procedure for the consideration of asylum applications'' and promulgate regulations related to other conditions or limitations on the consideration of an asylum application. *See* INA 208(b)(1)(A), (d)(1), and (5)(B), 8 U.S.C. 1158(b)(1)(A), (d)(1), and (5)(B). The INA also establishes a timeframe in which an interview or hearing to consider an application for asylum must be provided, should one be offered to the alien, and the consequences of failure to appear: ''in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after'' the alien filed the application and that the asylum application shall be dismissed or the applicant sanctioned if the alien ''fails without prior authorization or in the

[7] USCIS acknowledges that earlier placement into removal proceedings might lead some aliens to consult or retain legal counsel sooner than they otherwise would have. Hence, the rule may affect the timing of when some aliens choose to engage legal counsel but does not create new costs to these aliens.

[8] Prior to this rule, USCIS generally conducted an interview unless the application was withdrawn, the interview was waived by the alien, or the application was dismissed including because the alien adjusted status to lawful permanent resident and no longer wished to pursue an asylum claim or naturalized.

absence of exceptional circumstances to appear for an interview or hearing . . . .'' INA 208(d)(5)(A)(ii), (v), 8 U.S.C. 1158(d)(5)(A)(ii), (v).

Accordingly, USCIS regulations promulgated pursuant to the INA provide procedures governing asylum interviews, including the purpose and timing of an interview and specific manner in which an interview is to be conducted. *See* 8 CFR 208.9. For example, prior to this IFR, 8 CFR 208.4(a) instructed that an asylum officer must, ''in an interview,'' review the asylum application and give the applicant an opportunity to present useful and relevant information if it appears that one or more of the mandatory bars to filing for asylum at INA 208(a)(2), 8 U.S.C. 1158(a)(2), such as the one-year filing deadline, apply.

In addition, prior to this IFR, other regulations stated that failure to appear for a scheduled asylum interview without prior authorization may result in dismissal of the application or the waiver of the ''right to an interview,'' and that failure to comply with fingerprint processing without good cause may result in dismissal of the application or waiver of the right to an adjudication by an AO. *See* 8 CFR 208.10; *see also* 8 CFR 208.14(c). Pre-existing language at 8 CFR 208.10 was also intended to implement INA 208(d)(5)(A)(i) and (v), 8 U.S.C. 1158(d)(5)(A)(i) and (v), which state: ''asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases,'' and that aliens who fail ''to appear for an interview or hearing'' may have their applications dismissed or may be sanctioned; as well as to clarify implications for employment authorization.

There is no statutory requirement that a decision letter communicating a referral on an asylum application include an assessment of the alien's credibility. *See, e.g.,* INA 208(b) and (d), 8 U.S.C. 1158(b) and (d).[9] Therefore, amending provisions at 8 CFR 208.19 to remove language about including an assessment of the alien's credibility for referral letters is still in compliance with the INA. Furthermore, under the rule, USCIS still communicates a referral of asylum in writing and states the basis for referral. *See* 8 CFR 208.19.

Lastly, where USCIS refers an application as a matter of discretion, the agency had a long-standing practice of instructing AOs to make a determination of statutory eligibility before addressing the exercise of discretion.[10] However, there is no statutory or regulatory requirement that an AO make an eligibility determination prior to making a discretionary determination. The Asylum Division acknowledges this fact in existing policy guidance to adjudicators, which states: ''As a legal matter, it is permissible to deny an application as a matter of discretion, without determining whether the alien is eligible for the benefit of asylum.'' [11] Therefore, the change in agency practice to allow AOs to make a discretionary determination before an eligibility determination is still in compliance with the INA and does not require an amendment to existing regulations.

B. Authority To Apply for Asylum and Conditions for Granting Asylum

To be eligible for asylum, the burden of proof is on the alien to establish that he or she is a refugee as defined in section 101(a)(42) of the INA, 8 U.S.C. 1101(a)(42). *See* 8 CFR 208.13. The burden of proof does not change under this rule. Additionally, an asylum application constitutes at the same time an application for withholding of removal, unless adjudicated in deportation or exclusion proceedings commenced prior to April 1, 1997. *See* 8 CFR 208.3(b).

1. Eligibility To Apply

The INA contains multiple bars to an alien's eligibility to apply for asylum. *See* INA 208(a)(2)(A)–(E), 8 U.S.C. 1158(a)(2)(A)–(E). First, an alien cannot apply for asylum if he or she can be removed, pursuant to a bilateral or multilateral agreement, to a country in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion and where the alien would have access to a full and fair procedure for determining a claim to asylum. *See* INA 208(a)(2)(A), 8 U.S.C. 1158(a)(2)(A). In addition, unless an alien demonstrates changed or extraordinary circumstances, he or she cannot file for asylum if he or she filed the application more than one year after the date of his or her last arrival in the United States or if the alien has previously applied for asylum and was denied by EOIR. *See* INA 208(a)(2)(B), (C) and (D), 8 U.S.C. 1158(a)(2)(B), (C), and (D); *see also* 8 CFR 208.4(a)(2), (3), (6).[12]

The one-year filing deadline (OYFD) is a particularly common bar to applying for asylum. As of December 11, 2025, there are 444,724 pending affirmative asylum applications filed more than one year after last entry. *See* Table 1 for details on asylum applications filed more than one year after last entry.

TABLE 1—PENDING AFFIRMATIVE ASYLUM APPLICATIONS FILED ON OR AFTER APRIL 16, 1998AS OF DECEMBER 11, 2025

Filed Ten Years or More After Last Entry or Blank Entry Date	Filed More Than One Year After Last Entry or Blank Entry Date
129,525	444,724

Notes:

(1) For cases filed more than one year after last entry or blank entry date, this data only includes cases where an initial interview has never been scheduled and excludes cases where the alien is a lawful permanent resident, is an unaccompanied alien child in removal proceedings, or was under 18 at the time of filing; cases that are already completed and pending review or service, such as unserved administrative closures; and cases already scheduled for interview.

(2) USCIS has found that cases filed 10 or more years after last entry or blank entry date often are cases where the alien wanted to use the affirmative asylum process as a pathway to removal proceedings so that he or she could apply for cancellation of removal and adjustment of status to lawful permanent resident under INA 240A(b), 8 U.S.C. 1229b(b), before an IJ.

[9] Per INA 208(b)(1)(B)(iii), 8 U.S.C. 1158(b)(1)(B)(iii): ''If no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.''

[10] *See* USCIS RAIO Directorate, *Lesson Plan, Discretion* 12 (Jan. 27, 2025), *https://www.uscis.gov/sites/default/files/document/foia/Discretion_LP_RAIO.pdf.*

[11] *Id.; see also INS* v. *Abudu,* 485 U.S. 94, 105 (1988); *INS* v. *Bagamasbad,* 429 U.S. 24, 26 (1976).

[12] The rule and any future USCIS guidance will comply with the Ms. L Settlement Agreement, which includes specific accommodations with respect to the one-year filing deadline for class members who meet certain settlement-related deadlines. *See Ms. L et al.* v. *ICE,* No. 18-cv-00428 (S.D. Cal. 2023), *https://www.together.gov/assets/docs/Ms.%20L%20v.%20ICE%20Settlement.pdf;* see also USCIS, DHS, ''Applying for Asylum with USCIS for Ms. L Settlement Class Members'' (last updated Feb. 20 2026), *https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notices-and-agreements/applying-for-asylum-with-uscis-for-ms-l-settlement-class-members.*

(3) Cases filed 10 or more years after last entry or blank entry date are only included in this data if all other parameters mentioned in Table 1, Note 1, such as not having ever been scheduled for an interview, are present.

Source: U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Chief Data and Analytics Office (CDAO). NPR Report, HQRAIO, GLOBAL, queried 12/2025 for PAER0019563.

With respect to the OYFD, an alien must demonstrate by clear and convincing evidence that his or her asylum application was filed within one year after the date of his or her last arrival in the United States or prove to the satisfaction of the adjudicator either the existence of changed circumstances which materially affect the alien's eligibility for asylum or extraordinary circumstances relating to the delay in filing. *See* INA 208(a)(2)(B) and (D), 8 U.S.C. 1158(a)(2)(B) and (D); *see also* 8 CFR 208.4(a)(2), (4), and (5). Aliens are instructed to provide relevant information and evidence related to the OYFD in response to Part C, question 5 on Form I–589. The alien is also told that he or she must be prepared to explain at the ''interview or hearing'' why he or she did not file the asylum application within the first year after arrival. If an application appears to have been filed more than one year after the alien last arrived in the United States, the AO, the IJ, or the Board of Immigration Appeals (BIA) will determine whether the alien qualifies for an exception to the deadline. *See* 8 CFR 208.4(a)(2)(B).

Regulations explain that changed circumstances materially affecting the applicant's eligibility for asylum include but are not limited to: (A) changes in conditions in the alien's country of nationality or, if stateless, country of last habitual residence; (B) changes in the alien's circumstances, including changes in applicable United States law and activities the alien becomes involved in outside the country of feared persecution that place the alien at risk; or (C) in the case of an alien who had previously been included as a dependent in another alien's pending asylum application, the loss of the spousal or parent-child relationship to the principal applicant through marriage, divorce, death, or attainment of age 21. *See* 8 CFR 208.4(a)(4)(i). The alien must file an asylum application within a reasonable period given the changed circumstance(s), with delayed awareness taken into account as to what constitutes a reasonable period. *See* 8 CFR 208.4(a)(4)(ii).

For extraordinary circumstances, regulations state that the burden of proof is on the alien to establish to the satisfaction of the AO, the IJ, or the BIA that the circumstances were not intentionally created by the alien through his or her own action or inaction, that those circumstances were directly related to the alien's failure to file the application within the one-year period, and that the delay was reasonable under the circumstances. *See* 8 CFR 208.4(a)(5). Extraordinary circumstances may include but are not limited to: (i) serious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past, during the one-year period after arrival; (ii) legal disability (*e.g.,* the alien was a minor during the one-year period after arrival); (iii) ineffective assistance of counsel; (iv) the alien maintained Temporary Protected Status (TPS), lawful immigrant or nonimmigrant status, or was given parole, until a reasonable period before the filing of the asylum application; (v) the alien filed an asylum application prior to the expiration of the one-year deadline, but that application was rejected by USCIS as not properly filed, was returned to the alien for corrections, and was refiled within a reasonable period; and (vi) the death or serious illness or incapacity of the alien's legal representative or a member of the alien's immediate family. *See* 8 CFR 208.4(a)(5)(i)–(vi).

An alien who is not eligible to apply for asylum for failure to meet the one-year filing requirement is still eligible to apply for withholding of removal before an IJ. *See* 8 CFR 208.3(b).

2. Qualifying as a Refugee

In order to be granted asylum, an alien must establish that he or she is a refugee within the meaning of INA 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A). *See* INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A). An alien shall be found to be a refugee if he or she is outside of their country of nationality (or, if stateless, in his or her country of last habitual residence) and is unable or unwilling to return to that country and is unable or unwilling to avail himself or herself of that country because he or she has suffered past persecution or there is a reasonable possibility the alien will suffer future persecution in the alien's country of nationality (or, if stateless, in his or her country of last habitual residence) on account of his or her race, religion, nationality, membership in a particular social group, or political opinion. *See* INA 101(a)(42), 8 U.S.C. 1101(a)(42); *see also* 8 CFR 208.13(b)(1) and (2). An alien who establishes past persecution is presumed to have a well-founded fear of persecution on the basis of the original claim. *See* 8 CFR 208.13(b)(1). That presumption may be rebutted if an AO or IJ finds by a preponderance of the evidence that there has been a fundamental change in circumstances such that the alien no longer has a well-founded fear of persecution in their country of nationality (or, if stateless, in the applicant's country of last habitual residence), or that the alien could avoid future persecution by relocating to another part of the alien's country of nationality (or, if stateless, another part of the alien's country of last habitual residence) and it would be reasonable to expect the alien to do so. *Id.; see also* 8 CFR 208.13(b)(1)(i)(A)–(B), (b)(3); *see also* 8 CFR 1208.13(b)(1), (b)(1)(i)(A)–(B). Where the presumption of well-founded fear has been rebutted, an alien may still be granted asylum in the absence of well-founded fear of persecution if the alien demonstrates compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution, or the alien establishes there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country. *See* 8 CFR 208.13(b)(1)(iii).

3. Mandatory Bars to a Grant of Asylum

Under INA 208(b)(2), 8 U.S.C. 1158(b)(2), an alien is statutorily ineligible for a grant of asylum if:

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion; [13]

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States; [14]

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 1182(a)(3)(B)(i) of this title or section 1227(a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section

[13] By definition, a persecutor cannot be a ''refugee.'' *See* INA 101(a)(42)(B), 8 U.S.C. 1101(a)(42)(B).

[14] Particularly serious crimes include, but are not limited to, aggravated felonies, as defined under INA 101(a)(43), 8 U.S.C. 1101(a)(43).

1182(a)(3)(B)(i) of this title, the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or

(vi) the alien was firmly resettled in another country prior to arriving in the United States.

If evidence indicates that the alien may be subject to a mandatory bar to a grant, then the alien has the burden of proving by a preponderance of the evidence that the bar does not apply.[15]

4. Discretion

The AO balances positive and negative discretionary factors to determine if the alien who meets the definition of a refugee merits a grant of asylum as a matter of discretion.[16] While there is no exhaustive list of factors that can be considered, a discretionary analysis generally occurs after a fact-finding process and weighs negative factors against positive factors in the totality of the circumstances.[17] Whether to favorably exercise discretion is typically assessed after an AO has determined that the alien meets all applicable threshold eligibility requirements, with the alien's threshold eligibility for the benefit sought generally considered to be a positive factor. Absent any negative factors, USCIS ordinarily exercises discretion favorably.[18] Generally, if there are no negative factors to weigh against the positive factor that the alien is a refugee, denial of the benefit would be an inappropriate use of discretion. However, although factors material to eligibility have generally been given the most weight, including where an alien is eligible for the benefit, there is no statutory or regulatory requirement that an adjudicator find that the alien is a refugee prior to making a negative discretionary decision.

C. Eligibility Outcomes

If the AO determines that the alien is eligible to apply for asylum, meets the definition of a refugee, is not subject to a statutory bar to asylum, and merits a grant of asylum as a matter of discretion, the AO grants asylum. *See* INA 208(b), 8 U.S.C. 1158(b). If the AO determines that the alien is not eligible for asylum or does not merit a grant of asylum as a matter of discretion, and the alien maintains a lawful basis to remain in the United States, the AO issues a denial. *See* 8 CFR 208.14(c)(2)–(3). If the AO determines that the alien is not eligible for asylum or does not merit a grant of asylum as a matter of discretion, and the alien does not maintain a lawful basis to remain in the United States, the AO refers the application to EOIR, placing the alien into removal proceedings.[19] *See* 8 CFR 208.14(c)(1), (4). The alien can then apply for asylum or withholding of removal before an IJ. *See* 8 CFR 1208.14(a), (c)(1), (4); *see also* 8 CFR 1240.1(a). These eligibility outcomes—an AO determining whether to grant, deny, or refer an application for asylum—do not change under the rule.

D. Compliance with Statutory Obligations

The INA does not require that asylum applicants have a right to an interview.[20] The INA does, however, outline asylum procedures, including an aspirational timeframe in which an interview or hearing must be provided should one be offered to the alien. Specifically, INA 208(d)(5)(A)(ii), 8 U.S.C. 1158(d)(5)(A)(ii) states: ''in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed.'' *See also* INA 208(d)(5)(A)(v), 8 U.S.C. 1158(d)(5)(A)(v) (authorizing USCIS to dismiss an asylum application if the alien fails to appear for a scheduled interview ''without prior authorization or in the absence of exceptional circumstances''). Therefore, while the INA shows congressional intent that any interview or hearing, if offered, be conducted within a certain timeframe, such potential opportunity to be heard and meet the burden to show eligibility through testimony does not explicitly or exclusively require USCIS to offer or to conduct an interview.[21] Although applications processed under the rule will more quickly place certain aliens into removal proceedings, the overall number of aliens who will ultimately be referred to EOIR will not necessarily increase because the purpose of the rule is to refer applications without interview where the application will have been referred even if an interview had been conducted.[22]

Through the rule, USCIS permits an AO to refer certain asylum applications to EOIR without conducting an interview. Not all asylum applications are referred without interview under the rule. USCIS may only refer affirmative asylum applications without an interview if it determines prior to a scheduled interview that the alien is not eligible for a grant of asylum or does not merit a grant of asylum. USCIS still conducts an interview prior to any grant or denial of asylum, or where an asylum interview complies with other litigation

[15] Some courts have held that the burden shifts to the alien only when USCIS has presented sufficient evidence that the statutory bar applies. *See, e.g., Maharaj* v. *Gonzales,* 450 F.3d 961 (9th Cir. 2006); *see also* USCIS RAIO Directorate, *Lesson Plan, Firm Resettlement* 22 (Feb. 5, 2025) (''If there is evidence indicating an offer to stay in the third country indefinitely, the applicant can rebut the evidence of an offer by showing that such an offer has not, in fact, been made or that he or she would not qualify for it. The applicant must make this showing by a preponderance of the evidence.''), *https://www.uscis.gov/sites/default/files/document/foia/Firm_Resettlement_LP_RAIO.pdf.*

[16] *See* USCIS RAIO Directorate, *Lesson Plan, Discretion* 15–17 (Jan. 27, 2025), *https://www.uscis.gov/sites/default/files/document/foia/Discretion_LP_RAIO.pdf.* Furthermore, the INA states: ''The Secretary of Homeland Security or the Attorney General *may* grant asylum,'' which confirms that a grant of asylum is discretionary. *See* INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A) (emphasis added).

[17] *See* USCIS RAIO Directorate, *Lesson Plan, Discretion* 15–17 (Jan. 27, 2025), *https://www.uscis.gov/sites/default/files/document/foia/Discretion_LP_RAIO.pdf.*

[18] *See, e.g., Matter of Pula,* 19 I&N Dec. 467, 474 (BIA 1987) (asylum); *Matter of Arai,* 13 I&N Dec. 494, 496 (BIA 1970) (adjustment of status).

[19] Furthermore, if the asylum application was filed on or after January 4, 1995, information provided in the application may be used as a basis for the initiation of removal proceedings. *See* 8 CFR 208.3(c)(1).

[20] As stated earlier in this preamble, this rule establishes a process that permits, but does not require, USCIS to refer certain asylum applications to EOIR without an interview. Accordingly, this rule will not hinder USCIS' ability to comply with any legislation or settlement agreement in litigation that would require USCIS to schedule interviews for certain aliens and/or populations of aliens.

[21] The asylum statute, as amended in 1996, was designed to provide a fair, orderly, and efficient process for adjudicating asylum applications, while also allowing the agency flexibility to manage resources and respond to changing circumstances. The timing provision in INA 208(d)(5)(A)(ii), 8 U.S.C. 1158(d)(5)(A)(ii), thus merely reflects Congress's desire for expeditious adjudication, and USCIS no longer offering an in-person interview on all affirmative asylum applications furthers these objectives by enabling the agency to allocate resources more efficiently and resolve claims more expediently, especially in managing a burgeoning backlog. By contrast, in other INA provisions, Congress expressly mandated an in-person, telephonic, or video interview or hearing. *See, e.g.,* INA 216(c)(1)(B), 216A(c)(1)(B), 222(h)(1), 235(b)(1)(B); 8 U.S.C. 1186a(c)(1)(B), 1186b(c)(1)(B), 1202(h)(1), 1225(b)(1)(B).

[22] Last year, the Acting EOIR Director interpreted Department of Justice (DOJ)-specific regulations to allow EOIR to pretermit legally deficient asylum applications ''without a hearing.'' *See* Memorandum from Sirce E. Owen, Acting Director of EOIR, to all of EOIR, re *Pretermission of Legally Insufficient Applications for Asylum* (Apr. 11, 2025), *https://www.justice.gov/eoir/media/1396411/dl?inline.* The BIA recently confirmed that immigration judges have broad discretion to ''conduct and control immigration proceedings and may determine the length and type of hearings held,'' which includes not conducting a ''full evidentiary hearing'' on the merits of an asylum application if the Immigration Judge determines that the factual allegations underlying the claim, viewed in the light most favorable to the applicant, do not establish prima facie eligibility for relief. *Matter of H–A–A–V–,* 29 I&N Dec. 233 (BIA 2025). Therefore, while aliens who are not offered an interview with USCIS are still referred to EOIR, the length and nature of any hearing is determined by the IJ.

or settlement agreements. Additionally, the rule only applies to aliens who do not maintain a lawful basis to remain in the United States. Therefore, such aliens could be placed in removal proceedings to present his or her application for asylum or withholding of removal in front of an IJ. Furthermore, because an AO still issues a decision on the application as required by 8 CFR 208.19, the agency continues to comply with existing regulations requiring USCIS to adjudicate the claim. *See* 8 CFR 208.9(a).[23] Lastly, as discussed in section III.A of this preamble, there is no statutory requirement that an AO make an eligibility determination prior to making a discretionary determination. Therefore, USCIS' change in practice to permit AOs to refer an application as a matter of discretion without determining whether the alien is eligible for the benefit of asylum is still in compliance with the INA and existing regulations.

E. History of Affirmative Asylum Interview Procedures

In 1994, rulemaking initially proposed to amend paragraph (a) of 8 CFR 208.9 to explicitly make asylum interviews ''discretionary,'' but the agency ultimately decided to continue offering asylum interviews prior to the adjudication of an asylum application.[24] Although public comments identified concerns that denying an interview would deprive an alien of the opportunity to verbally articulate his or her claim in a non-adversarial setting, the agency concluded the proposed rule fully recognized the due process rights of aliens by preserving asylum and withholding of deportation proceedings before an IJ.[25] The agency further concluded that the goal of streamlining asylum adjudications could be met, at that time, without amending regulations to specify that asylum interviews would be discretionary.[26] The 1994 final rule amended 8 CFR 208.9(a) to state: ''For each application for asylum or withholding or deportation that is complete within the meaning of Sec. 208.3(c)(5) and that is within the jurisdiction of the Office of Refugees, Asylum, and Parole, an interview shall be conducted by an asylum officer.'' Even though ''right to an interview'' language was not explicitly included in the 1994 notice of proposed rulemaking, the final rule also amended 8 CFR 208.10 to state that ''failure without good cause to appear for a scheduled interview . . . may be deemed to constitute a waiver of the right to an interview with an asylum officer . . . .'' and 8 CFR 208.14(b)(2) to provide that an AO may refer an application either after an interview or if ''the applicant is deemed to have waived his or her right to an interview.'' [27]

In 1997, rulemaking to implement the provisions of IIRIRA governing, among others, the handling of asylum claims and streamline regulatory language amended 8 CFR 208.9(a) to replace language stating that ''an interview shall be conducted by an asylum officer'' with the following text that aligns with language still currently used: ''USCIS shall adjudicate the claim of each asylum applicant whose application is complete within the meaning of 208.3(a)(2) or (c)(3), when applicable, and is within the jurisdiction of USCIS pursuant to 208.2(a).'' [28] The 1997 interim rule also amended 8 CFR 208.10 regarding failure to appear for an interview by an AO, but retained the reference to a right to an interview that was codified by the 1994 rule.[29] Lastly, the 1997 interim rule amended 8 CFR 208.4(a) so that it provided ''[i]f an applicant submits an asylum application and it appears that one or more of the prohibitions contained in section 208(a)(2) of the Act apply, an asylum officer or an immigration judge shall review the application to determine if the application should be rejected or denied.'' [30]

In 2000, the former INS issued another rule updating the regulations implementing IIRIRA's asylum provisions.[31] That rule revised this sentence in 8 CFR 208.4(a) to specify that the AO's review is ''in an interview'' and the immigration judge's review is ''in a hearing.'' [32] The 2000 rule amended this provision because it was determined, at that time and in part, that the decision on an untimely filing issue could best be made after an ''asylum officer, in an interview, or immigration judge, in a hearing'' had given an alien the opportunity to present any relevant and useful information bearing on any prohibitions on filing.[33] These relevant provisions regarding an interview in 8 CFR part 208 remained otherwise unchanged in relevant part until this IFR.

F. Reason and Justification for Rule

The asylum system in the United States is facing an unprecedented crisis that is straining its adjudicatory capacity and undermining the timely protection of individuals seeking refuge. The volume of annual affirmative asylum applications USCIS receives has grown significantly in the past five years, reaching a high of 465,810 in 2023. *See* Table 5. By the end of FY 2025, over 1.4 million affirmative asylum applications remained pending at USCIS (*see* Table 5), reflecting more than a decade of continuous growth fueled by sustained high filing volumes and frequent surges in global displacement.[34] The increase in annual receipts and end of FY pending applications mean that individuals seeking asylum may wait over 7.3 years for resolution in prolonged legal and personal uncertainty (*See* Table 5). Without DHS intervention to improve the affirmative asylum process and expand USCIS' operational efficiencies with this rule, the number of pending applications at the end of each FY will continue to escalate. Reducing the affirmative asylum backlog at USCIS also safeguards our national security, public safety, and the integrity of the immigration system.

To address these issues, USCIS is amending regulations to permit AOs to refer certain applications to EOIR, without conducting an interview, based on the record and other relevant evidence. Through this rule, USCIS provides the necessary change to existing regulations by removing references to a ''right to'' an interview, and removing language that an AO shall review and determine any prohibitions on filing ''in an interview,'' to ensure that both future and current asylum applicants better understand the affirmative asylum process. *See* 8 CFR 208.10; *see also* 8 CFR 2018.14(c). More specifically, asylum applicants will understand that they may not be offered an opportunity for an interview, thus encouraging aliens to submit any and all evidence in support of his or her asylum claim at the time of filing. Updating these provisions allows the Asylum Division to better meet its current operational realities, thus, aligning with USCIS' goal of increased operational efficiency. Additionally, providing asylum applicants with a clear

[23] There is no regulatory definition of ''adjudicate,'' however, the existing regulatory decisions on asylum applications include a grant, denial, or referral. *See* 8 CFR 208.19.

[24] *See* 59 FR 62284, 62285 (Dec. 5, 1994) (final rule); *see also* 59 FR 14779 (Mar. 30, 1994) (proposed rule).

[25] *See* 59 FR 62285 (Dec. 5, 1994).

[26] *Id.*

[27] *See* 59 FR 62293–94 (Dec. 5, 1994).

[28] *See* 62 FR 10312, 10341 (Mar. 6, 1997); *see also* 62 FR 444, 446 (Jan. 3, 1997) (interim rule).

[29] *See* 62 FR 10341 (Mar. 6, 1997).

[30] *See* 62 FR 10338 (Mar. 6, 1997).

[31] *See* 65 FR 76121 (Dec. 6, 2000).

[32] *See* 65 FR 76131 (Dec. 6, 2000).

[33] *See* 65 FR 76123 (Dec. 6, 2000).

[34] Global displacement refers to recurring increases in the number of people forced to leave their homes due to various factors, such as armed conflicts, persecution, natural disasters, climate change, or economic instability.

understanding of this change in the agency's long-standing practice of interviewing each asylum application results in improved application quality and completeness, as well as aliens who are better prepared for the asylum process.

The rule affects aliens who are removable and could therefore be placed in removal proceedings to present their application for asylum or withholding of removal to an IJ.

This change is necessary for the agency to keep up with receipts of incoming asylum applications and to efficiently process a backlog of over 1.4 million affirmative asylum cases, including over 400,000 asylum applications that were untimely filed.[35] Many of these pending cases do not require an interview for an AO to come to the legal conclusion that an alien is ineligible to apply for asylum or ineligible for a grant of asylum. For example, over the past five FYs, approximately 77 percent of untimely filed asylum applications that were referred to EOIR after an interview with USCIS were referred on the basis that the alien failed to meet, or establish an exception to, the OYFD. *See* Table 2 for details on FY 2021 through FY 2025 affirmative asylum receipts of applications filed more than one year after date of entry, referrals of such cases after interview, and the basis for referral.

TABLE 2—PENDING AFFIRMATIVE ASYLUM APPLICATIONS FILED MORE THAN ONE YEAR AFTER DATE OF ENTRY OR WITH BLANK DATE OF ENTRY, FISCAL YEARS 2021 THROUGH FY 2025 AS OF DECEMBER 11, 2025

FY of filing	Total pending	Total granted	Total referred	Referred based on one-year filing deadline	Percent of referrals with one-year filing deadline as basis for referral (%)	Total cases filed
2021	19,955	1,125	5,571	4,480	80.4	26,651
2022	36,824	1,732	2,797	2,226	79.6	41,353
2023	90,864	8,091	893	721	80.7	99,848
2024	138,061	1,714	1,137	957	84.2	140,912
2025	207,830	1,592	6,472	4,590	70.9	215,894
5-Year Total	493,534	14,254	16,870	12,974	76.9	524,658
5-Year Annual Average	98,707	2,851	3,374	2,595	76.9	104,932

Notes:
(1) This data includes where there is a blank entry date.
(2) This data includes cases where there is a blank date of entry or an error in the date of entry that initially indicates a one-year filing deadline issue.
(3) This data does not include Notices of Intent to Deny or Final Denials.
(4) This data does not include aliens who are an unaccompanied alien child in removal proceedings and are not subject to the filing deadline.
(5) Total pending includes cases pending interview and/or adjudication.
(6) Total cases filed includes cases that have since been closed without adjudication, including where the alien withdrew the application for asylum.
Source: U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Chief Data and Analytics Office. NPR Report, HQRAIO, GLOBAL, queried 12/2025 for PAER0019563.

This data shows that where aliens do not file a timely application and are ultimately referred to EOIR, a majority fail to qualify for an exception to the filing deadline even after an interview is conducted. Additionally, over the past five FYs, approximately 94 percent of untimely filed applications are still pending interview or have had an interview completed and are pending adjudication.[36] *See* Table 2 for details on FY 2021 through FY 2025 affirmative asylum applications filed more than one year after date of entry and pending interview and/or adjudication. This backlog is due, in part, to USCIS' long-standing practice of offering all asylum applicants an interview.

By amending regulations to permit AOs to refer an application without conducting an interview, USCIS will improve overall efficiency of operations by reducing adjudicative resources expended on non-meritorious claims, freeing up interview slots for cases based on scheduling priorities, and reducing the affirmative asylum backlog. Under the rule, an AO still adjudicates the asylum application. However, amending regulations to permit applications to be adjudicated without offering an interview allows USCIS to adjudicate some asylum applications more quickly, thereby reducing overall processing times for pending and incoming applications for asylum. Promptly referring to EOIR aliens who are ineligible for asylum and who are removable facilitates more quickly placing such aliens into removal proceedings and the removal of such aliens if they do not qualify for relief from removal.

The regulatory amendments are also necessary for USCIS to protect national security and public safety interests. Under the rule, USCIS permits an AO to refer an application without interview, which includes cases where an alien is barred from a grant or does not merit a grant of asylum as a matter of discretion. Such cases can involve issues relating to terrorism or serious crime that are more appropriately handled in an immigration court rather than an asylum office. Policy guidance implemented by USCIS regarding how to apply the rule to cases involving terrorism or serious crime will ensure that aliens posing a threat to national security or public safety are promptly identified and placed into removal proceedings if he or she is amenable to removal. Such cases present complex legal and factual issues that are more conducive to INA Section 240 removal proceedings, where the alien can present his or her asylum application or claim for other forms of relief before an IJ and the interests of the

[35] *See* Table 5 for details on FY 2021 through FY 2025 affirmative asylum receipts, pending cases at the end of each FY, and processing times; *see also* Table 1 for details on pending affirmative applications filed more than one year after last entry into the United States.

[36] Calculation: 493,534 Total Pending Untimely Filed Affirmative Asylum Applications/524,658 Total Untimely Filed Affirmative Asylum Applications = 94 percent (rounded).

United States government will be properly represented by an attorney from the U.S. Immigration and Customs Enforcement (ICE) Office of the Principal Legal Advisor (OPLA). Moreover, unlike an AO, an IJ has authority to consider other forms of relief or protection from removal. Furthermore, OPLA has better resources and the support of ICE Enforcement and Removal Operations (ERO) and ICE Homeland Security Investigations (HSI) as they prepare for court. These are precisely the types of situations contemplated by section (d)(5)(B) of section 208 of the INA, 8 U.S.C. 1158(d)(5)(B), which allows for the agency to provide regulations for ''any other conditions or limitations on the consideration of an application for asylum not inconsistent with this chapter.''

In addition, under the rule, USCIS does not need to wait for ICE to issue the Notice to Appear (NTA), but rather USCIS can issue the NTA, ensuring that USCIS timely identifies and places dangerous aliens in removal proceedings. For example, under previous agency practice, aliens in federal or state custody due to dangerous criminal conduct could not be interviewed and their applications could not be adjudicated by USCIS until the alien was released from criminal custody into ICE custody. Under this rule permitting referrals without interview for certain applications, USCIS can proceed to adjudicate those cases without further delay. Similarly, for aliens who have been arrested and charged with serious crimes, such as terrorism or murder, USCIS can proceed to refer without interview, where appropriate, rather than wait for the alien's criminal proceedings and detention to conclude.

The pre-existing process for USCIS to refer aliens to ICE [37] is insufficient to address the public safety concerns motivating this rule. First, there is a delay while ICE considers whether to accept the referral and issue an NTA. Second, the time that ICE takes to consider whether to accept the referral further delays the alien's adjudication, and in turn lengthens the period in which the alien is permitted to remain in the United States and increase the risk to the United States that that alien presents. Overall, under this pre-existing process, USCIS experiences significant delays in processing both national security and public safety concerns due to staffing, resources, and USCIS dependency on ICE, and other law enforcement and intelligence community responsiveness. Under the rule described in this preamble, permitting USCIS to refer an application without interview, the agency is able to identify and refer aliens with the most serious derogatory information more quickly than is possible under pre-existing processes.

Under the rule, USCIS will issue guidance about whether and how it will coordinate with FDNS prior to a referral without interview, in the event that a USCIS referral to ICE under pre-existing policy guidance will more efficiently move a specific case to the appropriate venue of EOIR than will a USCIS referral without interview under this rule. Although it is not ultimately in USCIS' purview to determine if an alien referred to EOIR will be apprehended by ICE, such aliens may come to ICE's attention more quickly if referred without interview under this rule than under pre-existing referral to ICE processes.

Because the rule only affects aliens who have not yet been scheduled for an asylum interview, USCIS is consistent with other regulations regarding interview procedures that must be followed when an interview is scheduled.[38] By amending regulations to permit AOs to refer without interview, USCIS is able to focus its limited resources on asylum applications that require eliciting testimony for adjudication. This is also consistent with overall efficiency efforts, particularly considering that aliens now need to pay an asylum fee for each calendar year the application is pending.[39]

Under the rule, USCIS simplifies its adjudicative decision writing process in two ways. First, by removing the requirement to include an assessment of credibility in a referral letter, USCIS adjudicators are able to focus the written decision on the actual reasons for referral, particularly where credibility does not form the basis for the decision. Second, USCIS is modifying its processes regarding discretionary referrals so that an AO may refer an application as a matter of discretion without first making an eligibility determination. With this change, AOs are able to focus their analysis on the outcome-determinative basis for the referral rather than spending valuable adjudicative time assessing whether the alien is a refugee only to find that the alien does not merit a grant of asylum. Therefore, by changing this practice and guidance to its adjudicators, USCIS is able to draft decision letters more quickly in cases where negative factors ultimately outweigh any positive factors.

IV. Discussion of Rule

A. Regulatory Changes

Five regulatory changes result from this rule. First, 8 CFR 208.4(a) is amended to remove language stating that an asylum officer ''in an interview'' shall review the application and give the applicant the opportunity to present any relevant and useful information bearing on any prohibitions on filing. Second, a paragraph at 8 CFR 208.9(a)(2) is amended to permit an AO to refer without conducting an interview, based on a review of the record and other relevant evidence, as applicable. Third, 8 CFR 208.10 and 208.14 are amended to remove language referring to the ''right to an'' interview, to be consistent with the fact that there is no explicit statutory right for an asylum applicant to receive an interview.[40] Fourth, 8 CFR 208.14(c) is amended to add language confirming that an AO could also refer an asylum application even if no interview was conducted, and to remove language referring to the ''applicant's right to an'' interview. Fifth, 8 CFR 208.19 is amended to add language that a denial or referral decision letter include an assessment of the applicant's credibility only ''for denials.''

Amending these provisions explains that USCIS may not offer an interview for all asylum applications, that an AO may determine based on the record and other evidence if the application can be referred without interview, and that a

[37] Under existing enhanced vetting efforts, the National Vetting Center (NVC) and Unified Passenger (UPAX) enable USCIS to identify aliens confirmed on terrorist watchlists, as a known or suspected terrorist, and on criminal databases indicating the alien has engaged in conduct constituting, in aid of, or related to transnational organized crime. For further information on NVC, please see *https://www.dhs.gov/publication/dhsallpia-072-national-vetting-center-nvc* (last updated May 22, 2024). For further information on UPAX, please see *https://www.dhs.gov/publication/automated-targeting-system-ats-update* (last updated Dec. 11, 2024). When USCIS identifies such an alien during USCIS' screening, the USCIS Fraud Detection and National Security Directorate (FDNS) first tries to resolve any concerns. If unresolved, FDNS will refer the alien to ICE for enforcement action.

[38] Such regulations address the timing of the interview, the specific manner in which the interview is to be conducted, the authority of an AO to administer oaths, the role of the representative in the interview, the provision of additional evidence, the composition of the record, and the requirements for interpreters. *See* 8 CFR 208.9(a)–(g).

[39] *See* 90 FR 34511, 34515 (July 22, 2025).

[40] USCIS emphasizes, however, that removing the ''right to an'' interview language from 8 CFR 208.10 and 208.14 does not otherwise impact affirmative applicants who are not amenable to referral to EOIR, as USCIS will still conduct an interview prior to a grant or denial of asylum.

credibility assessment is not required in a referral decision letter where credibility is not the basis for referral. These changes are necessary to inform individuals seeking asylum that they may not be offered an interview in all cases, and that this rule removes reference to a ''right'' to an interview in 8 CFR 208.10 (previously providing that ''[f]ailure to appear for a scheduled interview without prior authorization may result in dismissal of the application or waiver of the right to an interview'') and in 8 CFR 208.14(c) (previously providing that ''if, as provided in § 208.10, the applicant is deemed to have waived the applicant's right to an interview or an adjudication by an asylum officer, the asylum officer shall deny, refer, or dismiss the application''). These changes are also necessary to inform aliens that any prohibitions on filing for asylum may not be determined in an interview, and this rule removes language that an AO shall review and determine prohibitions on filing ''in an interview'' in 8 CFR 208.4(a) (previously providing that ''[i]f an applicant files an asylum application and it appears that one or more of the prohibitions contained in section 208(a)(2) of the Act apply, an asylum officer, in an interview, or an immigration judge, in a hearing, shall review the application and give the applicant the opportunity to present any relevant and useful information bearing on any prohibitions on filing to determine if the application should be rejected''). The addition of 8 CFR 208.9(a)(2) is necessary to further explain that affirmative asylum interview procedures, pursuant to 8 CFR 208.9, still apply only if an interview is in fact scheduled—but do not entail a broader right to an interview in all cases simply because the alien filed an asylum application. Lastly, amending provisions to remove the requirement for a credibility assessment in referral letters is necessary because it allows USCIS to efficiently draft decision documentation where credibility is not the basis for referral.

B. Referrals Without Interview

In previous practice, an AO generally [41] conducted an interview on the asylum application and then adjudicated the application based on the record and evidence, including testimony elicited at a scheduled interview. Regulations state that the purpose of an interview is to ''elicit all relevant and useful information bearing on the applicant's eligibility for asylum.'' 8 CFR 208.9(b). Through the rule, USCIS permits AOs to refer an asylum application filed by an alien who is amenable to referral to EOIR (aliens who do not maintain a lawful basis to remain in the United States) without conducting an interview. USCIS will continue to offer an interview for cases where the alien maintains a lawful basis to remain in the United States.

Referral case types may include where the alien is barred from applying for asylum, is barred from a grant of asylum, does not merit a grant as a matter of discretion, or is not eligible on the merits of the claim. For example, this could include cases involving terrorism or serious crime, or where the alien is barred from applying for asylum due to the OYFD. USCIS welcomes comments on this issue. In any case, USCIS will implement guidance for referrals without interview in various situations where, based on preliminary review of the record and evidence, the alien is ineligible for asylum or does not merit a grant of asylum. USCIS will continue to offer an interview for cases where the alien is not barred from asylum or ineligible on the merits of the claim and may merit a grant as a matter of discretion.

Through the rule, an AO determines if an interview is necessary based on a review of the record [42] and other relevant evidence, to include the asylum application, supporting documents, other information in the file, and background checks including classified information, as applicable.[43] In applying the rule to both future filings and pending cases that have not been scheduled for an initial asylum interview, the Asylum Division could electronically scan applications for certain parameters—for example, the alien's date of last entry into the United States, filing date, and/or security checks results—to determine if the case may be amenable to referral without interview. At that point, an AO reviews the file and all relevant evidence to determine whether the opportunity for an interview will be provided. USCIS also retains the ability to conduct an interview on any asylum application, including where the officer cannot determine the alien's amenability for a referral from the record and evidence alone or where the officer deems an interview appropriate to meet the interests of the agency.

USCIS will generally schedule an interview for any case where the AO cannot determine eligibility to apply or to be granted asylum from the record and evidence alone, including any response to a request for evidence (RFE) and/or a public web alert or other methods reminding aliens to submit further evidence as discussed further in the section below. Importantly, a determination that the alien provided evidence of eligibility, either in the initial application or in response to an RFE and/or a public web alert or other methods, and will be scheduled for interview, will *not* be a final determination that the alien has met his or her burden of proof. If an application is determined at any point to need an interview, an AO could still refer the application after interview.

Because an AO adjudicates the application, even without interview, USCIS is complying with regulations requiring referrals to have a decision in writing stating the basis for referral. *See* 8 CFR 208.19. Under the rule and amendments to 8 CFR 208.19, a referral decision letter no longer requires the written decision to include an assessment of the alien's credibility. This allows AOs to focus the written decision on the actual reasons for referral, particularly where an application is amenable to referral without interview and credibility is not the reason for the referral. This amendment to 8 CFR 208.19 does not prevent USCIS from including a credibility assessment in the decision letter, where credibility does form the basis for referral.

C. Additional Evidence

Previously, as a matter of practice, all asylum applicants were given the opportunity to address evidentiary deficiencies in an interview. Current regulations state the purpose of an interview is to elicit all relevant and useful information bearing on the applicant's eligibility. *See* 8 CFR 208.9(b). However, this purpose can sometimes be accomplished through non-interview means, such as RFEs,

[41] For example, and as discussed below, USCIS has developed alternative processes that allow aliens to waive the interview in some circumstances.

[42] The rule cites to the definition of the record as provided in 8 CFR 208.9(f)(1), which states: ''The asylum application, as defined in [section] 208.3(a), all supporting information provided by the applicant, any comments submitted by the Department of State or by DHS, and any other unclassified information considered by the asylum officer in the written decision shall comprise the record.''

[43] The Department must obtain the authorization of the originator before classified information or any unclassified summary of classified information may be used in immigration proceedings. *See* Memorandum from Alejandro N. Mayorkas, Secretary of DHS, to Heads of Dep't Components, re *DHS Policy and Guidelines for the Use of Classified Information in Immigration Proceedings* (May 9, 2024) (''DHS UCIIP Memo May 2024''), *https://www.dhs.gov/sites/default/files/2024-05/24_0509_sec_24-02395-s1-signed-policy-and-guidellines-classified-info-in-immigration-proceedings-508.pdf.*

and/or issuing reminders to submit all evidence via a public web alert, or other methods. Under the rule, although the mechanisms for providing additional evidence may be a departure from previous agency practice (*e.g.,* paper-based testimony and evidence rather than oral and paper-based testimony and evidence), the fact that aliens can amend or supplement their asylum applications at any point before a decision remains unchanged. See 8 CFR 208.4(b)(1). In addition, USCIS may issue an RFE if, for example, the application is insufficient on its own to determine the alien's eligibility for asylum or referral without an interview. *See* 8 CFR 103.2(b)(8)(iii).

USCIS emphasizes, however, that it is not required to issue an RFE in every case. For example, for applications filed on or after the effective date of the rule, RFEs may be used less frequently than for those filed before the effective date of the rule. This is because such aliens will have the benefit of public notice of this rule and the revised Form I–589 filing instructions informing aliens that USCIS may adjudicate the application without conducting an interview or issuing a request for further evidence. The revised Form I–589 filing instructions will further highlight that the application and any supporting documentation provided at the time of filing may be the only opportunity to meet his or her burden. USCIS will also clearly state in the revised Form I–589 filing instructions that, because an AO may adjudicate the application without conducting an interview or requesting additional evidence, the alien should ensure that his or her explanations are complete and detailed. Furthermore, a written acknowledgement that the alien's application is considered complete for filing purposes with USCIS is not a finding that the alien has met his or her burden of proof to establish eligibility. *See* 8 CFR 208.3(c)(3).

DHS is applying this rule's changes in practice to affirmative asylum applications currently pending with USCIS. DHS is considering, and welcomes public comment on, non-interview pathways to inform aliens of the ability to supplement his or her asylum applications, such as the issuance of an RFE and/or a public web alert reminder, or other methods. Aliens with pending applications may be given an opportunity to overcome the deficiency that will be the basis for referring the application since an alien may have relied on USCIS' practice of interviewing in every case when filing the Form I–589. Issuing RFEs in the context of referrals without interview presents one such opportunity for aliens with pending applications to meet their burden. Another avenue for aliens with pending applications to meet their burden is *sua sponte* supplementing their application if the alien feels he or she has additional evidence that has not yet been submitted. USCIS could issue a public web alert to notify aliens of this rule's changes to USCIS practice and remind them of the ability to supplement their application and meet their burden to establish eligibility. Any public web alert will not request or require information from a specific asylum applicant but will rather serve as a reminder to aliens with pending asylum applications that they can submit additional evidence and that the application may be referred without interview based on any existing evidence.

As with the referrals without an interview, USCIS is considering which pending cases could be scheduled for interview or referred without an interview without first needing to request additional evidence. USCIS welcomes comment on this issue as well. USCIS will schedule those cases for an interview when resources permit. USCIS could issue an RFE for pending cases where further information is needed to determine if an interview is necessary. Where USCIS determines that an RFE is needed, the RFE will be issued by regular or electronic mail and will specify the type of evidence required and the deadline for response, in line with existing guidance. *See* 8 CFR 103.2(b)(8). In some cases, a pending application may be referred without interview and without an RFE.

Before referring an application without interview, an adjudicator must determine whether the alien has met the standard of proof. *See* 8 CFR 208.4(a)(1); *see also* 8 CFR 208.14(c).[44] Therefore, an AO reviews any evidence the alien submits in response to an RFE and/or a public web alert or other methods the agency implements, as well as the record and other relevant evidence, to determine whether the application should be scheduled for interview or referred without interview. If the alien fails to submit additional evidence, an AO may still refer the application to EOIR by making an eligibility determination based on the existing record and evidence. Because referrals require a decision in writing describing the basis for referral, an AO will adjudicate an application even where the alien fails to respond to an individualized request or a public call for further evidence issued under the rule. *See* 8 CFR 208.19.[45]

D. Aliens Ineligible To Apply for Asylum

As noted above, USCIS is amending its regulations to permit AOs to refer certain applications to EOIR without an interview, including in cases where the alien is ineligible to apply for asylum.[46] The OYFD is the most common bar [47] to applying for asylum. *See* INA 208(a)(2)(B), 8 U.S.C. 1158(a)(2)(B). Any affirmative asylum applicant who applies on or after April 16, 1998 must establish that he or she filed for asylum within one year from the date of last arrival (or April 1, 1997, whichever is later), or establish that he or she is eligible for an exception to the one-year filing requirement.[48] *See* INA

[44] Paragraph (c) of 8 CFR 208.14 describes how to process applications where the AO does not grant asylum. Inherent in this provision is that where an AO does not grant asylum, the officer has also determined that the alien did not meet his or her burden of proof on eligibility or does not warrant a favorable exercise of discretion.

[45] In line with existing guidance, a failure to respond to an RFE does not in itself form the basis of the referral. *See* 8 CFR 103.2(b)(8). Cases where the alien fails to respond to an RFE will not result in dismissal of the application or waiver of the right to an adjudication by an AO, except in limited circumstances involving RFEs related to fingerprint processing requirements. *See* 8 CFR 208.10; *see also* USCIS, *Affirmative Asylum Procedures Manual,* sec. III.K.1 (last updated Feb. 2025), *https://www.uscis.gov/sites/default/files/document/guides/AAPM.pdf.*

[46] Bars to applying for asylum also include where an alien can be removed, pursuant to a bilateral or multilateral agreement, to a country in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion and where the alien would have access to a full and fair procedure for determining a claim to asylum. *See* INA 208(a)(2)(A), 8 U.S.C. 1158(a)(2)(A); *see also* 8 CFR 208.4(a)(6). However, the rule does not apply to this specific bar because, in such cases, the alien would be removed using expedited removal authority rather than INA Section 240 removal authority. Lastly, bars to applying for asylum also include where the alien has previously applied for asylum and was denied by an IJ or the BIA. *See* INA 208(a)(2)(C), 8 U.S.C. 1158(a)(2)(C); *see also* 8 CFR 208.4(a)(3). However, the rule does not apply to this specific bar because, in such cases, the alien can apply for asylum again with USCIS if he or she demonstrates that there are changed circumstances which affect his or her eligibility for asylum. *See* INA Section 208(a)(2)(C), (D); 8 CFR 208.4(a)(3), (4).Additionally, if the alien was a dependent on a prior asylum application that was denied by the IJ, the prohibition on filing does not apply. 8 CFR 208.14(f).

[47] As of December 11, 2025, there are approximately 444,724 cases pending initial interview scheduling that were filed more than one year after date of entry and are not filed by an unaccompanied alien child, an alien under 18 years old at the time of filing, or lawful permanent resident. *See* Table 1 for details on affirmative asylum applications filed on or after April 16, 1998, filed more than one year after date of entry, and pending initial interview scheduling.

[48] *See* 8 CFR 208.4(a)(2)(ii). Although April 1, 1998, is the effective date provided by regulation for those who arrived before April 1, 1997, the legacy Immigration and Naturalization Service (INS) extended an administrative 14-day grace period for

208(a)(2)(D), 8 U.S.C. 1158(a)(2)(D). Unaccompanied alien children (UACs) are not subject to the filing deadline and will therefore not be referred without interview based on the OYFD, but a UAC may still be referred under the rule if an AO determines the UAC is ineligible for asylum.[49]

As mentioned above, the alien must demonstrate by clear and convincing evidence that the application has been filed within one year after the date of the alien's last arrival in the United States or to the satisfaction of the adjudicator either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing. *See* INA 208(a)(2)(B), (D), 8 U.S.C. 1158(a)(2)(B), (D); *see also* 8 CFR 208.4(a)(2), (4), (5). Under the rule, an AO still determines if an alien filed more than one year after the alien last arrived in the United States and whether the alien qualifies for an exception to the filing deadline prior to referring the application. However, an AO may make this determination based on the record and evidence, with or without conducting an asylum interview. Because an alien who is ineligible to apply for asylum due to the OYFD is still eligible to apply for withholding of removal before an IJ, an AO will refer such applications to EOIR.

USCIS may determine whether a pending case with an OYFD issue should be placed on the interview schedule or whether further information is needed, either through the issuance of an RFE and/or a public web alert, or other methods. For instance, where an alien appears to qualify for an exception to the OYFD based on information from Form I–589 or background checks, USCIS could schedule an interview for the case. Alternatively, if USCIS requires further information to determine if an interview is needed, the agency may allow the alien an opportunity to provide additional evidence through the issuance of an RFE or other methods. If USCIS issues a public web alert to aliens with pending applications, the alert will notify aliens of changed regulations and procedures and remind aliens that they may submit additional evidence. If an RFE is issued, USCIS will clearly explain in the request that the burden of proof is on the alien to establish eligibility to apply, including whether an alien qualifies for an exception to the filing deadline. Requests for such evidence could cite to statutory and regulatory provisions that list examples of changed or extraordinary circumstances exceptions to the OYFD and explain that an application must be filed within a reasonable period given the circumstance. *See* INA 208(a)(2)(B), (D), 8 U.S.C. 1158(a)(2)(B), (D); *see also* 8 CFR 208.4(a)(2), (4), (5). The determination of reasonableness is made on a case-by-case basis. The fact that an alien's claimed reason for filing a late application is described in the list of possible changed or extraordinary circumstances does not in itself constitute an exception to the filing deadline, as this is a decision to be made to the satisfaction of the adjudicator. *See* 8 CFR 208.4(a)(2)(B); *see also* 65 FR 76121, 76124 (Dec. 6, 2000).

Specific to the OYFD, 8 CFR 208.4(a) states: ''an asylum officer, or an immigration judge in a hearing,'' shall review the application and give the applicant the opportunity to present relevant and useful information bearing on any prohibitions on filing, with this rule removing previous language stating that this review and opportunity would occur ''in an interview.'' Because an AO can often determine eligibility to apply for asylum by the evidence provided in the application, testimony presented in interviews rarely leads to the alien overcoming the OYFD. *See* Table 2 for details on FY 2021 through FY2025 affirmative asylum receipts of applications filed more than one year after date of entry, referrals of such cases after interview, and the basis for referral. While it is possible that an alien who qualifies for an exception to the OYFD could erroneously be referred without interview, the alien will retain the opportunity to present his or her claim to an IJ *de novo,* at which point he or she could present arguments and evidence of an exception to the filing deadline.

Lastly, under the rule, the Asylum Division may still issue revised interview waiver notices in cases where an alien filed an asylum application with USCIS 10 years after his or her last entry into the United States or did not include a date of entry on the application.[50] The notices previously stated that failure to sign the waiver will result in an interview. However, this rule applies to those in the backlog that may have already received a waiver notice.

E. Aliens Barred From a Grant of Asylum or Do Not Merit a Grant as a Matter of Discretion

The Asylum Division will implement processes for applications under the rule where the alien is barred from a grant of asylum or does not merit a grant as a matter of discretion, including cases where the alien has a connection to terrorism or serious crime, as the Asylum Division further defines these terms in operational guidance. This may include cases where an alien is barred from a grant due to a mandatory criminal bar, as described in section III.B.3 of this preamble. This may also include cases where negative factors outweigh any positive factors in the totality of the circumstances as outlined in a discretionary analysis, as described in section III.B.4 of this preamble.

Evidence of a mandatory bar may arise in the application, supporting documents, background checks, or other evidence. For example, Part B, question 2 of Form I–589 asks if the alien or a family member has ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States. The response to this question may present information related to the alien's claim for asylum but may also indicate evidence of a mandatory bar for conviction of a particularly serious crime or commission of a serious non-political crime outside of the United States. Similarly, Part B, questions 3.A and 3.B ask about the alien's past or continued involvement with any groups or organizations, including paramilitary or guerilla organizations, which can

---

applications filed with the first 15 days of April 1998. *See* USCIS RAIO Directorate, *Lesson Plan, One-Year Filing Deadline* 5 (May 6, 2013), *https://www.uscis.gov/sites/default/files/document/lesson-plans/One_Year_Filing_Deadline_Asylum_Lesson_Plan.pdf.*

[49] UAC is defined as a child who has no lawful immigration status in the United States, has not attained 18 years of age, and there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody. *See* 6 U.S.C. 279(g)(2). AOs have initial jurisdiction over any asylum application filed by a UAC. *See* INA 208(b)(3)(C), 8 U.S.C. 1158(b)(3)(C).

[50] This interview waiver program was developed after the agency noticed that some aliens who filed their applications 10 or more years after their entry to the United States were not genuinely seeking asylum but instead wanted to use the affirmative asylum process as a vehicle to obtain employment authorization and a pathway to removal proceedings where they could apply for cancellation of removal and adjustment of status to lawful permanent resident under INA 240A(b), 8 U.S.C. 1229b(b), before an IJ. As of December 11, 2025, the Asylum Division estimates that it had approximately 129,525 ''cancellation cases'' pending, filed by aliens who were living in the United States for at least 10 years at the time of filing his or her asylum application. *See* Table 1 for details on affirmative asylum applications that were filed on or after April 16, 1998, and where the application was filed with USCIS 10 years or more after the alien's last entry into the United States or where the alien did not include a date of entry on the application.

present information related to both the claim and to potential mandatory bars. Part C, question 3 of Form I–589 asks if the alien, spouse or child(ren), ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion. An affirmative response to this question may indicate that the alien, spouse and/or child(ren), may be barred due to the persecution of others.

Under the rule, USCIS considers the alien's responses to questions on the Form I–589, along with the record and other relevant evidence, in determining if an interview is necessary. Evidence of a mandatory bar may not arise until after the alien filed the asylum application. For instance, Part C, question 6 of Form I–589 asks if the alien or a family member included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States. If the alien is arrested for a crime only after filing for asylum, the application may not accurately reflect the alien's criminal history. However, information about the alien's criminal conduct may be identified through background checks. The Asylum Division will implement processes to identify cases where evidence of a mandatory bar arises after the application is filed and to determine if an interview needs to be conducted. As with other cases under the rule, USCIS may issue an RFE, if applicable, for documentation such as arrest records, police reports, or court dispositions.[51]

For the purpose of discretionary referrals to EOIR without conducting an interview, aliens with a connection to terrorism or serious crime may include but are not limited to, known or suspected terrorists as confirmed on terrorist watchlists or criminal organization watchlists. An alien with background checks indicating that the alien is on a terrorist or criminal organization watchlist, and where the identity of the watchlisted individual is confirmed by USCIS to match the alien, could be referred as not meriting a grant of asylum as a matter of discretion.[52]

As mentioned above, there is no complete list of discretionary factors that can or should be considered prior to a discretionary determination. AOs receive training in accordance with case law stating: ''[D]iscretionary factors should be carefully evaluated in light of the unusually harsh consequences which may befall an alien who has established a well-founded fear of persecution; the danger of persecution should generally outweigh all but the most egregious of adverse factors.''[53] However, there are cases which do present the most egregious of adverse factors which may form the basis of a discretionary referral. For instance, AOs also receive training that a criminal conviction is always a negative factor that will weigh heavily against an alien, and that AOs should carefully consider any indication that the alien might pose a threat to public safety or national security.[54] As a general rule, information that raises the possibility that a bar to asylum might apply would likely also constitute a negative discretionary factor even if it is determined that the bar does not apply.[55]

As a matter of policy, USCIS previously instructed that AOs should generally make a determination of statutory eligibility before addressing the exercise of discretion.[56] However, there is no statute, regulation, or case law that states that it is impermissible to refer an application as a matter of discretion without first making a determination that the alien would otherwise be eligible for a grant. In fact, case law suggests that it is legally permissible.[57] Therefore, despite long-standing USCIS practice of placing a threshold eligibility determination before exercising discretion, the agency has always had, as a matter of law, the ability to put the discretionary decision first. Thus, as a legal matter, it is permissible to deny or refer an application as a matter of discretion without also making a determination that the alien is otherwise eligible for the benefit. Under the rule, a formal exercise of discretion to refer, rather than to approve, may be appropriate when the alien might be eligible for the benefit under the statutory and regulatory criteria but negative factors have been found in the course of the adjudication that outweigh any positive factors. *See* INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A) (stating that an AO may grant asylum if the alien is a refugee within the meaning of INA 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A), not that an AO must grant asylum). Such language supports the idea that an asylum grant is discretionary and that a grant is not a requirement even if an alien establishes eligibility.[58] In referring such cases without interview, an AO will write a specific and persuasive explanation of the decision, identifying both the positive and negative factors considered, applying

[51] If USCIS requests documentation such as final disposition of an arrest, the alien's failure to respond could be considered a failure to comply with fingerprint processing requirements without good cause, under current regulations and existing Asylum Division guidance. *See* 8 CFR 208.10; *see also* USCIS, *Affirmative Asylum Procedures Manual,* sec. III.K.1 (last updated Feb. 2025), *https://www.uscis.gov/sites/default/files/document/guides/AAPM.pdf.*

[52] USCIS does not intend to apply the rule to all cases with an indication of terrorism-related inadmissibility grounds (TRIG), as defined under INA 212(a)(3)(B), 8 U.S.C. 1182(a)(3)(B), as this presents efficiency implications for USCIS, ICE OPLA, and EOIR. Referring all cases due to a TRIG bar, without interview, would likely undermine certain efficiency gains contemplated by the rule. AOs are extensively trained on TRIG issues. Cases requiring TRIG analysis while at EOIR may have to be returned to USCIS for certain purposes before being sent back to EOIR. *See* INA 212(d)(3)(B)(i), 8 U.S.C. 1182(d)(3)(B)(i); *Matter of A–C–M-,* 27 I&N Dec. 303, 308–09 & n.6 (BIA 2018). Considering these operational impacts, the Asylum Division could implement guidance specifying which cases the rule will be applied to regarding known or suspected terrorists and TRIG cases. Lastly, in general, any terrorism-related or security-related charges on the NTA, *e.g.,* INA 212(a)(3) or 237(a)(4), 8 U.S.C. 1182(a)(3) or 1227(a)(4), will need to be approved by OPLA and be supported with evidence that could be disclosed to the alien.

[53] *See Matter of Pula,* 19 I&N Dec. 467, 474 (BIA 1987).

[54] *See* USCIS RAIO Directorate, *Lesson Plan, Discretion* 18 (Jan. 27, 2025), *https://www.uscis.gov/sites/default/files/document/foia/Discretion_LP_RAIO.pdf.*

[55] *Id.*

[56] *Id.*

[57] *See* USCIS RAIO Directorate, *Lesson Plan, Discretion* 12 (Jan. 27, 2025), *https://www.uscis.gov/sites/default/files/document/foia/Discretion_LP_RAIO.pdf; see also INS* v. *Abudu,* 485 U.S. 94, 105 (1988) (stating that ''in cases in which the ultimate grant of relief is discretionary (asylum, suspension of deportation, and adjustment of status, but not withholding of deportation), the BIA may leap ahead, as it were, over the two threshold concerns (*prima facie* case and new evidence/reasonable explanation), and simply determine that, even if they were met, the movant would not be entitled to the discretionary grant of relief.''); *INS* v. *Bagamasbad,* 429 U.S. 24, 25–26 (1976) (In finding that the respondent's application for adjustment of status would have been properly denied whether or not she satisfied the statutory eligibility requirements, the Supreme Court stated that ''[a]s a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach'' and that ''absent an express statutory requirement, we see no reason to depart from the general rule and require the immigration judge to arrive at purely advisory findings and conclusions as to statutory eligibility.'').

[58] The RAIO Directorate Lesson Plan on discretion also confirms that ''[d]iscretion gives the adjudicator authority to deny a benefit or a form of relief even when the applicant is eligible according to the law, but that power cannot be exercised arbitrarily or capriciously,'' thus reinforcing the fact that all decisions, including discretionary ones, need to be supported with a reasoned analysis which would include a weighing of the positive and negative factors. *See* USCIS RAIO Directorate, *Lesson Plan, Discretion* 13 (Jan. 27, 2025), *https://www.uscis.gov/sites/default/files/document/foia/Discretion_LP_RAIO.pdf.*

the totality of the circumstances of the specific facts of the case, and explaining how the officer weighed the different factors.[59]

Under the rule, an AO is able to base a determination to interview or refer without interview on classified information, as applicable, meaning where there is use authority.[60] Under the rule, USCIS will still comply with regulatory requirements that referral decisions communicate the basis for referral. *See* 8 CFR 208.19.

DHS recognizes that this is a significant departure from its previous long-standing use of discretion in affirmative asylum adjudications and that many asylum applicants had become accustomed to this practice. DHS does not believe there are significant reliance interests in whether USCIS determines an alien should or should not be granted asylum as a matter of discretion after an eligibility determination, as in either case the ultimate decision is deferred to the agency's discretion. To the extent there may be reliance interests, DHS believes the public safety and national security benefits of this change far outweigh any potential reliance interests. DHS welcomes public comment on this and all aspects of the rule.

By permitting AOs to refer certain affirmative asylum applications to EOIR without interview, including where the alien presents national security and public safety concerns, such as found in cases where the alien is barred by a mandatory bar or does not merit a grant as a matter of discretion, USCIS is better able to protect national security and public safety interests by quickly identifying individuals who pose a danger to the United States and placing them in INA Section 240 removal proceedings. Such an alien will be able to present his or her asylum application or claim for other forms of relief to an IJ, and where an attorney from ICE OPLA could properly represent the interests of DHS.

[59] *See* USCIS RAIO Directorate, *Lesson Plan, Discretion* 20 (Jan. 27, 2025), *https://www.uscis.gov/sites/default/files/document/foia/Discretion_LP_RAIO.pdf.*

[60] *See* DHS UCIIP Memo May 2024, at 4–5, providing that the Department has the legal authority to use classified information, where approved, ''as deemed necessary to protect our national security and public safety interests, and consistent with the legal obligation to protect intelligence sources and methods.'' This guidance is meant to include cases involving an individual who may pose a threat to national security or public safety or where the classified information could bear on the outcome of the proceeding.

F. Aliens Not Eligible for Asylum on the Merits of the Claim

USCIS intends to implement subregulatory guidance, as needed in the future, on how to refer applications without interview where the alien is ineligible for asylum on the merits of the claim. For example, USCIS may choose to begin referring applications where the alleged or feared persecution is not on account of a protected ground under INA 101(a)(42), 8 U.S.C. 1101(a)(42).

G. Severability

As discussed above, in issuing this interim final rule, it is DHS's intent that each change be considered as a separate provision that can stand on its own and be considered independently to the greatest extent possible. This rule is structured in such a way that a stay, injunction, or vacatur of this rule could be narrowly tailored to remedy the specific harm that a court may determine exists with a specific provision. In other words, if a court were to hold that any provision of this rule is invalid or unenforceable by its terms, or as applied to any person or circumstance, DHS intends that the provision be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is that the provision is wholly invalid and unenforceable, in which event the provision should be severed and the holding should not affect the remainder of this rule or the application of the affected provision to persons not similarly situated or to dissimilar circumstances.

For example, if a court were to hold that only the amendments to the regulations under 8 CFR 208.19, which change the requirements for when an asylum officer's decision letter must include an assessment of an alien's credibility, should be enjoined or vacated for some reason, it is the intent of DHS that such court would narrowly construe its decision and leave the remainder of the rule regarding referrals without an interview in place with respect to all other circumstances. Similarly, even if one of the changes to remove language regarding interviews and affirmatively set out an overview of the process for referrals without an interview in 8 CFR 208.4, 208.9, 208.10, or 208.14 is enjoined, DHS would still prefer the remaining sections to remain in place as a more accurate reading of the statute.

V. Statutory and Regulatory Requirements

A. Administrative Procedure Act (APA)

DHS is issuing this rule without prior notice-and-comment and without a 30-day delayed effective date, pursuant to 5 U.S.C. 553(b)(A) and (d). DHS has also considered potential reliance interests as discussed below.

1. Procedural Rule With Immediate Effective Date

This interim final rule is a rule of ''agency organization, procedure, or practice.'' *See* 5 U.S.C. 553(b)(A). The D.C. Circuit Court of Appeals explained:

> the critical feature of the procedural exception is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency. Of course, procedure impacts on outcomes and thus can virtually always be described as affecting substance, but to pursue that line of analysis results in the obliteration of the distinction that Congress demanded. The issue, therefore, is one of degree, and our task is to identify which substantive effects are sufficiently grave so that notice and comment are needed to safeguard the policies underlying the APA.

JEM Broad. Co. v. *FCC,* 22 F.3d 320, 326–27 (D.C. Cir. 1994) (cleaned up). Rules are also procedural ''if they are primarily directed toward improving the efficient and effective operations of an agency.'' *AFL–CIO* v. *NLRB,* 57 F.4th 1023, 1034 (D.C. Cir. 2023) (cleaned up).

''In determining whether a rule is substantive, [a court] must look at [the rule's] effect on those interests ultimately at stake in the agency proceeding.'' *Neighborhood TV Co., Inc.* v. *FCC,* 742 F.2d 629, 637 (D.C. Cir. 1984). ''Hence, agency rules that impose 'derivative,' 'incidental,' or 'mechanical' burdens upon regulated individuals are considered procedural, rather than substantive.'' *Nat'l Sec. Counselors* v. *CIA,* 931 F. Supp. 2d 77, 107 (D.D.C. 2013);[61] *see Am. Hosp. Ass'n* v. *Bowen,* 834 F.2d 1037, 1051 (D.C. Cir. 1987). Moreover, ''an otherwise-procedural rule does not become a substantive one, for notice-and-comment purposes, simply because it imposes a burden on regulated parties.'' *James V. Hurson Assocs., Inc.* v. *Glickman,* 229 F.3d 277,

[61] *See also Elec. Priv. Info. Ctr.* v. *U.S. Dep't of Homeland Sec.,* 653 F.3d 1, 5 (D.C. Cir. 2011) (even ''a rule with a 'substantial impact' upon the persons subject to it is not necessarily a substantive rule'' (citing *Pub. Citizen* v. *Dep't of State,* 276 F.3d 634, 640–41 (D.C. Cir. 2002)); *Ranger* v. *FCC,* 294 F.2d 240, 244 (D.C. Cir. 1961) (while holding that a rule was procedural, noting that ''no substantive rights were actually involved by the regulation itself'' even if ''failure to observe it might cause the loss of substantive rights'').

281 (D.C. Cir. 2000). Finally, although a procedural rule generally may not ''encode[ ] a substantive value judgment or put[ ] a stamp of approval or disapproval on a given type of behavior,'' *Bowen,* 834 F.2d at 1047, ''the fact that the agency's decision was based on a value judgment about procedural efficiency does not convert the resulting rule into a substantive one,'' *Glickman,* 229 F.3d at 282.

DHS has long believed there is no statutory right to an asylum interview. For example, in 1994, DHS proposed to make such interviews discretionary,[62] but ultimately decided not to finalize the change because it determined ''the goal of streamlining asylum adjudications [could] be met without changing the present rule.''[63] However, over 30 years have passed, and DHS now believes that streamlining asylum adjudications is no longer possible while interviewing every asylum applicant.

This rule alters how asylum applicants present themselves to USCIS, but it does not alter their rights or interests. Affirmative asylum applicants must still submit a complete Form I–589, in accordance with 8 CFR 208.3 and 208.4, and satisfy all eligibility requirements to be granted asylum. USCIS does not interview every petitioner, applicant, or beneficiary, relating to all submitted benefit requests. Doing so would place a massive and unnecessary burden on agency resources and the public. For example, USCIS waives adjustment of status interviews in many cases, including when the ''applicant is clearly ineligible.''[64] Interviews are also generally waived or not mandated include Special Immigrant Juvenile petitions[65] and Petitions to Remove Conditions on Residence.[66]

DHS does not believe removing an interview procedure created by regulation constitutes a change with ''sufficiently grave'' substantive effects that would trigger notice and comment rulemaking. The D.C. Circuit addressed a comparable scenario where the Federal Communications Commission promulgated a procedural rule by limiting an applicant's ability to amend their applications. *See JEM Broad. Co.,* 22 F.3d at 323. The Court concluded that an applicant's ''right to a free shot at amending its application is not so significant'' as to trigger notice and comment rulemaking, ''particularly in light of the Commission's weighty efficiency interests.'' *Id.* at 327. The Court went on to state that the procedural exception embraces such cases where there are considerations such as ''effectiveness, efficiency, expedition and reduction in expense.'' *Id.*

The landscape of asylum applications has drastically changed since the interview procedures were promulgated. In 1994, the asylum backlog was at around 340,000[67] cases. By the end of FY 2025, it reached over 1.4 million. This, coupled with an increase in annual receipts, means that individuals seeking asylum may wait over 7.3 years for resolution in prolonged legal and personal uncertainty.

DHS believes that an alien's desire to be interviewed on what should be a complete application for consideration is not so significant as to trigger notice and comment rulemaking. Accordingly, DHS is issuing this procedural rule without engaging in notice and comment and with an immediate effective date.[68] DHS is nevertheless seeking post-promulgation public comments.

2. Foreign Affairs Exception

Agencies may forgo notice and comment rulemaking and a delayed effective date when the rulemaking involves ''a military or foreign affairs function of the United States.'' 5 U.S.C. 553(a)(1). The Secretary of State, on February 21, 2025,[69] determined that ''all efforts conducted by any agency of the federal government to control the status, entry and exit of people, and the transfer of goods, services, data, technology, and other items across the borders of the United States, constitutes a foreign affairs function of the United States under the Administrative Procedure Act, 5 U.S.C. 553, 554.''

DHS finds that this rulemaking is directly connected to controlling the status and entry and exit of people across the borders of the United States, such that it constitutes a foreign affairs function. No longer interviewing all affirmative asylum applicants allows USCIS to move aliens more quickly though the removal process where the alien is ineligible for a grant of asylum, is barred by a mandatory bar, such as the OYFD or a criminal bar, or does not merit a grant as a matter of discretion, including but not limited to, where an alien has a connection to terrorism or serious crime. Thus, this rulemaking is related to the control of the entry and exit of aliens across the borders of the United States and falls within the Secretary's foreign affairs determination.[70]

3. Consideration of Reliance Interests

As this interim final rule is immediately effective and will be applied to those with pending asylum applications upon publication, as well as those filed on or after the publication date, DHS has considered potential reliance interests. DHS recognizes that asylum applicants have become accustomed to presenting their claims to an asylum officer at a scheduled interview. Aliens may have personal interests in sharing sensitive elements of an asylum claim face-to-face with an asylum officer, where for example, someone may be more comfortable and elaborative in a non-adversarial interview setting. DHS recognizes that this element may be important in certain cases but also recognizes that USCIS cannot continue to offer everyone an asylum interview given the drastic growth in the affirmative asylum applicant landscape since this agency procedure was last evaluated. The affirmative asylum backlog at the end of FY 2025 was above 1.4 million cases, approximately 31% of which were filed more than one year after last entry or had a blank last entry date. DHS has implemented similar interview discretion or interview waivers in numerous other adjudications, and

[62] *See* 59 FR 14779 (Mar. 30, 1994) (''As currently constituted, INS regulations mandate the interview of all applicants . . . Asylum Officers no longer will be required to conduct personal interviews, but will have discretion to conduct such interview in any case they deem appropriate.'').

[63] *See* 59 FR 62292 (Dec. 5, 1994) (''Accordingly, the present rule is retained and there is no provision for immediate referral of cases, without an interview, to an immigration judge.'').

[64] 8 CFR 245.6.

[65] USCIS, Policy Manual, Vol. 6 Part J, *Chapter 4—Adjudication, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4#footnote-5* (last updated May 8, 2026).

[66] USCIS, Policy Manual, Vol. 6 Part I, *Chapter 3—Petition to Remove Conditions on Residence, https://www.uscis.gov/policy-manual/volume-6-part-i-chapter-3* (last updated May 8, 2026).

[67] 59 FR 14779, 14780 (Mar. 30, 1994) (''On October 1, 1990, the INS had a backlog of approximately 90,000 asylum claims. Since that date, approximately 250,000 cases have been added to that backlog.'').

[68] 5 U.S.C. 553(d) requires a 30-day delayed effective date for substantive rules but exempts a substantive rule which ''recognizes an exemption or relieves a restriction.'' Although DHS believes this interim final rule is procedural and that it is not bound by the 30-day delayed effective date, the rule also removes the regulatory restriction to permit USCIS to refer certain affirmative asylum applications to EOIR without interview.

[69] *See* 90 FR 12200 (Mar. 14, 2025).

[70] The Secretary of State's determination references and implements numerous Presidential actions reflecting the President's top foreign policy priorities, including E.O. 14161. *See* 90 FR 12200 (Mar. 14, 2025); *see also, e.g., Yassini* v. *Crosland,* 618 F.2d 1356, 1361 (9th Cir. 1980) (because an immigration directive ''was implementing the President's foreign policy,'' the action ''fell within the foreign affairs function and good cause exceptions to the notice and comment requirements of the APA'').

USCIS officers are demonstrably capable of adjudicating applications without an interview.

In recognition of potential reliance interests, DHS has limited this change to referral cases where one is barred from applying for or being granted asylum, does not merit a grant as a matter of discretion, or is not eligible on the merits of the claim. DHS has further limited this change to cases where the alien does not maintain a lawful basis to remain in the United States, and where the application would be referred to DOJ, not where DHS would deny the application. Additionally, an alien can still supplement his or her application and USCIS still retains discretion to RFE for additional information. DHS believes that these measures help mitigate reliance interests while also providing USCIS with the tools needed to reduce administrative burdens, create greater efficiencies, and enhance national security and public safety. DHS welcomes public comment on all aspects of this rule, including effective date and implementation.

B. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14192 (Unleashing Prosperity Through Deregulation)

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14192 directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that ''any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.''

The Office of Management and Budget (OMB) has designated this rule a ''significant regulatory action'' under section 3(f) of E.O. 12866, although not economically significant under section 3(f)(1). Accordingly, the rule has been reviewed by OMB.

This rule is not an E.O. 14192 regulatory action because it is being issued with respect to an immigration-related function of the United States. The rule's primary direct purpose is to implement or interpret the immigration laws of the United States (as described in INA 101(a)(17), 8 U.S.C. 1101(a)(17)) or any other function performed by the U.S. Federal Government with respect to aliens.[71]

1. Summary of the Costs and Benefits

By the end of FY 2025, the volume of pending affirmative asylum cases exceeded 1.4 million, reaching an all-time high. DHS believes that without policy intervention, the volume of affirmative asylum pending cases will continue to grow and strain the agency's asylum system's adjudicatory capacity. To mitigate this issue, DHS is amending its regulations to permit an AO to refer an affirmative asylum application to EOIR, without conducting an interview, based on the record and other evidence.

The interim final rule impacts affirmative asylum application processing. USCIS will continue to refer an asylum application to EOIR in various situations, including but not limited to when the alien is barred from applying for asylum due to the one-year filing deadline, is barred from a grant of asylum, does not merit a grant as a matter of discretion, or is not eligible on the merits of the claim. The rule also gives USCIS flexibility to issue future policy guidance about which categories of cases should be prioritized by the agency for referral without interview based on evolving trends and agency priorities. For future filings, DHS estimates that approximately 132,167 aliens seeking affirmative asylum annually may be referred without interview due to a bar to applying for asylum, a bar to a grant of asylum, or where the alien does not merit a grant as a matter of discretion, and uses this estimate as the population of future filings that could be impacted by this rule.[72] The rule also impacts aliens with pending affirmative asylum applications. Potentially, at least 444,724 (31 percent) of the 1,434,145 cases in the affirmative asylum backlog may be impacted by this rule due to the OYFD.[73] DHS does not have an estimate for how many pending or future asylum applications may be impacted as cases where the alien is not eligible on the merits of the claim.

In the regulatory impact analysis (RIA), USCIS evaluates the potential impacts of the rule against a no action baseline describing what the world will be like if the rule had not been adopted. A primary benefit of no longer interviewing all aliens prior to the referral of an affirmative asylum application to EOIR is the increased operational efficiency of the affirmative asylum process within USCIS.

In changing its long-standing practice of offering an interview on all asylum applications, even where USCIS may not approve the application due to obvious statutory ineligibility for asylum or where the alien does not merit a favorable exercise of discretion, the agency is eliminating duplicative work that will likely be repeated before an IJ. Further, USCIS can prioritize the allocation of scarce resources including AO, interpreter, and administrative staff towards timely adjudication of meritorious cases. The reallocation of these limited adjudicatory resources could facilitate faster scheduling, improve the timeliness of adjudication for aliens with meritorious cases, and accelerate the resolution of non-meritorious claims. As a result, this rule may reduce the growth of the affirmative asylum backlog that, as of the end of Fiscal Year (FY) 2025, exceeded 1.4 million cases, enhance the agency's ability to respond to emergent humanitarian needs presented by aliens with meritorious applications, and strengthen system integrity by limiting opportunities for strategic delay of removal proceedings through prolonged affirmative application pendency.

DHS acknowledges that while the rule may reduce USCIS' affirmative asylum backlog, it will initially increase the volume of USCIS referrals to EOIR annually which could then increase EOIR's pending cases backlog. DOJ may incur costs to develop certain elements of a case during removal proceedings where USCIS no longer performs an interview. DHS asserts that while these impacts may increase operational demands for EOIR, many of the associated costs reflect a redistribution of responsibilities from USCIS to EOIR.

USCIS also acknowledges the possibility that some applications may be referred under this rule that USCIS could have granted. This could cause some aliens to experience increased wait times and slower case resolution, and DOJ could incur new costs processing these claims. However, DHS believes this will be a rare occurrence

---

[71] *See* OMB Memorandum M–25–20, *Guidance Implementing Section 3 of Executive Order 14192, titled ''Unleashing Prosperity Through Deregulation''* (Mar. 26, 2025), *https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-20-Guidance-Implementing-Section-3-of-Executive-Order-14192-Titled-Unleashing-Prosperity-Through-Deregulation.pdf.*

[72] This estimate is based on the average number of receipts of untimely filed affirmative asylum applications each year over the past five fiscal years (*see* Table 2) plus an approximate number of cases where a mandatory bar other than the filing deadline could potentially apply to affirmative cases; *see also* section of V.B.3 of this preamble for further analysis of affected population estimates.

[73] *See* Table 1 for details on the number of pending affirmative asylum applications that are untimely filed; *see also* Table 5 for details on the total number of pending affirmative asylum applications.

because an AO still reviews the record and evidence before a final adjudication and USCIS still retains the ability to offer an interview on any application, including where there is evidence of overcoming a bar. Therefore, the overall number of aliens who will ultimately be referred to EOIR will not necessarily increase because the rule is intended to refer applications without interview where the application will likely have been referred even if an interview had been conducted. Therefore, DHS does not believe that the impact to EOIR's backlog will be significant in the long term.

Another meaningful benefit of no longer interviewing all affirmative asylum applicants is the enhancement of national security and public safety. Moving dangerous aliens who are statutorily ineligible for a grant of asylum due to a mandatory bar, such as a criminal bar, or do not merit a grant of asylum as a matter of discretion, more quickly through the removal process decreases the overall exposure risk to the public because it reduces the amount of time during which dangerous aliens can remain at large within the United States while awaiting adjudication of their asylum application. The national security and safety benefits also extend to DHS personnel as well as other aliens who appear at USCIS facilities. Prompt referral to EOIR, without interview, for ineligible aliens who also present a danger to others reduces the number of in-person encounters in USCIS facilities, thereby lowering the exposure risk for other aliens, AOs, interpreters, attorneys, and other government staff working in public-facing interview spaces.

Removing the requirement that a letter communicating the basis for referral of asylum include an assessment of the alien's credibility produces operational efficiencies for USCIS by giving AOs the ability to focus a decision letter on the reason(s) for referral, where credibility does not form the basis for referral. Eliminating this requirement reduces drafting time and streamlines the preparation of referral decision letters, allowing AOs to focus more directly on threshold eligibility issues or statutory bars to asylum.

Asylum applicants will also experience sustained benefits as a result of this rule. With improvements in the affirmative asylum system at USCIS, aliens with strong or meritorious claims could see reduced waiting times and faster adjudication of their cases. Aliens who are ultimately destined for EOIR will no longer spend several years waiting for an interview in the affirmative asylum queue before receiving a referral but will instead enter the more appropriate adjudicatory forum sooner, thereby escaping prolonged legal limbo. Earlier placement into removal proceedings allows aliens to apply for other forms of relief before an IJ—forms of relief that USCIS does not have authority to grant—and to receive a final decision with less delay and prolonged uncertainty.[74] This quicker resolution to the same outcome reduces emotional and psychological strain and preserves the quality of evidence that may deteriorate during multi-year waits. Moreover, aliens will be spared the burden of preparing for a duplicative proceeding with USCIS that will have no substantive effect on the final adjudication of their claim in immigration court. Lastly, all asylum applicants benefit from the changes to affirmative asylum interview procedures as it results in aliens' improved understanding of the asylum process and improved application quality and completeness.

A summary of the potential impacts of the rule is presented in Table 3. These impacts are discussed in further detail in the ensuing analysis.

[74] USCIS acknowledges that earlier placement into removal proceedings might lead some aliens to consult or retain legal counsel sooner than they otherwise will have. Hence, the rule may affect the timing of when some aliens choose to engage legal counsel but does not create new costs to these aliens.

TABLE 3—SUMMARY OF THE COST AND BENEFITS OF THE RULE

Changes	Description of the changes to the regulatory text	Estimated benefits	Estimated costs
Referral of an affirmative asylum application to EOIR without interview.	Amend regulations to remove language stating that an AO ''in an interview'' shall review the application and give the alien the opportunity to present any relevant and useful information bearing on any prohibitions on filing. *Update to 8 CFR 208.4(a).* Amend regulations to permit an AO to refer an affirmative Form I–589 to EOIR without interview, based on the record and other relevant evidence. *Addition of 8 CFR § 208.9(a)(2).* Amend regulations to remove language referring to ''right to an'' interview. *Update to 8 CFR § 208.10.* Amend regulations to include that an AO can refer an asylum application to EOIR without offering an opportunity for an interview, and to remove language referring to ''applicant's right to an'' interview. *Update to 8 CFR § 208.14(c).*	Applicants— • Reduced applicant wait times and faster case resolution at USCIS for both meritorious claims and referrals. ○ Earlier clarity and less time in legal uncertainty. ○ Faster access to long-term protection and family re-unification. ○ Better preservation of evidence. ○ Earlier work authorization for aliens who are approvable. ○ Earlier access to INA 240 removal proceedings. ○ Earlier access to procedural protections. ○ Reduced procedural redundancy. • Better understanding of the asylum process. ○ Explaining that an interview may not be offered for all cases. ○ Greater awareness to submit any and all evidence in support of the asylum application at the time of filing. ○ Improved application quality and completeness. ○ Aliens who are better prepared for the asylum process.	Applicants— • Possibility of increased wait times and slower case resolution for some aliens who under the previous process would have asylum granted by USCIS. Government— • Possible costs to DOJ to develop certain elements of the case during removal proceedings where USCIS no longer performs an interview. • Possible new costs to DOJ for processing referred asylum cases that USCIS could have granted.
	Amend regulations to remove the requirement that a letter communicating the basis for referral of asylum include an assessment of the alien's credibility. *Update to 8 CFR § 208.19.* Amend previous agency practice so that an AO may refer an application as a matter of discretion without first making an eligibility determination. (No change to a regulatory provision).	Government— • Increased operational efficiency and reduction in USCIS' affirmative asylum backlog. ○ Time and resource savings (AO time, interpreter resources, and administrative support) for USCIS that could be reallocated to other priority caseloads. ○ More efficient adjudications within USCIS, especially in cases where aliens clearly fail to meet their burden to establish eligibility.	
	○ Reduced duplicative work for USCIS and EOIR. ○ Give USCIS flexibility to issue future policy guidance about which categories of cases should be prioritized for referral without interview. ○ Give AOs the ability to focus a decision letter on the basis for referral, where credibility is not the basis for referral. ○ More efficient drafting of referral decision letters. • Improvements to national security and public safety. ○ Accelerate adjudication and reduce the amount of time that potentially dangerous aliens remain in the community. ○ Reduce the number of in-person encounters in USCIS facilities for ineligible aliens who also pose a danger to the public, thereby lowering the exposure risk for AOs, interpreters, attorneys, and other government staff working in public-facing interview spaces.		

Source: USCIS Analysis

In addition to the impacts summarized above, and as required by OMB Circular A–4, Table 4 presents the prepared accounting statement showing the costs and benefits associated with this rule.[75]

TABLE 4—OMB A–4 ACCOUNTING STATEMENT ($ MILLIONS, 2024)TIME PERIOD: FY 2026 THROUGH FY 2035

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (RIA, RFA, preamble, etc.)
Benefits:				
Monetized Benefits	N/A	N/A	N/A	
Annualized quantified, but un-monetized benefits	N/A	N/A	N/A	
Qualitative (unquantified) Benefits	A primary benefit of eliminating affirmative asylum interviews for cases that can be referred to EOIR is increased operational efficiency of the affirmative asylum process within USCIS. The reallocation of limited adjudicatory resources (AO time, interpreter resources, and administrative support) could facilitate faster scheduling, improve the timeliness of adjudications for aliens with meritorious cases, and accelerate the resolution of non-meritorious claims. As a result, this rule could reduce the growth of the affirmative asylum backlog, enhance the agency's ability to respond to emergent humanitarian needs presented by aliens with meritorious asylum applications, and strengthen system integrity by limiting opportunities for strategic delay of removal proceedings through prolonged affirmative pendency. Another meaningful benefit of eliminating affirmative interviews for certain categories of aliens is the enhancement of national security and public safety. Moving dangerous individuals and aliens who are statutorily ineligible for asylum due to a mandatory bar, such as a criminal bar, more quickly through the removal process decreases the overall exposure risk to the public because it reduces the amount of time during which these individuals can remain at large within the United States while awaiting adjudication of their claim. The national security and safety benefits also extend to DHS personnel as well as other aliens who appear at USCIS facilities. Prompt referral to EOIR, without interview, for ineligible aliens who also present a danger to others will reduce the number of in-person encounters in USCIS facilities, thereby lowering the exposure risk for other aliens, AOs, interpreters, attorneys, and other government staff working in public-facing interview spaces. Removing the requirement that a letter communicating the basis for referral of asylum includes an assessment of the alien's credibility will produce operational efficiencies for USCIS by giving AOs the ability to focus a decision letter on the reason(s) for referral, where credibility does not form the basis for referral. This creates a more efficient drafting of referral decision letters process. Allowing AOs to refer applications to EOIR without first making a full eligibility determination generates operational efficiencies for USCIS by allowing the agency to focus its limited adjudicative capacity on the ultimate reason for referral in cases where negative factors overwhelmingly outweigh any positive factors. Affirmative asylum applicants with meritorious claims could see reduced waiting times and faster adjudication of their cases. Aliens who are ultimately destined for EOIR will no longer spend several years waiting in the affirmative asylum queue before receiving a referral but will instead enter the correct adjudicatory forum sooner, thereby escaping prolonged legal limbo. This quicker resolution to the same outcome reduces emotional and psychological strain and preserves the quality of evidence that may deteriorate during multi-year waits.			RIA.
Costs:				
Annualized monetized costs	N/A			
Annualized quantified, but un-monetized costs	(3% and 7%) N/A			
Qualitative (unquantified) costs	Possible increased wait times and slower case resolution for some aliens who under the previous process would have asylum granted by USCIS. Possible costs to DOJ to develop certain elements of the case during removal proceedings where USCIS no longer performs an interview. Possible new costs to DOJ for processing referred asylum cases that USCIS could have granted.			RIA
Transfers:				
Annualized monetized transfers: "on budget"	N/A	N/A	N/A	
From whom to whom?	N/A	N/A	N/A	
Annualized monetized transfers: "off-budget"	N/A	N/A	N/A	
From whom to whom?	N/A	N/A	N/A	
Miscellaneous Analyses/Category	Effects			
Effects on State, local, and/or Tribal governments	None			
Effects on small businesses	This rule does not directly regulate small entities, but rather individuals. DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities.			RFA.
Effects on wages	None			
Effects on growth	None			

2. Background and Purpose

Any alien physically in the United States or arriving in the United States can apply for asylum. *See* INA 208(a), 8 U.S.C. 1158(a). In order to be granted asylum, that alien must be found to meet the definition of a refugee and merit a favorable exercise of discretion. *See* INA 208(b)(1)(B), 8 U.S.C. 1158(b)(1)(B). The affirmative asylum application process commences when an individual proactively applies for asylum with USCIS, by filing an Application for Asylum and for Withholding of Removal, Form I–589. As of July 22, 2025, there is a $100 initial fee for filing Form I–589, and a $100 annual asylum fee for each year an application is pending.[76] To be eligible to apply for asylum via the affirmative asylum process, the alien must be physically present in the United States and not otherwise barred, including barred by the OYFD if applicable. Under the existing affirmative asylum application process, USCIS has jurisdiction over asylum applications filed by aliens who are not in removal proceedings as well as UACs who are in removal proceedings.[77]

The Form I–589 application includes information about the alien's identity, background, reasons for seeking asylum, and possible bars to asylum. The application also instructs applicants to provide details in support of their claim for asylum and provide any necessary supporting documents. Upon receipt of an asylum application, USCIS personnel review the application to confirm that the application is complete and properly filed and create an alien registration number (A number) and case file, if needed. If the application is improperly filed or incomplete, USCIS rejects and returns the application to the alien with instructions for corrections and resubmission. Once the application is properly filed and complete, USCIS issues the alien a notice to acknowledge receipt of the application and, later, a separate notice for a biometrics appointment at an Application Support Center (ASC). At the ASC appointment, USCIS may collect fingerprints, photographs, and other biometrics data for identity verification and background and security checks for the alien and any dependents included in the application. Once biometrics have been captured, the asylum office with jurisdiction over the application generally schedules the case for interview with an AO according to Asylum Division scheduling priorities and where USCIS determines an interview is needed.[78] During any interview, the AO reviews the application, asks questions about the alien's claim, and assesses the credibility of the alien's testimony. The interview generally lasts about one to three hours, although the time may vary depending on the case. Aliens may bring an attorney or accredited representative to the interview. The alien must bring an interpreter if the alien cannot proceed with the interview in English.

USCIS may issue an RFE at any point during the affirmative asylum process where an AO determines that more information is needed to make a decision on the alien's eligibility for asylum. An RFE, if issued, requires the alien to submit additional information or evidence to address the deficiencies or concerns identified by the agency. Once there is sufficient information to make a decision, the AO determines whether the alien is eligible for asylum and merits a favorable exercise of discretion to grant asylum or whether the AO will not grant asylum. If the alien is not granted asylum and the alien does not maintain a lawful basis to remain in the United States, the AO will refer the alien to EOIR. If the AO refers the application to an IJ, the alien may pursue asylum defensively in EOIR as well as seek other forms of relief or protection from removal in front of an IJ. If the alien is not granted asylum but maintains a lawful basis to remain in the United States, the AO will issue a denial.

Under the rule, DHS is changing affirmative asylum interview procedures to permit an AO to refer an affirmative asylum application to EOIR without interview based on the record and other relevant evidence, to remove existing regulatory language referencing a ''right'' to an interview, to remove language that an AO shall review and determine any prohibitions on filing ''in an interview,'' and to remove the requirement that referral decision letters include an assessment of the alien's credibility.

3. Affected Population

The rule impacts affirmative asylum applicants.[79] These are aliens who have filed or will file Form I–589 with USCIS. The aliens are also physically present in the United States or aliens seeking admission at a port of entry, and are stating that he or she is applying for asylum as a means of protection from persecution or fear of persecution in their country of nationality (or, in the case of a person having no nationality, is outside any country in which such person last habitually resided) based on their race, religion, nationality, membership in a particular social group, or political opinion.

For the following population estimates and throughout the analysis, when possible, DHS uses five years of historical data (FY 2021 through FY 2025). Table 5 shows that the population of affirmative asylum applicants significantly increased over the past five years, reaching 465,810 in FY 2023, an 87 percent[80] increase from the previous year. DHS estimates that an annual average of 322,312 aliens apply for affirmative asylum each year. Contributing to this increase in the affirmative asylum population is the growing number of pending cases at the end of each FY. Most notably, Table 5 depicts that the number of Form I–589 pending cases reached a new high of 1,434,145 in FY 2025. An annual average of 954,155 cases remain pending at the end of each FY. On average, the affirmative asylum backlog of pending cases has a 39 percent growth rate over the past five years with the highest growth rate of 78 percent in FY 2023. Table 5 also shows that the average processing time for Form I–589 has fluctuated throughout the years,

[75] OMB, *Circular A–4* (Sept. 17, 2003), *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4.*

[76] The One Big Beautiful Bill Act, Public Law 119–21, 139 Stat. 72, 8 U.S.C. 1814 (HR–1) was signed into law on July 4, 2025. On July 22, 2025, DHS published a **Federal Register** notice announcing the implementation of several H.R. 1 immigration-related fees, including the new annual asylum fee (AAF). *See* 90 FR 34511 (July 22, 2025). H.R. 1 requires annual adjustments to some of the fees beginning in FY 2026 based on the Consumer Price Index for All Urban Consumers (CPI–U).The new inflationary-adjusted fees are effective on Jan. 1, 2026.

[77] USCIS, ''*The Affirmative Asylum Process,*'' *https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/the-affirmative-asylum-process* (last updated Oct. 17, 2025).

[78] *See* USCIS, *Affirmative Asylum Procedures Manual* sec. II.G.2.c (Feb. 2025), *https://www.uscis.gov/sites/default/files/document/guides/AAPM.pdf;* USCIS, ''Affirmative Asylum Interview Scheduling,'' *https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/affirmative-asylum-interview-scheduling* (last updated Mar. 29, 2024).

[79] As indicated in this preamble, UACs are not subject to the filing deadline and will therefore not be referred without interview based on the OYFD but may still be referred under the rule if an AO determines the UAC is ineligible for asylum. Under the existing affirmative asylum application process, USCIS continues to have jurisdiction over asylum applications filed by aliens who are not in removal proceedings as well as UACs who are in removal proceedings. *See* USCIS, *The Affirmative Asylum Process, https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/the-affirmative-asylum-process* (last updated Oct. 17, 2025).

[80] Calculation: (465,810–248,725)/248,725 = 87 percent. DHS acknowledges that the total affirmative asylum receipts for FY 2021 is significantly low due to the impacts of the COVID–19 pandemic including the subsequent border closures.

increasing to 7.3 years in FY 2025. DHS estimates the annual average processing time over the past five years is 5.8 years.

estimates the annual average processing time over the past five years is 5.8 years.

TABLE 5: INITIAL FORM I–589 AFFIRMATIVE ASYLUM RECEIPTS, PENDING CASES AT THE END OF FY, AND PROCESSING TIMES FOR FY 2021 THROUGH FY 2025

FY	Total receipts	Pending cases at the end of FY	% Change in pending cases	Average processing time (years)
2021	65,732	412,796		5.0
2022	248,725	569,243	38	5.3
2023	465,810	1,012,528	78	5.4
2024	423,110	1,342,061	33	5.9
2025	408,181	1,434,145	7	7.3
5-Year Total	1,611,558	4,770,773		
5-Year Annual Average	322,312	954,155	39	5.8

Notes:
(1) Totals may not sum due to rounding.
Source: Department of Homeland Security, U.S. Citizenship and Immigration Services, Chief Data and Analytics Office. NPR Report, HQRAIO, GLOBAL, queried 10/2025 for PAER0019312.

The rule impacts affirmative asylum applicants who apply for asylum after the final rule is published as well as aliens with pending affirmative asylum applications. More specifically, the rule applies to aliens who file or filed Form I–589 with USCIS, do not maintain a lawful basis to remain in the United States, and including where the alien is barred from applying for asylum, is barred from a grant of asylum, does not merit a grant as a matter of discretion, or is not eligible for asylum on the merits of the claim based on the record and evidence.

In the proceeding section, DHS presents a breakout of some of these various sub-populations of the affirmative asylum baseline population that could be impacted by the rule. DHS notes that the estimates provided focus on affirmative asylum applicants subject to a bar to applying for asylum, a bar to a grant of asylum, or where the alien does not merit a grant as a matter of discretion, and do not consider populations that may be impacted in light of future policy guidance about which categories of cases should be prioritized for referral without interview.

a. Aliens Ineligible To Apply for Asylum Due to the One-Year Filing Deadline (OYFD)

The rule impacts aliens with future asylum filings and existing affirmative asylum applications who are ineligible to apply for asylum, most notably aliens who can be referred to EOIR due to the OYFD. Table 1 shows the number of cases where aliens filed more than one year after their last entry or had a blank entry date. This rule permits USCIS to refer these cases to EOIR without interview. Table 2 shows the affirmative asylum receipts of applications filed more than one year after date of entry, referrals of such cases after interview, and the basis for referral from FY 2021 through FY 2025. The data shows that where aliens do not file a timely application and are ultimately referred to EOIR, a majority fail to qualify for an exception to the filing deadline even after an interview is conducted. Therefore, potentially up to 444,724 (31 percent) of the 1,434,145 cases in the affirmative asylum backlog are subject to the OYFD and may be impacted by this rule.[81] For future filings, DHS estimates that an annual average of 104,932 cases with a potential bar to applying for asylum may be impacted by the rule.

b. Aliens Barred From a Grant of Asylum or Do Not Merit a Grant as a Matter of Discretion

DHS estimates this impacted population described by applying data from a 2024 final rule showing how frequently AOs flag a potential bar to asylum or withholding of removal in a screening interview.[82] DHS uses 8.45 percent, which is the percentage of negative credible fear determinations[83] where AOs flagged a potential mandatory bar to asylum, to estimate the population impacted by this rule. DHS acknowledges that this estimate might be an underestimate for the affirmative asylum population because the available data describing the credible fear asylum population contains aliens who are recently arriving at a land border (rather than being physically present in the United States for some time) and who receive a screening interview that may not incorporate full background checks to the extent required for applications filed by the affirmative asylum population impacted by this rule. Therefore, noting the caveat regarding data from different asylum populations, DHS estimates that approximately 8.45 percent (27,235) of the 322,312 aliens seeking affirmative asylum annually could potentially be impacted by this rule, as cases where the alien is barred by a mandatory bar or does not merit a grant as a matter of discretion.[84]

For future filings, DHS estimates that a total of 132,167 aliens seeking affirmative asylum annually may be referred without interview due to a bar

[81] As of December 11, 2025, there are 444,724 pending affirmative asylum applications that are untimely filed, and an unknown number of these untimely filed applications may be affected by the rule as aliens that are barred from applying for asylum. *See* Table 1; *see also* Table 5 for details on the total number of pending affirmative asylum applications.

[82] *See* 89 FR 103370, 103408 (Dec. 18, 2024).

[83] Credible fear interviews and subsequent determinations are made by AOs as part of the expedited removal process under INA 235(b)(1), 8 U.S.C. 1225(b)(1), and is a pathway for aliens to apply for asylum distinct from the affirmative asylum process.

[84] *Id.* This estimate is based on the approximate number of cases where a mandatory bar other than the filing deadline could potentially apply to affirmative cases. Calculation: 322,312 annual average number of affirmative asylum receipts × 8.45 percent of negative credible fear determinations flagged for a potential mandatory bar = 27,235 potential bars to asylum. This estimate is also used to include cases where the alien does not merit a grant as a matter of discretion because, as described in section IV.E of this preamble, information that raises the possibility that a bar to asylum might apply would likely also constitute a negative discretionary factor even if it is determined that the bar does not apply. *See* USCIS RAIO Directorate, *Lesson Plan, Discretion* 18 (Jan. 27, 2025), *https://www.uscis.gov/sites/default/files/document/foia/Discretion_LP_RAIO.pdf.*

to applying for asylum, a bar to a grant of asylum, or where the alien does not merit a grant as a matter of discretion, and uses this estimate as the population of future filings that could be impacted by this rule.[85]

4. Cost-Benefit Analysis

Under the rule, USCIS will not schedule an interview in connection with all affirmative asylum applications. Instead, an AO determines if the application could be referred to an IJ without interview, based on the record and other evidence. The rule impacts affirmative asylum applicants who apply after the rule is effective, as well as some aliens with pending affirmative asylum applications at USCIS. The new and pending cases that can be referred to EOIR encompass cases where the alien is subject to removal proceedings and the alien is barred from applying for asylum, is barred from a grant of asylum, does not merit a grant of asylum as a matter of discretion, or is not eligible for asylum on the merits of the claim based on the record and evidence.

In this analysis, we evaluate the impacts of the rule against a no action baseline over a 10-year period of analysis (FY 2026 through FY 2035). The no action baseline is what the world would be like if the rule had not been adopted. As such, the benefits discussed below are analyzed against this baseline.

Benefits

Applicants

As previously mentioned, the average processing time for case resolution at USCIS recently increased to 7.3 years in FY 2025. During the years spent waiting in the affirmative queue, aliens experience prolonged uncertainty about their legal future, family stability, and ability to plan their lives. The lengthy wait times in legal limbo may exacerbate psychological hardship for asylum applicants. For those with meritorious claims, earlier adjudication and grant of asylum provides faster access to protection, stability, and family reunification. Reduced wait times and freed up interview slots could also result in earlier work authorization for aliens who are approvable, which provides financial stability, reduces reliance on assistance programs, and allows aliens to support themselves and their families throughout their asylum process. For aliens who will ultimately be referred to EOIR, these aliens are able to be placed in INA 240 removal proceedings earlier, shortening the total time before they obtain a final decision. The quicker resolution to the same outcome reduces unnecessary stress and provides a more predictable timeline for aliens. Earlier placement into EOIR proceedings means aliens can begin preparing to present their claim to an IJ sooner and avoid the deterioration of evidence that occurs with multi-year delays. Thus, moving to the correct adjudicatory setting sooner helps preserve the integrity of the alien's claim.

Additionally, bypassing an unnecessary asylum interview reduces the procedural redundancy for referrals. This spares aliens from having to prepare for two different adjudicatory events: the USCIS interview followed by presenting their claim before an IJ. Preparing for a USCIS interview requires gathering evidence and potentially paying for legal representation. For aliens with applications that can be referred to EOIR, this interview preparation becomes a duplicative burden. Therefore, eliminating the interview step for ineligible aliens will allow such aliens to focus time and money preparing for the immigration court process. USCIS is unable to quantify the cost savings to these aliens from the opportunity cost of time in no longer preparing, paying legal fees, transporting to and undergoing an asylum interview.

Lastly, all affirmative asylum applicants benefit from the change to affirmative asylum interview procedures as it results in aliens' improved understanding of the asylum process. Specifically, amending regulations to permit USCIS to refer without interview encourages aliens to submit any and all evidence in support of their application at the time of filing, resulting in improved application quality and completeness. USCIS is unable to quantify the cost savings to these aliens from submitting a more thorough application at the time of filing. However, better informed asylum applicants will be better prepared for both USCIS and EOIR processes.

Government

A primary benefit of eliminating affirmative asylum interviews for cases that can be referred to EOIR is increased operational efficiency of the affirmative asylum process within USCIS. Increased efficiency is seen from the time and resource savings that could be reallocated to meritorious cases, reduced duplicative work with EOIR, reduced case processing times, and faster throughput of cases.[86] The compounding effects of these improvements could reduce the growing volume of pending cases, which now exceeds 1.4 million. Aliens with both meritorious and non-meritorious cases may also experience reduced wait times, shortening the time spent in legal and personal uncertainty.

Under the previous affirmative asylum process, every asylum applicant, regardless of eligibility, generally underwent a non-adversarial interview with an AO. Many of these aliens, particularly those who are subject to statutory bars, were ultimately referred to EOIR after an interview with an AO. Conducting full interviews for these cases requires significant AO time, interpreter resources, and administrative support while duplicating work that will later be repeated before an IJ. Each AO interview requires hours of officer time to prepare, interview, and draft decisions. Additionally, because many aliens are ultimately referred to EOIR, the same case often receives two full adjudications: one by USCIS and one by EOIR, resulting in duplicative resource use across agencies. Therefore, removing the interview for cases that are amendable to removal and are not likely to be meritorious allows USCIS to reallocate AO time towards adjudicating affirmative asylum applications with higher chances of approval, such as those presented by aliens with stronger humanitarian claims.

An added benefit of removing the interview step for referrals is the faster resolution of cases at USCIS. USCIS estimates that the average processing time for affirmative asylum cases from FY 2021 through FY 2025 was almost six years. *See* Table 5. This time has increased to over 7.3 years as of FY 2025. Previously, these cases occupied interview slots and consumed AO resources despite having little likelihood of approval, contributing to the unnecessary queue congestion. By routing such cases to EOIR faster, USCIS is accelerating the removal of non-meritorious applications from the affirmative pipelines. This enhances the deterrent value of the asylum process by reducing opportunities for individuals to exploit lengthy pending cases as a means of delaying removal, while simultaneously promoting fairness by shortening wait times for aliens with genuine and approvable asylum claims. This also means that AOs are able to

[85] Calculations: 27,235 potential bars to a grant of asylum + 104,932 applications filed more than one year after date of entry = 132,167.

[86] Faster throughout means increasing the speed at which cases or applications are reviewed, adjudicated, and processed, while maintaining accuracy and compliance with legal and procedural requirements.

shift focus to applications not subject to a bar. As such, the rule results in faster adjudication for strong or time-sensitive claims. Every unproductive interview occupies limited interview slots that could otherwise be used to resolve meritorious cases faster. By referring aliens ineligible or likely to be ineligible to EOIR without an interview, USCIS is prioritizing resources for aliens with approvable asylum claims, resulting in faster case resolution and protection for those who truly qualify. Furthermore, the reallocation of USCIS' resources could contribute to the slowing of the affirmative asylum pending cases backlog. This not only reduces waiting times for meritorious claims but also strengthens the public's confidence in the United States' asylum system's integrity and responsiveness. As there is now an annual asylum fee, faster processing times could result in saving applicants money.[87]

Another meaningful benefit of eliminating affirmative interviews for certain categories of aliens, including mandatory bar referrals and discretionary referrals, is the enhancement of national security and public safety. As previously mentioned in Section IV.E of this preamble, pre-existing policy guidance allows USCIS to refer cases with criminal issues, national security concerns, or public safety concerns to ICE, however, this process is time-consuming as ICE must first accept the referral from USCIS and then issue an NTA. Furthermore, if ICE does not accept or respond to the referral, USCIS must then wait for an interview to be scheduled and conducted prior to USCIS adjudicating and referring the case. Therefore, under the referral to ICE process, individuals with disqualifying criminal histories, mandatory bars or other national security concerns often remained in the affirmative asylum backlog for years before USCIS could interview, adjudicate, and refer to EOIR. During this waiting period, such aliens remained physically present in the United States, sometimes with work authorization and freedom of movement.

Even if, after interview, an AO found that an alien is possibly a danger to public safety or national security and was ineligible or did not merit a grant of asylum as a matter of discretion, the AO had to write a referral assessment stating the reasons why the alien was ineligible or could not be granted, including a detailed analysis of any mandatory bar or discretionary factors related to the potential threat to national security or public safety. This process could take weeks to months or longer before asylum personnel could process the referral, issuing an NTA to the alien and placing the case on the EOIR docket. During this time, the alien still had freedom of movement in public until the complex public safety and national security issues in the case were reviewed, adjudicated, processed, and ultimately referred to an IJ.

Under the rule, faster movement of dangerous or barred aliens through the affirmative asylum process accelerates adjudication and reduces the amount of time that potentially dangerous individuals remain in the public community without resolution. It also shortens the period during which new criminal activity could occur, thereby reducing potential victimization risks and minimizing harm to the community. More efficient referral to EOIR allows IJs to review the alien's criminal or security profile sooner, enabling earlier consideration of custody determinations, bond conditions, and monitoring or detention where warranted. This strengthens DHS's ability to manage aliens who pose elevated national security and public safety risks and ensures that security-relevant cases do not remain dormant in the affirmative asylum system for an extended number of years. Prompt referral to EOIR, without interview, for ineligible aliens who also present a danger to others reduces the number of in-person encounters in USCIS facilities, thereby lowering the exposure risk for AOs, interpreters, attorneys, and other government staff working in public-facing interview spaces.

DHS is removing the regulatory requirement that a letter communicating the basis for referral of asylum include an assessment of the alien's credibility. This change produces operational efficiencies for USCIS by giving AOs the ability to focus a decision letter on the reason(s) for referral, where credibility does not form the basis for referral. Preparing formal credibility findings required AOs to draft unnecessary narrative explanations addressing a credibility finding that did not ultimately form the basis for the referral. Eliminating this requirement reduces drafting time and streamlines the preparation of referral decision letters, allowing AOs to focus more directly on threshold eligibility issues or statutory bars to asylum. From an administrative perspective, shorter and more standardized decision letters improves processing efficiency, reduces documentation burdens and supports higher case throughput within the affirmative asylum system, while still preserving the agency's ability to include a credibility assessment where credibility does form the basis for a referral. DHS believes that this is a more efficient way to draft referral decision letters.

Although it does not require a change in regulatory provisions, DHS is also modifying its processes so that an AO may make a determination that an alien does not merit a grant as a matter of discretion without first making an eligibility determination. This change in agency practice generates operational efficiencies for USCIS by allowing the agency to focus its limited adjudicative capacity on the ultimate reason for referral in cases where negative factors overwhelmingly outweigh any positive factors. Conducting a complete eligibility analysis required substantial AO time to assess nexus, past persecution, well-founded fear, credibility and potential statutory bars and then complete detailed written documentation. With this change, in cases where the AOs can already determine that the alien will not merit a grant as a matter of discretion, the adjudicator no longer has to complete this time-consuming assessment and written documentation.

Amending regulations in this rule also gives USCIS the flexibility to issue future policy guidance regarding when an AO may refer without interview, such as where the alien is barred from a grant of asylum or does not merit a grant of asylum as a matter of discretion, including but not limited to cases involving terrorism or serious crime. The guidance will ensure that aliens posing a threat to national security or public safety are promptly identified and placed into removal proceedings if they do not have a valid immigration basis to remain in the United States. Such cases present complex legal and factual issues that are more conducive to INA 240 removal proceedings, where the alien will be afforded due process in presenting his or her claim to an IJ and similarly the interests of the United States government will be properly represented by an attorney from ICE OPLA.

The rule also strengthens the integrity of the asylum system by reducing opportunities for strategic filings intended solely to prolong presence in the United States. By ensuring that aliens who do not engage with the

[87] On July 22, 2025, USCIS published a **Federal Register** notice announcing the implementation of several fees administered by USCIS mandated by H.R. 1 (H.R. 1 Fee notice). 90 FR 34511 (July 22, 2025). That notice implemented a minimum $100 asylum application filing fee commencing in FY 2025 under 8 U.S.C. 1802 and a minimum $100 AAF starting in FY 2025 for each calendar year an asylum application remains pending under 8 U.S.C. 1808. 90 FR 34512 (July 22, 2025).

process do not remain in multi-year affirmative asylum queues, DHS reinforces the credibility and deterrent value of the asylum system. DHS believes that the rule ultimately encourages timely compliance and higher quality submissions. The AOs are likely to receive better prepared applications, which reduce unnecessary delays and contribute to more efficient adjudications.

Costs

Applicants

It is possible that USCIS may refer some cases to EOIR that it could have granted under the previous process. These aliens could experience increased wait times and slower case resolution due to this rule. These aliens could lose the opportunity to present their claim in a non-adversarial setting before USCIS which could result in added stress, a less predictable timeline, and delay their ability to work. However, DHS believes this will be a rare occurrence because an AO still reviews the record and evidence before a final adjudication and USCIS still retains the ability to offer an interview on any application, including where there is evidence of overcoming a bar. Additionally, although the rule does not introduce new requirements for the completeness or quality of applications, DHS acknowledges that some aliens, particularly those who need to overcome any mandatory bars, may voluntarily opt to retain counsel or seek other outside assistance in preparing their application because of this rule.

Government

Under this rule, some affirmative asylum applications will be referred to EOIR earlier than under the previous process. This initial increase in referrals from USCIS to EOIR may contribute to higher immigration court caseloads and add to their backlog. However, most of these cases would be referred to EOIR regardless of this rule.

By removing USCIS's automatic offering of an affirmative asylum interview for certain aliens, this rule shifts the initial in-person layer of asylum processing for certain referral cases from USCIS to EOIR, which may place greater responsibility on EOIR staff to develop certain elements of the case during removal proceedings. This will occur when EOIR may have benefited from a fully fleshed out record resulting from an AO interview but do not have that record because USCIS referred the case without performing an interview. Thus, EOIR may need to conduct additional work to develop the record. Such costs are difficult to quantify because, for example, some number may be decided by EOIR without a full merits hearing (*Matter of H-A-A-V-,* different IJ practices, etc.), while others may require more time or resources.[88] Overall, USCIS expects to refer only those cases that would not benefit from an interview, making any shift in costs to EOIR to further develop a record minimal. DHS acknowledges that while this rule may reduce USCIS' workload, this rule may shift system-wide efficiency rather than improve it for every agency involved. DHS maintains that while this rule may increase operational demands for EOIR, many of the associated costs reflect a redistribution of responsibilities from USCIS to EOIR.

Lastly, in the rare circumstance where USCIS could have granted the asylum case that is instead referred to EOIR under this rule, DOJ could possibly incur new costs processing these claims. DHS believes this will be a rare occurrence because an AO still reviews the record and evidence before a final adjudication and USCIS still retains the ability to offer an interview on any application, including where there is evidence of overcoming a bar. Therefore, the overall number of aliens who will ultimately be referred to EOIR will not noticeably increase because the rule is intended to refer applications without interview where the application would have been referred even if an interview had been conducted.

5. Alternative Regulatory Approaches

a. Status Quo

DHS considered an alternative that would keep the pre-existing policies in place. The volume of annual affirmative asylum applications USCIS receives has grown significantly over the years, reaching a high of 465,810 in FY 2023. *See* Table 5. By the end of FY 2025, over 1.4 million affirmative asylum applications remain pending at USCIS, reflecting years of continuous growth fueled by sustained high filing volumes and frequent surges in global displacement. The increase in annual receipts and end of FY pending applications means that individuals seeking asylum may wait over seven years for resolution. DHS rejected this alternative approach as this would not result in any long-term measurable improvements to the backlog reduction, efficiency of operations, or the affirmative asylum system as a whole. With this approach, DHS anticipated that the affirmative asylum backlog would continue to grow and strain its adjudicatory capacity and undermine the timely protection of individuals seeking refuge.

b. Short-Form Screening Interviews

Under this alternative, USCIS would have retained a modified version of the current affirmative asylum interview rather than eliminating it for aliens that can be referred to EOIR. AOs would have conducted a short-form, targeted interview lasting about 30 minutes to verify identity, clarify the basic claim and any prohibitions on filing, and ask mandatory bars questions. The AO would have documented the essential facts needed for adjudication. DHS rejected this alternative because although shorter than a full interview, this process would have still required scheduling, interpreter support, and officer time. Additionally, because an AO can often determine eligibility to apply for asylum by the evidence provided in the application, testimony presented in interviews rarely leads to the alien overcoming the OYFD. Hence, if an AO determined before the short-form, targeted interview that an alien should be referred to EOIR, there is likely nothing that could have been said in testimony during an interview that would have changed the expected outcome of ineligibility.

This alternative would have continued to use valuable DHS resources that could be reallocated to improve its operational efficiencies and more meaningfully reduce its backlog of pending cases.

c. Enhanced Form Completeness and Rejection Authority for Incomplete Applications

With this alternative, USCIS would have strengthened its completeness check during intake of Form I–589 and adopted or expanded authority to reject incomplete applications at filing, similar to rejection procedures used for other immigration forms. Although USCIS already rejects and returns applications that fail to meet explicit completeness requirements, this completeness check would have been carried out more carefully and thoroughly to ensure that incomplete applications were not accepted as filed. Aliens could have refiled with the missing information, but incomplete filings would not have entered the affirmative processing queue until all requirements of a properly filed and completed application were met, such as responding to all applicable questions on Form I–589. Enhanced completeness screenings would have reduced the volume of low-quality

[88] *Matter of H-A-A-V-,* 29 I&N Dec. 233 (BIA 2025).

applications entering the affirmative asylum system and ensured that AO resources are directed towards cases with minimal administrative flaws. This approach would have also improved application quality at intake and reduced RFE-related delays by ensuring that only complete filings enter the asylum pipeline. DHS rejected this alternative because expanding rejection authority for asylum could have inadvertently led to the rejection of filings from vulnerable aliens who face literacy or language challenges, and/or lack access to legal aid. As such, this approach could have been perceived as reducing access to the asylum process.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Mar. 29, 1996), requires Federal agencies to consider the potential impact of regulations on small entities during the development of their rules to determine whether there will be a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. An ''individual'' is not considered a small entity and costs to an individual are not considered a small entity impact for RFA purposes.[89] In addition, the courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates small entities.[90] Consequently, a rule's indirect impacts on a small entity not subject to the rule are not considered for RFA purposes.

The rule does not directly regulate small entities and is not expected to have a direct effect on them. The rule regulates individuals, and individuals are not defined as ''small entities'' by the RFA. DHS acknowledges that there might be indirect impacts to entities that represent the aliens impacted by the rule. Based on the information presented above in the RIA and throughout the preamble, DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities. Nonetheless, DHS welcomes comments regarding potential impacts on small entities.

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

The Congressional Review Act (CRA) was included as part of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) by subtitle E of SBREFA, Public Law 104–121, tit. II, 110 Stat. 847, 868, *et seq.* This interim final rule is not a major rule as defined by section 804 of SBREFA because it does not result in an annual effect on the economy of $100 million or more. *See* 5 U.S.C. 804(2)(A). DHS has complied with the CRA's reporting requirements and has sent this rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1). As stated in this preamble, DHS has found that there is good cause to make this rule effective immediately upon publication.

E. Unfunded Mandates Reform Act of 1995 (UMRA)

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments.[91] Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a rule, or final rule for which the agency published a rule, which includes any Federal mandate that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. *See* 2 U.S.C. 1532(a). The inflation adjusted value of $100 million in 1995 is approximately $213 million in 2025 based on the Consumer Price Index for All Urban Consumer (CPI–U).[92]

This rule does not contain such a mandate, because it does not impose any enforceable duty upon any other level of government or private sector entity. Amending regulations to permit an AO to refer an affirmative Form I–589 to EOIR, without interview, based on the record and other evidence does not result in any expenditures by the State, local, or Tribal governments, or by the private sector. The requirements of title II of UMRA therefore, do not apply, and DHS has not prepared a statement under UMRA. DHS has, however, analyzed many of the potential effects of this action in the RIA at section V.A of this rule. DHS welcomes comments on this analysis.

F. Executive Order 13132 (Federalism)

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

G. Executive Order 12988 (Civil Justice Reform)

This rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities to minimize litigation and undue burden on the Federal court system. DHS has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

H. Family Assessment

DHS has reviewed this rule in line with the requirements of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277 (1998), which requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. DHS has systematically reviewed the criteria specified in section 654(c)(1) by evaluating whether this regulatory action: (1) impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform

[89] *See* Public Law 104–121, tit. II, 110 Stat. 847 (5 U.S.C. 601 note). A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632.

[90] *See* Office of Advocacy, Small Business Administration, ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act'' 22 (Aug. 2017) *https://advocacy.sba.gov/wp-content/uploads/2019/06/How-to-Comply-with-the-RFA.pdf.*

[91] The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(5), and (6).

[92] *See* BLS, ''Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. city average, all items, by month,'' *https://data.bls.gov/pdq/SurveyOutputServlet.* Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2025); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2025–Average monthly CPI–U for 1995) ÷ (Average monthly CPI–U for 1995)] × 100 = [(324.054–152.383) ÷ 152.383] = (171.671/152.383) = 1.126 ×100 = 112.6 percent = 113 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars × 2.13 = $213 million in 2025 dollars.

its functions; (4) affects disposable income or poverty of families and children; (5) only financially impacts families, if at all, to the extent such impacts are justified; (6) may be carried out by State or local government or by the family; or (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If DHS determines a regulation may negatively affect family well-being, then DHS must provide an adequate rationale for its implementation.

DHS has no data that indicates that this rule has any impact on family well-being. DHS has determined that the implementation of this regulation does not negatively affect family well-being and does not have any impact on the autonomy and integrity of the family as an institution.

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

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

J. National Environmental Policy Act

DHS and its components analyze regulatory actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* applies and, if so, what degree of analysis is required. DHS Directive 023–01, Revision 01 ''Implementing the National Environmental Policy Act'' and Instruction Manual 023–01–001–01, Revision 01 (''Instruction Manual'') [93] establish the policies and procedures that DHS and its components use to comply with NEPA.

NEPA allows Federal agencies to establish, in their NEPA implementing procedures, categories of actions (''categorical exclusions'') that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement.[94] The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.[95]

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[96]

This rule is limited to amending the DHS regulations to change affirmative asylum interview procedures and decision letter requirements. This rule is strictly administrative and procedural. DHS has reviewed this rule and finds that no significant impact on the environment, or any change in environmental effect result from the amendments in this rule.

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

K. Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights)

This rule does not cause the taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

L. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3512, DHS must submit to the Office of Management and Budget (OMB) for review and approval, any reporting requirements inherent in a rule, unless they are exempt. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. This rule does require non-substantive modifications to the USCIS Form listed in Table 6 below.

Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83C, and amended information collection instruments, to OMB for review and approval in accordance with the PRA.

TABLE 6—INFORMATION COLLECTION(S)

OMB control No.	Form No.	Form name	Type of PRA action
1615–0067	I–589	Application for Asylum and for Withholding of Removal.	No material or non-substantive change to a currently approved collection.

The non-substantive changes to the form and filing instructions are limited to removing language that implies an interview will be scheduled in all cases, and adding language to inform aliens that USCIS may refer certain asylum applications without conducting an interview and without issuing a request for evidence, and reminding aliens that the application and any supporting evidence the alien provides may be the alien's only opportunity to meet his or her burden of proof to establish eligibility for asylum before USCIS.

List of Subjects in 8 CFR Part 208

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

For the reasons stated in the preamble, DHS is amending part 208 of chapter I of title 8 of the Code of Federal Regulations as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 208 continues to read as follows:

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

[93] The Instruction Manual contains DHS's procedures for implementing NEPA and was issued on November 6, 2014, available at *https://www.dhs.gov/ocrso/eed/epb/nepa.*

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

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

[96] *See* Instruction Manual at V.B(2)(a) through (c).

■ 2. Amend § 208.4 by revising the introductory text to paragraph (a) to read as follows:

§ 208.4 Filing the application.

* * * * *

(a) *Prohibitions on filing.* Section 208(a)(2) of the Act prohibits certain aliens from filing for asylum on or after April 1, 1997, unless the alien can demonstrate to the satisfaction of the Secretary or the Attorney General that one of the exceptions in section 208(a)(2)(D) of the Act applies. Such prohibition applies only to asylum applications under section 208 of the Act and not to applications for withholding of removal under § 208.16. If an applicant files an asylum application and it appears that one or more of the prohibitions contained in section 208(a)(2) of the Act apply, an asylum officer, or an immigration judge in a hearing, shall review the application and give the applicant the opportunity to present any relevant and useful information bearing on any prohibitions on filing to determine if the application should be rejected. For the purpose of making determinations under section 208(a)(2) of the Act, the following rules shall apply:

* * * * *

■ 3. Amend § 208.9 by adding paragraph (a)(2) to read as follows:

§ 208.9 Procedure for interview before an asylum officer.

(a) * * *

(2) *Referrals without interview.* Notwithstanding the interview procedures described in this section and in accordance with § 208.14(c), an asylum officer may refer an affirmative asylum application to an immigration judge, without conducting an interview, based on a review of the record, as defined in paragraph (f)(1) of this section, and other relevant evidence, as applicable. An asylum officer may issue a referral without interview in cases where the alien is barred from applying for asylum, is barred from a grant of asylum, does not merit a grant as a matter of discretion, or is not eligible on the merits of the claim.

* * * * *

■ 4. Revise § 208.10 to read as follows:

§ 208.10 Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprint processing.

Failure to appear for a scheduled interview without prior authorization may result in dismissal of the application or waiver of the interview. Failure to comply with fingerprint processing requirements without good cause may result in dismissal of the application or waiver of the right to an adjudication by an asylum officer. Failure to appear shall be excused if the notice of the interview or fingerprint appointment was not mailed to the applicant's current address and such address had been provided to the USCIS by the applicant prior to the date of mailing in accordance with section 265 of the Act and regulations in this part, unless the asylum officer determines that the applicant received reasonable notice of the interview or fingerprinting appointment. Failure to appear at the interview or fingerprint appointment will be excused if the applicant demonstrates that such failure was the result of exceptional circumstances.

■ 5. Amend § 208.14 by revising the introductory text of paragraph (c) to read as follows:

§ 208.14 Approval, denial, referral, or dismissal of application.

* * * * *

(c) *Denial, referral, or dismissal by an asylum officer.* If the asylum officer, subject to review within USCIS, refers an asylum application without interview or does not grant asylum to an applicant after an interview in accordance with § 208.9(a), or if, as provided in § 208.10, the applicant is deemed to have waived the interview or an adjudication by an asylum officer, the asylum officer shall deny, refer, or dismiss the application as follows:

* * * * *

■ 6. Revise § 208.19 to read as follows:

§ 208.19 Decisions.

The decision of an asylum officer to grant or to deny asylum or to refer an asylum application, in accordance with *§ 208.14(b)* or (c), shall be communicated in writing to the applicant. Pursuant to *§ 208.9(d),* an applicant must appear in person to receive and to acknowledge receipt of the decision to grant or deny asylum, or to refer an asylum application unless, in the discretion of the asylum office director, service by mail is appropriate. A letter communicating denial of asylum or referral of the application shall state the basis for denial or referral and include an assessment of the applicant's credibility for denials.

Markwayne Mullin,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2026–15190 Filed 7–27–26; 8:45 am]

BILLING CODE 9111–97–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 75

[NRC–2019–0062]

RIN 3150–AK31

Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correcting amendments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) published a final rule in the **Federal Register** on March 30, 2026, to add a risk-informed, performance-based, and technology-inclusive regulatory framework for commercial nuclear plants. The final rule contained an error in the amendatory instruction for the definition, "Facilities" in part 75, "Safeguards On Nuclear Material—Implementation Of Safeguards Agreements Between The United States And The International Atomic Energy Agency." This document corrects the final rule by revising the section that contains the error.

DATES: This rule is effective on July 28, 2026.

ADDRESSES: Please refer to Docket ID NRC–2019–0062 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Electronically at *https://www.regulations.gov.* Search for Docket ID NRC–2019–0062. Address questions about NRC dockets to Helen Chang; telephone: 301–415–3228; email: *Helen.Chang@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "Begin ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.*
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–