

# Proposed Rules

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

## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review

#### 8 CFR Parts 1003 and 1103

[Docket No. EOIR–26–AB02; Dir. Order No. 07–2026]

RIN 1125–AB02

#### Civil Money Penalty for Actions in Contempt of an Immigration Judge's Proper Exercise of Authority

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice of proposed rulemaking (“NPRM”) would implement a provision of the Immigration and Nationality Act (“INA” or “the Act”) that authorizes Immigration Judges, under regulations prescribed by the Attorney General, to sanction by civil money penalty any action (or inaction) in contempt of the proper exercise of their authority by certain individuals. The rule would: define the scope of the contempt authority; provide procedures for contempt findings, penalty determinations, and penalty payment; establish an appellate process; and implement oversight of the use of contempt authority. The rule would also make conforming changes to the grounds for practitioner discipline.

**DATES:** Electronic comments must be submitted on or before September 28, 2026. The electronic Federal Docket Management System at <https://www.regulations.gov> will accept electronic comments until 11:59 p.m. Eastern Time on that date.

**ADDRESSES:** If you wish to provide comments regarding this proposed rulemaking, you must submit your comments, identified by the agency name and reference RIN 1125–AB02 or EOIR Docket No. EOIR–26–AB02, via the Federal eRulemaking Portal at <https://www.regulations.gov>. The

electronic Federal Docket Management System (“FDMS”) at <https://www.regulations.gov> will accept electronic comments until September 28, 2026. Follow the website instructions for submitting comments. Comments must be submitted in English, or an English translation must be provided.

Comments submitted in a manner other than via <https://www.regulations.gov> will not be considered comments on the proposed rule and may not receive a response from EOIR. EOIR is not accepting mailed comments at this time.

If you cannot submit your comment by using <https://www.regulations.gov>, please contact Jamee E. Comans, Assistant Director for Policy, Office of Policy, Executive Office for Immigration Review, by telephone at (703) 305–0289 (not a toll-free call) for alternate instructions.

Pursuant to 5 U.S.C. 553(b)(4), a plain language summary of the proposed rule is available in the rulemaking docket at <https://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Jamee E. Comans, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, Virginia 22041, telephone (703) 305–0289 (not a toll-free call).

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

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

Please note that all comments received are considered part of the public record and made available for public inspection at <https://www.regulations.gov>. Such information includes personally identifying information (such as your name,

address, etc.) voluntarily submitted by the commenter.

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

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

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

##### II. Legal Authority

The Department is issuing this NPRM pursuant to section 103(g) of the INA, 8 U.S.C. 1103(g), as amended by the Homeland Security Act of 2002 (“HSA”), Public Law 107–296, 116 Stat. 2135. Under the HSA, the Attorney General retains the authority to “establish such regulations, . . . issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out” the Attorney General’s duties under the

INA. HSA 1102, 116 Stat. at 2273–74; INA 103(g)(2), 8 U.S.C. 1103(g)(2).

Further, the INA explicitly authorizes the Attorney General to prescribe regulations related to Immigration Judges' authority to issue civil money penalties for any contemptuous action or inaction during the course of removal proceedings under section 240 of the INA, 8 U.S.C. 1229a. INA 240(b)(1), 8 U.S.C. 1229a(b)(1).

### III. Background

In 1996, Congress codified Immigration Judges' authority to sanction contemptuous action or inaction by imposing civil money penalties. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 304, 110 Stat. 3009, 3009–589; *see* INA 240(b)(1), 8 U.S.C. 1229a(b)(1). The statute requires, however, that the Attorney General promulgate regulations to define and delineate that statutory authority.

In 2006, then-Attorney General Alberto Gonzales announced measures designed to improve the performance of the Immigration Courts and the Board of Immigration Appeals (“Board”). One measure directed EOIR to “draft a new proposed rule that creates a strictly defined and clearly delineated authority to sanction by civil money penalty an action (or inaction) in contempt of an immigration judge’s proper exercise of authority.”<sup>1</sup> Attorney General Gonzales announced this measure because “Immigration judges should have the tools necessary to control their courtrooms and to protect the adjudicatory system from fraud and abuse.”<sup>2</sup>

Despite Attorney General Gonzales’s instruction and Departmental efforts over time, the Department has not published a rulemaking implementing “a strictly defined and clearly delineated authority” for Immigration Judges to impose a civil money penalty as a sanction for contemptuous conduct. The Department has adopted regulations establishing rules of professional conduct for practice before EOIR, *see* 8 CFR 1003.101–.111, but that disciplinary process is initiated and led by the EOIR disciplinary counsel. *See generally* 8 CFR 1003.105 (detailing discipline process). Thus, there are no

existing mechanisms for Immigration Judges presiding over proceedings to impose sanctions when an individual engages in contemptuous conduct; if an attorney or accredited representative engages in contemptuous conduct, the Immigration Judge is limited to filing a disciplinary complaint in the same manner as members of the general public. *See* 8 CFR 1003.104(a)(1).

Now, the Department is issuing this NPRM, which, if finalized, would implement the contempt authority provided for Immigration Judges under section 240(b)(1) of the INA, 8 U.S.C. 1229a(b)(1). The implementation of Immigration Judges’ authority to sanction contemptuous conduct by civil money penalty will honor the framework envisioned by Congress for Immigration Judges to control the proceedings before them and help deter detrimental conduct that may affect such proceedings.

### IV. Description of the Proposed Rule

The Department proposes to add Subpart H—Civil Money Penalty for Contemptuous Conduct Before an Immigration Judge to Title 8, Chapter V, Part 1003 of the Code of Federal Regulations. Within this subpart, the Department proposes to: (1) explain the purpose and exceptional nature of the civil money penalty; (2) describe individuals who may be ordered to pay a civil money penalty; (3) outline the types of contemptuous conduct that may result in the imposition of a civil money penalty; (4) provide procedural standards for the Immigration Judge, the individual, and the Chief Immigration Judge to follow in the consideration of contempt matters; (5) authorize and provide standards for appeals to the Board; (6) provide guidelines for the payment of civil money penalties, including consequences for failure to pay; and (7) ensure oversight by EOIR management—primarily by the Chief Immigration Judge—of Immigration Judges’ use of their contempt authority.

#### A. Purpose of the Proposed Rule

This rule proposes regulations that would allow Immigration Judges to use the contempt authority Congress provided for nearly 30 years ago. *See* INA 240(b)(1), 8 U.S.C. 1229a(b)(1); 8 CFR 1003.121 (proposed). It continues to be the case that Immigration Judges should have this important tool “to control their courtrooms and to protect the adjudicatory system from fraud and abuse.”<sup>3</sup> Despite Congress’s decision to

provide contempt authority as a tool for Immigration Judges, the absence of implementing regulations means that Immigration Judges are currently unable to use this contempt authority to aid in efficiently conducting and managing removal proceedings. While the Department’s intent to issue regulations to define and delineate the contempt authority is longstanding,<sup>4</sup> it is now imperative to do so to ensure Immigration Judges can exercise contempt authority to efficiently manage removal proceedings. Indeed, EOIR currently has a backlog of over 3.5 million cases.<sup>5</sup> Given the scope of this backlog, it is crucial for Immigration Judges to have every tool available—including the authority to impose civil money penalties—to control the proceedings before them and address and deter conduct that prevents efficient completion of removal proceedings.

Further, in addition to implementing an Immigration Judge’s statutory authority, such a measure is consistent with the Administration’s goal of combatting fraud and abuse of legal processes, including in the immigration system, which may lead to delays in the adjudication of cases before the agency.<sup>6</sup> Accordingly, if finalized, the proposed rule will help to promote the fair, efficient, and consistent adjudication of immigration proceedings by allowing Immigration Judges to use civil money penalties to deter behavior that delays, disrupts, or obstructs the due course of immigration proceedings. 8 CFR 1003.122(a) (proposed).

#### B. Covered Individuals

The proposed rule defines the three categories of individuals upon whom a civil money penalty may be imposed. *See* 8 CFR 1003.123(a) (proposed). Specifically, the proposed rule would allow for a civil money penalty to be

Office for Immigration Review, and Acting Chief Immigration Judge 5 (Aug. 9, 2006), <https://www.justice.gov/sites/default/files/ag/legacy/2009/02/10/ag-080906.pdf> [<https://perma.cc/V79E-T87Q>].

<sup>4</sup> *See, e.g.*, Civil Money Penalty for Actions in Contempt of an Immigration Judge’s Proper Exercise of Authority, RIN 1125–AB02, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=1125-AB02> [<https://perma.cc/7YFD-PXTV>] (showing inclusion of this rulemaking in the Spring 2020 Unified Agenda, which identifies the Department’s planned regulatory actions).

<sup>5</sup> EOIR, *Adjudication Statistics: Pending Cases, New Cases, and Total Completions* (Apr. 22, 2026), <https://www.justice.gov/eoir/media/1344791/dl?inline> [<https://perma.cc/J5L7-EGLV>].

<sup>6</sup> *See* Presidential Memorandum, Preventing Abuses of the Legal System and the Federal Court (Mar. 22, 2025), <https://www.whitehouse.gov/presidential-actions/2025/03/preventing-abuses-of-the-legal-system-and-the-federal-court/> [<https://perma.cc/KVC6-FE7F>].

<sup>1</sup> Memorandum from the Attorney General for the Deputy Attorney General, Assistant Attorney General for Legal Policy, Director of the Executive Office for Immigration Review, and Acting Chief Immigration Judge (Aug. 9, 2006), <https://www.justice.gov/sites/default/files/ag/legacy/2009/02/10/ag-080906.pdf> [<https://perma.cc/V79E-T87Q>].

<sup>2</sup> *Id.*

<sup>3</sup> Memorandum from the Attorney General for the Deputy Attorney General, Assistant Attorney General for Legal Policy, Director of the Executive

imposed upon the following individuals directly affiliated with proceedings before the Immigration Court: (1) an attorney (as defined at 8 CFR 1001.1(f)) or representative (as defined at 8 CFR 1001.1(j)) who has filed with the Immigration Court either a Notice of Entry of Appearance as Attorney or Representative before the Immigration Court (Form EOIR-28) or a Notice of Entry of Limited Appearance for Document Assistance before the Immigration Court (Form EOIR-61); (2) aliens who are the subject of the proceedings before the Immigration Judge; and (3) witnesses in any court proceedings before the Immigration Judge,<sup>7</sup> other than witnesses who are current employees or contractors of the Federal government acting in their official capacity. *Id.*

Under the proposed rule, an Immigration Judge would not be able to propose a civil money penalty on any other category of individual, including attorneys acting in their official capacity representing the Federal Government. *See* 8 CFR 1003.123(b) (“Individuals not subject to civil money penalties.”) (proposed). This exclusion is analogous to the approach of the EOIR disciplinary rules. *See* 8 CFR 1003.101(b) (excluding practitioners who represent the government from EOIR’s authority to impose disciplinary sanctions for attorney misconduct). Importantly, government attorneys who appear in Immigration Court are subject to the jurisdiction of the Office of the Inspector General for the Department of Homeland Security (“DHS”) and, if warranted, will be disciplined pursuant to DHS’s attorney discipline procedures. *See* 8 CFR 292.3(i). Moreover, the Department is wary of creating a regulatory structure where one Executive agency may impose money sanctions on individuals engaging in official representation of another Executive agency. *See* 5 CFR 2635.106(b) (“It is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases.”).

For the same reasons, the Department does not propose to apply civil money penalties on witnesses who are current employees or contractors of the Federal government acting in their official capacity. Any otherwise contemptuous conduct made by such Federal employees or contractors in their official capacity is more properly addressed by their employing or contracting agency.

### C. Covered Conduct

The Department proposes to authorize Immigration Judges to propose a civil money penalty as a sanction only for specified types of contemptuous conduct. *See* 8 CFR 1003.124 (proposed). Specifically, the only five types of conduct that would be subject to a civil money penalty under the proposed rule are: (1) attorneys’ and representatives’ repeated failure to appear or to appear on time for scheduled hearings or pre-hearing conferences, including those held via telephone or video conferencing, without good cause; (2) repeated failure to comply with Immigration Judge orders to timely file pleadings, applications, pre-hearing statements, evidentiary submissions, or any other filings, without good cause; (3) disorderly or abusive behavior or language in and around the courtroom and before the Immigration Judge or abusive language in any filing with the Immigration Court; (4) knowingly or recklessly making a false statement of material fact or law, or knowingly or recklessly offering false evidence, and for attorneys and representatives, failing to take appropriate remedial measures after becoming aware of the falsity of previous material statements or evidence; and (5) willfully misleading, misinforming, threatening, or deceiving any person (including a party to a case or an officer or employee of the Department), concerning any relevant matter relating to a case. 8 CFR 1003.124(a)(1)–(5) (proposed). Both actions and inactions may constitute contemptuous conduct. *See* 8 CFR 1003.124(b) (proposed).

When determining whether good cause exists for the failure to appear or to appear on time, 8 CFR 1003.124(a)(1) (proposed), or for the failure to comply with filing orders, 8 CFR 1003.124(a)(2) (proposed), the proposed rule would require the adjudicator to consider all relevant information, similar to other uses of the “good cause” standard in immigration proceedings. *See, e.g., Dugboe v. Holder*, 644 F.3d 462, 471 (6th Cir. 2011) (applying a multi-factor balancing test when adjudicating a change of venue request under the “good cause” standard); *Matter of L-A-B-R-*, 27 I&N Dec. 405, 406 (A.G. 2018) (applying a “multifactor analysis” when adjudicating a continuance request under the “good cause” standard).

In considering whether an attorney or representative is repeatedly failing to appear or timely appear at hearings, as stated in 8 CFR 1003.124(a)(1) (proposed), likely relevant factors would include, but not be limited to, whether

proper notice of the hearing was provided; whether there were technical difficulties if appearing by telephone or videoconferencing; emergency medical or familial issues; or transportation issues beyond normal traffic, such as issues resulting from severe weather, among others. In considering whether an individual is repeatedly failing to timely file documents pursuant to an Immigration Judge’s order, as stated in 8 CFR 1003.124(a)(2) (proposed), likely relevant factors would include, but not be limited to, technical difficulties with filing if filing electronically; emergency medical or familial issues; or other similar, external factors that repeatedly prevented the individual from filing documents pursuant to the Immigration Judge’s order.

Similarly, the term “repeated failure,” as used in 8 CFR 1003.124(a)(1) and (2) (proposed), is intended to capture persistent and sustained failures that delay, disrupt, or obstruct the adjudicatory process. Immigration Judges would consider the total number of failures, their proximity to each other, the severity of the failures (*e.g.*, whether the failure is being a few minutes late versus not appearing at all), and the degree of actual prejudice to the conduct of the proceedings, as well as any other relevant factors. The Department expects that, ordinarily, an attorney or representative will not confront these types of external factors on a regular basis such that it would result in repeated inexcusable delays or absences.

Additionally, “disorderly or abusive behavior or language in and around the courtroom and before the Immigration Judge,” as stated in 8 CFR 1003.124(a)(3) (proposed), includes, but is not limited to, behavior or language that impugns the integrity of the court, unfairly maligns the competence or impartiality of the presiding Immigration Judge, is defamatory or slanderous, or inappropriately accosts any individual in the courtroom.<sup>8</sup> *See* 8 CFR 1003.124(a)(3) (proposed). These types of abusive language in any filing with the Immigration Court also constitute sanctionable conduct. *Id.*

The fourth type of sanctionable conduct includes knowingly or recklessly making a false statement of material fact or law or offering false evidence. *See* 8 CFR 1003.124(a)(4)

<sup>8</sup> To the extent that an attorney or representative has concerns about an Immigration Judge’s conduct, they may raise such concerns by filing a complaint with EOIR’s Judicial Conduct and Professionalism Unit. *See* EOIR PM 26–03, *Judicial Conduct and Professionalism* (Mar. 20, 2026), <https://www.justice.gov/eoir/media/1432036/dl?inline> [<https://perma.cc/HZ6F-EJSN>].

<sup>7</sup> This includes witnesses who are present in the courtroom, either physically or remotely through telephone or video-teleconferencing equipment, including during internet-based hearings. 8 CFR 1003.123(a)(3) (proposed).

(proposed). Importantly, for attorneys and representatives, failing to take appropriate remedial measures after receiving notice of such falsity, or when the attorney or representative reasonably should have known of the falsity, of either a previous statement of material law or fact or previously offered material evidence, encompasses the same conduct that is sanctionable for practitioners under 8 CFR 1003.102(c).<sup>9</sup> *Id.*

The last type of sanctionable conduct proposed by the rule includes willfully misleading, misinforming, threatening, or deceiving any person (including a party to a case or an officer or employee of the Department), concerning any relevant matter relating to a case, and applies to any individual who may be subject to sanctions by civil money penalty. 8 CFR 1003.124(a)(5) (proposed).

Overall, these sanctionable forms of conduct directly interfere with the Immigration Courts' ability to conduct proceedings in a fair and efficient manner. To ensure that the contempt authority works to promote the efficient and fair adjudication of proceedings, the proposed rule specifies that an Immigration Judge will only be able to initiate the proposed civil money penalty process if the Immigration Judge makes a *prima facie* determination, based on the circumstances of the case, that the charged conduct did, in fact, delay, disrupt, or obstruct the adjudicatory process. 8 CFR 1003.124(a) (proposed).

Like the standards applied in Federal courts, these standards are applicable to conduct that occurs inside or outside of the courtroom. *See* 18 U.S.C. 401 (authorizing a court to sanction misbehavior that occurs "in its presence or so near thereto as to obstruct the administration of justice," for "[m]isbehavior of any of its officers in their official transactions," and for "[d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command"); *see also Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 833 (1994) (explaining that certain contemptuous conduct

occurring outside of the courtroom "impede[s] the court's ability to adjudicate the proceedings before it and thus touch[es] upon the core justification for the contempt power"). In this proposed rule, for example, the disorderly or abusive behavior may occur in the court waiting room, hallway, or at the filing window. Disorderly or abusive language in written filings may also serve as the basis for sanctions.

#### *D. Process for Sanctioning by Civil Money Penalty*

The Department is also proposing a detailed process for Immigration Judges to follow to impose sanctions for contemptuous conduct by civil money penalty. *See* 8 CFR 1003.125 ("Required warning before initiating the civil money penalty process."); 1003.126 ("Initiation of the civil money penalty process."); and 1003.127 ("Decision by the Chief Immigration Judge or designee.") (proposed). These proposed procedures ensure that the imposition of a civil money penalty is used as an exceptional tool that should be rarely invoked. *See, e.g., Nelson v. Steiner*, 279 F.2d 944, 948 (7th Cir. 1960) ("The power to punish for contempt is to be sparingly used . . . ." (citation omitted)).

##### 1. Warning of Violation Before Imposition of Civil Money Penalty

In general, the proposed rule requires the Immigration Judge to provide the covered individual with a clear and unambiguous warning that a violation has occurred before initiating the civil money penalty process. 8 CFR 1003.125(a) (proposed); *cf.* Fed. R. Crim. P. 42(a)(1) (notice requirement applies). If the covered individual engages in the same misconduct within one year from the date of issuance of the warning, no further warning is required before initiating the civil money penalty process. 8 CFR 1003.125(a), 1003.126(a) (proposed).

Procedurally, the Immigration Judge will provide either an oral or written warning, depending on whether the individual is present before the Immigration Judge when the conduct occurs. 8 CFR 1003.125(b) (proposed). If an oral warning is given, the Immigration Judge must memorialize the warning in writing as soon as practicable. *Id.* Any written warning or written memorialization of an oral warning will then be served on the individual. *Id.*

Substantively, the warning must describe the specific conduct; explain why the conduct is sanctionable under the applicable contempt regulations;

notify the individual that continuing to engage in the same conduct may result in the initiation of contempt proceedings and the imposition of a civil money penalty; and notify the individual that they may respond to the warning within 10 days of issuance of the warning. 8 CFR 1003.125(c), (d) (proposed).

This warning will ensure that the individual is provided clear and unambiguous notice of their conduct and the potential effects of continuing that conduct. 8 CFR 1003.125(a), (c) (proposed). To achieve this purpose, the Immigration Judge should provide the warning as close in time as reasonably possible to the contemptuous conduct. 8 CFR 1003.125(a)–(b) (proposed). Moreover, the Immigration Judge's warning must detail the specific conduct that has occurred, and a standing order or a generic discussion not tied to the specific conduct at issue does not satisfy the requirement of a warning under this proposed rule.<sup>10</sup> 8 CFR 1003.125(c)(1) (proposed).

Once a warning has been issued, an individual may, but is not required to, respond to the Immigration Judge's warning, either on the record orally at the time of the warning or in writing within 10 days of the issuance of the warning. 8 CFR 1003.125(d) (proposed). Such response, if any, will be included in the Record of Proceeding for the relevant case in which the contemptuous conduct occurred, as well as the separate contempt Record of Proceeding if a civil money penalty process is subsequently initiated.<sup>11</sup> *Id.* Any contemptuous response to a warning may also be sufficient to

<sup>10</sup> Nothing in this proposed rule would prohibit an Immigration Judge from issuing a standing order regulating conduct within his or her courtroom, as long as the order is consistent with applicable law and policy. *See* EOIR Policy Memorandum 20–09, *The Immigration Court Practice Manual and Orders* (Feb. 13, 2020), <https://www.justice.gov/eoir/reference-materials/ODD2009/dl> [<https://perma.cc/76TJ-TMKP>]. Nonetheless, while the violation of a standing order may serve as evidence of contemptuous conduct, the presence of a standing order itself is insufficient to constitute a warning necessary prior to seeking to impose a civil money penalty.

<sup>11</sup> When an Immigration Judge initiates a civil money penalty process based on a contempt allegation, the Immigration Court will create a contempt Record of Proceeding, separate from the underlying case Record of Proceeding, and ensure that relevant matters in the underlying immigration proceeding(s) that gave rise to the initiation of the civil money penalty are entered or described in the contempt Record of Proceeding. 8 CFR 1003.126(e) (proposed). Any oral statements given on the record, including any oral response to the Immigration Judge's warning, will be transcribed for inclusion in the contempt Record of Proceeding. *Id.* Any oral statements that were not recorded must be summarized in writing by the Immigration Judge for inclusion in the contempt Record of Proceeding. *Id.*

<sup>9</sup> Currently, 8 CFR 1003.102(c) notes a practitioner's obligation to take remedial measures regarding false evidence, but not regarding false statements of material law or fact. That distinction has no basis in the professional responsibility obligations of practitioners. *See, e.g., Model Rule of Prof. Conduct 3.3(a)(1)* ("A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." (emphasis added)). Accordingly, and consistent with the bases for contemptuous conduct subject to a civil money penalty, the proposed rule would correct that oversight. *See* 8 CFR 1003.102(c) (proposed).

initiate the civil money penalty process. *Id.*

If the individual continues to engage in the same contemptuous conduct after the warning is given, the proposed rule requires the Immigration Judge to make a finding on the record—which can be an oral statement on the record or a written statement added to the Record of Proceeding—that such conduct has continued to occur. 8 CFR 1003.125(e) (proposed).

Additionally, the warning would not be limited to the particular proceeding in which the initial contemptuous conduct occurred but, rather, would apply across all future proceedings. 8 CFR 1003.125(a) (proposed). For example, if an Immigration Judge issues a warning to an individual for engaging in contemptuous conduct and that case then changes venue to another Immigration Court, that warning—which will have been made or memorialized in writing and contained within the Record of Proceeding of the underlying case—would still be a valid foundation for the initiation of the civil money penalty process in the new Immigration Court if the individual continues to engage in the same contemptuous conduct that was the subject of the warning. *See id.* Similarly, as another example, if an individual is warned about the use of abusive language under § 1003.124(a)(3) (proposed) in a specific proceeding, that warning would be effective for any further abusive conduct under § 1003.124(a)(3) (proposed) by that individual in any other proceedings, even proceedings unrelated to the initial one.

Furthermore, under § 1003.125(a) (proposed), the Immigration Judge will not be required to issue a warning where a previous order imposing a civil money penalty had been issued on a covered individual for continuing to engage in the same type of contemptuous conduct. In such instances, the previous order will serve as a warning for the imposition of future civil money penalties if the individual continues to engage in the same conduct within one year of the previous order.

## 2. Notice of Intent To Impose Civil Money Penalty

If, after issuing a warning, the Immigration Judge makes a finding of continued contemptuous conduct on the record, the Immigration Judge may initiate the civil money penalty process. *See* 8 CFR 1003.126(a) (proposed).

Under the proposed rule, the Immigration Judge initiates the civil money penalty process by serving a Notice of Intent to Impose Civil Money

Penalty (“CMP Notice”) on the individual. 8 CFR 1003.126(b)(1) (proposed). The CMP Notice may be served on the individual by personal service or mail, and if the individual is a practitioner before EOIR, the CMP Notice may also be served electronically using the practitioner’s email address provided through eRegistry. *Id.* This process must be initiated as soon as practicable after a finding on the record of continued contemptuous conduct, and in no case later than one year after the most recent related warning. 8 CFR 1003.126(a) (proposed).

The CMP Notice must include the following items: (1) the name and address of the individual; (2) a factual description of the conduct in question; (3) the alleged charge or charges of contemptuous conduct; (4) an explanation of how the conduct in question delayed, disrupted, or obstructed the adjudicatory process; (5) a brief description of any warning(s) provided; and (6) the Immigration Judge’s proposed civil money penalty amount. 8 CFR 1003.126(b)(2) (proposed).

The CMP Notice will also inform the individual of the procedures for the civil money penalty process. 8 CFR 1003.126(b)(3) (proposed). This will include informing the individual that the matter is being referred to the Chief Immigration Judge for a decision and that he or she has the right to file a response with the Chief Immigration Judge within 30 days of issuance of the CMP Notice; the right to file one motion to extend the time to respond for up to 7 days for good cause; and the right to be represented at the individual’s own expense. 8 CFR 1003.126(b)(3)(i)–(iv) (proposed). The individual’s response will be required to include the following information: (1) the individual’s name; (2) the contempt proceeding case number; (3) the individual’s A-number<sup>12</sup> or EOIR identification number (if any);<sup>13</sup> (4) the individual’s

<sup>12</sup> An Alien Registration Number (“A-number”) is a unique identification number that DHS assigns to an alien.

<sup>13</sup> An EOIR identification number (“EOIR ID”) is an identifier used by EOIR for attorneys and fully accredited representatives to indicate that such an individual has registered with EOIR. EOIR requires attorneys and fully accredited representatives to register with the agency to practice before the Immigration Courts and the Board. To receive an EOIR ID, attorneys and fully accredited representatives must (1) register online through the eRegistry portal, and (2) appear in person at an approved location to present photo identification for identity validation. Upon completion of both steps, EOIR issues a unique EOIR ID to the individual by email. For further information, see EOIR, Attorneys and Fully Accredited Reps—How to Register (Feb. 2024), <https://www.justice.gov/eoir/media/1358206/dl?inline> [<https://perma.cc/F3M3-N3SM>].

current physical and email addresses; (5) the individual’s position on the charge(s) in the CMP Notice; and (6) any written or documentary evidence that the individual wishes to provide in support of the individual’s position. 8 CFR 1003.126(d) (proposed). The CMP Notice, any responses to the CMP Notice, and related filings will be included in the contempt Record of Proceeding. 8 CFR 1003.126(e) (proposed).

The proposed rule’s inclusion of this 30-day response period, as well as the earlier warning and CMP Notice requirements, will ensure that the individual is provided notice of the contemptuous behavior and an opportunity to be heard. *See generally Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950) (explaining that notice and an opportunity to be heard must be “appropriate to the nature of the case”). These contempt proceedings are not “required by statute to be determined on the record after opportunity for an agency hearing” and, thus, are not subject to the Administrative Procedure Act’s requirements for formal adjudications under 5 U.S.C. 554, 556–57. *Accord* INA 240(b)(1), 8 U.S.C. 1229a(b)(1) (not requiring specific hearing procedures for Immigration Judges’ contempt authority). However, the proposed rule comports with general due process principles, which require, at a minimum, notice and an opportunity to respond. *See Mullane*, 339 U.S. at 314. The CMP Notice will ensure that the individual is made aware of the allegations against him or her. The CMP Notice will also inform the individual that he or she has the right to representation at no expense to the government by an attorney or other representative. 8 CFR 1003.126(b)(3)(iv) (proposed).

Additionally, to determine the penalty amount for the CMP Notice, the proposed rule provides a penalty schedule and relevant factors for the Immigration Judge to consider. *See* 8 CFR 1003.126(c) (proposed).

Lastly, the proposed rule requires all filings by the individual to comply with existing Immigration Court filing procedures. *See* 8 CFR 1003.126(f) (proposed); *see also* 8 CFR 1003.31–33 (requiring certain document sizes and English language usage or translation, among other requirements).

## 3. Decision by the Chief Immigration Judge or Designee

Under the proposed rule, decisions on civil money penalties would be made by the Chief Immigration Judge or his or her designee. Jurisdiction vests,

including over all motions filed, with the Chief Immigration Judge once the CMP Notice is referred to him or her. 8 CFR 1003.127(a) (proposed). The Chief Immigration Judge may not remand the CMP Notice to the Immigration Judge. 8 CFR 1003.127(b) (proposed).

Once the individual files a response to the CMP Notice, or the 30-day response period expires, the Chief Immigration Judge will then issue a written decision determining whether there is clear and convincing evidence that the individual engaged in contemptuous conduct that delayed, disrupted, or obstructed the adjudicatory process. *See* 8 CFR 1003.127(b)–(d) (proposed). The Chief Immigration Judge will only be able to issue an order finding the individual in contempt and imposing a civil money penalty if clear and convincing evidence demonstrates: (1) that the person charged is a covered individual against whom a civil money penalty may be imposed; (2) the conduct described in the CMP Notice did in fact occur; (3) the conduct described in the CMP Notice falls within the scope of 8 CFR 1003.124(a) (proposed); and (4) the Immigration Judge properly provided a warning, time to respond to the warning, and the CMP Notice. 8 CFR 1003.127(d)(1) (proposed).

In making this decision, the proposed rule limits the ability of the Chief Immigration Judge to engage in additional factfinding by only allowing for the consideration of the contempt Record of Proceeding as described in § 1003.126(e) (proposed). 8 CFR 1003.127(b) (proposed).

If the Chief Immigration Judge determines that these requirements were met, the order is required to specify the civil money penalty amount imposed and provide instructions regarding the payment of the penalty. 8 CFR 1003.127(d)(2) (proposed). If, on the other hand, the Chief Immigration Judge determines that the evidence is insufficient to impose a civil money penalty, the Chief Immigration Judge will issue an order dismissing the CMP Notice with prejudice, and no further review is provided. 8 CFR 1003.127(d)(3)–(4) (proposed).

The Chief Immigration Judge or the designee must serve a copy of his or her order on the individual or, if represented, the individual's attorney or representative. 8 CFR 1003.127(d)(5) (proposed). If the individual is represented by an attorney or representative, the Chief Immigration Judge's order will be served electronically using the email address that the individual's attorney or representative has provided through

eRegistry. *Id.* If the individual is not represented, the Chief Immigration Judge's order may be served on the individual by personal service or mail. *Id.* If the unrepresented individual is a practitioner before EOIR, service may also be made electronically using the practitioner's email address provided through eRegistry. *Id.* These methods of service are consistent with general EOIR practice. *See* 8 CFR 1003.32(b); 8 CFR 1003.37.

The Chief Immigration Judge also may designate a permanent Deputy Chief Immigration Judge to conduct such a review in his or her place, provided that such designee (1) is not the present first-line supervisor of the Immigration Judge who issued the CMP Notice; and (2) is not conducting a review involving an alien who has previously appeared in immigration proceedings before the designee. 8 CFR 1003.127(a) (proposed). If the Chief Immigration Judge is the Immigration Judge who issued the CMP Notice, the EOIR Director will designate a senior adjudicator outside of the Office of the Chief Immigration Judge to make a decision. *Id.*

#### 4. Amount of the Civil Money Penalty

In all cases, the civil money penalty ordered will be based on the penalty schedule included in the proposed rule. *See* 8 CFR 1003.126(c)(1) (proposed). After considering all relevant factors, the Chief Immigration Judge will be able to issue a penalty of an amount according to the following ranges: \$1,000 to \$1,500 for a first contempt order; \$1,500 to \$2,500 for a second contempt order; and \$2,500 to \$3,500 for any subsequent contempt orders. *Id.* The Department believes these amounts properly account for the important purposes served by the statutory contempt authority; are sufficient, in combination with other sanctions and procedures that may be available under existing laws and regulations, to deter the types of contemptuous conduct covered in this proposed rule; and are only issuable in the context of the significant procedural protections put into place, including official warnings, a civil penalty process, and administrative appeal availability.

These ranges will also allow the penalty amount to be properly tailored to the conduct in question. Relevant factors to be considered include the number of offenses, the harm resulting from the sanctionable conduct, the remarkable nature of the conduct, and the deterrent effect of the penalty. 8 CFR 1003.126(c)(2) (proposed). In ordering a civil money penalty, the Chief Immigration Judge will not be able to increase the penalty amount stated in

the CMP Notice. 8 CFR 1003.127(d)(2) (proposed).

The Department considered leaving the civil money penalty amounts to the Immigration Judge's discretion, similar to the discretion afforded to Federal court judges. *See generally Paramedics Electromedicina Comercial, Ltda v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 657 (2d Cir. 2004) (noting that, for civil contempt purposes, judges have "broad discretion" to set a penalty to coerce compliance). However, the Department determined that providing a generally applicable penalty schedule will better promote consistency amongst the Immigration Courts.

Separately, the Department notes that, in the future, it will review the penalty amounts for any potential further adjustment, including periodically to account for inflation. *Accord* Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Public Law 101–410, sec. 4, as amended, (28 U.S.C. 2461 note) (requiring Federal agencies to adjust statutory penalties for inflation annually to maintain their deterrent effect).

#### E. Appeals

The rule proposes to include an appeal process to provide an additional layer of procedural protection to individuals found in contempt. *See* 8 CFR 1003.128 ("Appeals.") (proposed). Following the Chief Immigration Judge's order imposing a civil money penalty, the individual found in contempt will be able to challenge that order by filing an appeal with the Board. *Id.* The Board will review the Chief Immigration Judge's decision consistent with 8 CFR 1003.1(d)(3), similar to how it reviews decisions of adjudicating officials in disciplinary proceedings involving practitioners or recognized organizations. *See* 8 CFR 1003.1(b)(13); 8 CFR 1003.106(c). The Chief Immigration Judge's decision dismissing the CMP Notice with prejudice is not subject to appeal. 8 CFR 1003.127(d)(4) (proposed). The Chief Immigration Judge's order becomes a final agency decision unless the individual files a timely notice of appeal. 8 CFR 1003.127(e) (proposed). The appeal is subject to a proposed \$675 filing fee, 8 CFR 1103.7(b)(1) (proposed), which is the same amount as the fee currently charged for appeals from a decision of an adjudicating official in a practitioner disciplinary case under section 286(m) of the INA, 8 U.S.C. 1356(m), as discussed in Section V.C of this preamble. To be timely, the appeal must be filed within 10 days from the date of the order and include the required filing

fee or fee waiver form. 8 CFR 1003.128(a) (proposed).

As part of the proposed appeal process, the individual is required to simultaneously serve a copy of the appeal and other related filings on the EOIR General Counsel. 8 CFR 1003.128(a) (proposed). EOIR's General Counsel, or the EOIR disciplinary counsel where so designated, will represent the agency on appeal and will be permitted to submit a brief under the briefing schedule issued by the Board. *Id.*; 8 CFR 1003.3(c)(1) (proposed). The Board will set a simultaneous briefing schedule with briefs due from both parties within 20 days of the Board order setting the schedule and in no case more than 35 days after the appeal was filed. 8 CFR 1003.3(c)(1) (proposed). Following review, the Board will issue a written decision affirming, modifying, or vacating with prejudice the civil money penalty. *See* 8 CFR 1003.128(d)(2) (proposed). The Board will not be permitted to set a penalty amount above the amount stated in the CMP Notice or to remand the case for further proceedings.<sup>14</sup> *Id.* The Board's order will become the final agency decision on the date the order is issued. *Id.*

#### F. Other Provisions

##### 1. Limited Sanction

The proposed rule includes instructions to EOIR's adjudicators that the contempt authority is an exceptional tool that should be used sparingly. *See* 8 CFR 1003.122(b) (proposed). The proposed rule also explains that Immigration Judges should attempt to deter or redress contemptuous conduct through other reasonably available means, resorting to the initiation of the civil money penalty process only after other reasonably available means have failed to restore proper courtroom conduct. 8 CFR 1003.122(b) (proposed).

The proposed rule also explains that the contempt authority is independent of other sanctions or procedures. 8 CFR 1003.122(c) (proposed). Those include, but are not limited to, attorney or representative discipline pursuant to subpart G of 8 CFR part 1003; admitting evidence described in a pre-hearing statement as unopposed when evidentiary objections to the pre-hearing

statement are required but not timely received, as provided in 8 CFR 1003.21(c); and deeming the opportunity to file an application or document as waived or abandoned, *see, e.g.*, 8 CFR 1003.31(h).

Lastly, the proposed rule explicitly states that contempt authority under proposed subpart H of 8 CFR part 1003, does not apply to subpoena enforcement pursuant to 8 CFR 1003.35(b). 8 CFR 1003.122(d) (proposed).

##### 2. Payment of the Civil Money Penalty

The proposed rule includes instructions regarding the deadline for paying civil money penalties and the consequences of failing to pay a civil money penalty as ordered. 8 CFR 1003.129 (proposed). An individual found in contempt will be required to pay the penalty within 30 days of the Board's order becoming final. 8 CFR 1003.129(a) (proposed). In other words, if an individual does not file an appeal, the individual will be required to pay the penalty within 30 days of the Chief Immigration Judge's order becoming final, or if an individual files an appeal, within 30 days of the Board's decision affirming or modifying a civil money penalty.<sup>15</sup> *Id.*

If a practitioner (attorney or accredited representative) fails to timely pay a required civil money penalty, the EOIR disciplinary counsel will move to immediately suspend the practitioner from practice before EOIR. 8 CFR 1003.129(c) (proposed). Upon proof of payment of the penalty, the practitioner will then be able to move to have the suspension set aside. 8 CFR 1003.129(c)(4) (proposed).

##### 3. Oversight

The proposed rule specifically instructs the Chief Immigration Judge to maintain oversight over Immigration Judges' use of the civil money penalty authority afforded by section 240(b)(1) of the INA, 8 U.S.C. 1229a(b)(1), and proposed subpart H of 8 CFR part 1003. *See* 8 CFR 1003.130 (proposed).

Consistent with preexisting regulatory provisions, Immigration Judges will also receive appropriate training and guidance on the proper use of their authority to sanction by civil money penalty. *See, e.g.*, 8 CFR 1003.0(b)(1)(vii) (establishing that the Director shall have the authority to "[p]rovide for comprehensive, continuing training and support for Board members, immigration judges,

and EOIR staff in order to promote the quality and consistency of adjudications"), 1003.9(b)(2). Further, the proposed rule reiterates that an Immigration Judge's exercise of the authority to issue a CMP Notice is subject to the supervision of the Chief Immigration Judge; that the Chief Immigration Judge must conduct periodic reviews of that authority; and that, after consultation with the Director, the Chief Immigration Judge may suspend any Immigration Judge's exercise of that authority for up to 30 days if that Immigration Judge has improperly applied or misused that authority. 8 CFR 1003.130 (proposed). These provisions are consistent with the Chief Immigration Judge's general authority to oversee Immigration Court operations and the authority to make reports and inspections and take corrective action. 8 CFR 1003.9(b)(4). Any such suspension of an Immigration Judge's contempt authority by the Chief Immigration Judge will be conducted through a standing order.<sup>16</sup> 8 CFR 1003.130 (proposed).

To ensure further oversight, the proposed rule makes clear that complaints or allegations of misconduct regarding the threat or exercise of authority by an Immigration Judge should be directed to the Immigration Judge's supervisor, EOIR's Judicial Conduct and Professionalism Unit, or the Department of Justice Office of Professional Responsibility ("OPR"). *See* 8 CFR 1003.109 (proposed). In doing so, the proposed rule revises 8 CFR 1003.109 to make clear that complaints regarding the behavior of EOIR adjudicators, including Immigration Judges, need not be directed solely to OPR and may be directed to the adjudicator's supervisor or to EOIR's Judicial Conduct and Professionalism Unit. *Id.* This clarification is consistent with longstanding practice;<sup>17</sup> guidance from former Attorney General Alberto

<sup>14</sup> If the individual subject to a civil money penalty is an alien described in 8 CFR 1003.123(a)(2) (proposed) and either the Chief Immigration Judge or his or her designee or the Board receives information that the alien has been removed prior to the issuance of a decision, then, as appropriate, the Chief Immigration Judge or his or her designee will dismiss the CMP Notice or the Board will vacate the civil money penalty. 8 CFR 1003.127(d)(3), 1003.128(d)(2) (proposed).

<sup>15</sup> If the individual seeks further Federal court review of the Board's order imposing a civil money penalty for contempt, the payment would then be due within 30 days of a final court decision upholding the civil money penalty.

<sup>16</sup> The Chief Immigration Judge's use of the authority to issue a CMP Notice will be subject to the supervision of the Director. 8 CFR 1003.0(b); 28 CFR 0.115(a). The Director will conduct periodic reviews of that authority by the Chief Immigration Judge and may suspend the Chief Immigration Judge's exercise of that authority for up to 30 days if the authority has been improperly applied or misused. The proposed rule authorizes the Director to issue a standing order to memorialize any such suspension of the Chief Immigration Judge's contempt authority. 8 CFR 1003.130 (proposed).

<sup>17</sup> *See* EOIR, *Judicial Complaint Process* (Feb. 2023), <https://www.justice.gov/eoir/page/file/1100946/download> [<https://perma.cc/Q4H9-SG9Q>].



Gonzales;<sup>18</sup> and other regulatory authority.<sup>19</sup>

#### 4. Professional Conduct for Practitioners

“Engag[ing] in contumelious or otherwise obnoxious conduct” is already a ground for practitioner discipline. 8 CFR 1003.102(g). The proposed rule clarifies—consistent with the Department’s previous statements regarding contempt proceedings and practitioner discipline<sup>20</sup>—that contumelious conduct includes conduct for which a civil money penalty has been assessed under proposed subpart H of 8 CFR part 1003. 8 CFR 1003.102(g) (proposed). The rule also proposes to add a ground for practitioner discipline for repeatedly failing to pay any ordered civil money penalty to promote compliance with such orders. 8 CFR 1003.102(x) (proposed).

#### G. Effective Date

The provisions of the proposed rule would apply only to conduct in the Immigration Courts on or after the effective date of the final rule.

### V. Regulatory Requirements

#### A. Regulatory Flexibility Act

The Department has reviewed this proposed regulation in accordance with the Regulatory Flexibility Act (“RFA”). See 5 U.S.C. 605(b). As proposed, this rule regulates attorneys and accredited representatives, which qualify as “small entities” under the RFA. See 5 U.S.C. 601(3)–(4), (6). However, the Department has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. As indicated in the proposed rule, the imposition of a civil money penalty is intended to be an extraordinary sanction that is used

infrequently in response to misconduct occurring before an Immigration Judge.

#### B. Unfunded Mandates Reform Act of 1995

The proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, codified at 2 U.S.C. 1501 *et seq.*

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

The Office of Information and Regulatory Affairs has determined that the proposed rule is a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the proposed regulation has been submitted to the Office of Management and Budget (“OMB”) for review. The Department certifies that the proposed regulation has been drafted in accordance with the principles of Executive Order 12866, section 1(b), and Executive Order 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects). Executive Order 13563 emphasizes the importance of using the best available methods to quantify costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Department believes that the proposed rule will provide significant benefits relating to EOIR proceedings. See Section 1(b)(6) of E.O. 12866. The proposed rule will help ensure the efficiency and integrity of these proceedings by setting out enforcement mechanisms for the sanctionable conduct of individuals appearing before the Immigration Court system. The Department anticipates that allowing Immigration Judges to warn and institute the civil money penalty process against those individuals who are disruptive to the proceedings will encourage those appearing before the Immigration Courts to act with decorum and will have a deterrent effect on overall sanctionable conduct, thereby reducing the time Immigration Judges spend attempting to enforce courtroom decorum instead of adjudicating cases.

In contrast, the costs on the public that the proposed rule will impose are the individual liabilities for individuals who may be subject to a civil money penalty for actions or inactions in contempt of the Immigration Judge’s authority, as well as the filing fee for any appeals of the Chief Immigration Judge’s civil money penalty order. The Department is proposing a \$675 appeal filing fee to match the cost recovery portion of the Form EOIR–45, Notice of Appeal from a Decision of an Adjudicating Official in Practitioner Disciplinary Case.<sup>21</sup> The Department anticipates that the Board’s adjudication of an appeal in contempt proceedings will be substantially similar to that in attorney discipline cases, such that the filing fees should be consistent.

Because the Department intends for the civil money penalty to be an “extraordinary” sanction, see 8 CFR 1003.122(b) (proposed), the Department does not anticipate that a significant number of individuals will ultimately be subject to such a penalty (for example, in Section V.F of this preamble, the Department estimates an approximate 50 appeals per year for Paperwork Reduction Act purposes).<sup>22</sup> Rather, the Department expects that, in most cases, warnings issued under this proposed rule will be sufficient to deter contemptuous conduct without having to initiate the civil money penalty process.

Otherwise, the Department does not believe that, broadly speaking, the proposed rule could be said to burden the parties in EOIR proceedings, as the proposed rule simply provides for civil money penalties where misconduct

<sup>18</sup> See Memorandum from the Attorney General for the Deputy Attorney General, Assistant Attorney General for Legal Policy, Director of the Executive Office for Immigration Review, and the Acting Chief Immigration Judge (Aug. 9, 2006) (directing EOIR to develop an adjudicator complaint process that clearly defines the roles of EOIR, OPR, and the Office of the Inspector General in handling adjudicator complaints), <https://www.justice.gov/sites/default/files/ag/legacy/2009/02/10/ag-080906.pdf> [<https://perma.cc/V79E-T87Q>].

<sup>19</sup> See, e.g., 8 CFR 1003.0(b)(1)(viii) (instructing the Director to “[i]mplement a process for receiving, evaluating, and responding to complaints of inappropriate conduct by EOIR adjudicators”).

<sup>20</sup> See Professional Conduct for Practitioners—Rules and Procedures, 65 FR 39513, 39518–19 (Jun. 27, 2000) (“It is expected that the contempt regulations, once published, will provide that a practitioner can be disciplined under the Professional Conduct Rules when the practitioner has been sanctioned for contemptuous conduct by an Immigration Judge pursuant to 8 U.S.C. 1229a(b)(1). A finding of contempt will become a prerequisite to the imposition of disciplinary action pursuant to this subsection.”).

<sup>21</sup> On July 4, 2025, President Trump signed the One Big Beautiful Bill Act (H.R. 1) (“OBBA”), which added an additional \$1,325 fee for attorney discipline appeals. See Public Law 119–21, 139 Stat. 72 at sec. 100013(f). OBBA did not include any additional fees relating to contempt, so the Department is comparing its contempt appeal fee to the preexisting \$675 EOIR fee for attorney discipline cases, which itself was based on a 2018 fee study of relevant adjudication costs. See Executive Office for Immigration Review; Fee Review, 85 FR 11866, 11870 (Feb. 28, 2020).

<sup>22</sup> See EOIR, List of Currently Disciplined Practitioners (July 13, 2026), <https://www.justice.gov/eoir/list-of-currently-disciplined-practitioners> [<https://perma.cc/XQ6Y-LKAG>] (showing immediate suspension or final disciplinary action (not including reinstatement) imposed on approximately 46 practitioners in 2025 and 37 practitioners in 2026 to date). The Department acknowledges that the individuals subject to a civil money penalty under this proposed rule, see 8 CFR 1003.123 (proposed), is a broader group of individuals than practitioners subject to EOIR’s professional conduct rules, see 8 CFR 1003.101(b), which may result in more individuals receiving or appealing a civil money penalty than individuals subject to discipline. Nonetheless, the Department believes this is an appropriate analogy.



prevents efficiencies. Moreover, any burden would only be held by a covered individual who engaged in contemptuous conduct that delayed, disrupted, or obstructed the adjudicatory process, which holds comparatively little weight in balancing the costs and benefits of the proposed rule.

#### *D. Executive Order 13132 (Federalism)*

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

#### *E. Executive Order 12988 (Civil Justice Reform)*

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

#### *F. Paperwork Reduction Act*

Under the procedures established by the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. A person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The Information Collection Requests (“ICRs”) for the proposed new and revised information collections described below have been forwarded to OMB for review and comment. In compliance with these requirements, the Department asks for public comments on the following proposed collections of information for which the agency is seeking approval from OMB.

If you have any comments or suggestions, especially on the estimated public burden or associated response

time, or if you need a copy of the proposed new or revised information collection instruments with instructions or additional information, please contact the Department as noted in the **FOR FURTHER INFORMATION CONTACT** section of this preamble. Written comments and suggestions from the public and affected agencies concerning the proposed information collection instruments are encouraged. Comments should be directed to the address listed in the **ADDRESSES** section at the beginning of this preamble. Comments should also be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for EOIR, New Executive Building, 725 17th Street NW, Washington, DC 20053. This process complies with 5 CFR 1320.11.

Your comments should address one or more of the following four points: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) how the Department could enhance the quality, utility, and clarity of the information to be collected; or (4) how the Department could minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

#### **1. New Information Collection**

The proposed rule includes one new collection of information: Form EOIR–86, Notice of Appeal of a Civil Money Penalty for Contempt. The proposed new information collection is intended to be used by individuals to appeal to the Board an order of the Chief Immigration Judge finding the individual in contempt and issuing a

civil money penalty. An individual is required to complete the form to exercise the appeal rights afforded to the individual under the proposed rule. The proposed new collection of information will help the Board differentiate appeals of decisions involving civil money penalties for contempt from other types of appeals, such as appeals of Immigration Judge decisions in removal proceedings.

The proposed new collection of information is modeled on the current approved Forms EOIR–26, Notice of Appeal from a Decision of an Immigration Judge, and EOIR–45, Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case. Like the Forms EOIR–26 and EOIR–45, the proposed new collection will require the appellant to identify himself or herself, to state the decision being appealed, and to explain the basis for the appeal. The proposed new form will also provide the appellant with instructions as to where and how to serve the EOIR General Counsel as a party to contempt proceedings. Individuals will be able to download and complete the form either electronically or by printing and handwriting responses. Individuals will be able to submit completed forms to EOIR by email, electronically when available, or by regular mail, overnight mail, or hand-delivery.

The Department estimates that up to 50 individuals will submit an average of one form per year. The Department estimates that the average time to review the proposed form, gather necessary materials, complete the proposed form, and assemble any attachments will be one hour in total. The total public burden of the proposed new collection is estimated to be 50 burden hours (50 respondents × 1 response per respondent × 1 hour per response = 50 burden hours). The Department estimates the upper bound for aggregate costs for all respondents at \$39,278 annually, accounting for the following types of estimated costs to members of the public.

| Type of cost                                         | Estimated per response                                            | Estimated total responses per year | Total              |
|------------------------------------------------------|-------------------------------------------------------------------|------------------------------------|--------------------|
| Filing Fee .....                                     | \$675 .....                                                       | 50                                 | \$33,750 per year. |
| Printing .....                                       | \$0.10 per page × 5 pages × 2 copies = \$1.00 per response .....  | 50                                 | 50 per year.       |
| Postage .....                                        | \$10.10 per response × 2 copies = \$20.20 per response .....      | 50                                 | 1,010 per year.    |
| Professional Legal Assistance to Complete Form ..... | \$89.35 per hour × 1 hour per response = \$89.35 per response ... | 50                                 | 4,468 per year.    |
| AGGREGATE ESTIMATED ANNUAL COST TO PUBLIC .....      | .....                                                             | .....                              | 39,278 per year.   |

The aggregate estimated annual cost to the public is the upper bound of estimated costs. There are no capital or start-up costs associated with the form. There is a maximum estimated labor cost of \$89.35 per form, based on the national average hourly wage for attorneys as estimated by the Bureau of Labor Statistics. *See* BLS, Occupational Employment and Wage Statistics (OEWS) Profiles, Lawyers (May 2025), [https://data.bls.gov/oesprofile/?major\\_group=230000&occupation=231011&measure=03&areas=INDUSTRY,STATE,MSA](https://data.bls.gov/oesprofile/?major_group=230000&occupation=231011&measure=03&areas=INDUSTRY,STATE,MSA) [<https://perma.cc/AW2X-GKSN>].

The lower bound of aggregate estimated annual cost to the public is \$33,750 because printing and postage costs may be avoided if an individual completes the form electronically and submits the form via email and because professional legal assistance is not required to complete the form.

2. Revisions to Approved Collections of Information

The proposed rule also includes revisions to two currently approved collections of information: Form EOIR–27, Notice of Entry of Appearance as an Attorney or Representative before the Board of Immigration Appeals; and EOIR–28, Notice of Entry of Appearance as an Attorney or Representative before the Immigration Court. These forms were previously approved by OMB under the provisions of the PRA, and the information collections were assigned OMB Control Number 1125–0005 for Form EOIR–27 and 1125–0006 for Form EOIR–28.

Under the proposed rule, Forms EOIR–27 and EOIR–28 are being revised so that the forms may be used by practitioners to enter an appearance to represent an individual in contempt proceedings before the Chief Immigration Judge or Board. Specifically, the Department proposes to update the forms by adding fields for the contempt proceeding case number and the relevant service of process locations. The Forms EOIR–27 and EOIR–28 are required to represent an individual in proceedings before the Immigration Courts or Board. The proposed revisions do not change the underlying purpose of the forms or how individuals can submit the forms to EOIR, and the proposed revisions minimally affect the substance of the forms. Therefore, the Department believes that these proposed revisions will not increase the average time required to complete the forms, which was previously estimated at six minutes.

- *Form EOIR–27, Notice of Entry of Appearance as an Attorney or Representative before the Board of Immigration Appeals.* The Department estimates that an average of 42,176 individuals will submit one form per year, spending an estimated average of six minutes to prepare and submit the form. The total public burden of this revised collection is estimated at 4,213 burden hours annually (42,126 respondents × 1 response per respondent × 6 minutes per response = 4,213 burden hours). The Department estimates the aggregate costs for all respondents at \$314,681. There are no capital or start-up costs or filing fees associated with the form. Assuming the

form is included in the samemailed envelope as any filings submitted by mail, there is no additional postage cost. The estimated printing cost is \$0.20 per form. Printing and postage costs may be avoided by completing and submitting the form electronically. There is an estimated labor cost of \$8.94 per form, based on the current median hourly wage for attorneys as set by the Bureau of Labor Statistics (\$89.35 per hour × 0.1 hour to complete = \$8.94 per form).

- *Form EOIR–28, Notice of Entry of Appearance as an Attorney or Representative before the Immigration Court.* The Department estimates that 1,536,921 individuals will submit one form per year, spending an estimated average of six minutes to prepare and submit the form. The total public burden of this revised collection is estimated at 153,692 burden hours annually (1,536,921 respondents × 1 response per respondent × 6 minutes per response = 153,692 burden hours). The Department estimates the aggregate costs for all respondents at \$11,480,800. There are no capital or start-up costs or filing fees associated with the form. Assuming the form is included in the samemailed envelope as any filings submitted by mail, there is no additional postage cost. The estimated printing cost is \$0.20 per form. Printing and postage costs may be avoided by completing and submitting the form electronically. There is an estimated labor cost of \$8.94 per form, based on the current median hourly wage for attorneys as set by the Bureau of Labor Statistics (\$89.35 per hour × 0.1 hour to complete = \$8.94 per form).

|               | Approx.<br>number of<br>respondents | Average<br>response time<br>(minutes) | Total burden<br>(hours) |
|---------------|-------------------------------------|---------------------------------------|-------------------------|
| EOIR–27 ..... | 42,126                              | 6                                     | 4,213                   |
| EOIR–28 ..... | 1,536,921                           | 6                                     | 153,692                 |

G. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

The proposed rule is a “regulation[] issued with respect to a[n] . . . immigration-related function of the United States” and is therefore exempt from the requirements of Executive Order 14192 under section 5(a) of that Order.

H. Executive Order 14219 (Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative)

The proposed rule is “an[] action related to a[n] . . . immigration-related

function of the United States” and is therefore exempt from the requirements of Executive Order 14219 under section 7(a) of that Order.

I. Executive Order 14294 (Overcriminalization of Federal Regulations)

Executive Order 14294 requires agencies promulgating regulations with criminal regulatory offenses potentially subject to criminal enforcement to explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to each element of those offenses. This proposed rule will not

create a criminal regulatory offense and is thus exempt from Executive Order 14294 requirements.

List of Subjects

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and functions (Government agencies).

8 CFR Part 1103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, and by the authority vested in the Acting Director, Executive Office for Immigration Review, by the Attorney General Order Number 6260–2025, the Department proposes to amend parts 1003 and 1103 of chapter V of title 8 of the Code of Federal Regulations as follows:

## **PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

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

**Authority:** 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362, 1801, 1802, 1808, 1812; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002.

- 2. Amend § 1003.1 by adding new paragraph (b)(15) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(15) Decisions on the imposition of a civil money penalty under subpart H of this part.

\* \* \* \* \*

### **§ 1003.3 [Amended]**

- 3. Amend § 1003.3(c)(1) by adding a new sentence after the third sentence that reads “For appeals of orders in contempt proceedings under subpart H of this part, briefs shall be due to the Board simultaneously from both parties within 20 days of the Board order setting the schedule and in no case more than 35 days after the appeal was filed.”

- 4. Amend § 1003.9 by:

- a. Removing the word “and” in paragraph (b)(5);
- b. Redesignating paragraph (b)(6) as (b)(7); and
- c. Adding new paragraph (b)(6) to read as follows:

### **§ 1003.9 Office of the Chief Immigration Judge.**

\* \* \* \* \*

(b) \* \* \*

(6) Issue orders imposing a civil money penalty, in accordance with 8 CFR part 1003, subpart H; and

\* \* \* \* \*

- 5. Amend § 1003.102 by:

- a. Revising the last sentence of paragraph (c);
- b. Revising paragraph (g);
- c. Removing the period at the end of paragraph (v) and adding in its place a semicolon;

- d. Removing the period at the end of paragraph (w) and adding in its place “; or”; and

- e. Adding paragraph (x).

The revisions and addition read as follows:

### **§ 1003.102 Grounds.**

\* \* \* \* \*

(c) \* \* \* If a practitioner has offered material evidence or made a false statement of material fact or law and receives notice, or reasonably should have known, of the falsity, the practitioner shall take appropriate remedial measures, and a failure to take such remedial measures shall subject the practitioner to disciplinary sanctions in the public interest under this paragraph (c);

\* \* \* \* \*

(g) Engages in contumelious or otherwise obnoxious conduct, with regard to a case in which he or she acts in a representative capacity, which would constitute contempt of court in a judicial proceeding or a proceeding under subpart H of this part. The assessment of a final order for a civil money penalty in proceedings under subpart H of this part, and the conduct underlying such an order, are factors that may be considered when determining if contumelious or otherwise obnoxious conduct has occurred;

\* \* \* \* \*

(x) Repeatedly fails to pay a civil money penalty as described in § 1003.129.

- 6. Revise § 1003.103 by adding new paragraph (d) to read as follows:

### **§ 1003.103 Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify EOIR of conviction or discipline.**

\* \* \* \* \*

(d) *Contempt civil money penalty.* For procedures relating to the immediate suspension of practitioners for failure to pay a civil money penalty for contempt, see § 1003.129.

- 7. Revise § 1003.109, including the section heading, to read as follows:

### **§ 1003.109 Discipline of EOIR adjudicators.**

Complaints regarding the conduct or behavior of Immigration Judges, Appellate Immigration Judges, or Administrative Law Judges shall be directed to an appropriate supervisor, the EOIR Judicial Conduct and Professionalism Unit, or the Office of Professional Responsibility, United States Department of Justice. If disciplinary action is warranted, it shall be administered pursuant to the

Department’s attorney discipline procedures and, for Administrative Law Judges, pursuant to 5 CFR 930.211.

- 8. Amend part 1003 by adding a new Subpart H, to read as follows:

## **SUBPART H—CIVIL MONEY PENALTY FOR CONTEMPTUOUS CONDUCT BEFORE AN IMMIGRATION JUDGE**

Sec.

- 1003.121 Authority to impose civil money penalties for contemptuous conduct.
- 1003.122 General statement of principles.
- 1003.123 Covered individuals.
- 1003.124 Contemptuous conduct for which a civil money penalty may be imposed.
- 1003.125 Required warning before initiating the civil money penalty process.
- 1003.126 Initiation of the civil money penalty process.
- 1003.127 Decision by the Chief Immigration Judge or designee.
- 1003.128 Appeals.
- 1003.129 Payment of the civil money penalty.
- 1003.130 Oversight.

### **§ 1003.121 Authority to impose civil money penalties for contemptuous conduct.**

Under section 240(b)(1) of the Act and the provisions of this subpart, an Immigration Judge has the authority to propose, and the Chief Immigration Judge or designee has the authority to impose, a civil money penalty on an individual, as set forth in § 1003.123, who engages in conduct, as set forth in § 1003.124, in contempt of the Immigration Judge’s proper exercise of authority under the Act during the course of proceedings conducted under section 240 of the Act.

### **§ 1003.122 General statement of principles.**

(a) *Purpose of the civil money penalty.* The purpose of imposing civil money penalties for contemptuous conduct before an Immigration Judge is to promote the fair, efficient, and consistent adjudication of immigration proceedings; to uphold the dignity and authority of such proceedings; and to deter behavior that delays, disrupts, or obstructs the due course of those proceedings.

(b) *Exceptional use.* The imposition of a civil money penalty for contemptuous conduct is an extraordinary sanction. The civil money penalty sanction under this subpart exists to allow Immigration Judges to conduct proceedings without improper interference. Immigration Judges generally should make a reasonable attempt to deter or redress contemptuous conduct through other available means, resorting to the proposal of a civil money penalty only after other reasonably available means have failed to restore proper conduct. A

civil money penalty should be imposed only upon clearly identifiable behavior that constitutes misconduct under this subpart.

(c) *Relationship of the civil money penalty to other sanctions.* The procedures in this subpart are independent of other sanctions or procedures that may be available under the immigration laws and this chapter. The availability or imposition of a civil money penalty under this subpart does not preclude the use of other sanctions or procedures with regard to misconduct that are available.

(d) *Inapplicability of the civil money penalty to the enforcement of subpoenas.* Contempt authority and procedures under this subpart do not apply to the enforcement of a subpoena pursuant to § 1003.35(b).

#### **§ 1003.123 Covered individuals.**

(a) *Individuals subject to civil money penalties.* Civil money penalties under this subpart may only be imposed on the following individuals:

(1) An attorney or representative, as defined in § 1001.1(f) and (j), who has filed a Notice of Entry of Appearance as Attorney or Representative before the Immigration Court (Form EOIR-28) or a Notice of Entry of Limited Appearance for Document Assistance before the Immigration Court (Form EOIR-61);

(2) An alien who is the subject of proceedings before the Immigration Judge; and,

(3) Witnesses, except as described in paragraph (b) of this section, in any proceedings before the Immigration Judge, whether physically present in the courtroom or whose presence in the courtroom is effectuated through telephonic or videoconferencing equipment.

(b) *Individuals not subject to civil money penalties.* Civil money penalties may only be imposed on individuals described in paragraph (a) of this section, which does not include attorneys or witnesses who are employees or contractors of the federal government acting in their official capacity.

#### **§ 1003.124 Contemptuous conduct for which a civil money penalty may be imposed.**

(a) *Contemptuous conduct subject to a civil money penalty.* Subject to the requirements of § 1003.125 and § 1003.126, an Immigration Judge may issue a Notice of Intent to Impose Civil Money Penalty on a covered individual, as defined in § 1003.123, if the Immigration Judge makes a prima facie determination that the individual has engaged in one or more of the following

types of conduct, and that the conduct delayed, disrupted, or obstructed the adjudicatory process:

(1) For attorneys and representatives, the repeated failure to appear or to appear in a timely manner, including by telephone or by videoconferencing, for scheduled hearings or pre-hearing conferences, without good cause.

(2) Repeated failure to comply with Immigration Judge orders to timely file pleadings, applications, pre-hearing statements, evidentiary submissions, or any other filings, without good cause.

(3) Disorderly or abusive behavior or language in and around the courtroom and before the Immigration Judge or abusive language in any filing with the court.

(4) Knowingly or recklessly making a false statement of material fact or law or offering false evidence. For attorneys and representatives, such conduct includes failing to take appropriate remedial measures after receiving notice of the falsity, or when the attorney or representative reasonably should have known of the falsity, of either a previous statement of material law or fact or previously offered material evidence.

(5) Willfully misleading, misinforming, threatening, or deceiving any person (including a party to a case or an officer or employee of the Department of Justice), concerning any relevant matter relating to a case.

(b) *Action and inaction.* Both actions and inactions may constitute contemptuous conduct if they satisfy the requirements of paragraph (a) of this section.

(c) *Exclusive list of contemptuous conduct.* A civil money penalty may not be imposed for conduct that is not described in this section.

#### **§ 1003.125 Required warning before initiating the civil money penalty process.**

(a) *Warning requirement.* If an Immigration Judge believes a covered individual, as set forth in § 1003.123, has engaged in contemptuous conduct for which a civil money penalty may be imposed, as set forth in § 1003.124, the Immigration Judge must provide the individual with a clear and unambiguous warning before initiating the civil money penalty process under this subpart. The Immigration Judge is required to issue only one warning before initiating the civil money penalty process for continued engagement in the same contemptuous conduct; and such warning is not limited to a single proceeding. The warning remains in effect for one year from the date of issuance of the warning. Any previous order imposing a civil money penalty on a covered individual, as set forth in

§ 1003.123, for contemptuous conduct, shall also serve as a warning for the imposition of future civil money penalties if the same type of contemptuous conduct continues or is repeated within one year of the previous order.

(b) *Form of warning.* If the individual is present before the Immigration Judge when the conduct occurs, the Immigration Judge must provide an oral warning on the record and memorialize the warning in writing as soon as practicable. If the individual is not present before the Immigration Judge when the conduct occurs, the Immigration Judge must provide a written warning. In all cases, the warning should be made as close in time to the occurrence of the conduct as reasonably possible. The written warning or a written memorialization of an oral warning must be served on the individual either in person or at the individual's physical or email address in EOIR's case management system, and a copy shall be maintained in the Record of Proceeding for the relevant case in which the contemptuous conduct occurred. If the individual's name and address(es) are not in EOIR's case management system, the Immigration Judge must request on the record that the individual provide such information.

(c) *Contents of the warning.* The warning must:

(1) Describe the specific conduct that resulted in the warning;

(2) Explain why the Immigration Judge believes the conduct is within the scope of § 1003.124;

(3) Notify the individual that, if he or she continues to engage in such conduct, the Immigration Judge may initiate the process to hold the individual in contempt and impose a civil money penalty on the individual; and

(4) Notify the individual that he or she may respond to the warning and, if responding, must do so within the time specified in paragraph (d) of this section.

(d) *Response to the warning.* An individual may, but is not required to, respond to the Immigration Judge's warning, either on the record orally at the time of the warning or in writing within 10 days of the issuance of the warning. Such response, if any, must be included in the Record of Proceeding of the relevant case in which the contemptuous conduct occurred. Any response demonstrating further contemptuous conduct within the scope of § 1003.124 that the individual was warned about may form the basis for

initiation of the civil money penalty process.

(e) *Continued contemptuous conduct following warning.* If, after receiving a warning, the individual continues to engage in the same contemptuous conduct that the individual was warned about, the Immigration Judge must make a finding on the record that the individual has continued to engage in the specified conduct despite being warned before initiating the civil money penalty process under § 1003.126. In all cases, the finding of continued contemptuous conduct should be made as close in time to the occurrence of the conduct as reasonably possible.

**§ 1003.126 Initiation of the civil money penalty process.**

(a) *Generally.* The civil money penalty process is the sole means of imposing a civil money penalty for contemptuous conduct under § 1003.124. The civil money penalty process must be initiated as soon as practicable after the finding of continued contemptuous conduct under § 1003.125(e), but in no case later than one year after the most recent related warning issued pursuant to § 1003.125. No civil money penalty proceedings initiated against an alien described in § 1003.123(a)(2) may stay or otherwise interfere with the proceedings before the Immigration Judge or, as appropriate, the removal of the alien.

(b) *Initiating the civil money penalty process.* (1) To initiate the civil money penalty process, the Immigration Judge will serve the individual with a Notice of Intent to Impose Civil Money Penalty (CMP Notice). The CMP Notice may be served on the individual by personal service or mail. If the individual is a practitioner before EOIR, the CMP Notice may also be served electronically using the practitioner's email address provided through eRegistry. The Immigration Judge shall also refer the CMP Notice to the Chief Immigration Judge or his or her designee for adjudication.

(2) The CMP Notice must include:

(i) The name and address of the individual subject to the civil money penalty;

(ii) A factual description of the conduct in question, including the date(s), time(s), and place(s) of the conduct, as relevant;

(iii) The specific alleged charge(s) of conduct under § 1003.124;

(iv) An explanation of how the conduct in question delayed, disrupted, or obstructed the adjudicatory process;

(v) A brief description of any warning(s) provided; and

(vi) The amount of the proposed civil money penalty consistent with paragraph (c) of this section.

(3) The CMP Notice must inform the individual of the following:

(i) That the matter is being referred to the Chief Immigration Judge for decision as provided in § 1003.127;

(ii) That the individual may file a response to the CMP Notice with the Chief Immigration Judge in accordance with paragraph (d) of this section within 30 days of issuance of the CMP Notice, and the location where the response to the CMP Notice must be filed;

(iii) That the individual may file one motion with the Chief Immigration Judge to extend the time to respond to the CMP Notice for a maximum of 7 days, for good cause; and

(iv) That the individual may be represented at their own expense by an attorney, as defined in § 1001.1(f), or another representative allowed under § 1292.1.

(c) *Determining proposed penalty amount.* To determine the proposed penalty amount for the CMP Notice, the Immigration Judge must first determine the appropriate penalty range based on the penalty schedule provided in paragraph (c)(1) of this section. Once the penalty range is determined, the specific amount of the proposed penalty is then determined by considering all relevant factors as provided in paragraph (c)(2) of this section.

(1) *Penalty schedule.* A civil money penalty must be determined according to the following schedule:

(i) First contempt order: not less than \$1,000 and not more than \$1,500;

(ii) Second contempt order: not less than \$1,500 and not more than \$2,500; and

(iii) Any subsequent contempt order: not less than \$2,500 and not more than \$3,500.

(2) *Relevant factors.* The factors an Immigration Judge must consider when proposing a civil money penalty include, but are not limited to:

(i) The harm from the conduct, including any resulting administrative delays or additional costs or burdens;

(ii) The egregiousness of the individual's contemptuous conduct during the proceedings before the Immigration Judge;

(iii) The pervasiveness of the individual's contemptuous conduct during the proceedings before the Immigration Judge;

(iv) The probable deterrent effect of the penalty; and

(v) The number of prior offenses or warnings.

(d) *Response to the CMP Notice.* An individual served a CMP Notice under

paragraph (b) of this section may submit a written response to the CMP Notice to the Chief Immigration Judge. Such response must be filed within 30 days of the date of issuance of the CMP Notice. An individual may file one motion with the Chief Immigration Judge to extend the time to respond to the CMP Notice for a maximum of 7 days, for good cause. The response must include the individual's name, contempt case number, A-number or EOIR identification number (if any), current physical and email addresses, the individual's position on the charge(s) set forth in the CMP Notice, and any written or documentary evidence in support of the individual's position. If the individual is represented, his or her attorney or representative must file a Notice of Entry of Appearance as Attorney or Representative before the Immigration Court (Form EOIR-28) with the Chief Immigration Judge.

(e) *Record of Proceeding.* If the civil money penalty process is initiated under this section, the Immigration Court shall create a contempt Record of Proceeding, separate and apart from any underlying case Record of Proceeding(s). The Immigration Court shall ensure that all relevant evidence in the underlying case proceeding(s) that gave rise to the initiation of the civil money penalty process, such as any oral statements or documents capturing or giving rise to the contemptuous conduct, related warnings and warning responses under § 1003.125, and CMP Notices, responses to CMP Notices, and related filings under paragraphs (b) and (d) of this section, are entered or described in the contempt Record of Proceeding. Any oral statements, warnings, or warning responses given on the record must be transcribed for inclusion in the contempt Record of Proceeding. Any oral statements, warnings, or warning responses that were not recorded must be summarized in writing by the Immigration Judge for inclusion in the contempt Record of Proceeding.

(f) *Filing requirements.* All filings by an individual must comply with the document filing requirements in §§ 1003.31 through 1003.33, including that all filings submitted under this subpart must be submitted in English or accompanied by a certified English translation.

**§ 1003.127 Decision by the Chief Immigration Judge or designee.**

(a) *Adjudicator.* Upon referral of the CMP Notice by the Immigration Judge, jurisdiction over a civil money penalty process initiated under § 1003.126 vests

with the Chief Immigration Judge to make the final decision. The Chief Immigration Judge may designate a permanent Deputy Chief Immigration Judge to make the decision, provided that such designee is not the present first-line supervisor of the Immigration Judge who issued the CMP Notice and is not conducting a review involving an alien who has previously appeared in immigration proceedings before the designee. If the Chief Immigration Judge is the Immigration Judge who issued the CMP Notice, the EOIR Director will designate a senior adjudicator outside of the Office of the Chief Immigration Judge to adjudicate the CMP Notice and make a decision.

(b) *Adjudication procedures.* After reviewing the CMP Notice and the response to the CMP Notice, if any, as well as all supporting materials, the Chief Immigration Judge or the designee will issue a written decision under paragraph (d) of this section. The Chief Immigration Judge or the designee may only consider the contempt Record of Proceeding as described in § 1003.126(e). The Chief Immigration Judge or the designee will consider and rule on all motions. The Chief Immigration Judge or the designee may not remand a CMP Notice to the Immigration Judge for further clarification or proceedings.

(c) *Motion to extend time to respond.* A maximum of one time per case, upon a motion filed to extend the time to respond to the CMP Notice, the Chief Immigration Judge or the designee may extend the date by which the response must be filed by a maximum of 7 days upon good cause shown.

(d) *Decision.* (1) The Chief Immigration Judge or the designee shall issue a decision finding the individual in contempt and imposing a civil money penalty if clear and convincing evidence supports the following:

(i) The person charged in the CMP Notice is a covered individual under § 1003.123;

(ii) The conduct set forth in the CMP Notice occurred;

(iii) The conduct falls within the scope of § 1003.124(a); and

(iv) The Immigration Judge properly provided the required warning, time to respond to the warning, and the CMP Notice under §§ 1003.125 and 1003.126.

(2) If the Chief Immigration Judge or the designee issues an order imposing a civil money penalty, the order must specify the amount of the civil money penalty consistent with § 1003.126(c); provided, however, that the order may not set a penalty amount above the amount stated in the CMP Notice. The order must include instructions for

payment, including where payment is to be made and the form of such payment. The order must also inform the individual of the right to file an appeal with the Board under § 1003.128 within 10 days from the date of the order.

(3) The Chief Immigration Judge or the designee must issue an order dismissing the CMP Notice with prejudice if:

(i) He or she does not find clear and convincing evidence to support the findings required in paragraph (d)(1) of this section, or

(ii) The CMP Notice was issued against an alien described in § 1003.123(a)(2) and the Chief Immigration Judge or the designee receives information indicating that the alien has been removed from or has departed the United States prior to the issuance of a decision.

(4) An order dismissing the CMP Notice is final and not subject to further review.

(5) The Chief Immigration Judge or the designee must serve a copy of his or her order on the individual or, if represented, the individual's attorney or representative. If the individual is represented by an attorney or representative, the Chief Immigration Judge's order will be served electronically using the email address that the individual's attorney or representative has provided through eRegistry. If the individual is not represented, the Chief Immigration Judge's order may be served on the individual by personal service or mail. If the unrepresented individual is a practitioner before EOIR, service may also be made electronically using the practitioner's email address provided through eRegistry.

(e) *Finality of order.* The order of the Chief Immigration Judge or the designee becomes a final agency decision unless the individual files a timely appeal with the Board under § 1003.128. Where the individual has filed a timely appeal, the Board's decision shall become a final agency decision in accordance with § 1003.128(d)(2). Filing an appeal automatically stays the order and the requirement to pay the penalty pending the outcome of the appeal.

#### **§ 1003.128 Appeals.**

(a) *Generally.* An individual who has been issued an order finding the individual in contempt and imposing a civil money penalty pursuant to § 1003.127 may appeal the order to the Board by filing a Notice of Appeal of a Civil Money Penalty for Contempt (Form EOIR-86). A copy of the Notice of Appeal of a Civil Money Penalty for Contempt must be simultaneously

served on the General Counsel. The General Counsel or the EOIR disciplinary counsel, where so designated, will represent the Office of the Chief Immigration Judge in this appeal process. The Notice of Appeal of a Civil Money Penalty for Contempt must be filed within 10 days from the date of the order issued under § 1003.127 and include the required filing fee or fee waiver form pursuant to § 1103.7.

(b) *Notice of appeal and briefs.* The Notice of Appeal of a Civil Money Penalty for Contempt must state the basis for the appeal. A brief in support of an appeal shall be filed directly with the Board, follow the briefing schedules contained in § 1003.3(c)(1), and include proof of service on the General Counsel. All filings to the Board must include: the individual's name, case number, A-number or EOIR identification number (if any), current physical and email addresses, and a designation of the type of filing.

(c) *Representation.* An individual may be represented on appeal, at no expense to the government, by an attorney, as defined in § 1001.1(f), or another individual authorized under § 1292.1 to provide representation before EOIR. The attorney or representative must file a Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals (Form EOIR-27) and serve a copy on the General Counsel.

(d) *Appellate processes before the Board.* (1) Upon receipt of a timely filed Notice of Appeal of a Civil Money Penalty for Contempt, the Chief Immigration Judge or the designee will promptly forward the contempt Record of Proceeding to the Board to conduct a review pursuant to § 1003.1(d)(3).

(2) Following its review, the Board must issue a written decision affirming, modifying, or vacating with prejudice the civil money penalty, provided that the Board may neither set a penalty amount above the amount stated in the CMP Notice nor remand the case to the Chief Immigration Judge or the designee for further proceedings. If a civil money penalty was imposed against an alien described in § 1003.123(a)(2) and the Board receives information that the alien has been removed from or has departed the United States prior to issuing its decision, the Board shall vacate the civil money penalty. A copy of the Board's written decision will be served on the General Counsel, the individual, and, if the individual is represented, the individual's attorney or representative. The Board's decision becomes the final agency order on the date issued.

(3) The Board may publish decisions in proceedings conducted under this subpart consistent with its authority in § 1003.1(g). Such decisions will serve as precedents in all proceedings involving the same issue(s). The Board shall refer cases under this subpart to the Attorney General for review in accordance with § 1003.1(h).

#### **§ 1003.129 Payment of the civil money penalty.**

(a) *Deadline.* Payment of the civil money penalty must be made in a manner and form authorized by EOIR. If no appeal is filed, payment of the civil money penalty is due within 30 days of the order of the Chief Immigration Judge or the designee becoming final under § 1003.127(e). If an appeal is filed, payment of the civil money penalty is due within 30 days of the issuance of the final agency decision under § 1003.128(d). If review of the Board decision is sought in federal court, payment of the civil money penalty is due within 30 days of the issuance of a final court decision upholding the civil money penalty.

(b) *Collection of unpaid civil money penalty.* If the individual upon whom a civil money penalty has been imposed fails to pay the penalty in the timeframe provided in paragraph (a) of this section, the civil money penalty may be collected under the provisions in 28 CFR part 11 or any other applicable federal law.

(c) *Suspension of a practitioner for failure to pay.* (1) If the individual who fails to pay the imposed civil money penalty within 30 days as provided in paragraph (a) of this section is a practitioner subject to sanctions in § 1003.101(b), the EOIR disciplinary counsel will send the practitioner a notice that the disciplinary counsel will file a petition with the Board to suspend that practitioner from practice before the Board and the Immigration Courts immediately, unless the practitioner pays the civil money penalty and a late

fee of \$50 within 15 days from the date of issuance of the notice. Service of this notice will be made upon the practitioner either by certified mail to his or her last known address as defined in § 1003.105(a)(2) or by personal delivery.

(2) If the practitioner fails to pay the civil money penalty and the applicable late fee or otherwise send proof of payment thereof to the EOIR disciplinary counsel within 15 days of issuance of the notice, the EOIR disciplinary counsel shall file a petition with the Board to suspend that practitioner immediately from practice before the Board and the Immigration Courts. Service of the petition for immediate suspension will be made upon the practitioner either by certified mail to his or her last known address as defined in § 1003.105(a)(2) or by personal delivery.

(3) Upon the filing of a petition for immediate suspension by the EOIR disciplinary counsel, together with a certified copy of the relevant final order imposing a civil money penalty and a copy of the notice described in this section, the Board may enter an order immediately suspending the practitioner from practice before the Board and the Immigration Courts. If an immediate suspension is imposed upon a practitioner, the Board may require that notice of such suspension be posted at the Board and the Immigration Courts.

(4) A suspended practitioner may file a motion with the Board to set aside the immediate suspension order upon proof that the civil money penalty and the late fee were paid in full.

(5) Nothing in this section prohibits the EOIR disciplinary counsel from taking any other appropriate action consistent with subpart G of this part.

#### **§ 1003.130 Oversight.**

An Immigration Judge's exercise of the authority set forth in this subpart is subject to the supervision of the Chief

Immigration Judge. The Chief Immigration Judge's exercise of the authority set forth in this subpart is subject to the supervision of the Director. The Chief Immigration Judge must conduct periodic reviews of this authority and, after consultation with the Director, may suspend any Immigration Judge's exercise of the authority for up to 30 days if the authority has been improperly applied or misused. The Director will review the Chief Immigration Judge's exercise of the authority set forth in this subpart and may suspend the Chief Immigration Judge's exercise of the authority for up to 30 days if the authority has been improperly applied or misused. Any suspension of an Immigration Judge's authority under this paragraph shall be communicated through a standing order issued by the Chief Immigration Judge or, as appropriate, the Director. Complaints or allegations of misconduct by an Immigration Judge regarding the threat or exercise of authority under this subpart should be directed to the Immigration Judge's supervisor, EOIR's Judicial Conduct and Professionalism Unit, or the Department of Justice Office of Professional Responsibility.

### **PART 1103—APPEALS, RECORDS, AND FEES**

■ 9. The authority citation for part 1103 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1304, 1356, 1801, 1802, 1808, 1812; 31 U.S.C. 9701; 28 U.S.C. 509, 510.

■ 10. In § 1103.7, amend table 1 to paragraph (b)(1) by adding an entry for Form EOIR–86, Notice of Appeal of a Civil Money Penalty for Contempt, in numerical order by form number to read as follows:

#### **§ 1103.7 Fees.**

|     |   |   |   |   |
|-----|---|---|---|---|
| *   | * | * | * | * |
| (b) | * | * | * |   |
| (1) | * | * | * |   |

TABLE 1 TO PARAGRAPH (b)(1)

| Immigration fee type                                                       | Current EOIR (section 286(m) of the Immigration and Nationality Act) fee | Current One Big Beautiful Bill Act (OBBBA) fee | Current EOIR total fees except any biometrics fees |
|----------------------------------------------------------------------------|--------------------------------------------------------------------------|------------------------------------------------|----------------------------------------------------|
| Form EOIR–86, Notice of Appeal of a Civil Money Penalty for Contempt ..... | \$675                                                                    | \$0                                            | \$675                                              |



\* \* \* \* \*

**Sirce E. Owen,***Acting Director, Executive Office for  
Immigration Review, Department of Justice.*

[FR Doc. 2026-15458 Filed 7-29-26; 8:45 am]

BILLING CODE 4410-30-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39****[Docket No. FAA-2026-7230; Project  
Identifier MCAI-2026-00185-R]****RIN 2120-AA64****Airworthiness Directives; Airbus  
Helicopters Deutschland GmbH (AHD)  
Helicopters****AGENCY:** Federal Aviation  
Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking  
(NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 2024-04-10, which applies to all Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T3, and EC635T2+ helicopters. AD 2024-04-10 requires repetitively inspecting certain part-numbered tail rotor (T/R) blades for a crack and, depending on the results, removing any cracked T/R blade from service. AD 2024-04-10 also prohibits installing certain T/R blades on any helicopter unless certain requirements are met. Since AD 2024-04-10 was issued, it was determined that inspection Method A should be discontinued and that additional limitations shall be provided. This proposed AD would retain the actions of AD 2024-04-10 and would require repetitively inspecting a certain tail rotor blade (TRB) assembly for cracks and, depending on the results, removing any cracked TRB assembly from service and replacing an affected part as terminating action for the repetitive inspections. This proposed AD would also prohibit installing an affected TRB assembly on any helicopter unless certain requirements are met. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this NPRM by September 14, 2026.**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA-2026-7230; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI) any comments received, and other information. The street address for Docket Operations is listed above.

**Material Incorporated by Reference:**

- For European Union Aviation Safety Agency (EASA) material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu*; website: *easa.europa.eu*.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 10101 Hillwood Parkway, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110.

**FOR FURTHER INFORMATION CONTACT:**

Soban Saeed, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946-4123; email: *soban.saeed@faa.gov*.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under **ADDRESSES**. Include “Docket No. FAA-2026-7230; Project Identifier MCAI-2026-00185-R” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to

*regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

**Confidential Business Information**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Soban Saeed, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

**Background**

The FAA issued AD 2024-04-10, Amendment 39-22689 (89 FR 15431, March 4, 2024) (AD 2024-04-10), for all AHD Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T3, and EC635T2+ helicopters. AD 2024-04-10 was prompted by EASA Emergency AD 2024-0028-E, dated January 25, 2024, (EASA Emergency AD 2024-0028-E) originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued EASA Emergency AD 2024-0028-E to correct an unsafe condition identified as cracks in affected T/R blades. EASA then superseded EASA Emergency AD 2024-0028-E and issued EASA AD 2024-0028R1, dated April 22, 2024 (EASA AD 2024-0028R1), to allow an optional visual inspection (Method E). The FAA did not issue an AD corresponding to EASA AD 2024-0028R1.

AD 2024-04-10 requires repetitively inspecting T/R blades having part number (P/N) L642A2002111 or P/N L642A2002112 installed for a crack and, depending on the results, removing any cracked T/R blade from service. AD 2024-04-10 also prohibits installing certain T/R blades on any helicopter unless certain requirements are met.