

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 281

[Docket No: ICEB–2025–0034]

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DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003 and 1280

[Dir. Order No. 11–2026]

RIN 1125–AB36

Imposition and Collection of Civil Penalties for Certain Immigration-Related Violations

AGENCY: U.S. Immigration and Customs Enforcement (“ICE”), Department of Homeland Security (“DHS”); Executive Office for Immigration Review (“EOIR”), Department of Justice (“DOJ”).

ACTION: Final rule.

SUMMARY: On June 27, 2025, the Departments issued an interim final rule (“IFR”) to streamline assessment of civil penalties under the Immigration and Nationality Act (“INA”) for aliens who fail to depart during a voluntary departure period, willfully fail or refuse to depart after a final removal order and certain other proscribed activities, or are apprehended while improperly entering or attempting to enter the United States. This final rule addresses comments and finalizes the IFR with one change: it permits acceptance of a late-filed appeal based on documented mail delivery delays that ICE finds were beyond the alien’s control.

DATES: The effective date of this final rule is October 14, 2026.

FOR FURTHER INFORMATION CONTACT:

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For DOJ: Jamee E. Comans, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041; telephone (703) 305–0289.

SUPPLEMENTARY INFORMATION:

I. Background

A. Basis and Purpose of the IFR

On January 20, 2025, President Trump issued Executive Order (“E.O.”) 14159, *Protecting the American People Against Invasion*. E.O. 14159, 90 FR 8443 (Jan.

29, 2025). In Section 2 of that E.O., President Trump directed that it is “the policy of the United States to faithfully execute the immigration laws against all inadmissible and removable aliens” and “to achieve the total and efficient enforcement of those laws, including through lawful incentives and detention capabilities.” 90 FR 8443. Section 8 of E.O. 14159 directs the Secretary of Homeland Security, in coordination with the Secretary of the Treasury, to “take all appropriate action to ensure the assessment and collection of all fines and penalties that the Secretary of Homeland Security is authorized by law to assess and collect from aliens unlawfully present in the United States, including aliens who unlawfully entered or unlawfully attempted to enter the United States.” 90 FR 8444–45. Section 12 of E.O. 14159 directs the Secretary of Homeland Security, in coordination with the Secretary of State and the Attorney General, “to take all appropriate action . . . to adopt policies and procedures to encourage aliens unlawfully in the United States to voluntarily depart as soon as possible, including through enhanced usage of the provisions of section 240B of the INA (8 U.S.C. 1229c), international agreements or assistance, or any other measures that encourage aliens unlawfully in the United States to depart as promptly as possible”. 90 FR 8445. In Section 2 of E.O. 14165, *Securing Our Borders*, President Trump directed the Departments to “take all appropriate action to secure the borders of our Nation,” including by “[d]eterring and preventing the entry of illegal aliens into the United States” and by “[o]btaining complete operational control of the borders of the United States.” E.O. 14165, 90 FR 8467 (Jan. 30, 2025). In Proclamation 10935, President Trump established Project Homecoming to “present illegal aliens with a choice: either leave the United States voluntarily, with the support and financial assistance of the Federal government, or face the consequences.” *Establishing Project Homecoming*, 90 FR 20357 (May 14, 2025).

On June 27, 2025, the Departments issued an IFR, effective on the same date, to streamline how DHS assesses certain civil monetary penalties that Congress has long authorized under the INA. *See Imposition and Collection of Civil Penalties for Certain Immigration-Related Violations*, 90 FR 27439 (June 27, 2025). The IFR applies to three categories of illegal aliens: (1) aliens who willfully fail or refuse to depart the United States pursuant to a final order of removal or take certain actions to

thwart their departure or removal, INA 274D(a)(1), 8 U.S.C. 1324d(a)(1); (2) aliens who voluntarily fail to depart the United States within the time period specified pursuant to a voluntary departure order, INA 240B(d)(1)(A)–(B), 8 U.S.C. 1229c(d)(1)(A)–(B);¹ and (3) aliens apprehended while entering (or attempting to enter) the United States unlawfully, INA 275(b)(1), 8 U.S.C. 1325(b)(1). *See also* 8 CFR 281.1(a) (scope of the IFR). The IFR revised the Departments’ civil monetary penalty procedures for these categories of aliens so that DHS can more efficiently and effectively promote compliance with Immigration Court orders and support border security. *See* 90 FR 27442. The IFR partially implements Section 8 of E.O. 14159 and supports DHS’s efforts, as directed by the President, to faithfully execute the immigration laws, to achieve total and efficient enforcement of those laws, and to secure the borders of the United States. *See* 90 FR 27446–47. The IFR also advances the purpose of Proclamation 10935, *Establishing Project Homecoming*, by reinforcing that aliens must either voluntarily depart the United States, with Federal support as applicable, or face statutorily authorized consequences for failing to comply with removal or departure orders.

As the IFR explains, the revised procedures are needed to complement DHS’s efforts to address the large number of aliens who remain in the United States despite having final removal or voluntary departure orders. *See* 90 FR 27446. Prior to the issuance of the IFR, there were approximately 1.5 million aliens on ICE’s non-detained docket with final orders of removal, including those who failed to depart after being granted voluntary departure pursuant to INA 240B, 8 U.S.C. 1229c. For example, as discussed in the IFR, in FY 2024 alone, EOIR issued more than 282,000 final removal orders, but DHS data indicate that only about 10 percent of those orders were executed. 90 FR 27445. In the same year, EOIR granted approximately 8,800 voluntary departure orders, yet only about 50 percent of those aliens confirmed their departure. *Id.* Moreover, as a result of the prior Administration’s policies, including its border policies, the

¹ For ease of reading, this preamble in some instances uses the phrase “failure to depart civil monetary penalties” to refer collectively to both (1) the civil monetary penalties under section 274D(a)(1) of the INA, 8 U.S.C. 1324d(a)(1), for willful failure or refusal to depart following a removal order; and (2) civil monetary penalties under section 240B(d)(1)(A) of the INA, 8 U.S.C. 1229c(d)(1)(A), for failure to voluntarily depart within the time period specified in a voluntary departure order.

Immigration Court caseload has dramatically increased in recent years.² In the third quarter of FY 2026, there were over 3.4 million pending Immigration Court cases, a large percentage of which, if consistent with previous years, will result in removal or voluntary departure orders once adjudicated.³ Thus, without the IFR's intervention, the number of aliens who remain in the United States despite final removal and voluntary departure orders would have been likely to increase in the coming years. *Id.*

An Immigration Court's order of an alien's removal, unless reversed or vacated on appeal, is binding on all parties, including aliens. *See* 8 CFR 1240.1(a)(1)(i), 1240.41, 1241.1. Aliens subject to final executable orders of removal⁴ remain legally obligated to comply with Immigration Court orders to depart the United States, regardless of prior DHS policies that did not prioritize all such aliens for apprehension, detention, and removal. The large number of unexecuted removal orders and the growth of DHS's non-detained docket demonstrate, however, that many aliens do not comply with this obligation.⁵ This

pattern of large-scale noncompliance risks further encouraging aliens to disregard such orders under the belief that they can remain in the United States without consequence. *See* 90 FR 27446. Such noncompliance, in turn, undermines the integrity of the immigration system, weakens the authority of Immigration Courts, and raises fairness concerns for aliens who do comply with removal and departure requirements. *See id.*

Under this Administration, DHS is taking robust action, consistent with the President's direction, to ramp up efforts to locate, apprehend, detain, and remove aliens with final removal orders who were released under supervision or otherwise not subject to detention in prior years and who remain in the United States. *See* E.O. 14159, 90 FR 8443 (Jan. 29, 2025). Managing those removals requires a significant expenditure of ICE resources in addition to costs to taxpayers.⁶ Although ICE is hiring Enforcement and Removal Operations (ERO) officers and expanding detention capacity pursuant

have already been ordered removed. It directs DHS to remove an alien within a 90-day removal period. The statute provides: during the removal period, DHS shall detain the alien and "[u]nder no circumstance during the removal period shall the [Secretary] release an alien who has been found [removable on certain criminal and national-security grounds]." *See* INA 241(a)(1), 1231(a)(1). The prior Administration did not prioritize the apprehension, detention, and removal of all aliens with final removal orders. *See United States v. Texas*, 599 U.S. 670, 715 (2023) (Alito, J. dissenting) (discussing enforcement priorities memoranda issued by DHS and ICE in 2021). Instead, many simply remained in the United States without consequence. Congress, however, has not absolved such aliens of their obligation to depart the United States if they were not removed, were never detained, or were released during the removal period. Indeed, section 241 of the INA, 8 U.S.C. 1231, expressly contemplates that even aliens who were never detained during the 90-day removal period have an independent obligation to leave the United States. *See* INA 241(a)(3), 8 U.S.C. 1231(a)(3) (providing that DHS may impose conditions of supervision on the alien "[i]f the alien does not leave or is not removed within the removal period." Moreover, Congress has specifically authorized DHS to impose civil monetary penalties on aliens who willfully remain in the United States after a removal order which demonstrates that aliens have an independent obligation to leave the United States even if ICE did not take action to physically remove the alien or the alien was released after the expiration of the removal period. *See* INA 274d(a)(1), 8 U.S.C. 1324(d)(a)(1).

⁶ *See* DHS, *DHS Announces Historic Travel Assistance and Stipend for Voluntary Self-Deportation* (May 5, 2025) (noting that currently the average cost to arrest, detain, and remove an illegal alien is \$17,121) <https://www.dhs.gov/news/2025/05/05/dhs-announces-historic-travel-assistance-and-stipend-voluntary-self-deportation> [<https://perma.cc/8ST2-RHHP>]; *see also* Proclamation 10935, 90 FR 20357 ("Removal flights of illegal aliens are a necessary aspect of immigration enforcement and upholding the rule of law, but they require substantial resources and manpower.").

to additional funding under the One Big Beautiful Bill Act, Public Law 119–21, 139 Stat. 72, 358–59 (2025), those efforts will take time to implement, and ICE must continue to devote immigration enforcement resources to all categories of illegal aliens that may or may not be subject to removal orders, including criminal aliens, national security risks, and other aliens unlawfully present in the United States.⁷

The IFR was also intended to complement DHS's efforts to maintain border security. Under the prior Administration, more than 8 million aliens were encountered along the southern border of the United States. 90 FR 8334. In FY 2024 alone, DHS estimates that approximately 1.5 million aliens entered or attempted to enter unlawfully between ports of entry. 90 FR 27445. Although encounters have since declined in connection with this Administration's policies, these prior high encounter levels demonstrate the need for DHS to use all statutorily authorized tools to maintain border security and reduce incentives for unlawful entry. *Id.*

When such large numbers of aliens enter unlawfully between POEs, as occurred under the last Administration, DHS's capacity to apprehend, process, detain, and swiftly remove all such aliens diminishes.⁸ As a result, under the prior Administration, millions of aliens were released into communities nationwide, many of whom were subject to but not processed under expedited removal as envisioned by the statutory framework, imposing substantial costs on the States and encouraging additional migration by unlawful aliens who believed they would likely be released into the United States while awaiting removal proceedings that often

⁷ *See* DHS, *Finding of Mass Influx of Aliens*, 90 FR 45396–98 (Sept. 22, 2025) (explaining that in September 2025, ICE was working to fulfill a 61 percent vacancy rate for ERO officers and that the hiring of new ICE ERO officers "takes time and includes the hiring onboarding and training of new officers"); DHS *Finding of Mass Influx of Aliens* 91 FR 59795, 59796–97 (Sept. 21, 2026); 59796 (Sept. 21, 2026) (explaining that ICE detention facilities are at 83 percent capacity as of August, 2026).

⁸ *See* Proclamation 10888, *Guaranteeing the States Protection Against Invasion*, 90 FR 8333 (Jan. 29, 2025) ("The sheer number of aliens entering the United States has overwhelmed the system and rendered many of the INA's provisions ineffective."); *see also Securing the Border*, 89 FR 48710, 48714–15 (June 7, 2024) (interim final rule) (explaining that when large numbers of aliens cross the border unlawfully, the "Departments' ability to refer and process [aliens] through expedited removal thus continues to be overwhelmed, creating a vicious cycle in which the border security and immigration systems cannot deliver timely decisions and consequences to all the people who are encountered at the SWB and lack a lawful basis to remain in the United States").

² However, although EOIR's pending caseload continues to be over 3.4 million, this number is trending downwards for the first time since its dramatic increase between 2021 and 2024. This downward trend has resulted from corrective action taken by the current Administration to address the crisis at the border, *supra* at Section I.A of this preamble; as well as corrective action taken by EOIR to improve the efficiency of EOIR operations, which promoted a record number of case completions in FY 2025; and a dramatic drop in the number of cases before EOIR initiated by DHS in FY 2025. EOIR Workload & Adjudication Statistics, *Pending Cases, New Cases, and Total Completions* (July 24, 2026), <https://www.justice.gov/eoir/media/1344791/dl?inline> [<https://perma.cc/B2AW-2QYD>].

³ *See* EOIR Workload & Adjudication Statistics, *Pending Cases, New Cases, and Total Completions* (July 24, 2026), <https://www.justice.gov/eoir/media/1344791/dl?inline> [<https://perma.cc/B2AW-2QYD>].

⁴ The term "final executable removal order" describes a situation where there is no legal impediment to the alien's removal. As discussed in Section III of this preamble, DHS does not issue failure to depart penalties to aliens for whom there is no final executable removal order because, for example, they have a stay of removal or other forms of protection, including Temporary Protected Status, withholding of removal, or protection under the regulations implementing the Convention Against Torture when no alternative country of removal is available, or have a DHS approved reason for remaining in the United States including an affirmative grant of deferred action. (For aliens who have protection under the regulations implementing the Convention Against Torture but for whom there is an alternative country of removal, the final order of removal may still be executable to that alternative country.) For ease of reading in this preamble, the Departments use the term "removal order" to mean a "final executable removal order" when discussing civil penalties for failure to depart.

⁵ Section 241(a) of the INA, 8 U.S.C. 1231(a), governs the detention and removal of aliens who

take years to resolve.⁹ When U.S. Border Patrol (“USBP”) officers are diverted from patrol duties to process large groups of migrants and conduct detention-related activities, criminal organizations and smugglers can exploit the diversion of resources to move illegal drugs, weapons, contraband, and aliens into the United States. *See* E.O. 14165, 90 FR 8467 (Jan. 20, 2025). Elevated levels of unlawful border crossings also strain ICE’s detention resources and impede ICE’s ability to detain other aliens, including those with final removal orders. *See* 90 FR 45397, 45397. In combination, the prior Administration’s policies and resulting incentives for unlawful entry hindered the effective operation of immigration laws designed to protect U.S. sovereignty and prevent the unlawful entry of illicit contraband, criminals, and illegal aliens.

Additionally, elevated border crossings can severely inhibit the effective functioning of the Immigration Courts. Under the prior Administration, the record numbers of aliens encountered across the southern border overwhelmed DHS’s capacity to process such aliens through expedited removal as envisioned by the statutory framework of the Act. 89 FR 81158. Instead, DHS was forced to place aliens into section 240 removal proceedings at a rate that outpaced EOIR’s capacity to complete such cases in a timely manner and led to extensive delays in Immigration Court proceedings. *Id.* Under this Administration, the Departments have taken significant efforts to disrupt aliens’ expectations of lengthy Immigration Court delays, including more robust utilization of expedited removal where available and a renewed focus on EOIR operational efficiency. Accordingly, EOIR has seen a precipitous drop in initial receipts of charging documents to initiate proceedings between FY 2024 and FY 2025, and has been continually increasing the total number of case completions.¹⁰ However, considering

the challenges experienced under the prior administration at the southern border and the resulting consequences, the Departments have a need to use all available measures to prevent such a situation from reoccurring.

For these reasons, and consistent with this Administration’s policies, DHS believes that it must employ all immigration enforcement authorities that Congress has provided in order to both maintain border security, including to discourage large numbers of aliens from crossing the southern border and overwhelming the Departments’ abilities to effectively process and remove such aliens as occurred under the last administration, and to address the large number of aliens with removal and voluntary departure orders who have violated U.S. immigration law by remaining in the United States in contravention of such orders.

One such authority is civil monetary penalties. As explained in more detail in the IFR, Congress has authorized DHS to impose civil penalties on: (1) aliens who willfully fail or refuse to depart the United States after a final order of removal or take other action to thwart removal; (2) aliens who fail to comply with a voluntary departure order; and (3) aliens who are apprehended entering or attempting to enter the United States unlawfully (“unlawful entry penalties”). *See* INA 274D(a)(1), 8 U.S.C. 1324d(a)(1); INA 240B(d)(1)(A), 8 U.S.C. 1229c(d)(1)(A); INA 275(b)(1), 8 U.S.C. 1325(b)(1). Congress has also specified the authorized range of penalty amounts, which DHS has adjusted for inflation. For “unlawful entry,” the penalty amounts range from \$100 to \$500 per entry or attempted entry. *See* INA 275(b)(1), 8 U.S.C. 1325(b)(1); 8 CFR 280.53(b)(14). For failure to comply with voluntary departure conditions, the penalty is set by an Immigration Judge or the Board of Immigration Appeals (“BIA”) and may range from \$1,992 to \$9,970 after inflation adjustments, but the general default amount is \$3,000. *See* INA 240B(d)(1)(A), 8 U.S.C. 1229c(d)(1)(A); 8 CFR 280.53(b)(3), 1240.26(l). For aliens ordered removed who remain in the United States, DHS may impose a penalty of up to \$998 for each day the alien willfully fails to comply with the order. *See* INA 274D(a)(1), 8 U.S.C. 1324d(a)(1); 8 CFR 280.53(b)(14). As the IFR explains, DHS believes that robust application of these civil penalties will deter future unlawful entries and

encourage greater compliance with removal and voluntary departure orders, in line with Congress’s intent and this Administration’s focus on securing the border and restoring integrity to the immigration system. *See* 90 FR 27439–40, 27442.

Prior to the IFR, however, DHS was required to use the general civil penalty procedures at 8 CFR part 280 to impose these penalties. These procedures were promulgated by the former Immigration and Naturalization Service (“INS”) decades before Congress authorized the specific failure-to-depart and unlawful entry penalties covered by the IFR. *See* 90 FR 27440–41. Those regulations were designed primarily for penalties imposed on airlines and other carriers that violate INA provisions governing the transport of aliens into the United States, rather than for penalties against individual aliens for failure-to-depart or unlawful entry. *Id.* Under those regulations, DHS had to provide a written notice of intent to fine (“NIF”), served in person or by certified mail, and then wait at least 30 days for a response. *Id.* If the alien did not respond or did not contest the fine, a DHS officer could issue a final decision imposing the penalty. *Id.* If the alien contested the fine, the alien could request an in-person interview or submit a sworn written response; a supervisory immigration officer would then issue a written decision; the alien could seek reconsideration within DHS; after exhausting DHS procedures, the alien could appeal to the BIA. *Id.* As discussed in the IFR, these procedures are lengthy, resource intensive, and not tailored to the failure-to-depart and unlawful entry penalties that Congress later authorized. *See* 90 FR 27444–46.

The IFR streamlined and simplified the process DHS uses to impose civil penalties for failure-to-depart and unlawful entry and eliminated unnecessary procedures that are not required by statute. *See* 90 FR 27449–52. The IFR changed only the way DHS issues and adjudicates civil monetary penalties and the way an alien may contest such penalties for these specific fines. 90 FR 27454. The IFR did not require the imposition of any new penalties or otherwise change the substantive criteria for issuing civil penalties. *Id.*

Under the IFR, the new 8 CFR 281 allows a DHS immigration officer to initiate the penalty process by issuing a written decision and order imposing the civil monetary penalty. 8 CFR 281.1(b), (c). The decision and order must identify the statutory basis for the penalty, state the type and amount of the penalty, and provide a brief

⁹ *See* Proclamation 10888, 90 FR 8333, 8334 (Jan. 29, 2025) (“[T]he ‘influx of illegal aliens across the southern border of the United States has placed significant costs and constraints upon the States, which have collectively spent billions of dollars in providing medical care and related human services, and have spent considerable amounts on increased law enforcement costs associated with the presence of these illegal aliens within their boundaries’”); *see also* *Securing the Border*, 89 FR 48710, 48714 (discussing incentives for irregular migration during periods of high encounters at the U.S. southern border including possible release into the United States and years long delays in Immigration Court proceedings).

¹⁰ EOIR Workload & Adjudication Statistics, *Pending Cases, New Cases, and Total Completions* (July 24, 2026), <https://www.justice.gov/eoir/media/>

1344791/dl?inline [https://perma.cc/B2AW-2QYD]; EOIR Workload & Adjudication Statistics, *New Cases and Total Completion* (July 24, 2026), <https://www.justice.gov/eoir/media/1395636/dl?inline> [https://perma.cc/49J5-JTWY].

explanation of the reasons for the decision. 8 CFR 281.1(c)(1). The decision and order must also advise the alien of the right to appeal; the process for filing an appeal; the right to be represented by counsel at no expense to the government; and the opportunity to submit written arguments and supporting documentation challenging the penalty. 8 CFR 281.1(c)(2). The alien may file a written defense and supporting evidence or may simply submit a written notice of appeal. 8 CFR 281.1(c)(2), (e)(1). DHS may serve the decision and order in person or by regular mail. 8 CFR 281.1(d).

The IFR also replaced the elaborate review process before DHS set forth in 8 CFR part 280 and appeal process before EOIR set forth at 8 CFR 1280.1¹¹ for these three specific civil penalties with an appeal process that takes place solely before DHS. Under the IFR, an alien must file a notice of appeal within 15 business days of service of the initial decision and order. 8 CFR 281.1(e)(1). If the alien does not file a timely appeal with DHS, the initial decision and order become final. 8 CFR 281.1(f)(3). If the alien files a timely appeal with DHS, a supervisory immigration officer who did not issue the initial decision and order will review the appeal. 8 CFR 281.1(e)(2). The supervisory officer will review the appeal within 10 days of receipt and may, in his or her discretion, request additional written briefing or documentation, which the alien must provide within 15 days of receiving the request. *Id.* At the alien's request, the supervisory officer will generally provide copies of pertinent documents and records relevant to the penalty. 8 CFR 281.1(e)(3). The supervisory officer will decide the appeal on the written record; the IFR does not provide for in-person interviews. *Id.* The record must include the initial decision and order, evidence in DHS's administrative files, and any timely written submissions, briefs, documentary evidence, or other relevant

materials submitted by the alien. *Id.* The supervisory officer will review this record de novo, including the initial decision and order and any written arguments and evidence submitted by the alien, and will issue a final decision within 45 days. 8 CFR 281.1(e)(2). That officer's decision constitutes the final agency action, subject only to discretionary review by the Secretary of Homeland Security, and the alien may not appeal the decision to the BIA. 8 CFR 281.1(e)(4), (f)(1)–(3). However, the IFR allows DHS to reopen a decision, in its sole discretion (*i.e.*, sua sponte), at any time to reconsider the decision and reduce or rescind the fine. 8 CFR 281.1(f)(1).

As explained in the IFR, the Departments reasoned that these updated procedures will allow DHS to impose these civil penalties more swiftly on more aliens who unlawfully enter the United States and on those who disregard removal and voluntary departure orders. *See* 90 FR 27442. In turn, this will help support DHS's efforts to maintain border security and enforce immigration laws by deterring unlawful entries and encouraging compliance with removal and departure orders. *See* 90 FR 27445–46. Compared to the general procedures in 8 CFR part 280, the revised process reduces unnecessary administrative burdens and allows DHS to reach final decisions more quickly while at the same time reducing unnecessary burdens on the BIA's caseload. *See* 90 FR 27444–45. The IFR explained that these changes are needed to ensure that DHS can efficiently employ these statutory penalties while continuing to prioritize, without diverting resources away from, border security and the apprehension, detention, and removal of aliens who have violated the Nation's immigration laws, consistent with this Administration's policy objectives and the President's direction. *See* 90 FR 27444–46.

To further advance the IFR's goal of encouraging compliance with removal and departure orders, DHS has announced that it will rescind most failure to depart fines if an alien uses the U.S. Customs and Border Protection ("CBP") Home app to arrange and complete self-departure from the United States.¹² This policy, coupled with

DHS's expanded use of these civil penalties, is intended to provide an additional clear incentive for aliens to comply with removal and departure orders and avoid civil monetary penalties by doing what the law requires: departing the United States as ordered.¹³

At the same time, the Departments determined that the revised procedures are consistent with due process. For the reasons discussed more fully in the IFR and in response to comments in Section III of this preamble, the Departments have concluded that a shortened appeal period, removal of in-person interviews, and the shift from BIA review to internal DHS review are appropriate and consistent with due process given that these civil penalties typically turn on routine and straightforward factual and legal determinations and aliens have limited grounds to contest them. 90 FR 27451–55. In addition, ICE will now also permit acceptance of a late-filed appeal based on documented mail delivery delays that ICE finds were beyond the alien's control.

First, INA 275(b), 8 U.S.C. 1325(b), authorizes DHS to impose a civil penalty on any alien who is apprehended while entering or attempting to enter the United States at an improper place or time. Aliens apprehended while entering unlawfully have, by definition, violated INA 275(b), 8 U.S.C. 1325(b), and the documented encounter provides the only fact necessary to impose these penalties. Additionally, when USBP agents apprehend an alien entering unlawfully, the agents prepare a Form I–213, *Record of Deportable/Inadmissible Alien*, which documents the apprehension and is sufficient to demonstrate liability for these penalties. *See* 90 FR 27442. As a matter of practice, USBP issues these penalties at the time that it apprehends the alien. In these circumstances, the Departments do not believe that a lengthy, multi-step appeal process is necessary. *See id.* The IFR's appeal structure preserves an alien's meaningful ability to contest an unlawful entry penalty if the alien believes a penalty was issued erroneously.

Second, the nature of the failure to depart penalties also supports the IFR's changes. Congress has authorized DHS to impose civil monetary penalties on aliens for failure to depart, subject to the general federal statute of limitations, 28

¹¹ Any cases appealed to the BIA would add to the BIA's pending caseload and be subject to the same case management framework as all other appeals. *See* 8 CFR 1003.1. To address an unprecedented caseload and an urgent need to improve the efficiency of BIA procedures, the Department has reconsidered the Board's role as an appellate tribunal and issued an IFR to streamline BIA procedures. *See generally Appellate Procedures for the Board of Immigration Appeals*, 91 FR 5267 (Feb. 6, 2026) (partially set aside on procedural grounds *Amica Ctr. for Immigrant Rts. v. EOIR*, No. CV 26–696 (RDM), 2026 WL 662494, at *34 (D.D.C. Mar. 8, 2026)). Divesting the BIA of responsibility over DHS imposition and enforcement of civil fines and penalties, an area where there is no statutory requirement for EOIR review and where the BIA has no unique adjudicatory expertise, is consistent with BIA efforts to create operational efficiencies.

¹² *See* DHS, *DHS Announces It Will Forgive Failure to Depart Fines for Illegal Aliens who Self-Deport Through the CBP Home App* (June 9, 2025), <https://www.dhs.gov/news/2025/06/09/dhs-announces-it-will-forgive-failure-to-depart-fines-illegal-aliens-who-self-deport> [<https://perma.cc/8RBN-PACA>]. As discussed below in response to comments in Section III of this preamble, DHS has recently updated its website to make clear that all

non-criminal illegal aliens may register under CBP Home app to depart the United States and DHS will forgive failure-to-depart civil penalties once the alien departs.

¹³ *See id.*; *see also* Proclamation 10935, 90 FR 20357.

U.S.C. 2462, if two elements have been satisfied: (1) the alien is subject to a final order of removal or was granted voluntary departure and (2) the alien willfully fails or refuses to depart under a removal order or voluntarily fails to comply with a voluntary departure order. INA 274D(a)(1), 8 U.S.C. 1324d(a)(1); INA 240B(d)(1)(A), 8 U.S.C. 1229c(d)(1)(A). DHS maintains records of an alien's immigration history, including removal and voluntary departure orders, and has ready access to information about any pending appeals needed to verify that the alien is subject to a final removal or departure order. 90 FR 27442–43. Before issuing a penalty, ICE guidance requires the immigration officer to verify that there are no DHS records of the alien's departure from the United States and reviews the alien's immigration records for information suggesting that the alien's failure to depart was not willful or voluntary. This includes information about: automatic stays resulting from motions to reopen; certain immigration benefits under the Violence Against Women Act ("VAWA") that stay the alien's removal; for aliens on an order of supervision, efforts the alien has made to secure travel documents at DHS's request; whether DHS has affirmatively approved the alien for deferred action; whether the Immigration Courts, DHS, or a federal court has granted a stay of removal; and whether DHS or EOIR has granted the alien protection that excuses the alien's failure to depart while the alien maintains that protection, including temporary protected status ("TPS"), protection under the Convention Against Torture ("CAT"), and withholding of removal under INA 241(b)(3), 8 U.S.C. 1231(b)(3) when no alternative country of removal is available.

Absent evidence in records accessible to DHS showing that the alien is permitted to remain in the United States, or that the alien has departed, DHS believes the statutory prerequisites to issue a penalty will have been met where an alien ordered removed or granted voluntary departure is physically present in the United States beyond the time frame specified by the Immigration Judge. As the IFR explains, civil penalties for failure to depart are generally issued after completion of section 240 removal proceedings that resulted in a final order requiring the alien's departure from the United States immediately or within a certain time frame specified by the Immigration Judge. See 90 FR 27440. These aliens have received due process through

section 240 removal proceedings where they had an opportunity to contest the charges against them, to seek relief, and to be informed by an Immigration Judge of their obligation to depart and of the consequences of failing to do so. *Id.* Aliens granted voluntary departure prior to the conclusion of section 240 removal proceedings have already agreed to forgo challenging removal or seeking relief in exchange for being allowed to depart voluntarily. *Id.* In these circumstances, and when DHS records show the removal order is executable, the Departments reasoned that an alien's continued presence in the United States is generally sufficient to establish liability for these civil penalties, absent the alien providing evidence on appeal¹⁴ to demonstrate otherwise. See 90 FR 27442–43.

In addition, Immigration Judges are required by law to inform aliens of their departure obligations and the consequences for failing to comply. Under INA 240(c)(5), 8 U.S.C. 1229(a)(5), when an Immigration Judge orders removal, the Immigration Judge must inform the alien of the consequences for failure to depart under the order of removal, including civil penalties described at sections INA 274D, 8 U.S.C. 1324(d). See 8 CFR 1240.13(d). Likewise, for voluntary departure, the INA requires that an Immigration Judge "shall inform the alien of the penalties" that will apply if the alien voluntarily fails to depart within the time allowed, including civil monetary penalties and ineligibility for certain forms of relief. INA 240B(d)(3), 8 U.S.C. 1229c(d)(3). These advisals are mandatory components of 240 removal proceedings, not discretionary steps.

These statutory and regulatory requirements are directly relevant to the willfulness and voluntariness elements in the civil penalty statutes. Before DHS considers imposing a failure to depart penalty, the alien will ordinarily have been advised, on the record, that the law requires the alien to depart the United States and that failure to do so may result in civil fines and other adverse consequences. When an alien remains in the United States after such clear, legally required notice, his or her continued presence strongly supports the conclusion that the alien has "willfully fail[ed] or refuse[d]" to depart under a removal order or "voluntarily" failed to comply with a voluntary departure order, as required by the

failure to depart civil penalty statutes. In making this assessment, DHS also relies on the presumption of regularity that attaches to official acts of government officers, including Immigration Judges. See *United States Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001). Under this presumption, DHS may reasonably assume that Immigration Judges complied with their legal obligations under the INA and implementing regulations and provided the required advisals concerning departure obligations and the consequences of noncompliance, absent specific evidence to the contrary in the record. In all cases, ICE considers the willfulness of an alien's violation in determining whether to impose a penalty.

Taken together—(1) the procedural protections provided in section 240 removal proceedings, (2) the mandatory Immigration Judge advisals of departure obligations and penalties, (3) the presumption of regularity applicable to those advisals, and (4) DHS's careful review of U.S. Government records to confirm that the alien is subject to a final, executable order and lacks lawful permission to remain—DHS concludes that an alien's continued presence in the United States is generally sufficient to establish the willful or voluntary failure to depart required to impose these civil penalties, absent evidence provided by the alien on appeal to demonstrate that the alien is not liable. Therefore, the Departments reasoned that streamlining the issuance and adjudication of these civil penalties, and the associated appeals process, aligns more closely with the nature and intent of these straightforward civil penalties. While in most cases, DHS records sufficiently establish the facts necessary to demonstrate that the alien is subject to these civil penalties, the alien retains the right to contest them on limited grounds. See 90 FR 27442–46.

To the extent an alien believes that DHS issued a penalty erroneously—for example, because the alien is not subject to a removal order, is legally permitted to remain in the United States, or did not willfully or voluntarily fail to depart—the Departments determined that the IFR provides sufficient notice and an opportunity to contest the decision before DHS, and that further review before EOIR is unnecessary. See 90 FR 27451–55. Under the IFR, a DHS immigration officer must issue a written decision that sets forth the statutory and factual basis for the penalty and informs the alien of the requirements and deadlines for filing an appeal. See *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (stating

¹⁴ The Departments determined that such appeal should take place before DHS, and not the BIA, given the straightforward and readily determinable requirements for imposing and enforcing such penalties based on information within DHS's and the alien's possession. 90 FR 27444.

that notice under due process must be of a sufficient nature as to reasonably convey the required information). The revised appeal process also preserves an alien's opportunity to contest a civil penalty. Under the IFR's procedures, the alien has 15 business days to appeal using the DHS-developed Form 281, *Notice and Violation of Order*, and a supervisory immigration officer who did not issue the initial decision will review the record de novo and may request additional evidence before making a final determination. *See* 90 FR 27452–54.

As explained in the IFR and in response to comments in Section III of this preamble, the Departments believe that additional procedures, beyond those contained in the IFR, would not enhance the accuracy, fairness, or reliability of the process given the straightforward nature of these penalties and the limited grounds that an alien may have to contest them. *See id.* Thus, for the reasons discussed in the IFR and in response to comments in Section III of this preamble, the Departments believe that the revised procedure preserves an alien's ability to contest the fine while better ensuring that the BIA does not unnecessarily expend resources in areas where DHS is better positioned to review such determinations, and that DHS can reach final decisions efficiently and apply these statutory penalties swiftly and at the scale necessary to address the large number of aliens who have entered or remain unlawfully in the United States. Accordingly, after carefully considering comments received on the IFR, the Departments are finalizing this rule with one change discussed in more detail below to account for U.S. postal delays.

B. The Departments' Experience With the IFR

The IFR is working as intended. As a result of the IFR, DHS has been able to issue a significantly greater number of civil penalties compared to the pre-IFR process under 8 CFR part 280. From March 26, 2025, through June 26, 2025, ICE issued 12,135 civil penalties under the pre-IFR process.¹⁵ From June 27, 2025, after the IFR took effect, through September 14, 2026, ICE issued approximately 110,000 failure to depart civil penalties, and CBP issued an additional 66,000 civil penalties for unlawful entry. Thus, DHS increased the number of civil penalties issued from approximately 930 per week under

the pre-IFR process to nearly 2,800 per week under the IFR process.¹⁶ Accordingly, the IFR has allowed DHS to impose more civil penalties more quickly on a greater scale, while retaining procedural safeguards designed to promote accurate penalty assessments without diverting resources away from border security, and the apprehension, detention, and removal of aliens who have violated our immigration laws.

Second, DHS's robust use of civil penalties appears to be shifting incentives for aliens with removal and departure orders who might otherwise remain unlawfully in the United States. DHS data indicates that over 82,000 aliens with removal orders and voluntary departure orders have self-departed from the United States since DHS began issuing civil penalties in March 2025 through September 14, 2026.¹⁷ In that same period, over 7,700 aliens have self-departed after receiving a civil penalty.¹⁸ Further, the number of aliens with removal orders or voluntary departure orders who have self-departed since the IFR took effect has increased significantly, as has the number of aliens who have departed after receiving a civil penalty. In the pre-IFR period from March 26, 2025, through June 26, 2025, approximately 8,600 aliens with removal or voluntary departure orders self-departed, and approximately 540 aliens self-departed the United States after receiving a civil penalty during this period.¹⁹ In the post-IFR period from June 27, 2025, through September 14, 2026, over 74,000 aliens with removal orders or voluntary departure orders self-departed in total, and approximately 7,180 aliens self-departed after receiving a civil penalty

during this period. This data indicates that DHS's robust use of civil penalties, as facilitated by the IFR's streamlined procedures, is encouraging illegally present aliens to depart the United States on their own, consistent with the IFR's objectives.

Finally, DHS's experience implementing the civil penalties covered by this rule since March 26, 2025, confirms that many pre-IFR procedures were unnecessary and that the IFR's procedures provide a meaningful opportunity to contest penalties believed to be erroneous without unnecessarily diverting BIA resources away from adjudicating its existing pending caseload to conduct review better addressed by DHS. As discussed above, the IFR shortens the appeal period, eliminates in-person interviews, and shifts appeals from the BIA to DHS. DHS data support these changes:

- Under the pre-IFR process, aliens filed written answers pursuant to 8 CFR 280.12 contesting failure to depart penalties for only 222 of the 12,135 notices of intent to fine that ICE issued, a less than 2 percent appeal rate. Under the post-IFR process through September 10, 2026, aliens appealed failure to depart civil penalties in 3,072 cases of the approximately 110,000 penalties that ICE issued between June 27, 2025, through September 14, 2026, a nearly 3 percent appeal rate. The appeal rate has therefore increased under the post-IFR process.²⁰

- Only 4 aliens requested an in-person interview out of the 222 penalty notices that aliens contested under the pre-IFR process, indicating that in-person interviews are generally unnecessary and that aliens can adequately contest these decisions through written submissions based on information in the alien's possession.

- Under the pre-IFR process, only 44 aliens appealed DHS's penalty decision to the BIA under 8 CFR part 1003, further supporting the Departments' assessment that the legal issues associated with these penalties are relatively straightforward and appeals can be handled by DHS. As of September 10, 2026, the BIA has issued only two decisions in these appeals, including a published decision which

¹⁶ *Id.*

¹⁷ *Id.* For the purpose of this analysis, the term self-departure includes the sum of confirmed departures without involvement of DHS enforcement or without DHS expense including ICE-assisted repatriations at the alien's own expense and OFO repatriations. It also includes observed departures of aliens who have voluntarily departed with financial support from the U.S. Government through the CBP Home program. *See* Proclamation 10935, 90 FR 20357 (establishing Project Homecoming and directing DHS to establish a seamless process for illegal aliens to depart the United States including through the CBP Home program); *see also* DHS Fact Sheet, CBP Home: Assistance to Voluntarily Self-Depart (Sept. 1, 2026), <https://www.dhs.gov/cbphome> [<https://perma.cc/PWQ2-W6ZJ>] (explaining CBP Home app and departure incentives available to aliens who use the app to voluntarily self-depart). The count of departures without DHS assistance may be under-inclusive because, as explained in the IFR, DHS does not maintain comprehensive departure records for all aliens, particularly those who depart across the southern or northern land border without informing DHS. *See* 90 FR 27443, n.17.

¹⁸ *Id.*

¹⁹ *Id.*

¹⁵ *See* Office of Homeland Security Statistics analysis of Alien Departures by Civil Fine, DHS Enforcement, and EOIR Case Outcomes (Oct. 7, 2026).

²⁰ Prior to the IFR, CBP did not issue any penalties for unlawful entry under INA 275(b), 8 U.S.C. 1325(b). Thus, the comparison between pre-IFR and post-IFR appeals is limited to the failure to depart penalties under INA 240B(d), 8 U.S.C. 1229c(d) and INA 274D, 8 U.S.C. 1324d. Further, as discussed throughout this preamble, the Departments believe that very few aliens have grounds to appeal unlawful entry penalties issued under INA 275(b), 8 U.S.C. 1325(b), given the even more straightforward nature of those penalties.

upheld the civil penalty.²¹ This further supports the Departments' decision to eliminate BIA review in favor of an internal DHS appeal process given the lengthy BIA adjudication timeframes.

- Aliens have successfully contested penalty decisions under the post-IFR processes. Of the appeals that DHS has adjudicated under the post-IFR process, aliens prevailed in 25 percent of the cases. This clearly demonstrates that the IFR's appeal process is meaningful, and DHS can adjudicate these penalties fairly without the need for the BIA's review.

These results support the Departments' conclusion that the IFR's streamlined procedures provide appropriate protections while allowing DHS to apply statutory penalties efficiently and at scale. DHS believes there have been fewer appeals to fines issued under 8 CFR part 281, as compared to 8 CFR part 280, because of the straightforward determinations of fact associated with fines under part 281. Additionally, the appeal process under 8 CFR part 281 discourages frivolous or non-meritorious appeals, focusing resources on cases with substantive claims.

II. Statutory Authority

The Attorney General and Secretary of Homeland Security issue this joint final rule pursuant to their respective authorities. The Homeland Security Act of 2002 ("HSA"), Public Law 107–296, 116 Stat. 2135, as amended, transferred to the Secretary many functions previously exercised by the former INS in implementing and enforcing Federal immigration law. The INA, as amended, charges the Secretary "with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens." INA 103(a)(1); 8 U.S.C. 1103(a)(1). It authorizes the Secretary to take actions "necessary for carrying out" that responsibility. INA 103(a)(3); 8 U.S.C. 1103(a)(3). As relevant here, the INA and HSA now authorize the Secretary to impose most civil monetary penalties under the INA, including those set forth in INA 240B(d), 274D(a), and 275(b); 8 U.S.C. 1229c(d), 1324d(a), and 1325(b). *See* INA 103(a)(1); 8 U.S.C. 1103(a)(1) (reposing in the Secretary the authority to administer and enforce the immigration laws except as expressly reserved to the President, Attorney General, or Secretary of State) and HSA 402(3), 6 U.S.C. 202(3) (charging the Secretary with carrying out the immigration enforcement functions

vested by statute in, or performed by, the Commissioner of the former INS).

Within DHS, the HSA allocated immigration functions and responsibilities to CBP, ICE, and U.S. Citizenship and Immigration Services ("USCIS"). *See* HSA 411, 6 U.S.C. 211 (CBP); HSA 442, 6 U.S.C. 252 (ICE); HSA 451, 6 U.S.C. 271 (USCIS). ICE is generally responsible for interior immigration enforcement, and CBP is generally responsible for immigration enforcement at ports of entry and along the United States border. Both components have authority to administer civil monetary penalties relating to certain violations of immigration law and Immigration Court orders, including penalties authorized under INA 240B(d), 274D(a), and 275(b). *See, e.g.*, 8 CFR part 280.

The Secretary may delegate or re-delegate any authority vested in DHS under the immigration laws to any DHS officer, official, or employee, including by successive delegations. *See* INA 103(a)(4), 8 U.S.C. 1103(a)(4); 8 CFR 2.1; *Authority of the Secretary of Homeland Security; Immigration Laws*, 68 FR 10922 (Mar. 6, 2003). The Secretary may delegate his authority in any manner he chooses, including by regulation, memorandum, directive, or other method. 8 CFR 2.1. In addition, HSA 102(a)(3), 6 U.S.C. 112(a)(3), vests all functions of DHS officers, employees, and organizational units in the Secretary.

The HSA retains in DOJ, under the direction of the Attorney General, the functions of EOIR. *See* HSA 1101, 6 U.S.C. 521, INA 103(g)(1), 8 U.S.C. 1103(g)(1). Immigration Judges within EOIR conduct section 240 removal proceedings and have authority to issue removal orders or grant voluntary departure. *See* INA 240, 240B, 8 U.S.C. 1229a, 1229b. The INA further provides that the Attorney General's determinations on questions of law "shall be controlling." INA 103(a)(1), 8 U.S.C. 1103(a)(1). Nothing in this final rule alters EOIR's or the Attorney General's authority to conduct or review section 240 removal proceedings, including the issuance of removal orders or grants of voluntary departure.

DOJ participates in this rulemaking because, prior to the IFR, DOJ's regulations established BIA appellate jurisdiction over certain DHS-issued civil monetary penalties authorized under the INA, including those covered by this rulemaking. The IFR removed that appellate authority, which is finalized without further change in this rule. *See* 90 FR 27439, 27459. The INA does not require the BIA to review civil penalties, and nothing in the statute

precludes the Attorney General from removing the BIA's appellate jurisdiction over civil monetary penalties imposed by another agency. To the contrary, INA 103(g)(1) and (g)(2), 8 U.S.C. 1103(g)(1)–(2), authorize the Attorney General to issue regulations necessary for carrying out EOIR's responsibilities and governing its adjudicatory structure. Consistent with that authority, through the IFR, DOJ amended its regulations to eliminate the BIA's appellate authority over these DHS-imposed penalties in order to focus EOIR's resources on its statutory functions.

This final rule addresses DHS procedures for imposing civil monetary penalties under INA 240B(d), 274D(a)(1), and 275(b), 8 U.S.C. 1229c(d), 1324d(a), and 1325(b). Those statutory provisions define the categories of aliens subject to civil penalties, establish penalty amounts, and authorize DHS to impose such penalties, but they do not prescribe procedures DHS must follow or require DOJ review of those penalties. Similarly, INA 280, 8 U.S.C. 1330, addresses the collection of civil monetary penalties but does not specify assessment procedures. Accordingly, the INA affords DHS discretion to adopt reasonable procedures for assessing and issuing civil monetary penalties. *See Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 543 (1978) ("Absent constitutional constraints or extremely compelling circumstances the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.") (cleaned up).

III. Response to Public Comments on the IFR

The Departments received a total of 28 public comment submissions in response to the IFR. The Departments reviewed all the public comments received and have addressed relevant comments in this final rule, grouped by subject matter. While some commenters wrote that they supported the IFR, the vast majority of commenters opposed all or part of it.

A. General Support

Comment: Several commenters expressed overall support for the IFR. These commenters agreed with the use of civil monetary penalties to promote compliance with immigration laws. One commenter considered such civil penalties necessary to deter unlawful presence, encourage self-departure, and help offset the costs associated with

²¹ *See Matter of R-P-L-*, 29 I&N Dec. 859 (BIA 2026).

enforcing immigration laws and carrying out removals. Another commenter recognized the government's interest in recovering some of the costs associated with removing aliens. A third commenter expressed general support for imposing civil monetary fines to strengthen overall immigration enforcement. Collectively, these comments broadly endorsed the IFR's underlying policy objective of streamlining the process for imposing civil monetary penalties on aliens subject to the violations addressed in this rule.

Response: The Departments agree that promoting compliance with the Nation's immigration laws and maintaining border security is critical, and this rule is a key part of DHS's efforts to use all statutorily available tools to help achieve those objectives consistent with the Administration's policies and priorities while also allowing EOIR to focus time and resources on completing cases that are more aligned with its statutory authorities. *See* 90 FR 8445–55. Specifically, the unprecedented number of aliens entering and remaining in the country illegally, in recent years necessitates this rule. *See* 90 FR 27442 (quoting 90 FR 8443). Congress has authorized DHS to impose civil monetary penalties on aliens who unlawfully enter the United States and those who remain after a final removal or voluntary departure order. *See* 90 FR 27439–41. As explained in the IFR, this rule allows DHS to preserve due process while more efficiently imposing a greater number of these civil penalties on the aliens subject to them. 90 FR 27442. The Departments believe that this effort will, in turn, encourage greater compliance with removal and voluntary departure orders and discourage future unlawful entries. *Id.*

B. General Opposition

1. Impacts on Aliens, Families, Businesses, and Communities

Comment: Many commenters opposed the IFR, asserting that it will negatively impact aliens and their families. One commenter stated that the aliens impacted by this rule could face steep civil monetary fines in excess of \$1,000,000, causing significant financial distress for them and their families. Other commenters echoed this point, stating that the rule creates a substantial financial burden on aliens, and specifically viewed as particularly egregious the fine of \$998-per-day for willful failure or refusal to depart after a final removal order and certain other proscribed activities. One commenter said the IFR directly harms U.S. citizens

and lawful permanent residents because many aliens subject to these civil monetary fines are parents and spouses of U.S. citizens and permanent residents. They characterized these fines as “economically catastrophic for the entire household” resulting in “eviction, bankruptcy, or forced separation.” This commenter also noted that aliens who fail to pay the assessed penalties may be subject to additional consequences including garnished wages, seizure of assets including homes and vehicles, and long-term financial ruin.

Another commenter reiterated this point and additionally noted the potential confiscation of savings and vehicles and imposed additional financial planning burden and financial uncertainty. This commenter claimed that the Departments' conclusion that the IFR aligns with due process was arbitrary and capricious. The commenter said that the IFR arbitrarily characterized these penalties as “modest,” and claimed the Departments overlooked case law recognizing heightened due process interests when the government seizes homes, confiscates savings, and imposes fines that result in significant economic impacts on families. Given the substantial penalty amounts and the collateral consequences that can result if an alien fails to pay, the commenter argued that the IFR's procedures are constitutionally inadequate.

Response: As an initial point, Congress, not the Departments, has defined both the types of violations and the monetary range for the civil penalties covered by the IFR and this rule. These penalties and their amounts reflect Congress's judgment that the conduct involved—an alien's unlawful entry and failure to depart after a removal or voluntary departure order—is serious, and in some cases substantial civil fines are necessary to encourage aliens to comply with the immigration laws. *See* 90 FR 27439–40. This rule does not expand the scope of these penalties, nor their minimum or maximum dollar amounts. Furthermore, the immigration consequences for failing to depart or unlawful entry flow from the underlying immigration violation, not from the failure to pay the assessed civil monetary penalties. This rule merely streamlines the process that DHS applies when imposing civil penalties that Congress has already authorized DHS to impose. Therefore, to the extent that commenters are objecting to these civil monetary penalties and the amounts authorized by Congress, such concerns are outside of the scope of this rulemaking.

DHS often assesses the maximum penalty amount to fulfill the enforcement and deterrent objectives of the statute, as intended by Congress. These amounts are also consistent with the enforcement priorities of the Administration, as reflected in recent Executive Orders. *See* 90 FR 8443, 8443–45; 90 FR 8467, 8467. However, the Departments note that, in the voluntary departure context, immigration officers follow the civil penalty amounts that will continue to be set by EOIR. *See* 8 CFR 1240.26(l).

The Departments disagree with commenters' arguments that DHS should not streamline the process for imposing these civil penalties because of the burdens the penalties create for aliens and their families. The Departments acknowledge these concerns but note that financial, emotional, and family burdens are also an inherent consequence of removal based on an alien's violation of the Nation's immigration laws. *See e.g., Moctezuma-Reyes v. Garland*, 124 F.4th 416, 423 (6th Cir. 2024) (“[F]inancial and emotional strains are the typical results of removal; they aren't rare”); *see also Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996) (“[E]motional hardship caused by severing family and community ties is a common result of deportation”). The most substantial civil fines apply only to aliens who have been ordered removed or granted voluntary departure after the conclusion of immigration proceedings. These aliens have been warned of the consequences for failing to comply with the removal or departure order but have willfully ignored their departure obligations. In these circumstances, the Departments do not believe that it is unfair to impose substantial civil penalties that Congress has authorized for these violations even though it may cause additional burdens and hardships on aliens and their families.

To help alleviate the financial burden of civil penalties and incentivize compliance, DHS has announced it will reopen and rescind most outstanding civil penalties when an alien uses the CBP Home app to voluntarily self-depart the United States.²² This option allows aliens to avoid the civil penalties and attendant consequences that commenters have noted. The

²² DHS, *DHS Announces It Will Forgive Failure to Depart Fines for Illegal Aliens who Self-Depart Through the CBP Home App* (June 9, 2025), <https://www.dhs.gov/news/2025/06/09/dhs-announces-it-will-forgive-failure-depart-fines-illegal-aliens-who-self-depart> [<https://perma.cc/8RBN-PACA>]. *See* Presidential Proclamation 10935, *Establishing Project Homecoming*, 90 FR 20357 (May 9, 2025); 90 FR 27442.

Departments recognize that an alien's choice to exercise this option may still impose significant personal and family hardships, including to U.S. citizen or lawful permanent family members, but the Departments note that these hardships are an inherent consequence of a removal order and are compounded by the alien's willful failure to depart when that order became final and executable. *See Morales-Izquierdo v. DHS*, 600 F.3d 1076, 1091 (9th Cir. 2010) (rejecting argument that "an illegal alien with United States citizen family members cannot be removed" because such a proposition "would radically alter the status quo of our immigration law"). Additionally, the Departments believe that permitting removable aliens to remain in the United States would undermine immigration enforcement, the integrity of the Nation's immigration laws, American communities, and public safety.²³

Regarding commenters' concerns that aliens may face collateral consequences if they fail to take advantage of this off-ramp and further fail to pay these civil fines, the Departments note that the IFR and this final rule do not authorize the confiscation of savings, garnished wages, or the seizure of assets. Rather, separate statutes and regulations govern the U.S. Government's debt collection activities and remedies, which are outside the scope of this rule. However, the Departments note that only DOJ's Civil Division or another authorized litigating component of DOJ, not EOIR and DHS, have authority to obtain a judgment on a debt owed to the United States. *See* 31 CFR 904.1–904.4. DOJ's Civil Division or another authorized litigating component must bring an action in federal court to obtain a judgment and pursue any lien against assets or confiscation of savings, and the alien has an opportunity to request a federal court hearing on the enforceability of the debt. *See, e.g.,* 28 U.S.C. 3002(3)(B), 3101(d)(1), (d)(2). This provides due process before the U.S. Government seeks to obtain a judgment on an uncollected debt and before it can confiscate an alien's

property or savings. Accordingly, nothing in this rule deprives an alien of the ability to challenge the imposition of particular civil penalty assessments or collection methods that the alien regards as disproportionate, excessive, or in violation of due process during a federal court hearing.

Finally, the Departments disagree that the IFR's due process analysis fails to consider the full magnitude of the departure penalties and the collateral consequences that could result, should an alien remain in the United States and fail to pay the civil monetary penalty. As an initial matter, contrary to one commenter's claim, the Departments did not characterize the penalties covered by this rule as "modest." Rather, the IFR used that term to contrast the penalty amounts associated with the unlawful entry and voluntary departure order penalties and the per diem fines Congress has authorized DHS to impose on aliens who willfully remain in the United States for many years after a removal order. *See* 90 FR 27541.

The Departments do, however, acknowledge that the per diem civil penalties can result in substantial fines, including sums of over one million dollars in certain cases, and that these amounts could impose significant economic and emotional burdens on aliens and their families. The Departments also note that DHS will cancel most outstanding penalties when an alien uses the CBP Home app to depart the United States, as discussed above. Similarly, the Departments acknowledge the collateral consequences that could result if an alien fails to pay a civil penalty or depart the United States, but the Departments reiterate that this rule does not authorize DHS or EOIR to seize an alien's property, garnish wages, or confiscate savings. That authority rests with DOJ's Civil Division or another litigating component, and the alien would be able to challenge any action in court before any deprivation occurs.

The Departments, however, also have a weighty interest in ensuring that DHS can impose statutorily authorized civil monetary penalties efficiently and at scale to create greater incentives for aliens to comply with final removal orders and to impose timely consequences on those who do not. As the Departments explained in the IFR and Section II of this preamble, the need for this rule is demonstrated by the sheer number of aliens in the United States with final removal orders and the risk that, without additional action, a significant number of the millions of aliens currently in Immigration Court proceedings may be encouraged to

simply ignore final decisions ordering their removal. *See* 90 FR 27445. An alien's failure to comply with a removal order risks undermining the overall integrity of the immigration laws and processes and imposes significant enforcement costs on DHS. *Id.*; *see also* Section II of this preamble.

On balance, the Departments believe that the IFR's streamlined civil monetary penalty procedures strike an appropriate balance between: (1) increasing DHS's ability to impose statutorily authorized civil penalties quickly against aliens who have willfully failed to comply with removal orders and (2) protecting an alien's interest in ensuring that he or she has a meaningful opportunity to contest any civil penalty that DHS may have issued erroneously. Based on its experience, DHS believes that the risk of imposing these civil fines in error is low given the straightforward nature of these civil penalty determinations, and that the IFR's procedures provide sufficient due process to aliens who contest these penalties. *See* 90 FR 27451–54.

Comment: Commenters claimed that these penalties will harm businesses and communities. One commenter stated that many aliens targeted by this IFR pay taxes and work in "essential" sectors such as agriculture, healthcare, and construction. Another commenter claimed that the threat of high civil penalties will increase fear in communities and push people into hiding. The commenter claimed that the high penalties would reduce enrollment in schools and healthcare, and deter victims and witnesses from reporting crimes, thereby harming public safety and communities. Given these claimed impacts, commenters argued that the Departments should rescind the IFR.

Response: The Departments do not dispute the contributions of lawful immigrants to United States businesses and communities. The purpose of the IFR and this rule, however, is not to harm businesses or communities but to allow DHS to more efficiently impose these statutorily authorized civil monetary penalties on the large number of aliens who violate the Nation's immigration laws by entering or remaining in the country unlawfully. Congress has authorized DHS to impose civil penalties for these violations and did not create exceptions for aliens who pay taxes, work in "essential sectors", or otherwise "contribute" to communities. An alien's engagement in these activities does not absolve him or her from complying with the immigration laws. Moreover, the Departments note that, with limited exceptions, Congress has not authorized

²³ *See* 90 FR 47445–46 (discussing how an alien's failure to depart has serious consequences for immigration enforcement and the adjudication of immigration cases); *see also* E.O. 14159, 90 FR 8443, 8444–45 (Jan. 20, 2025). ("enforcing our Nation's immigration laws is critically important to the national security and public safety of the United States"); Presidential Proclamation 10935, 90 FR 20357 (May 9, 2025) ("The continued presence of illegal aliens in our Nation forces American taxpayers to bear a tremendous fiscal burden to support them, including through costs related to healthcare, food stamps, public housing, emergency services, education, and shelter, as well as the costs of crimes committed by illegal aliens.").

aliens with final executable removal and voluntary departure orders to work in the United States. INA 241(a)(7), 8 U.S.C. 1231(a)(7). Therefore, the Departments decline to rescind the IFR based on commenters' speculation that its procedures for imposing penalties on aliens will indirectly "harm" businesses or essential sectors. Further, the Departments believe that any such indirect impact that the penalties themselves may have on businesses would be outweighed by their benefits, including benefits to border security, public safety, immigration enforcement, and the integrity of the immigration laws. *See* 90 FR 27445–46; Section II of this preamble; *see also* 90 FR 8444–45.

Regarding comments related to the IFR's potential effects on the willingness of aliens to report crimes, while DHS does not dispute that illegal aliens might be less willing to report a crime, DHS cannot reliably estimate this rule's speculative impact on local policing, especially considering that this rule merely provides procedures for issuing civil fines that are authorized by statute. For similar reasons, the Departments decline to rescind the IFR based on other speculative community-level effects described by some commenters. Commenters provided no support for their belief that the revised civil penalty procedures will discourage eligible individuals from accessing education, healthcare, or other community services, or otherwise disengaging from their communities. The Departments believe that any such indirect impacts are also outweighed by this rule's potential benefits, including benefits to border security, public safety, immigration enforcement, and the integrity of the immigration laws.

2. Impacts on Specific Populations

Comment: Commenters broadly suggested that the IFR will have a disproportionate impact on vulnerable groups such as minors, aliens with limited English proficiency, and aliens fleeing hardships and lacking sufficient funds for legal representation. Commenters asserted that such aliens may face barriers in understanding or responding to civil monetary penalties within the prescribed timeframes and that the imposition of fines could create additional hardship or deter some from challenging these penalties altogether. One commenter expressed particular concern about aliens subject to domestic violence and human trafficking. The commenter explained that these aliens may be eligible for immigration relief based on this harm, but large civil fines may impose a barrier to escaping these situations and obtaining such relief.

Collectively, these commenters suggested that the IFR's streamlined penalty process, including its deadlines, should not apply to these groups.

Response: The procedures established by the IFR are designed to ensure efficiency in assessing civil penalties authorized by the INA, while maintaining the due process protections required by law. *See* 90 FR 27451–53. The rule does not alter eligibility for immigration benefits or relief available under other provisions of the INA, including protection for victims of trafficking or domestic violence, nor does it limit the Departments' existing discretion to consider individual circumstances consistent with applicable statutes and regulations. Moreover, ICE's guidance to immigration officers instructs that aliens with approved (or in some cases tentatively approved) applications for VAWA protections, T-visas, and U-visas for aliens who are victims of human trafficking or certain crimes should not be issued a civil fine. DHS also notes that nothing in this rule prevents immigration officers from exercising discretion in individual cases to not issue a civil monetary penalty if DHS is aware of such circumstances.

Moreover, the Departments reject commenters' arguments that the IFR's procedures would have a singular impact on non-English speakers or aliens who are unrepresented, low-income, or unfamiliar with the law. First, the Departments note that all immigration documents issued to aliens by DHS, and all orders, decisions, and notices issued by EOIR—including written removal and voluntary departure orders—are in English.²⁴ Therefore, the Departments do not believe that civil penalty decisions issued in English raise any inherent fairness concerns for non-English speakers, as a reasonable recipient would be on notice that further inquiry is required. *See, e.g., Lopez v. Garland*, 990 F.3d 1000, 1003 (6th Cir. 2021) (recognizing that English language notice typically satisfies due process because it alerts the alien to make further inquiry and seek help with any

language barrier); *see also Ojeda-Calderon v. Holder*, 726 F.3d 669, 675 (5th Cir. 2013) (citing *Nazarova v. INS*, 171 F.3d 478, 483 (7th Cir. 1999)) (explaining due process does not require notices to be in a language the alien can understand).

Second, the IFR's procedures provide all aliens with a fair opportunity to contest civil penalties. The penalty decision itself provides aliens with notice, in plain language about why the alien is subject to a civil penalty, *see* 90 FR 27449, and the Departments reiterate that Immigration Judges have already warned aliens subject to the failure to depart penalties about the consequences of failing to comply with removal and departure orders. *See* Section II of this preamble. The penalty decision also explains, in plain language, what an alien must do to contest the penalty. *See* 90 FR 27449. Indeed, the penalty decision, DHS Form 281, *Notice of Violation and Order*, contains a textbox that the alien can use to indicate that he or she is contesting the penalty decision and to provide a brief statement of reasons for the appeal. Moreover, the IFR simplifies regulatory requirements to trigger an appeal compared to the former process at 8 CFR part 280 that applies when an alien responds to a NIF. *See* 8 CFR 280.12 (requiring written answers responding to civil penalties to be filed under oath and in triplicate). Finally, under the IFR, an alien's appeal suffices to trigger mandatory de novo supervisory review. *See* 8 CFR 281.1(e)(2). In these circumstances, the Departments disagree with commenters' speculative concerns that the IFR's procedures unfairly disadvantage non-English speakers and unrepresented aliens with limited financial means. With regard to commenters' concerns about minors, DHS notes that ICE guidance to immigration officers is that such penalties should not be issued to minors without exceptions.

Comment: One commenter claimed that the IFR is particularly harmful to aliens seeking asylum or protection at the border. The commenter stated that, as a result of this IFR, these aliens will now be charged a civil fine, which the commenter characterizes as an erosion of their right to seek asylum, particularly when paired with other policies limiting asylum at the border.

Response: This rule does not alter or limit any statutory or regulatory right to apply for asylum or related protections under the INA or the regulations implementing U.S. obligations under the CAT. It does not create new grounds of inadmissibility, deportability, or ineligibility for relief or protection, and

²⁴ All EOIR forms are written in English with instructions for select forms available in other languages. *See EOIR, Forms & Fees* (last visited Oct. 6, 2026), <https://www.justice.gov/eoir/eoir-forms> [<https://perma.cc/G5PY-WDY>]; *USCIS, All Forms* (last visited May 29, 2026), <https://www.uscis.gov/forms/all-forms> [<https://perma.cc/J8A6-UASE>]. Regulations require that all documents filed with the EOIR Immigration Courts must also be in the English language or accompanied by a certified English translation. *See* 8 CFR 1003.33, 1003.23(b)(1)(i). DHS regulations also contain English-language requirements. *E.g.,* 8 CFR 103.2(b)(3), 204.1(f)(2).

it does not authorize the imposition of penalties based solely on the act of seeking asylum or protection. Rather, the IFR streamlines the process for assessing statutorily authorized civil penalties against aliens who violate immigration laws by entering the United States unlawfully, irrespective of their purpose for doing so. The statute does not create an exception for those who enter the United States unlawfully for the purpose of seeking asylum or related protection. Aliens who present themselves at a port of entry to seek asylum or other related protection are not subject to civil penalties under this rule.

3. Discrimination and Value-Based Considerations

Comment: Several commenters characterized the IFR as inconsistent with U.S. values and traditions, describing the IFR as “un-American,” “unjust,” and “contrary to national values.” One commenter characterized the IFR as designed to “punish” people trying to navigate the “labyrinthian immigration system.” One commenter suggested that the IFR was promulgated for a pretextual political purpose rather than a legitimate administrative one. The commenter argued that the IFR punishes aliens rather than deterring violations and improving compliance with removal obligations or upholding statutory requirements. Commenters generally suggested that the Administration should pursue policies that focus on humane and fair immigration policies, rather than punitive ones.

Response: The Departments categorically reject commenters’ characterization of this rule as inhumane, “un-American,” “unjust,” or “contrary to national values.” The United States is a nation of immigrants and a nation of laws. DHS is charged with administering and enforcing those laws, but the number of illegal aliens in the United States who are subject to final removal orders has outpaced DHS’s enforcement resources. *See* 90 FR 27445; *see also* Section II of this preamble. Further, EOIR statistics indicate that there are over 3.4 million pending Immigration Court proceedings as of the third quarter of FY 2026.²⁵ When completed, these cases may result

in a substantial number of additional removal orders against aliens, and without additional action there is a risk that many of these aliens may remain in the United States unlawfully. Further, although this Administration has made great strides to secure the southern border, DHS is committed to maintaining operational control of the border to ensure that DHS has sufficient resources to address the public safety and national security threats that arise constantly at the border.²⁶

The Departments believe that these circumstances warrant additional action consistent with this Administration’s direction to use all available statutory immigration enforcement tools including civil penalties. *See* 90 FR 27445–46 and Section II of this preamble; *see also* 90 FR 8444–45. Congress has authorized DHS to apply these penalties against aliens who are entering or attempting to enter the United States unlawfully and against aliens who have failed to comply with removal and departure orders. *See* 90 FR 27439–41. The enforcement of these statutory penalties is a legitimate and integral component of ensuring compliance with the Nation’s immigration laws and maintaining the integrity of the immigration system. *See* 90 FR 27444–46. Indeed, the IFR is achieving this objective, as DHS has issued over 176,000 civil penalties under the IFR (compared to approximately 12,000 penalties issued under 8 CFR part 280). These penalties have encouraged greater compliance with removal and voluntary departure orders as evidenced by the nearly 82,000 aliens with removal orders and voluntary departure orders who have self-departed the United States after DHS began issuing civil penalties in March 2025, and the nearly 7,200 aliens who self-departed from the United States after receiving notice of a civil penalty issued under the IFR.²⁷

Similarly, the Departments reject the claim that this rule is intended to dehumanize or punish people navigating the immigration system. DHS notes that these penalties generally are not imposed until after the aliens have completed immigration proceedings and received a determination that they are not authorized to remain in the United

States. The IFR did not create new categories of violative conduct or expand the scope of existing penalties. Instead, it updated the procedural framework that applies to these statutorily authorized penalties to ensure that DHS can assess them efficiently against aliens who have failed to comply with the Nation’s immigration laws. This framework allows DHS to avoid unnecessarily diverting resources from ICE’s and CBP’s missions to apprehend, detain, and remove aliens who have illegally entered and are unlawfully present. *See* 90 FR 27447. DHS remains committed to administering these authorities in a manner consistent with principles of due process, other statutory and regulatory requirements, and the Nation’s longstanding values of fairness and respect for the rule of law.

Comment: One commenter claimed that the IFR is discriminatory because its streamlined penalty process applies only to aliens, while the Departments’ regulations continue to provide additional procedural protections to companies that violate the immigration laws when they are faced with a fine. The commenter characterized the IFR as saying that the Departments cannot provide aliens with the same due process protections that they can afford companies like airline carriers because of the large number of fines that ICE has issued against aliens. The commenter claimed that this is a crisis of DHS’s own making rather than a rational reason for distinguishing between aliens and companies when designing civil penalty procedures. The commenter further argues that the IFR is discriminatory because other regulations require the Departments to consider mitigating circumstances when imposing penalties on employers and companies that violate immigration laws, but the IFR does not afford aliens the same treatment or allow them to seek mitigation.

Response: The Departments disagree with the commenter’s assertion that the IFR is discriminatory because it establishes a streamlined penalty process for aliens but not for carriers. The IFR is not intended to favor carriers over aliens. It addresses an immediate enforcement need: deterring large numbers of aliens from entering the United States unlawfully and encouraging compliance with removal and departure orders.

As an initial matter, the Departments note that aliens and carriers are not similarly situated under the INA. Aliens are the direct subjects of removal and departure orders and are personally responsible for complying with those

²⁵ *See* EOIR Workload & Adjudication Statistics, *Pending Cases, New Cases, and Total Completions* (July 31, 2026), <https://www.justice.gov/eoir/media/1344791/dl?inline> (<https://perma.cc/B2AW-2QYD>). EOIR statistics reported 3,469, 569 pending cases as of FY 2026 (Third Quarter). The term “pending cases” includes all uncompleted cases in removal, deportation, exclusion, asylum-only, and withholding-only proceedings.

²⁶ *See Finding of Mass Influx*, 90 FR 45396 (Sept. 22, 2025) (explaining the impact on DHS resources and the public safety and national security concerns that result when there is an influx of aliens arriving at the border and entering or attempting to enter illegally).

²⁷ *See* Office of Homeland Security Statistics analysis of Alien Departures by Civil Fine, DHS Enforcement, and EOIR Case Outcomes (Oct. 7, 2026).

orders, if not removed by ICE. They receive an opportunity for a full and fair hearing during section 240 removal proceedings, including an opportunity to contest removability and seek relief.²⁸ When an alien fails to comply with a removal or departure order after such proceedings, that violation directly undermines the orderly administration of the immigration system and the integrity of the immigration laws. By contrast, carriers are regulated third parties that frequently transport passengers, including aliens, into the United States, but are not directly responsible for an alien's independent decision to violate the Nation's immigration laws. Rather, their obligations are tailored to their role as carriers, arising from statutory and regulatory requirements to verify the travel documents of passengers seeking to travel to the United States, such as those in INA 273(a), 8 U.S.C. 1323(a). Noncompliance by carriers is addressed through a separate statutory provision, INA 273, 8 U.S.C. 1323, through a long-standing regime of inspections, penalties, and cooperative compliance measures with CBP tailored to entities engaged in international transportation.

The IFR focused on streamlining the process for collection of penalties against aliens because DHS identified an urgent need to increase the scale of such penalties and facilitate more timely processing, as well as to reduce incentives to unlawfully enter the United States and to ignore removal and departure orders. 90 FR 27447–48; see also Section II of this preamble. The streamlined process is intended to allow DHS to issue penalties more quickly and at a volume necessary to promote compliance and deterrence. DHS did not identify a comparable, immediate need to revise the penalty process for carrier violations. 90 FR 27447.

For years, CBP has assessed civil monetary penalties against carriers for violations of their obligations under the

immigration laws²⁹ and has routinely worked with carriers to improve compliance.³⁰ Carriers that operate regular transportation services into the United States already have strong incentives to verify passengers' travel documents to avoid substantial and repeated fines, as well as the costs of securing and returning inadmissible passengers.³¹ These incentives are further reinforced by CBP programs and arrangements with carriers designed to strengthen document screening and compliance, including CBP's voluntary document validation program and memoranda of understanding under which civil penalties may be reduced if carriers submit to CBP review of their screening processes and demonstrate successful screening procedures, as described in INA section 273, 8 U.S.C. 1323 violations.³²

As explained in the IFR, carrier fines also raise distinct considerations, including different grounds for violations and issues related to

²⁹ As discussed in the IFR, between October 1, 2022, and May 5, 2025, CBP initiated 1,428 carrier fines. 90 FR 27447; see also *Advanced Passenger Information System: Electronic Validation of Travel Documents*, 88 FR 7016, 7027 (Feb. 2, 2023) (noting that “the average number of penalties issued annually between 2015 and 2019 was 415 and explaining that the number of civil penalties for the years 2020–2022 was affected by the COVID–19 global pandemic consistent with a decrease in arrivals”).

³⁰ For example, CBP's carrier liaison program enhances border security by providing standardized training and assistance to international air carriers related to admissibility and fraudulent document detection. See *CBP Carrier Liaison Program*, https://www.help.cbp.gov/s/article/Article-1664?language=en_US [<https://perma.cc/F3NW-MFU6>] (Nov. 4, 2025). Additionally, CBP has established a process, first created by the legacy INS, for carriers to enter into a Memorandum of Understanding with CBP that results in automatic mitigation of carrier fines if the carrier agrees to certain conditions and the carrier demonstrates successful screening procedures by achieving satisfactory performance levels measured by the number of violations under INA 273, 8 U.S.C. 1323. See *Mitigation of Carrier Fines for Transporting Aliens Without Proper Documents; Modification of Memorandum of Understanding and Recalculation of Performance Levels To Measure Carrier Performance*; CBP Dec. 09–06, 75 FR 7616 (Feb. 22, 2010).

³¹ See INA 273(c)–(e), 8 U.S.C. 1323(c)–(e). See also *Advanced Passenger Information System: Electronic Validation of Travel Documents*, 88 FR 7016, 7027 (Feb. 2, 2023) (noting that the cost of a penalty under INA 273, 8 U.S.C. 1323, and the cost of securing and transporting the passenger out of the United States, which amounts to about \$10,000 for a single passenger).

³² See, e.g., 88 FR 7018, 7026 (discussing CBP's voluntary Document Validation Program, which allows CBP to vet travel document information submitted by carriers for passengers on international flights arriving in the United States prior to departure, and noting that, as a result of carrier participating in the program, 67 percent of commercial air passengers were covered by document validation as of FY 2021); see also CBP Dec. 09–06, 75 FR 7616 (Feb. 22, 2010).

statutorily authorized mitigation procedures, that are not present for the alien-focused civil penalties covered by this rule. See 90 FR 27447–48. These factors can in some cases make carrier penalty processes more complex and less suitable for the streamlined procedures adopted in the IFR. In addition, the existing regulations in 8 CFR part 280 were designed initially for carrier fines, not for the alien-focused civil penalties covered by this rule. See 90 FR 27440–41; see also *National Fines Office*, 54 FR 18648 (May 2, 1989) (describing 8 CFR part 280 procedures as applying to “violations of the [INA] by transportation companies”). The Departments concluded that addressing these carrier-specific issues in the IFR could have delayed action on the more pressing need to streamline penalties for aliens.

Quite simply, the IFR leaves the existing penalty framework for carriers intact while addressing a separate enforcement challenge related to aliens who unlawfully enter or remain in the United States in violation of the immigration laws. The Departments agree that it remains important to ensure that carriers comply with their obligations under immigration laws and that CBP can administer carrier penalties efficiently and effectively. Focusing this rulemaking on alien penalties does not preclude future consideration of whether changes to carrier penalty procedures may be warranted. The decision to address alien penalties first reflects prioritization based on pressing enforcement needs, not discrimination against aliens in favor of carriers. See *Ctr. for Biological Diversity v. EPA*, 722 F.3d 401, 409–10 (D.C. Cir. 2013) (quoting *City of Las Vegas v. Lujan*, 891 F.2d 927, 935 (D.C. Cir. 1989) (agencies may address problems in stages and “treat a problem partially” or regulate “in a piecemeal fashion.”)). The Departments therefore reject the claim that it is irrational or discriminatory to focus this rule on civil penalties against aliens without amending the procedures that apply to carriers.

For similar reasons, the Departments disagree with the commenter's claim that the need for streamlined procedures is a “problem of DHS's own making,” which, according to the commenter, was created by DHS's decision to issue large numbers of penalties against aliens. The Departments acknowledge that ICE rarely issued such fines prior to this Administration. As explained in the IFR, however, the Departments have determined that DHS must now use these penalties more robustly in light of the significant number of aliens who

²⁸ As noted in the IFR, under the INA, certain aliens can also be ordered removed by DHS with limited or no review by EOIR. See 90 FR 27740, n. 3 (discussing removal process outside of section 240 removal proceedings including expedited removal under INA 235(b)(1), 8 U.S.C. 1225(b)(1), reinstatement of a prior removal order under INA 241(a)(5), 8 U.S.C. 1231(a)(5), and administrative removal orders for certain non-permanent residents aliens who are aggravated felons under INA 238(b), 8 U.S.C. 1228(b)). As the IFR explained, however, aliens ordered removed through these processes generally must be detained, which reduces the likelihood of the alien's failure to depart. *Id.* Therefore, while applicable to all administratively final removal orders, the failure to depart civil monetary penalties are most relevant to aliens ordered removed through section 240 removal proceedings. *Id.*

have violated removal and departure orders and have unlawfully entered the country in recent years. 90 FR 27446–47. The increased use of penalties is intended to deter continued violations of the immigration laws and is consistent with this Administration's enforcement policies. Simply put, the IFR addresses the widespread failure by certain aliens to comply with the immigration laws and with removal or departure orders. The streamlined procedures in the IFR reflect a legitimate and rational interest in promoting timely and efficient enforcement against aliens who violate these laws. Congress provided these penalties and related authority in the INA; this rule merely modifies DHS's administration of collecting those penalties to implement that existing statutory authority more efficiently.

Finally, the streamlined procedures preserve the essential elements of due process for aliens. Aliens subject to these penalties continue to receive notice of the proposed penalty and an opportunity to seek review. Agencies may design procedures that take account of enforcement realities and deterrent effect, provided that the procedures preserve the core protections of meaningful notice and opportunity for a hearing. This rule maintains those protections while allowing DHS to more effectively enforce existing statutory penalties.

The Departments also disagree with the commenter's claims that the IFR discriminates against aliens in favor of companies because the IFR does not allow aliens to seek mitigation of civil penalties. The commenter's assertion overlooks that Congress established distinct statutory frameworks governing civil penalties imposed on employers and carriers, on the one hand, and the civil penalties at issue in this rule, on the other.

First, the commenter's reference to certain mitigating considerations for employer-related penalties under INA 274A, 8 U.S.C. 1324a, is misplaced. Congress has explicitly directed EOIR Administrative Law Judges ("ALJs") to consider the "mitigating" factors cited by the commenter when imposing a civil penalty against an employer under INA 274A, 8 U.S.C. 1324a. *See* INA 274A(e)(5), 8 U.S.C. 1324a(e)(5). By contrast, the INA civil penalty provisions underlying this rule contain no comparable statutory requirement to consider mitigating factors. *Compare* INA 274A(e)(5), 8 U.S.C. 1324a(e)(5), *with* INA 240B(d)(1)(A), 274D(a)(1), and 275(b)(1), 8 U.S.C. 1229c(d)(1)(A), 1324d(a)(1), 1325(b)(1). The differing procedures therefore reflect differences

Congress itself intended in these statutory schemes, not disparate treatment by the Departments, and the rule properly implements the procedures authorized for these distinct violations.

Second, the Departments disagree with the commenter's statement that "an [alien's] right to seek mitigation" has been curtailed under the IFR. The prior penalty process at 8 CFR part 280 did not provide all aliens subject to the civil penalties covered by this rule with a right to seek mitigation. Rather, 8 CFR 280.5 clarifies that an individual subject to a civil penalty covered by 8 CFR part 280 may only seek mitigation if it "is authorized by the [INA]." By statute, only certain individuals and entities subject to civil penalties covered by 8 CFR 280 are eligible to seek mitigation. For example, INA 273(e), 8 U.S.C. 1323(e), directs DHS to reduce, refund, or waive certain carrier penalties upon a showing of circumstances that would justify reduction, refund, or waiver. However, for the reasons discussed more fully in Section III.D.7 of this preamble, the INA does not authorize aliens to seek mitigation of the failure to depart and unlawful entry civil penalties. Accordingly, the Departments disagree that the aliens had a right to seek mitigation under 8 CFR part 280 and that this IFR denies them that right. For this reason, the Departments also disagree with the commenter that the IFR is facially discriminatory because it does not allow aliens to seek mitigation but preserves companies and corporations' ability to do so. Rather, the IFR merely implements Congress's choice. It is Congress, not the Departments, that has authorized carriers, companies, and employers to seek mitigation of certain immigration-related civil penalties, while not extending the same opportunity to aliens.

C. Justification and Need for the Rule

1. Nature of the Civil Fines

Comment: Several commenters took issue with the IFR's claim that the straightforward and readily verifiable nature of the failure to depart penalties supports the Departments' decision to streamline the underlying penalty process. 90 FR 27441–46. Commenters claimed that DHS has erroneously issued many civil fines over the past year under the prior penalty process, including to aliens with temporary or permanent immigration status and with an approved visa petition and related waiver request. A commenter also claimed that DHS has issued fines to aliens with pending motions seeking to

reopen or rescind removal orders. One commenter claimed that their client received a NIF that incorrectly stated a voluntary departure order had been issued several years prior to the date of actual issuance. Another alleged that, based on their clients' experiences, DHS frequently does not use or seek out the relevant information to determine whether aliens are willfully evading a removal order, thus frequently making incorrect assessments of such civil monetary penalties. One commenter stated that DHS appears to be issuing these fines in bulk through an automated system, often based on incomplete or inaccurate records and without considering aliens' individual circumstances. Collectively, these commenters argued that the number of alleged errors seen in these fines contradict the IFR's assertion that these penalties are straightforward and readily verifiable and raise concerns that the number of errors will be even higher under the IFR's streamlined process.

Response: Civil penalties are issued based on the facts of an alien's case; an alien who chooses to appeal to DHS may present evidence relevant to their specific circumstances. Prior to issuing a failure to depart civil penalty, immigration officers verify there are no applications or actions pending litigation—including appeals, motions, and petitions for review ("PFRs")—that would affect the finality of a removal order or allow the alien to lawfully remain in the United States. In the jurisdictions in which the filing of a PFR results in an automatic stay of removal, ICE generally will not issue the civil fine until there are no legal impediments to removal. Additionally, when calculating a fine under INA 274D, 8 U.S.C. 1324d, immigration officers account for any periods after the removal order became administratively final during which the alien was authorized to remain in the United States due to, for example, a stay of removal issued by EOIR, DHS, or a federal circuit court of appeals.

DHS rejects the claim that it is issuing these penalties in bulk through "an automated system" without a human verifying that there is a final executable removal order, and there are no legal impediments to removal. DHS further notes that aliens assessed a failure to depart civil penalty may raise on appeal any issues that purportedly affect the finality of the removal order, dates of issuance, or the alien's willfulness in failing to depart.

Finally, ICE acknowledges that, in some limited number of cases, it mistakenly issued penalties under the pre-IFR procedures in 8 CFR part 280.

However, ICE does not agree that the risk of such errors will increase under the more streamlined IFR procedures that this rule finalizes. The IFR was designed to simplify and speed up the process of issuing and finalizing ICE civil penalty decisions. It does not change ICE's process for deciding in the first place whether an alien is subject to a civil penalty. Moreover, as discussed above in Section II of this preamble, aliens have appealed civil penalties under both the pre-IFR and post-IFR procedures, albeit to different agencies, and have succeeded in having penalties set aside when issued in error at similar rates under both procedures. For these reasons, DHS continues to believe that the IFR provides aliens with sufficient opportunity to challenge a penalty they believe was issued in error and to have those penalties rescinded. The commenters' examples of errors in a limited number of individual cases under the pre-IFR process do not, on their face, call into question the adequacy of the IFR's process for error-correction. *See Mathews v. Eldridge*, 424 U.S. 319, 344 (1976) (finding that "procedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases.").

2. Compliance With Removal Orders

Comment: One commenter disagreed with the IFR's premise that increased use of civil penalties will deter immigration violations. Another commenter disagreed that the IFR would encourage individuals to comply with removal and departure orders through self-departure. The commenter stated that the IFR fails to account for the practical realities faced by many aliens who are unable to depart the United States, including aliens who cannot obtain travel documents because of the lack of U.S. consular relations with their home government and those who face dangers returning over land. According to the commenter, fining aliens who genuinely cannot depart is unjust and inconsistent with encouraging compliance with removal orders.

Response: The Departments disagree with commenters' claims that this rule will not encourage compliance with removal and departure orders through self-departure. In fact, since March 26, 2025, when DHS began issuing civil penalties, over 82,000 aliens with removal orders or voluntary departure orders have self-departed. DHS's ability to impose statutorily authorized civil penalties swiftly and in proportion to the large number of aliens with removal and departure orders is a critical part of

DHS's efforts to encourage such aliens to depart the United States. Indeed, the IFR is achieving this objective, as DHS has issued approximately 176,000 fines under the IFR (compared to approximately 12,100 fines issued under 8 CFR part 280). These fines have encouraged greater compliance with removal and voluntary departure orders as evidenced by the over 7,700 illegal aliens who self-departed from the United States after receiving notice of a civil fine issued under the IFR. Moreover, DHS believes that these civil penalties are likely having a broader effect on encouraging compliance with removal orders as indicated by the total number of aliens with removal or voluntary departure orders who have self-departed the United States since DHS began issuing these penalties.

DHS disagrees that it failed to consider that certain aliens may face impediments to departing the United States, including aliens who cannot obtain travel documents through U.S. consular relations with their country of citizenship or nationality. When an alien remains in DHS custody, immigration officers help them obtain and complete the necessary paperwork, including assisting where possible with consulate interaction.³³ When an alien has been released on supervision, the alien must sign ICE Form 220B, attesting that he or she will assist DHS in obtaining necessary travel documents in the event that a final order of removal is issued.

DHS notes that aliens subject to a final order of removal who fail to timely depart the United States will be subject to civil penalties. Evidence that an alien has made a good faith attempt to obtain travel documents needed to timely depart is held by only aliens and DHS is not privy to this evidence until an alien presents it to DHS. During the appellate process, the alien or counsel may present evidence of the alien's inability to obtain travel documents due to no fault of his or her own. DHS officers retain the discretion to rescind civil penalties depending on the circumstances, such as a good-faith attempt to obtain travel documents. In addition, an alien need not depart to their country of citizenship or nationality; they need only depart the United States.

Moreover, as directed by the President, DHS has removed many

³³ ICE notes that aliens in this situation could be subject to a range of options, including further detention, orders of supervision, removal to a third country, or in some cases, parole. These options do not grant the alien status in the United States and aliens remain subject to their final order of removal. 8 CFR 241.13.

impediments to an alien's ability to self-depart the United States. *See* 90 FR 8443. For example, DHS in partnership with the State Department is offering aliens free flights and providing travel document assistance to any non-criminal alien who uses the CBP Home app to indicate their intent to depart whether to their home country or a third country other than the United States. *See* DHS Press Release, *DHS Announces Historic Travel Assistance and Stipend for Voluntary Self-Deportation* (May 5, 2025), <https://dhs.gov/news/2025/05/05/dhs-announces-historic-travel-assistance-and-stipend-voluntary-self-deportation> [<https://perma.cc/8ST2-RHHP>]. Indeed, DHS data indicates that over 104,000 aliens have voluntarily departed the United States through this program since the IFR took effect on June 27, 2025 through September 14, 2026.³⁴

Comment: Another commenter explained that pressuring aliens to depart the United States to avoid civil fines undermines their existing rights and forecloses eligibility for immigration relief. One commenter said that leaving during removal proceedings can result in the loss of the statutory right to a fair hearing before an Immigration Judge. These commenters argued that departing interrupts the continuous presence requirement for cancellation of removal, thereby depriving qualifying aliens of this form of relief. Similarly, a commenter stated that departing terminates an alien's pending application for adjustment of status, impacting eligibility for lawful permanent resident status. Commenters also noted that departure can trigger statutory re-entry bars, creating barriers to lawful return and future immigration benefits. In this regard, one commenter characterized the IFR's goal of incentivizing aliens to self-depart as a "legal trap" that deprives aliens of due process and access to immigration benefits while barring their reentry.

Response: The Departments acknowledge that an illegal alien's departure from the United States can trigger various immigration consequences. However, the Departments disagree with the claim that this rule, which uses civil penalties and the CBP Home application to encourage aliens to leave the United States, unfairly denies them access to Immigration Court proceedings or immigration relief. Rather, the penalties covered by this rule primarily apply to

³⁴ *See* Office of Homeland Security Statistics analysis of Alien Departures by Civil Fine, DHS Enforcement, and EOIR Case Outcomes (Oct. 7, 2026).

aliens who have already gone through Immigration Court proceedings, which have resulted in an order of removal or grant of voluntary departure, and have failed to depart as required after the conclusion of such proceedings. Thus, commenter concerns about the implications of an alien's departure on the outcome of removal proceedings are unfounded. Relatedly, concerns about impacts to continuous physical presence are equally unfounded. The alien would stop accruing continuous physical presence, at the latest, on the date that they were served with the Notice to Appear to implement the removal proceedings that resulted in a final order of removal or grant of voluntary departure, not the date that they departed after being notified that they are subject to civil fines and penalties. INA 240A, 8 U.S.C. 1229b(d)(1). Departures for reasons other than the imposition of civil fines and penalties that may take place prior to the commencement of, or during, an alien's removal proceedings are beyond the scope of this rulemaking.

Moreover, aliens who are subject to removal orders or have failed to comply with voluntary departure orders are generally not eligible for, or face significant barriers to obtaining, the forms of relief mentioned by commenters. Under INA 240B(d)(1)(B), 8 U.S.C. 1229(d)(1)(B), aliens who fail to comply with voluntary departure orders are generally ineligible, for a period of 10 years to seek cancellation of removal, adjustment of status, and other forms of relief. Furthermore, aliens under removal orders generally must reopen their removal proceedings to seek such immigration relief. However, the BIA has held that reopening is generally not justified for relief based on eligibility that arose after the removal order. See *Matter of H-Y-Z-*, 28 I&N Dec. 156, 161 (BIA 2020) (“[E]quities that were acquired while [an alien] remained illegally in the United States after being ordered removed . . . generally do not . . . warrant discretionary reopening”); see also *Matter of Yauri*, 25 I&N Dec. 103, 105 (BIA 2009) (“[U]ntimely motions to reopen to pursue . . . adjustment of status . . . will ordinarily be denied”). More broadly, aliens subject to final executable removal orders do not have a right to remain in the United States to apply for motions to reopen or potential immigration benefits and, in many instances, they do not even have a right to remain to pursue pending applications for immigration benefits or motions to

reopen.³⁵ There may be limited circumstances where penalizable aliens can obtain the relief that the commenters mention. The number of cases in which an alien could obtain such relief in these circumstances is small, and civil penalties do not actually prevent aliens from applying for such relief. At most, it has an incidental deterrent impact on the alien, which is justified by the policies that the rule promotes. Therefore, the Departments disagree with commenters' claims that the IFR's goal of encouraging self-departure impermissibly deprives an alien of potential eligibility for immigration benefits or relief.

For similar reasons, the Departments also disagree with the claim that the IFR's goal of encouraging self-departure creates a “legal trap” for aliens who may become subject to reentry bars if they leave the United States. The Departments acknowledge that aliens who are subject to final removal orders or have accrued unlawful presence may be barred from re-admission to the United States for a certain number of years after departing. INA 212(a)(9), 8 U.S.C. 1182(a)(9). However, Congress did not intend for such consequences to excuse an illegal alien's continued presence in the United States. Enactment of these reentry bars plainly demonstrates that Congress intended immigration violations to carry significant consequences and did not view the possibility of future inadmissibility as a reason to excuse compliance with departure obligations. Accordingly, it is important for the Departments to faithfully carry out Congress's intent in a streamlined manner within the bounds of the law.

Moreover, the Departments note that relief may be available to certain aliens who are barred under these inadmissibility grounds if they later have a valid basis to re-enter the United States. See INA 212(a)(9)(A)(iii), 8

U.S.C. 1182(a)(9)(A)(iii) (exception to re-entry bar for certain aliens ordered removed who seek permission to re-enter); see also INA 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v) (waiver to unlawful presence bars for certain aliens).

Finally, to the extent that commenters are concerned about the impact of the unlawful entry civil monetary penalties, the Departments believe that concerns about aliens leaving the United States and abandoning removal hearings or benefits applications to avoid these specific penalties are speculative. The Departments do not believe that it is reasonable to assume that such aliens would abandon viable claims for relief or ongoing Immigration Court hearings given the more modest amount of these penalties.³⁶ See DHS, Press Release *DHS Announces It Will Forgive Failure to Depart Fines for Illegal Aliens who Self-Depart Through the CBP Home App* (June 9, 2025). Furthermore, Congress has made clear that aliens who enter unlawfully are subject to such penalties notwithstanding the initiation or pendency of removal proceedings. See INA 275(b)(1), 8 U.S.C. 1325(b)(1).

Comment: One commenter questioned DHS's reliance on the CBP Home application as an available mechanism for compliance incentives. The commenter asserted that the application is not broadly accessible to all aliens subject to civil monetary penalties under the IFR but is limited to aliens who entered at or between a port of entry, those who arrived under a parole program, and those whose Temporary Protected Status had been terminated. The commenter stated that the application therefore excludes many aliens who could be fined under this rule and does not provide meaningful relief from fines or available incentive programs.

Response: All non-criminal aliens who schedule their self-departure through the CBP Home App and depart will receive forgiveness of any civil penalties issued by DHS for failing to depart the United States. DHS has updated its website to reflect the full scope of the DHS policy.³⁷ Thus, the departure incentives announced by DHS are not limited to the category of aliens identified by commenters, and DHS encourages all aliens subject to removal

³⁵ See, e.g., *Dada v. Mukasey*, 554 U.S. 1, 21 (2008) (explaining that an alien subject to a removal order “may be removed by the DHS . . . even if the motion to reopen has yet to be adjudicated”); *Dada Achacoso-Sanchez v. INS*, 779 F.2d 1260, 1264 (7th Cir. 1985) (“Congress has not given deportable aliens a right to the reopening of deportation proceedings.”); see also *Riasati v. I.N.S.*, 738 F.2d 1115, 1118 (10th Cir. 1984) (“[a] pending visa application does not entitle an alien to a stay of deportation”) (citations and quotations omitted). The Departments acknowledge that certain aliens may be entitled to a stay of removal after filing for certain immigration benefits or certain motions to reopen. See, e.g., 8 CFR 214.205(g) (T-visas with a positive bona fide determination); INA 240(c)(7)(C)(iv), 8 U.S.C. 1229a(c)(7)(C)(iv) (VAWA self-petitioners); INA 240(b)(5)(C), 8 U.S.C. 1229a(b)(5)(C) (motions to reopen an in-absentia order based on lack of notice). As explained in Section III.E.2 of this preamble, DHS does not issue civil fines in these circumstances.

³⁶ Indeed, the Departments note that the fees for filing many immigration benefits applications, including cancellation of removal and adjustment of status, are higher than the civil penalty for unlawful entry.

³⁷ See, DHS Press Release, CBP HOME: Assistance to Voluntarily Self-Depart, <https://www.dhs.gov/cbphome> [<https://perma.cc/PWQ2-W6ZJ>] (Sept. 1, 2026).

or departure orders to take advantage of this opportunity and receive forgiveness for any civil penalty.

Comment: Several commenters questioned the IFR's empirical basis for the assertion that civil monetary penalties will deter immigration violations and promote compliance with removal and departure orders. One stated that the IFR lacks evidence-based support for this justification and pointed to ICE's prior use of fines and subsequent rescission of that policy as demonstrating that these fines are ineffective at achieving these purposes. One commenter stated that previous rules understood this and resultingly did not enforce these penalties, due to the cost of administering them far outweighing any fines collected. Collectively, these commenters viewed the IFR as lacking an empirical foundation, unlikely to alter behavior, and ineffective in achieving its compliance and enforcement goals.

One commenter claimed that behavioral research on sanctions and procedural justice shows that fines do not deter unlawful behavior or encourage compliance with the law if the process for imposing them is unfair. The commenter cited to a "policy briefing"³⁸ discussing research suggesting that people are more likely to comply with court orders when they believe that the underlying process is respectful, neutral, accessible, and provides an opportunity for them to participate before a decision is rendered.

Response: The Departments disagree with the assertion that this rule lacks an empirical basis or relies on unsupported assumptions regarding deterrence. Congress has expressly authorized civil monetary penalties for the violations addressed in this rule and has long identified such penalties as a tool that may promote compliance with these statutory obligations. See 90 FR 27439–40. The Departments' role in this rulemaking is to ensure that DHS can efficiently utilize these statutory penalties consistent with Congress's objective in enacting them, not to reconsider the policy judgement underlying those statutory authorities or to undertake a new empirical assessment of their effectiveness. Moreover, as explained in Section I of this preamble, the IFR is achieving its

intended incentive and deterrence objectives.³⁹

As explained in the IFR, DHS does not believe that its prior limited experience assessing these penalties in 2019 demonstrates that these penalties are ineffective. When ICE rescinded the prior penalty policy in 2021, there were only 26 active cases,⁴⁰ which DHS concluded was an insufficient sample size to judge the effectiveness of these civil penalties. DHS explained its belief that these civil penalties would be more effective at achieving their deterrence and compliance objectives if applied quickly and at scale. In addition, the IFR was designed to address many of those administrative challenges that ICE faced when issuing civil penalties in 2019, by streamlining the procedures for these civil monetary penalties, thereby reducing operational burden and costs. Finally, the Departments noted that DHS's decision to stop issuing civil penalties under the prior Administration was based on that Administration's findings that there is no indication that these penalties promoted compliance with the alien's departure obligations. On January 20, 2025, President Trump directed DHS to focus enforcement resources on carrying out final orders of removal and enforcing laws related to illegal entry and unlawful presence. E.O. 14159 also directed DHS to assess and collect all fines and penalties authorized by law. This rule is needed to help DHS meet these directives. See 90 FR 27447–48.

With respect to comments on sanctions and "procedural justice," the Departments note that the rule preserves the core procedural protections necessary to ensure fairness and meaningful participation, including written notice of the proposed penalty, information about the factual basis for it, an opportunity to present a written response with supporting evidence, and independent supervisory review by an official who was not involved in the initial determination. These protections reflect the principles of neutrality, respect, accessibility, and meaningful opportunity to be heard that the cited research suggests may support voluntary compliance.

Finally, while commenters questioned whether civil penalties would deter unlawful behavior, Congress has already

determined that these penalties may serve an enforcement and compliance function, and the Departments' procedural refinements help ensure these penalties can be administered efficiently and fairly in accordance with due process principles required by law. In any event, the Departments believe that DHS's robust use of these penalties is helping to achieve their compliance function as demonstrated by the over 82,000 aliens with removal and voluntary departure orders who self-departed after DHS began issuing these penalties, and as demonstrated by the fact that nearly 7,200 aliens self-departed after receiving a civil fine under the IFR.⁴¹ Accordingly, the Departments conclude that the rule has a sufficient basis.

3. Use of Government Resources

Comment: Commenters said that a large-scale penalty process will waste government time and resources. One claimed that issuing fines on a large scale would be an inefficient use of DHS resources because few aliens will pay them. Commenters discussed several factors that make collection improbable and administrative enforcement costly. They noted that many aliens have limited financial resources to pay these fines and the amounts are so high that aliens will not take them seriously. One commenter also said that the IFR will only further confuse many aliens as they do not understand the immigration system and many will not pay if they will be deported anyway. Another commenter said that sending a large number of fines to the Treasury Department for collection is wasteful because DHS itself cannot verify that aliens subject to these fines are actually in the United States, citing the IFR's statement that DHS records do not always reliably indicate which aliens actually remain in the United States after a removal or departure order. Another commenter also pointed to DHS's prior conclusion that the resources needed to impose these penalties outweighed the potential collections from a transient alien population that generally lacks the means to pay. Accordingly, commenters claimed that DHS should not expend substantial time and resources pursuing these penalties.

Response: The Departments do not agree that this rule's goal of streamlining the civil penalty process is wasteful or an improper use of Government

³⁸ Emily Gold LaGratta, Criminal Justice Alliance, *To Be Fair: Procedural Fairness in Courts* (Oct. 2014), <https://justiceinnovation.org/publications/be-fair-procedural-fairness-courts> [<https://perma.cc/YL4F-UVU9>].

³⁹ See Office of Homeland Security Statistics analysis of Alien Departures by Civil Fine, DHS Enforcement, and EOIR Case Outcomes (Oct. 7, 2026).

⁴⁰ See ICE Memorandum for Tae D. Johnson, Acting Dir., ICE, from Corey A. Price, Acting Exec. Assoc. Dir., Enforcement and Removal Operations, ICE, Re: Rescission of Civil Penalties for Failure to Depart (Aug. 6, 2021).

⁴¹ See Office of Homeland Security Statistics analysis of Alien Departures by Civil Fine, DHS Enforcement, and EOIR Case Outcomes (Oct. 7, 2026).

resources. As an initial matter, the IFR and this rule are a critical part of DHS's efforts to use all statutorily available tools to achieve the Administration's immigration enforcement and border security objectives. This includes issuance of civil monetary penalties to encourage aliens to comply with removal and voluntary departure orders and to deter unlawful entries. The purpose of the rule is to streamline the civil penalty process to ensure that DHS can use these statutorily authorized penalties swiftly and at the scale needed to respond to the large number of aliens who have entered the United States or remain unlawfully. *See* 90 FR 27442; *see also* Section I of this preamble. Quite simply, this rulemaking is intended to help ensure that DHS has a workable process for issuing civil monetary penalties against aliens who unlawfully entered or failed to depart the United States as part of ICE's and CBP's missions to apprehend, detain, and remove aliens who have illegally entered the United States and are unlawfully present.

More fundamentally, the Departments do not agree that civil penalties are an ineffective solution to the problem that many aliens remain in the United States in contravention of removal and departure orders. To the contrary, Congress has authorized DHS to impose these civil penalties on such aliens as a means to encourage them to comply with removal and departure orders and to impose consequences on those who fail to comply. 90 FR 27446. Indeed, DHS's use of these statutorily authorized tools is working to achieve the objective as discussed above in Section I of this preamble.

Similarly, the Departments disagree with one commenter's claims that attempting to collect failure to depart penalties is wasteful because DHS cannot verify that aliens issued fines remain in the United States. As discussed in the IFR, DHS acknowledges that it does not maintain comprehensive departure records for all aliens, particularly for aliens who cross land borders, and, therefore, DHS may have issued a certain number of penalties to aliens who have already departed. 90 FR 27445. ICE believes however, based on its experience, that it is reasonable to assume that a large number of aliens with final removal and departure orders remain in the United States.⁴² *Id.* Therefore, consistent with the President's direction in section 8 of

E.O. 14159, 90 FR 8444–45, DHS believes that the IFR's goal of quickly imposing penalties to encourage compliance with removal and departure orders justifies the resource expenditure, even if some number of penalties are not collected because the alien departed.

Finally, the IFR fully explains why the Departments believe that this rule is needed notwithstanding ICE's prior determination in 2021 that the resource burdens outweigh the amount that can be collected from a transient population of aliens that lacks the means to pay. 90 FR 27446–47. In the IFR, DHS first noted that its limited experience implementing these civil monetary penalties in prior years does not demonstrate that these penalties are innately ineffective. 90 FR 27447. Moreover, DHS explained that the IFR is intended to reduce potential resource burdens that DHS previously experienced when issuing these penalties by streamlining the underlying civil penalty process. *Id.* Additionally, DHS noted that the collection of civil penalties was not the only or even the primary goal; rather, DHS believes that maximizing the use of these civil penalties will encourage illegal aliens who are subject to them to voluntarily depart the United States. *Id.* As discussed above, DHS's use of these civil penalties is achieving this objective, and the use of the CBP Home app to self-deport is a cost-effective means of achieving this objective.

Comment: At least one commenter suggested that pursuing fines on a large scale would merely divert limited agency resources away from higher priority enforcement objectives, such as apprehending aliens who pose threats to public safety or national security. The commenter concluded that the IFR's approach would ultimately increase costs for the Departments without meaningfully advancing enforcement goals. Similarly, one commenter claimed that the IFR would not promote public safety but would have the opposite effect by heightening fear and discouraging engagement with law enforcement amongst immigrant communities. According to the commenter, imposing high civil fines on aliens, including those without criminal histories, would lead to fewer reports of crime, diminishing public safety for all. Another commenter suggested that a more effective and resource-efficient approach would be to focus enforcement on employers who hire unauthorized workers, suggesting that such entities can be expected to understand and comply with employment verification laws and will

be better motivated by civil penalties, or the threat of civil penalties, to follow those laws.

Response: The Departments disagree that implementing the civil penalty process described in the IFR will divert resources away from higher priority enforcement objectives or fail to advance statutory enforcement goals. Congress has expressly authorized the imposition and collection of civil penalties under INA 240B(d), 8 U.S.C. 1229c; INA 274D, 8 U.S.C. 1324d; and INA 275(b), 8 U.S.C. 1325. The Departments therefore have a responsibility to maintain procedures that enable the effective administration of these statutory authorities. Implementing a clear, streamlined penalty process does not diminish the Departments' ability to prioritize cases involving threats to public safety or national security, including cases where the alien fails to depart or illegally enters the United States. Rather, the IFR promotes administrative efficiency by updating and consolidating procedural steps.

Additionally, the concerns about the imposition of civil penalties heightening fear and discouraging engagement with law enforcement by the immigrant community is speculative. The commenter failed to provide information or evidence to support the concern that civil penalties will discourage aliens from reporting crime or engaging with law enforcement. Even if there is a disincentive to report crime or engage with law enforcement, the commenter failed to provide a basis to conclude that these disincentives stem from making the process of imposing civil penalties more efficient, rather than from the existence of civil penalties or immigration enforcement more generally.

The Departments also disagree that the penalty process undermines public safety by discouraging aliens from reporting crime or engaging with law enforcement. The penalties addressed in the IFR apply only in limited circumstances specified by statute and do not alter DHS's longstanding policies and efforts aimed at encouraging victims, witnesses, and other individuals to cooperate with law enforcement regardless of immigration status. Nothing in the IFR changes protections for victims of crime, humanitarian programs, or DHS's ability to exercise discretion on a case-by-case basis. The Departments, therefore, do not expect the procedural updates in the IFR to meaningfully affect crime reporting or relationships between immigrant communities and law enforcement.

⁴² According to data in DHS's ENFORCE Alien Removal Module, there are 1.9 million aliens with final executable orders of removal out of a total of 2.1 million final orders of removal (last visited Sep. 10, 2026).

The Departments further disagree that focusing enforcement resources on employers who hire unauthorized workers would be a more effective or statutorily appropriate approach. Employer sanctions and worker-related civil penalties are governed by distinct provisions of the INA, and the IFR did not amend or affect those frameworks. While the Departments enforce employer compliance laws through separate authorities, those efforts do not displace the need to implement civil monetary penalties against aliens where Congress has authorized their use and vested DHS with authority to enforce them. The IFR ensures streamlined procedures for carrying out the statutory provisions for civil monetary penalties applicable to aliens for failure to depart, failure to voluntarily depart, and improper entry, while employer-related enforcement continues under its own statutory framework.

For these reasons, the Departments conclude that the IFR's civil penalty procedures are an appropriate use of agency resources. The procedures promote efficient administration of existing statutory penalty authorities to meet immigration enforcement priorities and challenges.

D. Comments on Specific Provisions

1. Removal of Notice of Intent To Fine

Comment: Several commenters asserted that eliminating the notice of intent to fine (NIF) erodes procedural protections by transforming what was once a preliminary document signaling DHS's intent to issue a fine into a final agency decision. Commenters stated that this change reduces the time that aliens have to understand and respond to fines, seek legal advice, and submit an appeal. Additionally, one commenter suggested that eliminating the NIF process—which the commenter characterizes as being designed to notify aliens of potential penalties and allowing them to rectify the violation—is inconsistent with the goal of incentivizing aliens to comply with removal and departure orders.

Response: The Departments disagree with commenters' characterization of the rule. Although the IFR eliminated the NIF process for these penalties, it continues to require written notice of penalties that identify the factual and legal basis for liability, *see* 8 CFR 281.1(c), and provides aliens with an opportunity to submit a written response with supporting evidence before a final determination is made, *see* 8 CFR 281.1(e). Indeed, the differences between the NIF process prior to the IFR under 8 CFR part 280 and the process established by the IFR under 8 CFR part

281 are less substantial than commenters suggest. Under both regulations, if an alien fails to respond to the NIF or the penalty decision, as applicable, the alien will be liable for the penalty. *See generally* 90 FR 27449–54 (comparing 8 CFR 280 and 8 CFR 281). The only difference is that, under the part 280 process, a supervisory officer must convert a NIF into a final unappealable decision; under the IFR, the penalty decision automatically becomes final if the alien does not appeal. *Compare* 8 CFR 280.13(a)(2), *with* 8 CFR 281.1(f)(3). Under both regulations, an alien who timely appeals a penalty decision is entitled to additional process before a final decision is issued. *Compare* 8 CFR 280.13(b), *with* 8 CFR 281.1(e). Therefore, the IFR merely converts the prior two-stage NIF process under 8 CFR part 280 into a single process that eliminates duplicate administrative steps and paperwork if an alien does not appeal, but the fundamental safeguards of notice and an opportunity to be heard remain unchanged. *Id.*

The Departments acknowledge that the IFR reduces the amount of time that an alien has to contest a penalty and to submit supporting evidence compared to the NIF process. Prior to the IFR an alien generally was required to answer a NIF within 30 calendar days and could submit supporting evidence at an in-person hearing, if requested. 8 CFR 280.12. Under the IFR, an alien must file an appeal postmarked within 15 business days of the date of service of the civil penalty decision and the alien is generally required to submit all evidence in support of the appeal at the time of filing. 8 CFR 281.1(e)(1). However, as explained in the IFR and in response to related comments in this preamble, the Departments believe that shortening the timeline for appeals and evidentiary submissions is appropriate for the failure to depart and unlawful entry penalties due to the straightforward and readily determinable nature of these penalties.

Moreover, the Departments note that in some respects the IFR simplified the process for aliens to contest civil penalties compared to the procedures under 8 CFR part 280. An alien may trigger an appeal under the 8 CFR 281.1 process by simply filing a notice of written appeal indicating that the alien is contesting the penalty. Indeed, DHS uses the Form 281, *Notice of Violation and Order*, which includes a field for aliens to use to appeal a penalty. The alien may, but is not required to, submit written argument or documentary evidence contesting the penalty. *Id.* In contrast, under the NIF process, the

alien must provide a written defense, in duplicate, under oath setting forth the reasons why a fine should not be imposed. *See* 8 CFR 280.12.

In addition, this final rule amends 8 CFR 281.1(e) to permit aliens to file an appeal that is postmarked after the 15-business-day deadline where the alien asserts, and ICE determines after considering on a case-by-case basis all the evidence presented with the appeal, that there was a mail delay in receiving the immigration officer's decision and order issued under 8 CFR 281.1(c)(1). Additionally, to help ensure timely processing and avoid administrative delays by postal carriers on the backend, DHS encourages aliens to obtain contemporaneous, time-stamped evidence of deposit of their mailed appeal directly from the U.S. Postal Service ("USPS") or their chosen commercial carrier because merely depositing an appeal in a standard mail collection box does not guarantee an immediate postmark or proof of the date of dispatch. This amendment, which provides an exception to the 15-business-day deadline to appeal, addresses commenters' concerns relating to the reduced time for aliens to submit an appeal under 8 CFR part 281. Even assuming that the IFR's streamlined process makes it more challenging for aliens to appeal and submit supporting evidence in some cases, the Departments believe that this risk is outweighed by DHS's strong interest in the revised civil penalty process as discussed further in the IFR and this preamble.

Finally, regarding one commenter's claim that eliminating the NIF is inconsistent with the IFR's goal of incentivizing compliance with removal and departure orders, the Departments note that the IFR was designed to achieve several goals. As explained in the IFR preamble, one goal of this rule was to ensure that DHS has a workable process for issuing civil penalties against aliens without diverting resources away from ICE's and CBP's missions to apprehend, detain, and remove illegal aliens. 90 FR 27447; *see also* Section I of this preamble. Eliminating the NIF serves this goal by removing a duplicative step (*i.e.*, the requirement to issue a separate final decision) in cases where an alien does not appeal the civil penalty decision. The Departments note that aliens continue to have an avenue to rectify any fines resulting from these immigration violations. As the IFR explains, DHS will rescind outstanding civil penalties in cases where a qualifying alien uses the CBP Home app

to depart the United States. *See* 90 FR 27444.

Comment: One commenter claimed that eliminating the preliminary NIF makes notice and the opportunity to be heard occur only *after* DHS imposes a civil monetary penalty, violating due process. Citing *Mathews v. Eldridge*, 424 U.S. 319 (1976), the commenter argues that similar to how the government must give a disability benefits recipient notice and an opportunity to submit information prior to terminating benefits, DHS must give aliens notice of the fine and an opportunity to challenge the accuracy of DHS's information and its conclusions before DHS imposes the fine. The commenter contends that the IFR violates due process because aliens are given no opportunity to submit information or contest the penalty prior to the final decision.

Response: The Departments disagree with the commenter's characterization of the IFR. The IFR provides aliens with notice and an opportunity to contest civil penalties *before* they become final. As explained in the IFR, a decision imposing a civil monetary penalty becomes final only if the alien does not timely file an appeal, not at the time of issuance of the civil penalty.⁴³ *See* 8 CFR 281.1(f)(3); *see also* 90 FR 27450. If the alien timely appeals, the initial penalty decision will remain inoperative during the pendency of the appeal. 8 CFR 281.1(e)(1), (f)(3). At the end of the appeal process, and after considering any arguments and evidence submitted by the alien, a supervisory immigration officer who did not issue the initial penalty decision issues a final decision in writing affirming the initial penalty decision or withdrawing the decision and serves it on the alien. *See* 8 CFR 281.1(e). Therefore, contrary to the commenter's claim, the IFR provides an alien with both notice and an opportunity to challenge the penalty decision prior to the alien becoming liable for the penalty, in accordance with the pre-deprivation process upheld in *Mathews v. Eldridge*, 424 U.S. at 319.

Comment: Citing 5 U.S.C. 554(b), a commenter claimed that "eliminating the NIF also violates the [Administrative Procedure Act] because there is no notice of the matters of fact and law asserted, including what constitutes willfulness under these circumstances, and what factors are relevant to defenses or challenges to the penalty." More broadly, the commenter claims that the

removal of the NIF violates "a foundational principle of administrative law: meaningful notice must precede the imposition of civil penalties to satisfy due process requirements." The commenter notes that federal statutes, including immigration statutes, consistently underscore the importance of notice in administrative proceedings, and discusses 8 U.S.C. 1182(n)(2)(C), which governs the civil penalty process for employers who violate certain labor conditions under the H1-B visa program as an example.

Response: As an initial matter, the Departments note that, although the IFR eliminates the NIF process for these penalties, it continues to require DHS to issue a written notice that sufficiently identifies the basis for liability and provides aliens with an opportunity to contest such penalties before they become final. Under 8 CFR 281.1(c)(1), the initial penalty decision must include the statutory basis for the penalty, the amount and type of the penalty being imposed, and a brief statement of the reasons for the decision. DHS implements this requirement through Form 281, *Notice of Violation and Order*, which provides aliens with all of the required information, including information about the date that the alien became subject to a final removal or departure order or when the alien was apprehended entering the United States unlawfully. For the failure to depart penalties under section 274D(a)(1) of the INA, 8 U.S.C. 1324d(a)(1), the Form 281 also identifies the particular violation—*e.g.*, willful failure or refusal to depart pursuant to a removal order; willful failure or refusal to make timely application in good faith for travel documents; willful failure or refusal to present for removal as required by DHS.

This information ensures that aliens understand the basis for the penalty and have the requisite information in the event they seek to challenge it. *See* 90 FR 27449. Indeed, DHS notes that the NIF process does not require DHS to provide the alien with any additional information about the basis for a civil penalty beyond what the IFR and this rule require. *See* 8 CFR 280.1, 280.11. Moreover, as discussed in response to the comment immediately above, under the IFR an alien retains an opportunity to challenge a civil penalty decision issued pursuant to the IFR before it becomes final. Therefore, the Departments disagree that by eliminating the NIF this rule violates any "principles of administrative law" related to notice in the civil penalty context.

The Departments also note that the IFR's procedures are not subject to the requirements in 5 U.S.C. 554(a) because they are not adjudications "required by statute to be determined on the record after opportunity for an agency hearing." Moreover, unlike the H1-B civil penalty statute cited by the commenter, the civil penalty statutes relevant to this rule do not specify the procedures that DHS must follow to impose these penalties. 90 FR 27448. As discussed in the IFR, Congress has set forth detailed procedures that the Government must follow when imposing certain immigration-related civil penalties, but Congress's omission of similar procedures for the penalties covered by this rule indicates that Congress intended to give DHS discretion to employ procedures that DHS reasonably believes are appropriate for such penalties. *See id.*; *see also* *Vt. Yankee Nuclear Power Corp.*, 435 U.S. at 543 (concluding that "[a]bsent constitutional constraints or extremely compelling circumstances the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties") (cleaned up). For the reasons discussed further in the IFR and throughout this preamble, the Departments believe that the IFR's streamlined process, including the removal of the NIF, is reasonable and appropriate for these penalties given their typically straightforward nature and DHS's need to ensure that it has an efficient process for issuing these penalties more quickly and at scale to deter unlawful entries and to encourage compliance with removal and departure orders, while also providing aliens with sufficient notice of the basis for the penalty decision and opportunity to contest it before it becomes final.

2. Notice of Grounds for the Penalty

Comment: Commenters objected to adequacy of the notice of the grounds for issuing the civil monetary penalties. One commenter said that the IFR's requirement that DHS must include a "brief statement of the reasons" for imposing a penalty is inconsistent with DHS's burden of proving by "clear and convincing, and unequivocal evidence" that an alien is liable. Commenters suggested that aliens cannot defend against fines without additional information or explanation in the penalty decision. One commenter said that the IFR violates the Administrative Procedure Act ("APA"), citing 5 U.S.C. 556, and due process principles requiring notice to reasonably apprise parties of the action and provide an

⁴³ As a practical matter, the same is true of the NIF process; if an alien does not timely answer the NIF, DHS may issue a final decision imposing the penalty which the alien cannot appeal. *See* 8 CFR 280.13(a)(2).

opportunity to present objections, because DHS is not required to provide a complete record supporting the penalty.

Response: The Departments disagree that the penalty decision contains insufficient information for an alien to understand the basis for the penalty or to challenge it or that the IFR deprives aliens of their due process notice and hearing rights through lack of a record. There is no such requirement in statute for a hearing to be on the record in the civil penalties context or any indication that Congress intended the APA's procedures governing adjudications to apply. Therefore, DHS was not required to adopt the adjudication procedures in 5 U.S.C. 554 and the follow-on procedures in 5 U.S.C. 556 that apply to adjudications governed by 5 U.S.C. 554. Regardless, new section 8 CFR 281.1(e)(3) provides the materials that compose the record supporting a particular civil penalty.

As an initial matter, DHS reiterates that the legal and factual predicates for these penalties are relatively straightforward and readily determinable based on information within DHS's and the alien's possession. 90 FR 27442; *see also* Section II of this preamble. For example, the INA authorizes DHS to impose a civil monetary penalty for failure to depart if two conditions are met: (1) the alien was granted voluntary departure or is subject to a final executable order of removal; and (2) the alien voluntarily failed to depart in the allotted time set forth in the voluntary departure order or willfully failed to depart under a final removal order. *See* INA 240B(d)(1), 274D(a)(1)(A), 8 U.S.C. 1229c(d)(1), 1324d(a)(1)(A).⁴⁴ The penalty decision provides aliens with sufficient information as to each of these elements.

With respect to the first element (the removal or departure order), the civil penalty decision, *i.e.*, DHS Form 281, *Notice of Violation and Order*, explicitly lists whether the alien is being fined on the basis of a voluntary departure order or a removal order, and it provides the date that such an order was issued. DHS does not agree with commenters that DHS can only prove the existence of a removal or voluntary departure order by attaching the order to the penalty decision. The information contained in the penalty decision reflects that the immigration officer issuing the penalty

has reviewed relevant DHS records and the alien's immigration files as required by ICE guidance and has determined based on those records that the alien is subject to a final executable removal order or voluntary departure order. *See* 90 FR 27442–43; *see also* Section I of this preamble. To the extent that an alien believes that DHS records are mistaken, the alien can appeal the penalty decision and provide documentary evidence needed to dispute the decision. DHS assumes that aliens retain important documents, including legal documents demonstrating, for example, that the alien has been granted a stay of removal or has a pending appeal, or other documents reflecting that the alien is not subject to a final executable removal or departure order. Commenters have provided only speculative reasons to believe otherwise. Moreover, under the IFR's process, if an alien requests a copy of the relevant documents in connection with an appeal, the IFR requires DHS to provide such documents. 8 CFR 281.1(e)(3). Commenters have not provided any concrete evidence demonstrating that requiring DHS to provide a copy of the alien's removal or voluntary departure order would allow aliens to more effectively challenge a penalty decision. Indeed, ICE notes that the prior process under 8 CFR part 280 did not require DHS to provide a copy of an alien's removal or voluntary departure order when issuing a NIF and the DHS sees no reason for requiring it now. *See* 8 CFR 280.11.

With respect to the second (willfulness or voluntariness) element, the penalty decision lists whether the alien is being issued a civil penalty for willfully failing or refusing to depart the United States, or for instead, voluntarily failing to comply with a voluntary departure order. DHS does not believe that any additional information is required. As the Departments explained in the IFR and in Section II of this preamble, statutory and regulatory requirements impose a duty on Immigration Judges to inform aliens of their obligation to depart and of the consequences of failing to do so, including that they could be liable for civil penalties. *See* 90 FR 27440–41. Absent contrary evidence, the presumption of regularity satisfies DHS's burden to demonstrate that an Immigration Judge provided notice of these obligations and consequences, *see U.S. Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001), and an alien's failure to comply with the order after receiving notice of the consequences satisfies DHS's burden to demonstrate that the

alien is liable for the penalty. *See* Section I of this preamble. To the extent that an alien contests the voluntary or willful nature of his or her failure to depart due to circumstances beyond the alien's control (*e.g.*, hospitalization, incarceration, inability to obtain travel documents, lack of notice of a removal or voluntary departure order), the Departments note that the alien, not DHS, is in the best position to produce such evidence and may do so during the available appeals process before DHS. *See Zenith Elec. Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993) (“The burden of production should belong to the party in possession of the necessary information.”).

For these reasons, the Departments conclude that the information provided in the penalty decision is facially consistent with DHS's burden of proof to demonstrate an alien's liability for a civil penalty covered by this rule. Commenters argue that DHS must meet the “clear and convincing evidence standard” described in *Woodby v. INS*, 385 U.S. 276, 277 (1964). However, this standard applies to the burden of proof for deportable aliens in removal proceedings, not in the civil penalties' context. *See* 8 CFR 1240.8(a). Even assuming that DHS must meet the same “clear and convincing evidence standard” here, any challenge that DHS did not meet its burden of proof must be raised by an alien during the appeal process and based on the facts in his or her individual case.

Finally, with respect to commenters' claim that the IFR violates 5 U.S.C. 556 because it does not require DHS to provide a complete record supporting the penalty, DHS notes that 5 U.S.C. 556 applies only to hearings required by 5 U.S.C. 553 or 554. To the extent that the commenter is suggesting that civil penalty “adjudications” fall within the ambit of 5 U.S.C. 554(a) and therefore require DHS to follow the procedures in both 5 U.S.C. 554 and 556, DHS disagrees. There is no requirement in statute for a hearing to be on the record in the civil penalties context, let alone to comply with the procedures in 5 U.S.C. 554 and the follow-on procedures under 5 U.S.C. 556 that also apply to adjudications governed by 5 U.S.C. 554. *See Marathon Oil Co. v. E.P.A.*, 564 F.2d 1253, 1263 (9th Cir. 1977) (stating that “[t]he failure of Congress to provide for any hearing whatsoever within an administrative process may well be a valid indication that Congress either did not feel that it was providing for an “adjudication” in the traditional sense of the word or did not intend the APA procedures to apply”); *see also City of West Chicago, Ill. v. NCR*, 701 F.2d 632,

⁴⁴ The Departments focus on the failure to depart penalties consistent with the scope of commenters' concerns. To the extent that commenters are raising similar concerns about the unlawful entry penalties, commenters' concerns are addressed in Section III.E.2 of this preamble.

641 (7th Cir. 1983) (“Congress must clearly indicate its intent to trigger the formal on-the-record hearing provisions of the APA.”). Regardless, 8 CFR 281.1(e)(3) provides the materials that compose the record supporting a particular civil penalty and as explained in response to other comments in this preamble, the IFR’s other procedures satisfy due process.

Comment: One commenter claimed that the IFR should require DHS to attach a copy of the underlying voluntary departure order when imposing a fine for failure to depart under INA 240B(d), 8 U.S.C. 1229b(d). The commenter also states that many voluntary departure orders do not comply with INA 240B(d)(3), 8 U.S.C. 1229c(d)(3), which, according to the commenter, requires orders to include written warnings about potential fines for failure to depart. Accordingly, the commenter suggests that DHS can only meet its burden of proof to impose a fine if DHS provides a copy of the order containing the required warning.

Response: As an initial matter, the Departments disagree that Immigration Judges and the BIA regularly do not provide statutorily required civil monetary penalty warnings when granting voluntary departure. Absent information to the contrary, the presumption of regularity applies as both Immigration Judges and the BIA are legally required to provide these warnings. *See Gregory*, 534 U.S. at 10; 8 CFR 1240.26(k)(3). The commenter’s general assertion—in “many” cases Immigration Judges and the BIA do not comply with this obligation—without any factual basis is speculative and insufficient to overcome the presumption of regularity. To the extent an alien’s voluntary departure order does not contain the required warning, the alien can file a timely appeal of the penalty decision and submit a copy of the allegedly deficient order. Moreover, for the reasons discussed in the IFR and in the comment response above, the Departments believe that, given the straightforward nature of these penalties, the penalty decision provides sufficient notice to the alien of the basis for the penalty and how to contest it. *See also* 90 FR 27443–44, 27452.

3. Service by First Class Mail

Comment: Several commenters claimed that the change in service of process raises due process concerns. One commenter observed that the rule permits DHS to unilaterally send fines by ordinary mail despite previously issuing NIFs by personal service or certified mail. Another commenter states that previous rules required that

communications be sent by certified mail or served in person, guaranteeing receipt, and that the IFR removing this provision to instead allow service by ordinary mail will dramatically increase the likelihood that intended recipients will not receive information about their fine, miss their appeal window, and unknowingly accrue large amounts in civil monetary penalties. Another commenter suggests that these risks are amplified in this context given the highly transient nature of the population subject to these fines. One commenter explained that service by regular mail will not reasonably apprise aliens of the fine because regular mail makes it significantly less likely that the alien will receive the decision in a timely manner if at all. This commenter also points out that in the removal proceedings context in which DHS uses service by regular mail a significant amount of the information provided in mailings is also available online unlike in this civil penalty context. They state that here, in this context, aliens have no other way to access the information or be on notice that they have penalties brought against them. They also note that this is particularly an issue for those who have been fined incorrectly and explain that since the beginning of 2025 they have heard from permanent residents who have been in the United States for decades and would have no reason to believe there are pending proceedings against them who received NIFs. Other commenters also raised that authorizing service by regular mail increases the likelihood of delay or non-receipt, one noting that regular mail cannot be tracked.

Another commenter claimed that the IFR fails to explain how ordinary mail saves money and staff time compared to personal service or certified mail. The commenter also noted that the IFR does not explain why ICE cannot use personal service for aliens with removal orders because, as the IFR notes, these aliens are required to attend in-person check-ins with ICE.

Response: The Departments disagree that permitting service of civil monetary penalty determinations by regular mail raises due process concerns or fails to provide constitutionally adequate notice. Due process does not require use of any particular method of service or guarantee of actual receipt. Rather, it requires that the chosen method be “reasonably calculated, under all the circumstances,” to inform interested parties of the action and to permit them an opportunity to respond. *Mullane*, 339 U.S. at 314 (stating that notice under due process must be of a sufficient nature as to reasonably convey the

required information). Service by regular mail has long been recognized as a constitutionally sufficient method of notice in civil, administrative, and immigration contexts, including in removal proceedings, and other DHS communications. *See e.g., Gardner v. City of Columbus, Ohio*, 841 F.2d 1272, 1279 (6th Cir. 1988) (recognizing that service by regular mail satisfied due process notice requirements, while among other factors, noting government’s observation that service by certified mail would be more costly); *Urbina-Osejo v. INS*, 124 F.3d 1314, 1317 (9th Cir.1997) (stating that “notice of a deportation hearing sent by regular mail to the last address provided by the alien to the INS satisfies the requirements of constitutional due process”); *Matter of Grijalva*, 21 I&N Dec. 27 (BIA 1995) (holding that notice sent by regular mail is presumed sufficient if it is properly addressed and mailed according to established procedures and that the presumption of delivery may be rebutted with evidence of non-receipt). The IFR adopted this established practice.

Penalty determinations are sent to the address the alien has provided to DHS or that otherwise appears on file. As the IFR explains, DHS has a reasonable expectation that aliens will take these requirements seriously because failure to do so can result in a range of consequences including criminal penalties. INA 266, 8 U.S.C. 1306. In general, aliens in the United States are under specific statutory and regulatory obligations to register their presence, *see* INA 261–264, 8 U.S.C. 1301–1304; 8 CFR part 264, and to keep the U.S. Government apprised of their current address while in the country, *see* INA 265, 8 U.S.C. 1305; 8 CFR 265.1. Most aliens subject to the monetary penalties covered by this rule are warned of their address obligations upon initiation of section 240 removal proceedings, and DHS is taking steps to ensure that all aliens are aware of, and comply with, registration and address requirements consistent with this Administration’s policies. Additionally, DHS provides convenient and reliable ways for aliens to update their addresses including through online portals, and immigration officers have access to current address data maintained in DHS and EOIR databases.

Although some commenters expressed concern that personal service or certified mail had previously been used for NIFs, the governing statutory provisions do not require the use of those methods for civil monetary penalty notices, and neither do due process principles impose such a

requirement. INA 240B(d)(1)(A), 8 U.S.C. 1229c(d)(1)(A); INA 274D(a)(1), 8 U.S.C. 1324d(a)(1); & INA 275(b)(1), 8 U.S.C. 1325(b)(1). *See also Mullane*, 339 U.S. at 314 (“Personal service has not in all circumstances been regarded as indispensable to the process due to residents, and it has more often been held unnecessary as to nonresidents. We disturb none of the established rules on these subjects.”); *Dusenbery v. United States*, 534 U.S. 161, 161–62 (2002) (upholding notice sent by certified mail to a prison, even though inmate claimed he never received it, demonstrating that due process does not require proof of actual receipt, and explaining that *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 797 n.3 (1983) did “not say that the State *must* provide actual notice, but that it *must attempt* to provide actual notice”) (emphasis in original).⁴⁵ Furthermore, even a Notice to Appear (NTA), which initiates section 240 removal proceedings and thus carries greater legal consequences, may be served by regular mail. INA 239(a)(1), 8 U.S.C. 1229(a)(1). Although the statute previously required certified mail, Congress removed that requirement in IIRIRA, expressly permitting service by other forms of mail. *See* INA 239(a)(1)–(2), as amended by IIRIRA, Public Law 104–208, div. C, tit. III, 304(a)(3), 308(b)(6), 110 Stat. 3009–546, 3009–587–88, 3009–615. The INA now provides that service by mail “shall be sufficient if there is proof of attempted delivery to the last address provided by the alien.” INA 239(c), 8 U.S.C. 1229(c). By contrast, the INA is silent as to the method of service for civil monetary penalties under INA 240B(d), 274D(a), 275(b), 8 U.S.C. 1229c(d), 1324d(a), 1325(b). Accordingly, this final rule will allow DHS to use routine service, including regular mail which in turn will lessen DHS’s administrative burdens, such as the time and resources needed for personal service and the additional costs and increased processing times associated with certified mail. Routine service also provides an alien

appropriate notice of the imposition of a civil monetary penalty.

The Departments also disagree that service by regular mail increases the likelihood that aliens will unknowingly accrue penalties or be deprived of an opportunity to appeal. First, the rule’s procedures are reasonably designed to prevent aliens from unknowingly accruing civil monetary penalties. Under INA 262, 8 U.S.C. 1302, most aliens present in the United States for 30 days or more are required to apply for registration and fingerprinting. As a result, most aliens are subject to the address update requirement in INA 265, 8 U.S.C. 1305. Moreover, most aliens subject to the penalties addressed in this rule are specifically advised of these obligations upon initiation of section 240 removal proceedings. INA 239(a)(1)(F), 8 U.S.C. 1229(a)(1)(F). DHS provides convenient and reliable ways for aliens to update their addresses, including use of online portals, and immigration officers have access to current address data maintained in DHS and EOIR databases. 90 FR 27452.

Against that backdrop and as noted in the IFR, the Supreme Court has recognized that service by regular mail may, in some circumstances, provide better notice than certified mail or other methods. *Jones*, 547 U.S. at 234–35. This rule adopts that approach. 90 FR 27453. Based on ICE’s experience, service by ordinary mail is often more likely to reach aliens, including those who may be attempting to evade detection or who have moved without updating their address. *Id.* Such aliens, or members of their household, may be less likely to answer the door for personal service or to accept certified mail, whereas regular mail is delivered directly to their mailbox. *Id.* Even when an alien has moved, regular mail may still result in the current occupant forwarding address information or otherwise alerting the intended recipient. *Id.* (citing *Jones*, 547 U.S. at 235). Moreover, the rule does not mandate use of regular mail in all cases. DHS retains discretion to use other methods of service where appropriate. 90 FR 27453 (citing 8 CFR 281.1(d)). Accordingly, DHS reasonably believes that notices sent to the most recent address provided by the alien satisfy due process requirements.

Secondly, the rule includes sufficient procedural protections that mitigate the effects of any variation in mail delivery times and afford a meaningful opportunity for appeal. Consistent with 8 CFR 281.1(e), an alien shall file a written notice of appeal with the Department postmarked within 15 business days of the date of service of

the decision. Although service of the immigration officer’s decision is complete upon mailing, the rule mitigates the effects of variability in mail delivery times at the appeal stage by defining timeliness based on the postmark date of the appeal rather than the date of receipt. As explained in the IFR, “DHS will calculate the timeliness of an appeal based on the date that the alien’s appeal is postmarked.” 90 FR 27450 (citing 8 CFR 281.1(e)). Under this framework, an alien who mails an appeal within the 15-business-day period is not penalized for postal delays occurring after the appeal is sent. This approach allocates the risk of mail delay at the filing stage to the Government and helps ensure that ordinary variations in mail delivery do not result in forfeiture of appeal rights.

Along with the notice of appeal, an alien may, but is not required to, provide a written defense or documentary evidence, or both, setting forth the reasons why a penalty should not be imposed. *Id.* After the appeal is filed, a supervisory immigration officer who did not review the initial decision and order must conduct a de novo review and may request supplemental evidence or information, in which case aliens receive an additional 15 days to provide supporting material. 90 FR 27450 (citing 8 CFR 281.1(e)(2)). The officer may, in their discretion, call for additional briefing or written filings from the alien, and the alien will have 15 days from the receipt of that request to provide the information. *Id.* The officer will also provide the alien with copies of pertinent documents and records relevant to the penalty, if the alien requests, unless they are law enforcement sensitive, or disclosure is prohibited by law. 90 FR 27450 (citing 8 CFR 281.1(e)(3)). Moreover, if the alien files a notice of appeal, the initial civil penalty decision will remain inoperative during the appeal. 90 FR 27450 (citing 8 CFR 281.1(e)(1)).

In addition, the Departments recognize that aliens may, in limited circumstances, experience delayed or untimely delivery of notices served by mail that is outside aliens’ control. To address this concern while preserving the integrity and administrability of the appeals process, this rule provides a narrow, case-by-case mechanism for accepting appeals filed after the 15-day filing period when the alien demonstrates that the delay resulted from mail delivery issues. Under the rule, an alien who files an appeal after the applicable deadline and asserts that the delay was caused by untimely or delayed mail delivery must submit a written explanation and any available

⁴⁵ The agency acknowledges that in *Jones v. Flowers*, 547 U.S. 220 at 232 (2006), the Supreme Court held that a person’s failure to comply with a statutory address update requirement does not forfeit the right to constitutionally sufficient notice, and that additional reasonable steps may be required before the government takes certain actions. The Court emphasized, however, that due process adequacy requires balancing the government’s interests against the individual interests at stake. *Id.* at 229. For the reasons discussed in the IFR, the Departments believe that the Supreme Court’s decision is distinguishable. *See* 90 FR 27452 n.44.

documentary evidence supporting that assertion. If, based on the information submitted, ICE determines that the appeal was filed late due to mail delay beyond the alien's control, ICE will accept the appeal as timely filed and consider it on the merits. By requiring aliens to affirmatively raise mail delay and provide supporting evidence, the rule ensures that aliens are not prejudiced by mail delivery delays beyond their control, while maintaining finality and administrative efficiency.

The Departments acknowledge commenters' concerns that certain populations may be more mobile or may have limited access to online resources. However, DHS's service method here is identical to the method used for numerous other immigration-related notices, including those in removal proceedings where similar concerns may exist. Even if mobile, aliens have a statutory duty to register their presence and keep the U.S. Government apprised of their current address, and DHS has a reasonable expectation that aliens will comply with such requirements. INA 266, 8 U.S.C. 1306. While the information in penalty notices is not available online like it is for removal proceedings notices, the constitutionally relevant question is whether the method of service is reasonably calculated to inform, not whether parallel avenues for accessing the same information exist. *See Mullane*, 339 U.S. at 315 ("The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected."). The penalty notice itself contains the relevant information: the statutory basis for the penalty, the factual allegations, the amount sought, and clear instructions on how to appeal. *See* 8 CFR 281.1(c)(1); 90 FR 27449. Due process does not require DHS to maintain a public online portal for civil monetary penalty notices, nor does the lack of such a portal make regular mail constitutionally insufficient. *See Mullane*, 339 U.S. at 315.

The Departments also disagree with commenters' suggestion that ICE must use personal service for individuals who attend in-person check-ins. Not all aliens subject to civil penalties are enrolled in programs involving in-person reporting, and requiring personal service in every case would impose significant operational burdens without materially improving notice. Regular mail ensures efficient and consistent delivery of notices for geographically dispersed aliens.

Finally, while one commenter questioned whether ordinary mail saves

time or resources, the IFR explains that allowing service by regular mail promotes efficiency. As discussed in the IFR, personal delivery often may require burdensome manual efforts to locate the alien. It may further require the use of multiple DHS agents or officers to appear on location to ensure officer safety, and multiple attempts at personal service if not effectuated on the first attempt, thereby diverting officers from their other duties. 90 FR 27444–45. Service by certified mail involves preparation of individual mailings in each case, including handwriting envelopes, which has proven to be costly and resource intensive and would become even more so as DHS expands its use of these civil penalties. Indeed, ICE estimates that the certified mail requirement costs the agency \$23.53 for each civil monetary penalty, which includes certified mail fees, materials, and labor. 90 FR 27444. Consequently, personal service or certified mail imposes higher costs and increases processing times and is unnecessary to satisfy constitutional or statutory notice requirements. *See Mullane*, 339 U.S. at 306. The Departments also recognize commenters' concerns that some individuals, including lawful permanent residents, may have reported receiving penalty-related notices in error. The IFR's service provisions do not increase the likelihood of incorrect notices. Instead, the procedural framework contains safeguards and corrective mechanisms, including written notice and a mandatory *de novo* supervisory review over any appeal. The initial civil penalty decision remains inoperative while a timely administrative appeal is pending. This provides structured mechanisms to correct any errors promptly. Any alien who believes a notice was issued in error may file a simple written appeal explaining as much, triggering the supervisory review process. These procedures ensure that aliens have meaningful opportunities to contest errors.

Accordingly, the Departments conclude that service by regular mail, coupled with the exception to the 15-business-day deadline to appeal when ICE determines that there was a mail delay under 8 CFR 281.1(e)(2), is a reasonable, appropriate, and constitutionally sufficient method of providing notice of civil monetary penalty determinations under the INA, particularly given the IFR's procedural safeguards that ensure aliens retain meaningful opportunity to contest penalties. *See Mathews v. Eldridge*, 424 U.S. at 335.

4. 15-Day Appeal Deadline and Process

Comment: Commenters argued that a 15-business-day appeal deadline will prevent aliens from being able to contest these civil fines. Commenters listed several barriers they claim will prevent aliens from meeting the appeal deadline. One commenter asserted that a significant number of aliens that receive these fines speak a language other than English, but the IFR lacks any language accommodation, creating a barrier to responding within 15 days. Another commenter also noted that some may struggle to understand fine-related communications not delivered in their primary language. They noted that they expect this to be a common occurrence given that DOJ's July 14, 2025, memorandum regarding implementation of Executive Order 14224, Designating English as the Official Language of the United States, 90 FR 11363 (Mar. 6, 2025), directed a reduction in multilingual services at federal agencies. This commenter also asserted that a 15-day appeal period is unrealistic and unfair because aliens will lack sufficient time to understand the fines and their applicability and legal nuances and the related processes and will be unfamiliar with the IFR's new provisions. Another commenter stated that the 15-business-day period would make obtaining legal representation difficult and expensive and asserted that the IFR minimized the complexity of proving and imposing civil penalties. Another commenter stated that the 15-business-day period does not account for the time needed to access the necessary information required to contest a penalty decision. They note that some medical records are accessible online but that many health networks cite a 7-to-14-business-day turn around to provide medical records and that federal law requires medical records to be processed in 30 days. They also explained that state and local incarceration, court records, and travel documents are difficult to access and involve waiting times in excess of 15 business days. The commenter also claimed that obtaining travel documents takes significant time because many countries' embassies are located in Washington, DC and require aliens to appear in person. The commenter also noted that aliens whose citizenship is not recognized by a country may have difficulty securing an appointment.

Response: The Departments disagree that the 15-day deadline for submitting an administrative appeal will prevent aliens from contesting civil penalties. The revised process continues to provide aliens with written notice of the

proposed penalty that identifies the factual and legal basis for the determination and explains the steps to request the review. The Departments also disagree that the lack of language accommodation in the IFR, such as a requirement to translate penalty determinations and appeal instructions into each respondent's native language, prevents aliens from meeting the 15-day appeal deadline. As with other immigration notices and charging documents, including NTAs, removal orders, voluntary departure orders, and USCIS decision notices, civil monetary determinations are issued in English, and neither the INA nor the Constitution obligates DHS to translate such documents into every alien's native language. *See Ojeda-Calderon v. Holder*, 726 F.3d 669, 675 (5th Cir. 2013) (citing *Nazarova v. INS*, 171 F.3d 478, 483 (7th Cir. 1999) (explaining that due process does not require immigration notices to be in a language the alien can understand). Civil penalty decisions issued under this final rule will continue to include written instructions explaining how to file an appeal. Aliens may also seek assistance from legal representatives, community organizations, or interpreters. Aliens may provide additional documentation if the supervisory officer requests supplemental briefing during de novo review. Accordingly, the Departments conclude that the English language format of penalty notices is consistent with longstanding immigration practice and constitutional requirements as well as DOJ's memorandum implementing Executive Order 14224 by minimizing non-essential multilingual services, redirecting resources toward English-language education and assimilation, and ensuring compliance with legal obligations through targeted measures where necessary. Memorandum for all Federal Agencies, from Pamela Bondi, Attorney General, *Re: Implementation of Executive Order No. 14,224: Designating English as the Official Language of the United States of America* at 2, 7 (July 14, 2025) <https://www.justice.gov/ag/media/1407776/dl>.

Aliens also remain free to seek legal representation at any point in the process, including after filing the initial written appeal request. Nothing in the IFR limits a respondent's ability to obtain counsel or work with legal service providers. The IFR merely standardizes the timeframe for the initial appeal filing while preserving a meaningful opportunity, through mandatory de novo review and a potential supplemental briefing period, to submit evidence or legal argument.

Considering these procedural safeguards, the Departments conclude that the 15-day appeal period is a reasonable and appropriate procedural requirement.

In addition, the IFR also only requires that the alien submit a written appeal explaining the basis for contesting the civil penalty, as the grounds on which an alien may contest a civil penalty are limited and generally involve facts uniquely within the alien's knowledge. As the IFR noted, aliens will ordinarily possess the necessary information to contest these fines. 90 FR 27450. If an alien submits an appeal with assertions that are unsupported by documentary evidence because there was no time for the alien to obtain these documents, then the supervisory immigration officer reviewing the appeal can request the documents during the course of the appeal to verify the validity of the alien's assertions. *See* 8 CFR 281.1(e)(3). Additionally, the fact that it takes an alien longer than 15 days to obtain travel documents is irrelevant because the fines are issued after the time period aliens have been given to obtain travel documents and depart has elapsed. The streamlined procedures are designed to ensure timely resolution of cases and maintain the integrity of enforcement actions. DHS believes the 15-day appeal period, coupled with ICE's discretion to equitably toll the appeal deadline when ICE determines that there was a mail delay under 8 CFR 281.1(e)(2), strikes an appropriate balance between efficiency and fairness, providing adequate opportunity for aliens to contest violations and demonstrate lawful status or other circumstances that may preclude liability.

Comment: Commenters also expressed concern with the interaction between the 15-day appeal deadline and the IFR's provisions allowing DHS to serve fines by regular mail. One commenter pointed out that, according to the U.S. Postal Service, ordinary mail takes 1–5 business days to reach its destination. The commenter noted that this leaves an alien with only 10 days to appeal a fine once received and, if sent in advance of a weekend, an alien only has 8 days. Another commenter reiterated that this 15-day appeal period is not enough time to meaningfully respond and noted that other federal regulations governing civil penalties include a 5-day mail presumption. They also stated they “were aware of many people who have received notices that were dated several days before they were mailed out.”

Response: The Departments disagree that the interaction between the 15-business-day appeal deadline and the

IFR's service provisions prevents aliens from having a meaningful opportunity to appeal. The Departments recognize that aliens may, in limited circumstances, experience delayed or untimely delivery of notices served by mail that is outside the alien's control. To address this concern while preserving the integrity and administrability of the appeals process, this final rule amends 8 CFR 281.1(e) to provide a case-by-case mechanism for accepting appeals filed after the 15-day filing period when the alien demonstrates that the delay resulted from mail delivery issues. Under the rule, an alien who files an appeal after the applicable deadline and asserts that the delay was caused by untimely or delayed mail delivery must submit a written explanation and any available documentary evidence supporting that assertion. If, based on the information submitted, ICE determines that the appeal was filed late due to mail delay beyond the alien's control, ICE will accept the appeal as timely filed and consider it on the merits. By requiring aliens to affirmatively raise mail delay and provide supporting evidence, the rule ensures that aliens are not prejudiced by mail delivery delays beyond their control, while maintaining finality and administrative efficiency. In addition, although one commenter merely referenced anecdotal reports to assert some notices may have been mailed after the date listed on the document, this new exception to the 15-day filing period will provide aliens more time file their appeal for mail delays that occur while the notice is in transit and for processing delays from the time date the notice is signed until it is placed in the mail.

Moreover, due process principles require that notice be reasonably calculated to inform the respondent of the action and provide a meaningful opportunity to respond. *See Mullane*, 339 U.S. at 314. The combination of written notice, the exception to the 15-business day deadline to appeal when ICE determines that there was a mail delay under 8 CFR 281.1(e)(2), mandatory de novo review, and a potential 15-day period for supplemental briefing satisfies these constitutional requirements and provides aliens with a realistic and fair opportunity to contest civil fines. DHS believes that the nature of the failure to depart and unlawful entry penalties typically turn on routine and straightforward determinations of fact, meaning that an appeal period greater than 15-days is unnecessary. In fact, there has been a higher appeal rate of

civil penalties for failure to depart issued under 8 CFR part 281, as compared to 8 CFR part 280, which suggests that aliens are able to meaningfully file appeals within the shortened timeline. DHS believes this is because of the straightforward factual issues associated with these penalties. Additionally, the appeal process under 8 CFR part 281 discourages frivolous or non-meritorious appeals, focusing resources on cases with substantive claims.

Comment: Commenters raised general due process and fairness concerns with the 15-day appeal deadline and process. One commenter asserted that shortening the appeal deadline from 30- to 15-days eliminates a key due process safeguard. Commenters also claimed that DHS's interest in reducing the appeal period to avoid a backlog of penalties is outweighed by the alien's interest in having enough time to meaningfully respond to these penalties, especially given the amounts. One commenter stated that shortening the appeal period increases the chance that an alien could face serious penalties without even realizing what they are accused of. As an example, one commenter claimed that many aliens, including those who were brought to the United States as children, may not even be aware that they are subject to a removal order. A commenter claimed that, in light of the many barriers that aliens face responding to these penalties, the appeal period is "clearly designed" to prevent as many aliens from contesting these civil penalties as possible.

Response: The Departments disagree that the 15-day appeal deadline or the revised procedures deprive aliens of due process or create unfair barriers to contesting civil penalties. Due process requires that individuals receive notice reasonably calculated to inform them of the proposed action and a meaningful opportunity to be heard before a determination becomes final. The IFR preserves these core protections. Aliens continue to receive written notice setting out the factual and statutory basis for the penalty and providing clear instructions on how to appeal as explained in more detail in responses to comments about the appeal deadline in this Section, III.D., of the preamble.

Comment: Commenters also took issue with the lack of extensions for good cause. One commenter alleged that the lack of extensions for good cause further contributes to the erosion of procedural protections. Another commenter suggested that DHS should account for demonstrations of good faith compliance efforts.

Response: The Departments decline to modify the IFR to permit good cause extensions for late-filed appeals because the Departments do not believe that creating exceptions to the appeal deadline will meaningfully reduce the risk of error. *See Bowen v. City of New York*, 476 U.S. 467 (1986) (recognizing that agencies may impose deadlines for appeals, and that equitable tolling (exceptions) is only appropriate in exceptional circumstances and that routine or general exceptions are not required for due process). The Departments believe the risk of error is minimized through the robust procedures already in place, which ensure that aliens are provided with notice of the fine, an opportunity to appeal, and clear instructions on how to contest the penalty. The appeal process focuses on factual determinations, and aliens are best positioned to produce the necessary information to contest a fine within the established timeframe.

On the other hand, the Departments note that permitting good-cause extensions or excusing late filed appeals impedes DHS's ability to efficiently administer the penalty process as DHS expands its use of these penalties. DHS has a strong interest in ensuring that it can finalize penalty decisions quickly in response to the large number of aliens who have entered the United States unlawfully in recent years and the significant numbers of aliens who have failed to comply with removal and voluntary departure obligations. *See* 90 FR 27422–23; *see also* Section II of this preamble. It would be inconsistent with DHS's finality interests to allow late filed appeals. Such appeals would delay or impede DHS's ability to move forward with the collection process or would require DHS to re-open or pull back any final penalty decisions already transmitted for collection. Therefore, a strict appeal deadline allows DHS to have greater certainty in the finality of its penalty decisions and it allows DHS to more effectively achieve the IFR's objectives of incentivizing compliance with the immigration laws and imposing consequences on those who do not comply.

DHS acknowledges these finality concerns could, to some extent, be mitigated by imposing an outer deadline on late-filed appeals or by restricting the length of "good cause" extensions. The Departments decline to adopt this approach for several reasons. First, DHS believes that such an approach would undermine the Departments' goals regarding the 15-day appeal deadline. *See* 90 FR 27442–43. Allowing an alien to have a certain amount of time to file an untimely appeal would, as a practical

matter, merely extend the appeal 15-day appeal deadline. As discussed in the IFR and in response to the other similar comments in this preamble, the Departments believe that a 15-day appeal period supports DHS's need to have an efficient and administrable process while also affording the alien meaningful appellate rights especially given the straightforward nature of these penalties. *See* 90 FR 27444–45. For similar reasons, granting extensions would also unnecessarily delay the appeal process. The Departments believe that, in the vast majority of cases, aliens should have ready access to any information needed to contest these penalties and therefore do not need additional time to file an appeal. In these circumstances, allowing extensions would unnecessarily hinder DHS's ability to effectively administer the appeal process and impose civil penalties more swiftly and at scale to achieve the IFR's intended purposes.

Second, although adopting a "good cause" or "good faith" standard may reduce the number of aliens eligible to receive an extension or file an untimely appeal, these amorphous standards are likely to invite inconsistent practices among immigration officers and inconsistent results among similarly situated aliens. Although these standards are ubiquitous in law, they are hard to define, context specific, and often require a balancing of various legal issues. *See Matter of L-A-B-R-*, 27 I & N Dec. 405, 412 (A.G. 2018) (stating that "definitions of good cause tend to be nebulous and elusive" and noting that courts have "elaborated context-specific multifactor balancing tests, rather than bright-line rules"). The Departments believe that imposing an additional time-intensive burden on immigration officers to make such determinations would be inconsistent with the IFR's purpose of streamlining appeals for these straightforward penalties.

Comment: One commenter noted that a 15-day appeal period is much shorter than the timeframe that other agencies afford for other civil monetary penalties. The commenter cited several regulations that provide a 60-day appeal period governing civil monetary penalties for fraud, misrepresentations, and false claims in social security and health care benefits programs. The commenter claimed "[t]hese timelines reflect a broader regulatory recognition that individuals must be afforded adequate time to receive, review, and respond to significant legal determinations" which, according to the commenter, the IFR does not provide.

Response: The Departments disagree that the 15-day appeal period is

inadequate merely because other federal agencies afford longer timelines for contesting civil monetary penalties in unrelated statutory schemes. Appeal periods vary widely across federal programs,⁴⁶ and the timelines cited by the commenter arise under distinct statutes with different penalty structures, evidentiary frameworks, and administrative adjudication procedures. The INA provisions for the straightforward civil penalties at issue here, INA 240B(d), 274D, and 275(b), 8 U.S.C. 1229c(d), 1324d, and 1325(b), do not prescribe any particular appeal period, and nothing in due process jurisprudence requires the Departments to align procedures with unrelated programs such as those governing Social Security, healthcare fraud, or false claims penalties. See *Clev. Board of Educ. v. Loudermill*, 470 U.S. 532 (1985) (reaffirming that the formality and procedural requisites for due process vary depending on the importance of the interests involved and the circumstances); see also *Mathews*, 242 U.S. at 319. The relevant question is whether the procedures established by this rule provide sufficient notice and a meaningful opportunity to be heard before the determination becomes final. The rule satisfies this standard. The appeal requires only a brief written request for review and allows for the submission of written supporting evidence or documentation. Additionally, as explained above, upon appeal, the supervisory immigration officer must conduct a de novo review of the record within 10 days and may request additional evidence or information, affording the respondent another 15 days to provide it.

Moreover, these penalties differ from the examples cited by the commenter. The penalties addressed in this IFR implement longstanding statutory

requirements tied to an individual's immigration history and do not involve the complex evidentiary or program-eligibility determinations characteristic of Social Security or health-care fraud adjudications. These penalties are straightforward in nature and turn on routine and straightforward determinations of fact that can be decided quickly on a written record. The narrow factual bases for these penalties support the reasonableness of the 15-day appeal window, in which aliens can submit written evidence or documentation for de novo review.

Comment: Commenters also raised concerns with the appeal process itself. One commenter argued that the IFR allows the appellate reviewer to conduct factfinding in the first instance. The commenter argued that fact finding should be reserved for the initial decisionmaker. Another commenter stated that permitting supervisory immigration officers to call for additional evidence on a 15-day schedule but mandating a decision no later than 45 days after the alien appeals will force officers to choose between gathering critical information and meeting the 45-day deadline.

Response: The Departments disagree that the IFR impermissibly allows supervisory immigration officers to conduct fact finding in the first instance. The initial penalty determination is made by the enforcement officer based on the available evidence. The supervisory review stage is an internal appellate review designed to ensure accuracy and procedural fairness. Allowing the reviewing officer to request supplemental evidence and information does not convert the supervisory officer into a primary factfinder. Rather, it enables the reviewer to ensure that the existing record is complete, and that the respondent has had a full opportunity to present information relevant to the determination. Nothing in the IFR authorizes the supervisory immigration officer to engage in unrestricted factfinding. The officer's role is limited to reviewing the record and evaluating any supplemental evidence or information.

The Departments also disagree that the 45-day timeline for issuing a final decision places the supervisory immigration officer in an untenable position. The IFR provides a structured sequential process that ensures adequate time for both review and supplemental filing as needed. The officer conducts a de novo review of the record within 10 days of the appeal filing. If additional information is necessary for a fair and complete adjudication, the officer may

request supplemental evidence or information, and the respondent then has 15 days from receipt of that request to submit materials. The supervisory officer then retains the remaining portion of the 45-day period to complete the review and issue a decision. This framework provides sufficient time for both the respondent's submission and the officer's analysis, while promoting timely resolution, an important consideration in administering statutory civil monetary penalty schemes.

The Departments note that the 45-day timeframe balances the government's interest in prompt resolution and administrative efficiency with the respondent's interest in a meaningful opportunity to supplement the record when necessary. The structured process ensures that respondents are heard, that determinations are made based on a complete record, and that decisions are issued in a timely manner.

Accordingly, the Departments conclude that the supervisory review process, including the ability to request supplemental evidence or information and the 45-day timeline for issuing a final decision, is appropriate and reasonable.

5. Removal of In-Person Hearings

Comment: Several commenters claimed that eliminating in person hearings will deprive aliens of due process protections that ensure their appeal is thoroughly presented and fully considered. Citing *Mathews v. Eldridge*, one commenter said in-person hearings are critical because they allow aliens to present oral evidence and clarify misunderstandings. Another commenter stated that eliminating in-person hearings means that DHS will only review written filings, briefs, and any documentary evidence submitted which, according to the commenter, deprives aliens from a meaningful opportunity to be heard. Another commenter alleged that the limited due process rights under the new process will contribute to an "extremely high" possibility for error.

Response: The Departments disagree that eliminating in-person hearings deprives respondents of due process protections or prevents their appeals from being fully and fairly considered. As an initial matter, as discussed above in Section I of this preamble, the Departments note that only four aliens requested an in-person interview of the 450 appeals and over 12,000 civil penalties under the pre-IFR process, indicating that aliens do not place much value on the need for in-person hearings to contest civil penalties. Moreover, under the *Mathews* balancing test, the

⁴⁶ For example, in February 2026, EOIR issued an IFR establishing a generally applicable 10-day deadline for filing an appeal from a decision of an Immigration Judge. *Appellate Procedures for the Board of Immigration Appeals*, 91 FR 5267 (Feb. 6, 2026) (partially vacated on procedural grounds by *Amici Ctr. for Immigr. Rts. v. EOIR*, 822 F. Supp. 3d 119, 168 (D.D.C. Mar. 8, 2026)). These processes were implemented within the context of the robust procedures afforded to the aliens before the Immigration Court prior to any administrative appeal, the availability of electronic filing, and the need for immediate efficiency reforms in light of the BIA's historic pending caseload. See 91 FR 5272. Moreover, those processes do not involve the imposition of monetary fines, or any other penalties, but rather involve legal determinations regarding an alien's removability from the United States. Further, even in other situations which do involve civil monetary penalties in an immigration context—i.e. those imposed under INA 274A and 274C, 8 U.S.C. 1324a and 1324c—the administrative appellate deadline is only 10 days. See 28 CFR 68.54(a).

question is whether the procedures established by the IFR provide notice reasonably calculated to inform the alien of the action and a meaningful opportunity to be heard before a final decision is issued. The IFR satisfies both requirements. Aliens receive written notice detailing the factual basis and statutory grounds for the penalty and are afforded the opportunity to file an appeal with the option of including a written defense or documentary evidence. The initial appeal requires only a brief written request for review, and aliens may provide additional documentation if the supervisory immigration officer requests supplemental evidence or information. The supervisory officer must conduct a de novo review, ensuring that the respondent's written submissions and any relevant evidence are fully considered.

The Departments also disagree with commenters' assertions that in-person hearings are necessary to present oral evidence or clarify misunderstandings. Civil monetary penalties under INA 240B(d), 274D, and 275(b), 8 U.S.C. 1229c(d), 1324d, and 1325(b), turn on objective factual bases such as a prior removal order or a failure to comply with terms of voluntary departure that are typically documented in DHS records. Written submissions allow respondents to contest factual inaccuracies, provide additional documentation, or explain circumstances that negate the willfulness of the alien's failure to depart. As explained in the IFR, an in-person interview would not enhance the fairness or accuracy of the civil monetary penalty process because of the straightforward issues and types of evidence involved in these cases, which do not turn on credibility determinations or require the cross-examination of witnesses. If an alien, through no fault of his or her own, did not receive notice of the removal or voluntary departure order or was prevented from complying due to circumstances beyond his or her control, the alien can provide a written explanation and simple documentary evidence to support the claim. Accordingly, a requirement for in-person hearings would not meaningfully improve the accuracy or fairness of determinations, given the narrow factual issues typically involved in these penalties. See *Mathews*, 424 U.S. at 343–44 (considering for due process purposes both the nature of the issues to be decided and the nature of the evidence to be presented, such as whether it consists mainly of documents

or whether the resolution of the issue hinges on the need for in person testimony).

The risk of error is also mitigated by the IFR's multi-layered procedural safeguards. Aliens may file supplemental evidence if invited by the supervisory officer, and the officer must independently evaluate the record before issuing a final decision. These safeguards ensure that errors can be identified and corrected without necessitating formal, trial-type hearings. The Departments note that many administrative penalty and adjudication schemes, including certain USCIS benefit adjudications, and numerous civil penalty processes across the federal government operate without in-person hearings, and courts have recognized such frameworks as consistent with due process requirements.

For these reasons, the Departments conclude that an in-person hearing is not required and that the written, supervisory review process established by the IFR provides respondents with a fair and meaningful opportunity to present their claims.

Comment: One commenter also said that eliminating in-person hearings will put vulnerable populations at risk, such as aliens with low-income, a lack of representation, and a limited understanding of English. Citing *Goldberg v. Kelly*, the commenter alleged that because the respondents in this context are often low income, non-English speaking, and unrepresented by legal counsel, review of the paper file only is an insufficient means to afford due process. Another commenter also cites *Goldberg v. Kelly*, alleging that where DHS imposes such a toll on families and target “very means by which to live,” the private interests cannot be described as “modest.”

Response: The Departments disagree that eliminating in-person hearings fails to protect vulnerable populations or violates due process principles, including those discussed in *Goldberg v. Kelly*, 397 U.S. 254 (1970). The Supreme Court has long recognized that procedural due process generally requires notice and an opportunity to be heard before the Government deprives an individual of a protected property interest, while also emphasizing that due process “has never been a term of fixed and invariable content,” *FCC v. WJR*, U.S. 265, 275 (1949), as its “exact boundaries are undefinable, and its content varies according to specific factual contexts,” *Hannah v. Larche*, 363 U.S. 420, 442 (1960). The circumstances presented here differ materially from those at issue in

Goldberg. In *Goldberg*, the Court considered the termination of ongoing public assistance benefits that were essential to recipients' subsistence and daily living expenses. The Court considered the deprivation at issue to be immediate and uniquely harmful, distinguishing it from “virtually anyone else whose governmental entitlements are ended.” *Goldberg*, 397 U.S. at 263–64. The Court therefore concluded that a pre-termination evidentiary hearing was required to minimize risk of an erroneous deprivation. *Id.*

By contrast, the IFR concerns not the deprivation of a constitutional property interest but the imposition of civil monetary penalties authorized by statute for violations of INA 274D(a)(1), 8 U.S.C. 1324d(a)(1); INA 240B(d)(1)(A)–(B), 8 U.S.C. 1229c(d)(1)(A)–(B); and INA 275(b)(1), 8 U.S.C. 1325(b)(1). These penalties do not involve the termination of subsistence benefits or other government benefits. Nor do such determinations typically turn on complex credibility assessments; rather, they generally involve documentary evidence and objective statutory criteria. Therefore, the risk of government error is minimal, and the appeal process provides an adequate opportunity for error correction. Accordingly, the procedural concerns present in *Goldberg* are not implicated to the same degree here. Generally, civil fines are issued after aliens have received sufficient due process to challenge the findings against them and after the aliens have been adequately warned, by ICE and the immigration judge, of the consequences of failing to abide by the terms of the final order.

Under the *Mathews* framework, due process requires procedures that are reasonably designed to ensure fairness in light of the private interest affected, the risk of erroneous deprivation, and the Government's interest. Applying those factors here confirms that an in-person hearing is not required. The private interests at stake, while important, are financial in nature, not subsistence-level. The risk of error is mitigated by the IFR's multi-layered procedural safeguards, including written notice, an initial appeal requiring only a brief written request and explanation, mandatory de novo review by a supervisory immigration officer, and the ability of that officer to request supplemental evidence, giving aliens an additional 15 days to provide evidence or explanation. These safeguards provide aliens, including those that are recent arrivals, low-income, or limited-English proficient,

with meaningful opportunities to be heard.

The Departments also disagree that vulnerable populations require an in-person hearing to ensure adequate participation. Aliens may seek assistance from legal service providers or community organizations. Because the initial appeal filing is minimal and does not require complex filing, aliens are not required to navigate technical evidentiary matters within the initial 15-day period. The ability to supplement the record during supervisory review further ensures that aliens can clarify misunderstandings, correct errors, or provide additional information without the need for a formal oral hearing.

6. Removal of BIA Review

Comment: Several commenters took issue with the IFR's justification for moving appellate review from the BIA to DHS, suggesting that it was insufficient. These commenters broadly suggested that the Departments erroneously discounted the legal complexity of these penalties, asserting that DHS immigration officers do not have the legal training and experience necessary to adjudicate complex legal challenges. One commenter also challenged the IFR's statement that the BIA lacks experience adjudicating these civil penalties, noting that the IFR itself relied on a BIA precedent decision to explain the scope of the voluntary departure penalty. Additionally, commenters also said that the BIA's backlog of cases is not a valid reason to eliminate BIA review. One commenter said that the backlog is a self-created problem attributable to the Attorney General's recent decision to reduce the size of the BIA. Another commenter argued that the BIA's backlog is a result of Congressional funding decisions, and the Departments should not try to solve this funding problem by eliminating the BIA's jurisdiction over certain categories of cases.

Response: As an initial matter, the Departments disagree with the commenters' suggestion that the Departments' explanations for removing the BIA's jurisdiction over these penalties are insufficient. The IFR fully explains the Departments' reasons for eliminating BIA review. These reasons include: (1) the straightforward nature of these penalties and the lack of an operational need, such as an established subject-matter expertise, for the BIA to adjudicate such appeals; (2) the fact that the BIA has a large backlog of cases and appeals take a long time to resolve; (3) the need to prevent these cases from exacerbating the BIA's backlog; and (4)

the need to focus EOIR's resources on its statutorily prescribed functions under the INA, which do not include civil penalty appeals. *See* 90 FR 27441, 27444–47. The Departments believe that these reasons are sound and refer readers to the IFR for further discussion.

The Departments disagree that these penalties involve complicated legal issues that warrant BIA review. The Departments are not persuaded by commenter arguments related to the constitutionality of the IFR's streamlined procedures, civil penalty amounts, statute of limitations issues, and the scope of the unlawful entry penalty, which have been addressed below at Parts III.D.8, and E. Therefore, the commenters' examples are inconsequential to the Departments' conclusions that BIA review is (1) unnecessary because these civil penalties typically turn on straightforward issues of fact that supervisory immigration officers are prepared to adequately review and (2) inadvisable because the BIA's limited, specialized resources are better used to address its unprecedented pending caseload rather than to review decisions that can be adequately reviewed by supervisory immigration officers. *See* 90 FR 27453. Further, the Departments note that if an alien believes that a supervisory immigration officer's penalty decision was legally erroneous, the alien may, after exhausting administrative remedies, seek judicial review under the APA or may challenge the decision in connection with any enforcement action brought to collect the penalty.

Regarding one commenter's claim that the value of BIA review is demonstrated by the fact that the IFR's preamble relied on a BIA precedent decision to explain the scope of the voluntary departure penalty, the Departments note that the IFR cited that decision only to show that aliens generally will have limited defenses to these penalties. *See* 90 FR 27443. As a preliminary matter, the cited decision, *Matter of Zmijewska*, did not involve a civil penalty issue but instead addressed an alien's ineligibility for immigration relief because of the alien's failure to comply with a voluntary departure order. 24 I&N Dec. 87, 93–95 (BIA 2007).

Even still, *Matter of Zmijewska* clarifies that the sole exception to an alien being penalized for failure to depart after being granted voluntary departure is narrowly “limited to situations in which an alien, through no fault of his or her own, is unaware of the voluntary departure order or is physically unable to depart”—which turns not on complicated issues of law

but on issues of fact that can easily be demonstrated by the alien and adjudicated by a supervisory immigration officer. *Id.* at 945. Therefore, this BIA decision does not undermine the Departments' decision to remove BIA review but instead actively supports it.

Further, while the BIA is certainly qualified to adjudicate cases as straightforward as these civil penalties cases, it has not developed specialized expertise through historical practice, as it has only ever reviewed civil penalties cases, not adjudicated the factual findings they involve in the first instance. Moreover, as the IFR correctly points out, the BIA has little specialized expertise even in reviewing appeals of these civil penalties. *See* 90 FR 27450 (noting that only a handful of appeals resulted from civil penalties issued under President Trump's first term); *see also* Section I of this preamble (discussing the small number of BIA appeals in proportion to the number of civil penalties issued in the months leading up to the IFR). Because of this, there is effectively no operational necessity to this review being performed by the BIA instead of by a supervisory immigration officer within DHS, the administrative body that has the historical practical experience of adjudicating these penalties and providing internal DHS review over such determinations, even under a framework where the BIA had appellate authority. Thus, the Departments reaffirm that the BIA's lack of experience adjudicating these penalties in the first instance and lack of meaningful expertise even in reviewing them are valid bases (but not the sole bases) for removing BIA appellate review.

Finally, the Departments disagree that the BIA's backlog is not a valid reason to remove BIA review of these penalty decisions. As discussed above, the BIA's backlog has prompted a need for reconsideration of the BIA's role as an appellate tribunal and renewed focus on implementing streamlining case processing measures. As such, in February 2026, the BIA issued an IFR establishing, among other efficiency measures, that the BIA will generally summarily dismiss appeals unless it votes en banc to consider the appeal on the merits. 91 FR 5267, 5270.⁴⁷ Divesting the BIA responsibility over DHS imposition and enforcement of civil fines and penalties, an area where there is no statutory requirement for

⁴⁷ *See Amica Ctr. for Immigrant Rts. v. EOIR*, No. CV 26–696 (RDM), 2026 WL 662494, at *34 (D.D.C. Mar. 8, 2026) (partially vacating the rule).

EOIR review and where the BIA has no unique adjudicatory expertise, creates operational efficiencies, as the BIA need not devote resources to adjudicate such appeals, which may fluctuate over time and with the IFR's streamlined processes aimed at issuing such penalties at scale.

Additionally, the Attorney General's recent decision to reduce the number of permanent Appellate Immigration Judges who sit on the BIA does not undermine the Departments' concerns that preserving BIA review could unnecessarily delay the penalty process and exacerbate the BIA's backlog. Rather, as EOIR explained in a recent rule, "increasing the size of the BIA has not necessarily equated to a corresponding increase in the number of cases adjudicated or a reduction in the pending caseload."⁴⁸ Reducing the Size of the Board of Immigration Appeals, 90 FR 15525, 15526 (Apr. 14, 2025). EOIR also noted that the size of the BIA has had "significant institutional costs, including effects on the cohesiveness of the Board's decision-making process and the collegiality among Board members, a loss of uniformity in its non-precedent decisions, increased difficulty providing effective leadership, as well as an administrative and supervisory strain on the Board's limited legal staff." *Id.* None of these reasons for reducing the size of the BIA contradict the Departments' stated justification for removing the BIA's jurisdiction over these penalties, including concerns about BIA adjudication timelines and its backlog. For similar reasons, the Departments do not agree that they must wait for Congress to provide additional funding for the BIA, rather than removing BIA jurisdiction over certain categories of cases. As discussed in the IFR, Congress has not required EOIR or the BIA to review these civil penalty decisions, and nothing in the INA precludes the Attorney General from exercising his authority to remove the BIA's regulatory appellate authority over these penalties. 90 FR 27448.

Comment: Several commenters argued that replacing BIA appellate review with DHS appellate review impermissibly consolidates enforcement and adjudication powers within one agency.

They further argued that the IFR's appeal structure creates an inherent conflict of interest because DHS cannot be impartial when reviewing its own actions. One commenter argued that this consolidation of enforcement and adjudication functions violates due process. The commenter explained that the Supreme Court has long recognized that due process requires impartiality from adjudicators, and that any arrangement that gives rise to even a "possible temptation" to act in a biased way that benefits the decisionmaker violates due process. *See Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972). The commenter asserted that DHS assessing these penalties and reviewing appeals raises at least a possibility of temptation to impermissibly affirm the determinations, noting that the IFR itself was issued to allow DHS to impose these penalties more swiftly and at scale. Another commenter noted that these civil penalties are deposited into a DHS account that directly funds immigration detention, removal operations, and border wall construction. They suggested that this creates a powerful institutional incentive for DHS to maximize fine revenue, and, therefore, BIA review is needed to mitigate this potential conflict of interest. To address these concerns, this commenter urged the Departments to restore BIA review or to create an independent review board, separate from ICE and CBP, to review civil penalty appeals. They also suggested that if the IFR's structure is preserved, the rule should, at minimum, sever the financial interest DHS has in imposing these fines by redirecting civil penalty revenue to the Department of the Treasury's general fund rather than retaining it in DHS's enforcement accounts.

Response: DHS strongly rejects commenters' speculative suggestion that DHS immigration officers cannot be impartial and neutral when adjudicating civil penalty appeals. DHS has designed the appeal process to ensure that an alien's appeal is fairly and fully considered on the merits alone. Indeed, the IFR makes clear that any appeal of a penalty decision must be reviewed by a separate supervisory immigration officer who was not involved in the initial civil monetary penalty decision. Additionally, the IFR instructs the supervisory officer to review the appeal record de novo, which ensures that officers decide each appeal solely on the law and facts presented without providing any weight in favor of the initial decision. There is a presumption

of regularity that attaches to the actions of government agencies, *see U.S. Postal Serv.*, 534 U.S. at 10, and commenters have offered no support for their claim that immigration officers will deny otherwise meritorious challenges to civil penalties simply because they are employed by the same agency that issues and enforces these penalties.

Moreover, the Supreme Court has long held that it does not violate due process to combine enforcement and adjudication functions within a single agency. *See Withrow v. Larkin*, 421 U.S. 35, 56–58 (1975) (holding that the fact that the initial charge in an administrative proceeding is brought by the same agency that later adjudicates the matter is not, in and of itself, violative of due process); *see also Marcello v. Bonds*, 349 U.S. 302 (1955) (rejecting the argument that the former INS's comingled prosecutorial and adjudicative functions, under a prior version of the INA, deprived aliens of due process in deportation proceedings). Thus, the Departments disagree with commenters' suggestion that the consolidation of enforcement and adjudication functions within the same agency violates due process or inherently increases the risk of biased decision-making.

The caselaw cited by one commenter does not undermine the Departments' conclusion that the IFR's appeal procedures comport with due process. At most, the cited cases stand for the principle that an agency's adjudicatory procedures could violate due process if the adjudicator has a direct financial or pecuniary interest in the outcome of the case, has prejudged the case, or has some other concrete conflict of interest. These cases, however, do not support the commenter's broad argument that DHS immigration officers cannot be neutral and unbiased merely because they are part of DHS. Rather the caselaw is clear: there is a presumption of honesty and integrity in administrative officials exercising adjudicative functions, even where there is a combination of investigative and adjudicative functions, and some evidence of actual bias must be presented to overcome this presumption. *See Marcello*, 349 U.S. at 311; *Withrow*, 421 U.S. at 47; *see also Baran v. Port of Beaumont Navigation District*, 57 F.3d 436, 446 (5th Cir. 1995). The commenter has not offered any actual and non-speculative reason to think that DHS officers cannot be neutral but will instead be "tempted" to impermissibly affirm penalty decisions issued by other DHS officers.

The other concerns cited by commenters do not support their

⁴⁸ As EOIR noted in another recent rule, between fiscal year 2015 and the end of fiscal year 2025, as the number of permanent Appellate Immigration Judges increased, the BIA's pending case load increased more than five-fold—from 37,285 pending appeals to 202,946 pending appeals. Appellate Procedures for the Board of Immigration Appeals, 91 FR 5267, 5270 (Feb. 6, 2026) (citing EOIR, *Adjudication Statistics: All Appeals Filed, Completed, and Pending* (Nov. 18, 2025), <https://www.justice.gov/eoir/media/1344986/dl?inline> [<https://perma.cc/88C5-MU4N>]).

contention that civil penalty appeals must be adjudicated by the BIA or an agency outside of DHS. The Departments acknowledge that INA 280(b), 8 U.S.C. 1330(b), provides that any civil monetary penalties collected from aliens shall be deposited into a DHS account that funds immigration detention, removal operations, and border wall construction. DHS disagrees, however, with one commenter's view that DHS officers adjudicating civil penalty appeals will be encouraged to maximize fine revenue for this DHS fund. DHS officers adjudicating civil penalty appeals are bound by strict legal and procedural standards to ensure impartiality and fairness in their decision-making processes.⁴⁹ These officers are tasked with applying the law and evaluating the facts of each case independently, without regard to the financial implications of their decisions.⁵⁰ DHS has robust supervisory review mechanisms in place to ensure that adjudications are conducted in compliance with applicable laws, regulations, and ethical standards. The fine amounts are governed by statute and regulations and, once an immigration officer determines that a civil penalty should be issued, the officer's discretion in choosing the fine amount is bound by those statutory and regulatory limits, and this rule does not alter the penalty amounts themselves authorized by statute. Furthermore, the primary purpose of civil monetary penalties under the INA is to enforce compliance with immigration laws, not to generate revenue. DHS remains committed to upholding the integrity of the adjudication process and ensuring that decisions are made based solely on the merits of each case, rather than any external considerations related to funding.

Similarly, DHS disagrees that officers will have an incentive to affirm penalty decisions on appeal because the IFR's preamble emphasizes DHS's desire to maximize the use of these penalties. The Departments agree that the IFR was designed to maximize DHS's ability to impose civil penalties in proportion to the scale of illegal aliens in the United States—not the total amount of the penalties. The IFR achieves this purpose by streamlining the penalty process, but it does not dictate the outcome of any penalty appeal or otherwise pressure immigration officers to affirm initial

penalty decisions. Rather, as discussed above, the IFR makes clear that a supervisory officer must review appeals de novo based solely on DHS records and any evidence or argument submitted by the alien. Moreover, the IFR provides officers with a 45-day period to adjudicate appeals, which will ensure that they have ample time to consider all of the evidence and arguments provided by the alien. Accordingly, DHS believes that statements in the IFR's preamble will not cause immigration officers to prejudge appeals or impermissibly affirm penalty decisions. DHS clarifies that it expects each supervisory immigration officer to decide individual appeals based solely on the law and the facts presented.

Finally, the Departments note that BIA review is not needed to ensure that immigration officers comply with these regulatory requirements and decide each appeal on the basis of its own facts and circumstances. If an alien believes that an immigration officer's decision was erroneous and not based on the applicable law and the facts of the case, then after exhausting administrative remedies, the alien may seek judicial review under the APA or may challenge the decision in connection with any enforcement action brought by DOJ to collect the penalty.

For all of these reasons, individually and collectively, the Departments decline to modify the IFR to restore BIA review. Similarly, DHS declines to create an independent body, separate from ICE and CBP, to adjudicate civil penalty appeals because DHS believes that ICE and CBP supervisory officers are fully capable of deciding each appeal on the basis of its individual facts and circumstances without bias or prejudgment. Additionally, creating an independent board or body would conflict with the purpose of the IFR to streamline the civil penalty process, including the appeal process, because it could take additional time to create and to put in place processes that would ensure that the board receives filings and records in a timely manner. Finally, with respect to one commenter's claim that, in order to remove any conflict of interest, DHS should redirect penalty revenue to a general Treasury fund rather than retaining it in DHS accounts, DHS notes that it cannot redirect funds in contravention of INA 280(b), 8 U.S.C. 1330(b).

Comment: Several commenters characterized the IFR's appeal process as lacking transparency and accountability. They noted that the BIA makes its decisions publicly available and has a well-established process for

publishing decisions on emerging legal issues. In contrast, commenters noted that the IFR does not require DHS to make its civil fine decisions public or treat them as precedential in cases raising similar issues. Commenters argued that this will contribute to arbitrary and inconsistent decisions and a lack of accountability.

Response: As discussed in the IFR and above, the civil penalties covered by this rule typically turn on straightforward issues of fact, rather than complicated questions of law. See 90 FR 27453. Accordingly, the Departments disagree with commenters that there is a need for DHS to establish a process for publishing decisions on emerging legal issues involving these penalties. DHS also notes that ICE and CBP have issued guidance to immigration officers regarding these penalties, including guidance on the various legal issues that commenters have identified and that are discussed throughout this preamble. Finally, nothing in this rule prevents an alien from bringing a federal court challenge to a penalty decision or from raising any legal defense that may be available to the alien in connection with a DOJ enforcement action to collect the penalty. DHS will comply with any adverse court ruling and will apply any legal precedent applicable to these penalties that results from such a challenge.

To the extent that commenters are suggesting that DHS must publish civil penalty decisions to provide transparency, accountability, and consistency in the penalty amounts being assessed, ICE and CBP are applying a uniform practice of assessing the maximum statutorily authorized penalty amount in each case, consistent with the statute of limitations. DHS has an interest in issuing these penalties quickly and at the maximum authorized amount to encourage aliens to comply with removal and voluntary departure orders. To achieve these dual objectives, DHS has determined that ICE and CBP should assess the maximum penalties authorized by law.

7. Mitigation Factors; Motions To Reopen

Comment: Commenters argued that the rule should allow aliens to seek mitigation, and it should clarify that DHS should consider mitigating factors when assessing penalties. One commenter recommended a tiered penalty system based on severity and good faith compliance efforts. Another commenter recommended that the agencies adopt a means-tested fine structure that considers the recipient's

⁴⁹ E.g., *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) (recognizing that government decisionmakers adjudicating matters involving property must be impartial).

⁵⁰ *Id.*

financial capacity. Another commenter points out that the government considers mitigating factors for employers subject to penalties. They state that in assessing fines against employers of aliens under the Immigration Reform and Control Act, the government considers factors such as the size of their business, their good faith, the seriousness of the violations, whether the employee is an alien, and the employer's history of previous violations. Finally, one commenter argues that the rule undermines procedural fairness by eliminating any right for aliens to request reopening while preserving reopening authority for DHS.

Response: The Departments disagree that the IFR should authorize aliens to seek mitigation of penalty amounts, create a tiered penalty structure, or adopt a means-tested framework for assessing penalties. The civil monetary penalties addressed in this rule arise under INA 240B(d), 274D, and 275(b), 8 U.S.C. 1229c(d), 1324d, and 1325(b). These statutory provisions do not require DHS or DOJ to adjust penalty amounts based on mitigating circumstances, financial capacity, or subjective good-faith factors, nor do they provide a means for aliens to request discretionary mitigation. In contrast, several of the statutes cited by commenters, including those governing certain employer sanctions under the IRCA, explicitly establish mitigating factors that DHS or DOJ must consider when assessing penalties. Congress included no such language in the statutory provisions at issue here. Additionally, President Trump's Executive orders direct DHS to "ensure the assessment and collection of all fines and penalties [DHS] is authorized by law to assess and collect from aliens unlawfully present in the United States"⁵¹ and to "take all appropriate action to secure the borders of our Nation . . . [including by] deterring and preventing the entry of illegal aliens into the United States."⁵²

At the same time, the IFR does not foreclose DHS from rescinding or reopening decisions on its own initiative, where doing so is necessary to ensure administrative accuracy, correct an error, or address other considerations relevant to sound enforcement. This internal authority is procedural in nature and serves the agency's interest in consistency, fairness, and error

correction. Allowing aliens to file motions to reopen before DHS for the purpose of seeking mitigation, particularly after the supervisory review process, would undermine the Department's legitimate interests in finality, administrative efficiency, and the timely initiation of the collection process, which are essential to administering a nationwide penalty scheme. The civil monetary penalties addressed in this rule arising under INA 240B(d), 274(D), and 275(b), 8 U.S.C. 1229c(d), 1324d, and 1325(b), do not confer a statutory right on aliens to request reopening of a final civil monetary penalty determination. The Departments therefore decline to create a new regulatory mechanism that would effectively grant aliens a right to reopen final decisions or seek mitigation after supervisory review has concluded.

The Departments also disagree with commenters who argued that fairness requires adopting mitigation factors analogous to those applicable to employers sanctioned under the IRCA. That comparison is misplaced. IRCA explicitly directs the government to consider certain mitigating factors when assessing employer penalties. By contrast, the penalties at issue here are based on statutory conditions, such as failure to comply with voluntary departure or the presence of a prior removal order, that turn on objective, records-based facts. These provisions do not require a discretionary, multi-factor penalty assessment. The Departments are not required to import into these statutes mitigation frameworks that Congress has chosen to include elsewhere but omitted here.

For these reasons, the Departments conclude that the IFR appropriately reflects the statutory framework governing civil penalties under INA 240B(d), 274D, and 275(b), 8 U.S.C. 1229c(d), 1324d, and 1325(b), and that adopting a mitigation regime, a tiered fine system, a means-tested structure, or respondent-initiated motions to reopen is not required by the governing statutes, and is administratively impractical and beyond the scope of this rulemaking.

8. Civil Penalty Amounts; 8 CFR 281.1(g)

Comment: Some commenters argued that the fines imposed by the IFR implicate the Eighth Amendment's Excessive Fines Clause. They contend that, under U.S. Supreme Court precedent, even if a penalty is deemed "civil," it constitutes punishment for purposes of the Excessive Fines Clause if it serves retributive or deterrent purposes, rather than remedial ones.

They broadly claimed that the IFR authorizes DHS to issue fines that serve no remedial purpose, and the IFR's self-expressed intent—to deter future unlawful entries and encourage greater compliance with removal and voluntary departure orders—reflects a punitive purpose. Commenters broadly stated that these penalties are excessive under the Eighth Amendment because they can result in sums "disproportionate" to the underlying immigration violations.

One commenter noted that there is a wide range of circumstances surrounding an alien's decision to come to the United States or remain in the country after a removal order or voluntary departure order and suggested that the Departments' failure to consider these circumstances violates the Excessive Fines Clause. The commenter listed examples, including aliens fleeing persecution or seeking a better life for their children, aliens who were unable to depart due to illness, financial problems, aliens with pending challenges to a removal order, and aliens who were removed in absentia and were unaware of the order. One commenter suggested that DHS should cap fines at levels that reflect the nature of the violation and an alien's ability to pay.

Response: As an initial matter, the Departments note that the IFR did not change the scope or amount of the civil monetary penalties that Congress has established. It only changed the procedures for issuing and adjudicating these civil monetary penalties and for allowing an alien to contest them. See 90 FR 27454. DHS has imposed the maximum statutory penalties under both the IFR's streamlined penalty process and the prior penalty process in 8 CFR part 280. This indicates that commenters' Eighth Amendment concerns are directed primarily at the penalty amounts authorized by Congress, not at the IFR's procedures, and are therefore outside of the scope of this rule. Nevertheless, in so far as commenters are suggesting the IFR is unlawful because it does not require DHS immigration officers to assess proportionality or consider mitigating factors before imposing the maximum penalty amount, the Departments respond as follows: (1) these civil monetary penalties do not fall within the Eighth Amendment's Excessive Fines Clause, and (2) even if treated as "fines," they are not excessive under the factors in *United States v. Bajakajian*, 524 U.S. 321 (1998).

The Supreme Court has never held that civil monetary penalties for immigration violations are "fines" for purposes of the Excessive Fines Clause.

⁵¹ E.O. 14159, *Protecting the American People Against Invasion*, E.O. 14159, 90 FR 8443 (Jan. 20, 2025).

⁵² E.O. 14165, *Securing Our Borders*, 90 FR 8467 (Jan. 20, 2025).

The Court's cases in this area have either involved sanctions ordered as penalties for criminal conduct, or civil forfeiture actions imposed after a criminal conviction, where the property was used in the commission of the crime. *See Alexander v. United States*, 509 U.S. 544, 558 (1993) (criminal forfeiture of property); *Bajakajian*, 524 U.S. at 328 (criminal forfeiture of currency); *Austin v. United States*, 509 U.S. 602, 619–22 (1993) (civil forfeiture of property used to commit drug crimes). By contrast, the penalties covered by this rule are not imposed in connection with criminal offenses. They are civil measures designed to promote compliance with the immigration laws and support DHS's enforcement efforts. The Supreme Court has long recognized that Congress may impose civil monetary penalties for violations of the Nation's immigration laws, and that such penalties are not criminal in nature. *See, e.g., Oceanic Steam Nav. Co. v. Stranahan*, 214 U.S. 320, 337 (1909). Moreover, the fact that these penalties are intended to serve a deterrence purpose does not render them subject to the Excessive Fines Clause because “deterrence may serve civil as well as criminal goals.” *Hudson v. United States*, 522 U.S. 93 105, (1997) (internal quotation marks omitted); *see also Garner v. U.S. Dep't of Labor*, 221 F.3d 822, 827 (5th Cir. 2000) (“That a statute serves to deter future conduct does not automatically render it punitive.”). In addition, Congress clearly intended these penalties to serve a remedial purpose. As explained in Section II of this preamble, apprehending, detaining, and removing removable aliens, and conducting section 240 removal proceedings imposes significant costs on the Departments, and a large number of unlawful entries strain resources at the border. Congress recognized these harms and authorized civil penalties to both encourage compliance with the immigration laws and to help fund DHS's border security and removal efforts. *See INA 280(b)(3)*, 8 U.S.C. 1330(b)(3) (providing that the Immigration Enforcement Account is available for removal of criminal aliens and structures along certain portions of the United States border); *see also H. Rep. No. 104–469 pt. 1 at 155* (1996).

Even if these penalties were considered fines under the Excessive Fines Clause, DHS's decision to impose the maximum amount authorized by Congress without considering each alien's individual reasons for unlawful entry or failure to depart after a removal or departure order is neither excessive

nor unconstitutional. Courts of appeals generally apply the following factors from *Bajakajian*, 524 U.S. at 337–40, to determine whether a fine is “grossly disproportional” to the gravity of an offense: (1) the amount of the penalty authorized by Congress and the nature of the harm that results from a violation; (2) the class of persons to whom the statute principally applies; and (3) a comparison with potential criminal penalties. Taken together, these factors support the conclusion that the IFR need not be amended to limit DHS's authority to impose the maximum statutory penalties or to require a proportionality analysis before issuing a civil penalty or otherwise consider mitigating factors.

With respect to the first factor, judgments about the appropriate penalty amount for a violation “belong in the first instance to the legislature.” *Bajakajian*, 524 U.S. at 322. The civil monetary penalties covered by this rule reflect Congress's considered judgment that the conduct involved—an alien's unlawful entry or failure to depart after a removal or departure order—is particularly serious and warrants substantial fines to promote compliance with immigration laws. *See* 90 FR 27454. Consistent with Congress's judgment and current enforcement priorities, DHS has determined that imposing the maximum authorized penalties is an appropriate response to the large number of aliens who have unlawfully entered the United States or have violated removal and departure orders in recent years. *See* Section II of this preamble. Courts have held that an agency's civil penalty decision is not excessive under the Eighth Amendment when it does not exceed the statutory maximum. *See Newell Recycling Co. v. EPA*, 231 F.3d 204, 210 (5th Cir. 2000) (“No matter how excessive (in lay terms) an administrative fine may appear, if the fine does not exceed the limits prescribed by the statute authorizing it, the fine does not violate the Eighth Amendment”); *see also Pharaon v. Bd. of Governors of the Fed. Res. Sys.*, 135 F.3d 148, 155–57 (D.C. Cir. 1998).

The specific statutorily authorized penalty amounts are also proportionate to the underlying immigration law violations. For the unlawful entry penalty, the maximum penalty (adjusted for inflation) is \$500 for each entry. *See* 8 CFR 280.53(b)(15). That amount is not disproportionate to unlawful entries, including repeated unlawful entries, in violation of the immigration laws in light of Congress's concerns when enacting this penalty. *See H. Rep. No. 104–469 at 155* (1996) (noting that

unlawful entry “with no consequences undermines the credibility of our efforts to secure the border”).

For voluntary departure civil penalties, Congress has authorized Immigration Judges to set penalties between \$1,992 and \$9,970 (as adjusted for inflation). *See* 8 CFR 280.53(b)(3). Under longstanding regulations, Immigration Judges or the BIA must select an amount within that range that reflects the likelihood that the alien will comply with voluntary departure or may apply a presumptive amount of \$3,000. *See* 8 CFR 1240.26(l); 73 FR 76927, 76936 (Dec. 18, 2008). DHS adheres to the amount set by EOIR. That amount is not excessive because it reflects both the adjudicator's assessment of the incentive needed to secure compliance and Congress's desire to ensure consequences for violating departure orders. *See H. Rep. No. 104–469, at 122* (noting how aliens with voluntary departure and had “very little incentive” to actually depart the United States prior to IIRIRA).

For failure to depart after a removal order, Congress has authorized DHS to impose a penalty of \$998 per day (as adjusted for inflation) for each day an alien willfully fails to depart. Commenters argue that these penalties are excessive because the cumulative total may, in some cases, exceed \$1,000,000. The Departments disagree. Congress designed this provision so that each day of willful failure to depart constitutes a separate, repeating violation. *See* Section III.E. of this preamble. In this context, proportionality is assessed by looking at each per day penalty, not the cumulative amount. *See e.g., United States v. Schwarzbaum*, 127 F.4th 259, 276 (11th Cir. 2025). A \$998 per diem penalty is not excessive compared to other immigration-related civil penalties. It reflects Congress's judgment as to the seriousness of the harm that flows from each day an alien remains in the United States in willful violation of a removal order and how these willful violations undermine the credibility of the immigration laws and warrant a separate penalty.

Even when viewed cumulatively, the per diem failure to depart penalty is not excessive. Congress added this authority in IIRIRA to strengthen immigration enforcement and to increase the consequences for ignoring removal orders, in response to the problem of aliens remaining in the United States—sometimes for years—after final deportation orders. *See H.R. Rep. No. 104–469, pt. 1, at 160* (1996) (explaining when enacting IIRIRA that “aliens who have final orders of deportation [often]

remain in the United States indefinitely” and noting that “[a]s a result, the resources expended to identify, apprehend, and provide a hearing to a deportable alien are all too often wasted”). Against this backdrop, Congress expressly authorized DHS to impose per-day penalties that may reach substantial sums when an alien willfully remains in the United States for extended periods in violation of a removal order. In these circumstances, imposing the maximum daily amount, even where it results in a large total, is not excessive because the total directly reflects a long-running, repeated violation. *See Schwarzbau*, 127 F.4th at 284 (“when a cumulative fine is made up of constitutionally proportionate penalties, the cumulative fine “is, literally, directly proportionate to the offense”) (citation and internal quotations omitted).

Taken together, the three penalties covered by this rule reflect Congress’s calibrated assessment of the harm associated with each type of violation. Lower penalties for unlawful entry generally apply to aliens apprehended while entering and who are often subject to prompt return or expedited removal, thereby conserving resources associated with section 240 removal proceedings. Higher penalties for failure to depart reflect Congress’s judgment that remaining in the United States after a departure or removal order both seriously undermines the integrity of the immigration system and results in wasted enforcement and adjudicative resources. *See* H. Rep. No. 104 469, pt. 1, at 160. Accordingly, the Departments believe that imposing the maximum statutorily authorized amount of these penalties is both consistent with Congress’s purpose in enacting these penalties and not excessive given those amounts reflect the value of the harm Congress placed on such violations. *See United States v. Chaplin’s, Inc.*, 646 F.3d 846, 852 (11th Cir. 2011) (“Congress, as a representative body, can distill the monetary value society places on harmful conduct”).

The second *Bajakajian* factor—whether the penalties apply to the class of persons for whom the statute was principally designed—also supports the Departments’ position. Aliens subject to these penalties fall squarely within the class Congress targeted. For unlawful entry penalties, an alien’s apprehension while attempting to enter the United States unlawfully is sufficient to support the penalty. For failure to depart penalties, ICE guidance instructs officers to confirm that the alien is subject to a final removal or voluntary departure order, that there is no DHS

record of the alien’s departure, and that, based on available records, there are no legal impediments or other circumstances that would negate a willful or voluntary failure to depart. For per diem penalties, ICE guidance further requires officers to exclude periods when the alien was lawfully permitted to remain in the United States, such as during the pendency of a stay of removal. This is all Congress has required. Congress has clearly provided that any alien who engages in the proscribed conduct—unlawfully entering the United States or willfully or voluntarily failing to depart after a removal or departure order—is subject to a civil penalty up to the statutory maximum. By contrast to other immigration-related civil penalties⁵³ and contrary to commenters’ suggestion, Congress has not required DHS to adjust the penalty based on proportionality or to consider specific mitigating circumstances. To the extent that commenters are suggesting that DHS must consider factors such as an alien’s inability to obtain travel documents, hospitalization, or other circumstances beyond the alien’s control, such factors could negate the “willfulness” or “voluntariness” of an alien’s conduct and, if the alien demonstrates them on appeal, the alien may not be subject to the penalty at all. However, the alien is best positioned to raise these considerations on appeal because DHS would generally not have knowledge of such circumstances. The second *Bajakajian* factor therefore supports DHS’s decision to assess these penalties up to the maximum statutorily authorized amount without first conducting a proportionality analysis or considering mitigating circumstances.

The third *Bajakajian* factor—comparison to potential criminal sanctions—likewise weighs against a finding of excessiveness. In IIRIRA, Congress not only created the civil failure to depart penalty but also amended INA 243, 8 U.S.C. 1253, to make it a criminal offense for an alien to willfully fail or refuse to depart within 90 days of a final removal order. Congress authorized imprisonment of up to four years, a fine, or both, with enhanced penalties for certain criminal aliens. *See* INA 243(a)(1), 8 U.S.C. 1253(a)(1). Congress has also authorized criminal penalties for unlawful entry,

including up to six months’ imprisonment, a fine, or both, with increased penalties for repeat offenses. *See* INA 275(a), 8 U.S.C. 1325(a). These criminal penalties are significantly more severe than the civil penalties at issue, and Congress specifically provided that the maximum civil penalties may be imposed in addition to any criminal sanctions. *See* INA 274D(b), 275(b), 8 U.S.C. 1324d(b), 1325(b). In light of this statutory framework, all three *Bajakajian* factors weigh strongly against commenters’ arguments that imposing the maximum statutory civil penalties violates the Excessive Fines Clause.

For these reasons, the Departments decline to amend the rule to limit the discretion of DHS immigration officers to impose the maximum statutory penalty amounts or require that they apply proportionality factors before doing so. Finally, regarding one commenter’s concern about “ability to pay,” the Departments note that Congress has not required DHS to consider an alien’s ability to pay in assessing these penalties, and the Supreme Court has not held this factor must be analyzed under the Excessive Fines Clause. Absent a legal requirement for DHS to consider an alien’s ability to pay, DHS believes that adjusting a fine amount lower based on an alien’s ability to pay would diminish the rule’s deterrent effect.

Comment: One commenter alleged that 8 CFR 281.1(g) is inconsistent with 8 CFR 1240.26(l) mandating that the Immigration Judge or BIA advise the alien of the civil penalty amount at the time of granting voluntary departure or a presumptive amount of \$3,000 will be set. Another commenter noted that DHS has increased the penalty amounts in 8 CFR 280.53 for failure to depart violations incrementally over time from \$500 per diem penalty in 2011, to a \$998 per diem penalty in 2025, with DHS making incremental adjustments each year in between. The commenter claims that “the amount of fines that allegedly accrued on any given day should have been limited to the amount authorized by the regulation in effect on that day.” The commenter acknowledges that the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015 allows DHS to adjust civil penalty amounts for inflation each year and to apply adjustments retroactively, but the commenter argues that “charging a lump sum without itemizing the exact amounts that DHS alleges to have accrued on any specific dates nor any explanation for why DHS believes fines accrued during this particular timeframe

⁵³ *See e.g.*, INA 274A(e)(5), 8 U.S.C. 1324a(e)(5) (listing various factors that must be considered when determining the appropriate amount of the penalty for certain employment-related immigration violations); INA 273(e), 8 U.S.C. 1323(e) (directing DHS to prescribe regulations for reducing carrier penalties for transporting undocumented aliens in appropriate circumstances).

deprives respondents of critical information necessary to contest such charges.” The commenter argues the IFR is defective because it does not require DHS to itemize penalties that “DHS alleges to have accrued on any specific dates nor [provides] any explanation for why DHS believes fines accrued during this particular timeframe.”

Response: First, DHS notes that the IFR does not direct immigration officers to apply the penalty amounts listed in 8 CFR 280.53. Rather, 8 CFR 281.1(g) merely refers them to that provision so that they have access to information concerning the current inflation adjusted amount for each penalty. Immigration officers must determine how to apply those inflation adjusted rates in the context of each individual case, or whether to apply those rates at all, consistent with ICE and CBP guidance. Indeed, contrary to one commenter’s claim, ICE guidance directs immigration officers to apply the penalty amount set by an Immigration Judge or the BIA or a \$3,000 amount if no penalty amount is included in the voluntary departure order when assessing voluntary departure civil penalties. Accordingly, DHS is assessing voluntary departure penalties consistent with 8 CFR 1240.26(l).

Further, the Departments do not agree that DHS should itemize penalty amounts in penalty decisions imposing fines for willful failure to depart under INA 274D(a)(1), 8 U.S.C. 1324d(a)(1). The commenter’s suggestion that “the amount of fines that allegedly accrued on any given day should [be] limited to the amount authorized by the regulation in effect on that day” is inconsistent with the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, Public Law 114–74 (Nov. 2, 2015), 28 U.S.C. 2461 note. The 2015 Amendments amended section 6 of the Inflation Adjustment Act to provide that “[a]ny increase under this Act in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.” Congress’s specific reference to applying the adjustments to civil monetary penalties “whose associated violation predated” the effective date of the adjustment clearly contemplates that inflation adjustments after 2015 can be applied to violations occurring prior to the effective date of the increased civil penalty amounts—but only if the civil penalties are “assessed after the date the increase takes effect.” That is precisely how DHS applies the failure to depart penalties under INA 274D(a)(1), 8 U.S.C. 1324d(a)(1). Specifically, DHS applies

the inflation adjusted amount that is in effect on the day that the penalty is “assessed”—i.e., when DHS issues the penalty decision—regardless of the date of the removal order or the amount that was authorized on any one day in the period for which the penalty applies—i.e., any day that the alien willfully failed to depart the United States after the final removal order.

To the extent that the commenter is concerned about DHS applying the current inflation adjusted rate to violations that occurred prior to the Inflation Adjustment Improvements Act of 2015, DHS notes that the commenter’s concern is misplaced. As discussed above in this preamble, an alien is liable for a per diem penalty for each day he willfully remains in the United States after a final removal order regardless of when the removal order first became final. However, DHS is applying the failure to depart penalty for only five years back from the date of the penalty decision. Therefore, DHS would only assess the per diem penalty at the adjusted rate in place at the time of the penalty decision for a total of five years back from the date of the decision, even if the alien’s removal order became final prior to 2015.

Regarding commenters’ suggestion that DHS needs to itemize penalty decisions because the alien may not be liable for a per diem penalty for some portion of the period that the alien remained in the United States, ICE guidance directs immigration officers account for any periods after the removal order became administratively final during which the alien was authorized to remain in the United States (e.g., a stay of removal, a later approved immigration benefit). See Section III.E.2 of this preamble. To the extent that an alien’s individual circumstances excused an alien’s willful or voluntary failure to depart for some period of time (e.g., the alien was hospitalized or incarcerated or otherwise was unable to depart due to circumstances beyond the alien’s control), the alien is best positioned to raise these issues on appeal. DHS cannot be expected to know about an alien’s individual circumstances that prevented the alien from departing.

E. Other Matters Related to the IFR

1. Statute of Limitations

Comment: Several commenters asserted that the rule does not explain how the federal statute of limitations applies to the civil penalties imposed under the IFR. One commenter suggested that the IFR’s streamlined penalty procedures make it difficult for

aliens to raise statute of limitations defenses, and the complexity of these defenses undermines the IFR’s assumption about the readily verifiable and straightforward nature of these penalties. One commenter argued that the IFR does not require DHS to include information in the penalty decision about when the violation occurred which makes it difficult for aliens and their counsel to determine if DHS is correctly applying the statute of limitations. The commenter suggested that the 15-day appeal period, combined with the use of ordinary mail to serve decisions, could prevent aliens and their attorneys from investigating statute of limitations issues and raising the statute of limitations as a defense to these penalties. The commenter argued that eliminating BIA review is particularly problematic because DHS immigration officers do not have the legal expertise to resolve complex statute of limitations issues, and DHS does not have a mechanism to issue binding decisions on legal issues including those involving statutes of limitation.

Commenters offered their views regarding how the federal statute of limitations, 28 U.S.C. 2462, applies to the penalties covered by this rule. For the failure to depart penalties, commenters claimed that the five-year statute of limitations begins to run the moment the voluntary departure period ends or when a removal order becomes final. They stated that DHS cannot impose fines for conduct that happened more than five years ago, such as remaining in the United States after a voluntary departure order period expired or after a removal order became final, particularly when there is no caselaw or statute recognizing a “continuing violation” theory for these penalties. For the unlawful entry penalties, commenters said that the limitations period begins to run once an alien is apprehended while in the process of entering or attempting to enter the United States.

Response: The Departments disagree that the rule should be rescinded because it fails to include a statute of limitations provision. As an initial matter, the Departments emphasize the IFR’s limited scope. The IFR changed only the procedures by which DHS issues and adjudicates certain civil monetary penalties and the manner in which aliens may contest them. The IFR did not change or alter the criteria for issuing these penalties, including how DHS interprets or applies the general federal statute of limitations for these penalties. Indeed, the Departments note that none of the Departments’ other civil

monetary penalty regulations contain a statute of limitations provision, including 8 CFR 280, which, prior to the IFR, governed the process for assessing the penalties covered by this rule.

Accordingly, the Departments believe that it was reasonable and appropriate to limit the scope of the IFR consistent with the scope of the Departments' other civil penalty regulations, especially because of the IFR's narrow purpose of streamlining the process for the failure to depart and unlawful entry penalties. Therefore, the Departments decline to amend the rule to add a statute of limitations provision. For the same reasons, the Departments do not agree with commenters' suggestion that failure to include a statute of limitations provisions renders the rule arbitrary or capricious.⁵⁴

The Departments also disagree that the IFR's streamlined proceedings make it too difficult for aliens to assert a statute of limitations defense. Consistent with 8 CFR 281.1(c)(1), each penalty decision lists the date when the alien became subject to a final removal or a voluntary departure order, or when the alien was apprehended entering or attempting to enter the United States unlawfully. See DHS Form 281, *Notice of Violation and Order*. Therefore, to the extent that an alien believes that the violation occurred outside of the statute of limitations, the penalty decision itself contains the relevant information to dispute the penalty. Further, aliens should already possess any documents needed to dispute the information contained in the penalty decision. For example, an alien who disputes the date of a final removal or voluntary departure order can simply provide a copy of his removal or departure order or any documents showing that the alien's removal order or voluntary departure period was delayed because of an appeal or a stay of removal. The same is true for aliens subject to civil penalties for unlawful entry: the relevant charging document will list the date that DHS apprehended the alien entering or attempting to enter the United States. Commenters do not explain why aliens cannot retain these important documents, and the Departments will not assume otherwise. Accordingly, the Departments believe

that the penalty decision contains sufficient information to allow an alien to raise a statute of limitations defense, and the IFR's 15-day appeal period provides ample time for aliens and their attorneys, if any, to gather evidence to compliment or prepare such a defense.

Similarly, the Departments do not agree with commenters' position that BIA review is needed because legal questions regarding the statute of limitations cannot adequately be resolved by DHS immigration officers on appeal.

ICE and CBP both apply the statute of limitations for these penalties in a straightforward way that refutes commenters' arguments that additional procedures, including BIA review, are needed due to the complexity of statute of limitations issues. First, ICE only assesses penalties under INA 240B(d), 8 U.S.C. 1229c(d), if an alien's voluntary departure period expired within five years of the order imposing the penalty.⁵⁵ CBP only assesses penalties under INA 275(b), 8 U.S.C. 1325(b), against aliens apprehended in the last five years while entering (or attempting to enter) the United States. The Departments note these approaches are consistent with commenters' interpretation of the general statute of limitations, 28 U.S.C. 2462, applicable to these penalties. This application ensures consistency in the assessment of these penalties and provides clear direction to immigration officers on how far back to assess these penalties. Therefore, aliens do not need to prepare, and immigration officers do not need to decide, complicated statute of limitations defenses for these penalties in light of this approach. If an alien believes a penalty is contrary to this approach, the alien can appeal the civil penalty decision and provide a copy of the voluntary departure order indicating the date of the violation or, in the case of an unlawful entry penalty, the charging document listing the date and location of apprehension.

With respect to penalties under INA 274D(a)(1), 8 U.S.C. 1324d(a)(1), for willful failure to comply with a removal order, immigration officers can impose these penalties regardless of the date of the post-IIRIRA final removal order, but the per diem penalty amount should be assessed only for the five-year period preceding the date that the penalty is issued. Contrary to commenters' arguments, this is consistent with the plain language of the statute and

caselaw interpreting similar penalty statutes for the purposes of determining the application of the general five-year statute of limitations under 28 U.S.C. 2462. Section INA 274D(a)(1) of the INA, 8 U.S.C. 1324d(a)(1), provides that "any alien subject to a final removal order who—willfully fails or refuses to depart from the United States . . . shall pay a civil penalty of not more than \$500 to [DHS] for each day the alien is in violation of this section." (emphasis added). When a civil penalty statute imposes a per diem penalty, the "continuing violation" doctrine applies, and the Government may assess the penalty even if the first violation occurred more than five years back. See *Interamericas Invs., Ltd. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 111 F.3d 376, 382 (5th Cir. 1997) (explaining that "[w]here the civil penalty provision at hand contemplates per diem penalties for violations, then continuing violations are cognizable under the general statute of limitations."). Similarly, when a statute contemplates "repeated violations," each new violation restarts the statute of limitations, but penalties can be assessed only for the violations occurring within that limitations period. See *Hamer v. City of Trinidad*, 924 F.3d 1093, 1100 (10th Cir. 2019) (explaining the repeated violation doctrine). Under either doctrine, INA 274D(a)(1), 8 U.S.C. 1324d(a)(1), plainly indicates that Congress intended for an alien to be subject to a continuing or new penalty each day he remains in the United States in violation of a removal order regardless of when the final removal order was issued. And, as a matter of policy, ICE is applying the per diem penalty amount only for the five-year period preceding the date that the penalty is issued, consistent with the "repeated violations" doctrine.

Additionally, the Departments note that aliens can seek judicial review of final penalty decisions, after exhausting administrative remedies. See 5 U.S.C. 704. Aliens can also raise any available defense, including statute of limitations defenses, in connection with any enforcement action that DOJ brings to collect these fines.

For these reasons, individually and collectively, the Departments disagree with commenters' view that the IFR should be rescinded or revised because it does not address how the statute of limitations applies to these penalties. For the same reasons, commenters' views about the complexity of statute of limitations issues do not undermine the Departments' determination that the process for these penalties can be

⁵⁴ To the extent that any civil penalties issued under the IFR were determined to be inconsistent with the statute of limitations, addressing such fines would be outside of the scope of this final rulemaking. The preamble to a final rule exists to satisfy the APA's requirement of "a concise general statement of [the rule's] basis and purpose," 5 U.S.C. 553(c), and addressing fines already issued under the IFR—to the extent that is even necessary—plainly falls outside of that.

⁵⁵ DHS acknowledges that some fines have been issued based on violations that occurred more than five years after the voluntary departure period and is taking action to ensure fines issued in the future are consistent with the statute of limitations.

streamlined because of their straightforward nature.

2. Implementation Matters and Alternatives

Comment: Implementation concerns and alternatives were also raised. One commenter expressed concern that the rule lacks adequate safeguards to prevent civil monetary penalties from being applied to aliens who currently hold, or are eligible for, lawful or protected status. The commenter stated that the rule provides no clear guidance on how DHS will avoid imposing fines on individuals who have been granted TPS, asylum, or relief under the VAWA or the T and U visa programs. These groups, the commenter explained, often have pending or approved immigration benefits that authorize their continued presence in the U.S. or excuse prior periods of unlawful presence. The commenter also noted that the IFR does not address how DHS will handle cases where aliens are beneficiaries of prosecutorial discretion, deferred action, or stays of removal. According to the commenter, the absence of explicit instructions combined with the IFR's streamlined process, risks imposing fines on aliens who are lawfully present under DHS policy or court order. The commenter stated it was critical to recognize that individuals with lawful or protected status are not obligated to depart.

Another commenter suggested that DHS should implement this rule as a limited pilot program before implementing it nationwide. The commenter said that a pilot-and-evaluate model would allow DHS to collect empirical evidence to assess the impact of civil fines on compliance, family stability, and financial impact of these penalties on aliens and their families. Using this empirical evidence to guide adjustments would ensure that civil fine enforcement evolves in response to real-world outcomes rather than theoretical assumptions.

Response: As an initial matter, the Departments reiterate that the IFR did not change the categories of aliens subject to civil penalties or ICE's process for deciding whether an alien is subject to a civil penalty. Rather, the IFR was issued as a procedural rule and governs only the procedures that apply to these penalties. Therefore, DHS declines to modify the IFR in this final rule to clarify the category of aliens who are or are not subject to these penalties. Immigration officers confirm an alien's current status based on available records before assessing a civil fine by referencing multiple platforms and immigration databases. ICE's guidance

to immigration officers provides that aliens with approved applications for lawful or protected status—such as TPS, Form I-730 Refugee/Asylee Relative benefits, VAWA protections, DACA, and T-visas and U-visas—should not be issued a civil fine. ICE also accounts for any deferrals of removal triggered by the filing of certain applications before USCIS, consistent with applicable statutes and regulations. When calculating a fine under INA 274D, immigration officers account for any periods after the removal order became administratively final during which the alien was authorized to remain in the United States due to, e.g., a stay or deferral of removal. As part of the individual case review process, immigration officers review documents and supporting information across multiple immigration systems, including systems and platforms of entities such as USCIS, CBP, and DOJ/EOIR. DHS clarifies that lawful status cannot be conferred through an immigration officer's exercise of discretion and that the immigration officer cannot excuse an alien's obligation to depart pursuant to a final removal order. Rather, this measure reflects a determination not to pursue enforcement action at the time such discretion is exercised. As such, individuals who are beneficiaries of this measure remain subject to the underlying immigration laws and obligations, including potential civil penalties for violations.

Comment: One commenter asserted that the rule misinterprets and overextends the scope of the civil monetary penalty authorized by INA 275(b), 8 U.S.C. 1325(b). The commenter stated that, by statute, these penalties apply only to aliens who are “apprehended while entering (or attempting to enter)” the United States, and not to those later encountered within the interior after an unlawful entry. The commenter objected to language in the IFR suggesting that DHS may rely on Form I-213 or other records of interior apprehension to establish liability under INA 275(b), 8 U.S.C. 1325(b). The commenter argued that such an interpretation is inconsistent with the plain language of the statute and could lead to the improper assessment of fines against aliens who were not apprehended at the time of entry. The commenter urged DHS to revise the rule to clarify that INA 275(b), 8 U.S.C. 1325(b) penalties cannot be imposed on aliens apprehended after entry or encountered away from the border. The commenter also stated that the rule should require DHS to include

specific evidentiary information in any order imposing this penalty such as the date of the attempted entry and the date and location of the arrest, to ensure that the penalty is applied only in circumstances consistent with statutory authority.

Response: The Departments disagree with the commenter's characterization that the rule overextends the scope of penalties under INA 275(b)(1), 8 U.S.C. 1325(b)(1). The rule does not expand the statutory application of 275(b), 8 U.S.C. 1325(b)(1) but rather provides procedural clarity for the assessment and collection of civil monetary penalties. The Departments interpret INA 275(b), 8 U.S.C. 1325(b)(1) to apply to aliens who are apprehended while entering or attempting to enter the United States. In practice, CBP will assess an INA 275(b), 8 U.S.C. 1325(b)(1), penalty only when it apprehends an alien who has entered (or attempted to enter) the United States without inspection in the past seven days and who has not yet reached their destination, consistent with the statutory language and legislative intent of INA 275(b)(1), 8 U.S.C. 1325(b)(1). As indicated above, the applicable statute of limitations runs five years from the date of apprehension.

Comment: Commenters expressed concern that the rule does not address how civil monetary penalties would apply to aliens whose prior removal orders are later reopened, vacated, or otherwise resolved in a manner that permits adjustment of status or other immigration relief. They noted that DHS often agrees to join motions to reopen removal proceedings to allow individuals to pursue lawful status or relief. They stated that it was “critical to recognize that those with lawful status in the U.S. are under no obligation to depart,” and that “[t]heir continued presence in the U.S. is not a willful failure to depart, but a lawful consequence of the status conferred upon them. Another commenter urged DHS to clarify that civil penalties assessed must be rescinded when a removal order is reopened and will not be used as a basis to deny the alien's future attempts to regularize their immigration status. The commenter suggested, without much elaboration, that the IFR should clarify that DHS should not apply fines against aliens with *in absentia* removal orders.

Response: ICE's guidance to immigration officers provides that aliens whose removal order is stayed should not be issued an INA 274D, 8 U.S.C. 1324d, failure to depart penalty. ICE confers with DHS's Office of the Principal Legal Advisor before issuing a

failure to depart penalty in any case in which a Motion to Reopen (“MTR”) has been adjudicated for review of the reasons for reopening asserted by the alien and any circuit-specific case law that may affect the viability of the penalty. ICE confirms an alien’s current case status before assessing or collecting any fine by referencing its internal systems. DHS disagrees that fines should not apply to any alien with an *in absentia* removal order but notes that, where an alien files an MTR and claims that the alien did not receive notice, their removal order is stayed. INA 240(b)(5)(C), 8 U.S.C. 1229a(b)(5)(C). DHS emphasizes that the assessment of civil penalties is tied to the existence of a valid removal order and the alien’s willful failure or refusal to depart as required by law. If a removal order is reopened, vacated, or dismissed, DHS will review the circumstances to determine whether the assessed civil penalties remain appropriate.

F. Statutory and Regulatory Requirements

1. Administrative Procedure Act

i. Procedural Rule Exception

Comment: Several commenters generally asserted that Departments lacked authority to issue the IFR without first publishing a notice of proposed rulemaking and providing a pre-promulgation comment period in accordance with the APA, 5 U.S.C. 553. First, commenters argued that the Departments cannot properly characterize the IFR as a procedural rule under 5 U.S.C. 553(b)(A). Commenters identified changes such as eliminating the NIF before issuing a final penalty, reducing the time to respond from 30 days to 15 days, allowing service by regular mail instead of certified or personal service, and moving appeals from the BIA to DHS. They asserted that these changes remove or weaken existing protections, implicate due process, change rights and obligations of affected individuals, and therefore render the rule substantive, which would require compliance with the APA’s notice and comment requirements.

Response: The Departments disagree. This rule was properly issued without prior notice and comment under 5 U.S.C. 553(b)(A), which exempts from those requirements “rules of agency organization, procedure, or practice.” Under the APA, notice and comment is required for substantive rules. By contrast, agency rules that prescribe agency organization, procedure, or practice are exempt from the notice-and-comment requirement. *See* 5 U.S.C.

553(b)(A). The “critical feature of the procedural rule exception is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.” *JEM Broadcasting Co., Inc. v. FCC*, 22 F.3d 320, 328 (D.C. Cir. 1994) (cleaned up). In *JEM Broadcasting*, the D.C. Circuit upheld a rule that changed the timing and processing of applications, not the substantive criteria for deciding them, and treated the rule as procedural and exempt from notice and comment. *Id.*

As explained in the IFR, this rule fits within that procedural rule exemption. *See* 90 27454. This rule merely prescribes how the Departments conduct internal penalty proceedings and administrative reviews. The IFR does not alter the statutory obligations under INA 240B(d), 274D(a)(1), and 275(b); 8 U.S.C. 1229c(d), 1324d(a), and 1325(b), that authorize civil monetary penalties against aliens who fail to depart voluntarily, who willfully refuse to depart after a final order of removal, or who are apprehended while unlawfully entering or attempting to enter. It does not change the amount of these penalties or create new categories of violators or new statutory rights. The substantive legal liability remains as defined by statute.

Rather, the IFR merely revised the process by which the Departments impose these civil monetary penalties. For example, allowing DHS to serve penalty notices by regular mail (and no longer only by certified mail or personal service); shortening the period within which a respondent must contest the fine or exercise appeal rights from 30 to 15 days, moving the appeals process from the BIA to DHS, and other procedural streamlining merely alters the manner in which parties present themselves or their viewpoints to the Departments. Under the IFR, aliens continue to receive written notice of the penalty by regular mail and a meaningful opportunity to present a written response with supporting evidence before any final determination is made. Likewise, replacing BIA review with review by a DHS supervisory official who was not involved in the initial decision preserves neutral, independent oversight while streamlining the adjudication process. Accordingly, this rule is properly classified as a procedural rule and exempt from prior notice and comment procedures under the APA.

Moreover, though not required to do so, the Departments nonetheless solicited post-promulgation comments

following publication of the IFR on June 27, 2025, and accepted comments through July 28, 2025. The Departments have carefully reviewed and considered all comment submissions received at the docket in developing this final rule.

ii. Foreign Affairs Exemption

Comment: Commenters also asserted that the Departments’ reliance on the foreign affairs exemption under 5 U.S.C. 553(a)(1) is legally unsupported. They argued that the rule’s subject matter—imposing fines on aliens—is purely domestic enforcement activity that neither regulates nor directly impacts foreign affairs. Additionally, these commenters challenged the Departments’ assertion that the rule supports U.S. foreign policy negotiations as vague, too attenuated, and overbroad. One commenter said that under the Departments’ reasoning, nearly any domestic policy that “comes up in negotiations with a foreign country” could be exempt from notice and comment. The other commenter claimed that the Departments invoked the exception in bad faith, arguing that traditional examples of rules meeting the foreign affairs exemption involve rules relating to international trade and visa issuance.

One commenter suggested that the Departments did not demonstrate an immediate foreign affairs need to bypass the APA’s notice and comment and delayed-effective-date requirements, noting that the fines covered by the IFR have been codified in law for years but only rarely used by DHS. The commenter also took issue with the Departments’ assertion that immediate action is needed to address the shared problem of irregular migration to the southern border. The commenter asserted that the IFR will not have an appreciable impact on border operations because the Administration has already “shutdown asylum process at the Southern border” and the IFR is primarily targeted at aliens who are already illegally present within the United States.

Response: The IFR is excepted from the APA’s notice-and-comment and delayed-effective-date requirements because it involves a “foreign affairs function of the United States.” 5 U.S.C. 553(a)(1). As an initial matter, contrary to one commenter’s claim, the foreign affairs exception is not limited to rules relating to international trade and visa issuance. The Supreme Court has never determined what constitutes a “foreign affairs function of the United States.” Lower federal courts have held that this exception applies when the rule in question is “clearly and directly

involve[d]” in “a foreign affairs function.” *E.B. v. U.S. Dep’t of State*, 583 F. Supp. 3d 58, 63 (D.D.C. 2022) (cleaned up). In addition, although the text of the APA does not require an agency invoking this exception to show that such procedures may result in “definitely undesirable international consequences,” some courts have required such a showing. *See, e.g., Rajah v. Mukasey*, 544 F.3d 427, 437 (2d Cir. 2008) (quotation marks omitted). The IFR satisfies both standards. Even though the Departments issued an IFR, an opportunity for public comment after issuing the IFR was provided and this final rule responds to those comments. *See Little Sisters of the Poor Saints Peter and Paul Home*, 591 U.S. 657, 683–84 (2020).

The Departments disagree with commenters’ assertions that the IFR involves only domestic immigration enforcement and thus does not directly impact foreign affairs. First, as discussed in the IFR, the rule is directly and clearly connected to a foreign affairs function of the United States because it supports this Administration’s efforts to address the shared international challenge of border security and illegal migration. The Secretary of State has made clear that “securing America’s borders and protecting its citizens from external threats is the first priority foreign affairs function of the United States.” In this regard, the United States continues to work closely with foreign partner countries to address migration in the Western Hemisphere region to secure America’s borders and protect its citizens, and this rule is clearly and directly related to, and responsive to, the United States efforts in this regard. Specifically, the IFR and this rule are intended to allow DHS to streamline and maximize its use of civil penalties against aliens who are apprehended entering or enter unlawfully at the southern border. DHS believes that this additional tool will allow it to discourage, prepare for, and respond to unlawful migration by increasing the consequences on aliens who make the dangerous journey to the United States and enter unlawfully. Therefore, measures like the IFR advance the United States’ foreign policy objectives by demonstrating to partner countries that the United States is serious about the shared problem of irregular migration and border security and that the Administration is doing its part to address these challenges by using all available tools even if they originate from U.S. law. Further, the Departments disagree with one commenter’s suggestion that the Departments

invoked the exemption in “bad faith.” To the contrary, the Departments have relied on the foreign affairs exception, under several Administrations, when issuing rules designed to help address the shared international challenge of migration to the United States southern border.⁵⁶

The Departments acknowledge that this rule also applies to aliens in the interior of the United States who have violated the immigration laws by failing to depart after a removal or voluntary departure. The Departments disagree, however, that the problem that the IFR seeks to address is purely a domestic one. Rather, as explained in the IFR, the United States’ ability to address the challenge of aliens remaining in the country unlawfully after removal and departure orders depends in part on the willingness of other nations to accept the return and repatriation of their citizens from the United States. Contrary to commenters’ claims, the Departments have provided concrete examples of the United States’ foreign negotiations and efforts aimed at encouraging other countries to support the return of their citizens, including those with outstanding removal and voluntary departure orders. *See* 90 FR 27455. These efforts include encouraging other countries to promptly issue travels documents that allow their residents to return home, and more broadly to cooperate with DHS’s efforts to successfully implement Presidential Proclamation 10935, *Establishing Project Homecoming*, 90 FR 20357 (May 9, 2025), which provides aliens with a process to voluntarily depart the United States and return to their home countries. *See* 90 FR 27455–56. All of these efforts indicate that the removal and voluntary return of aliens with no legal right to remain in the United States is a critical foreign policy objective of the United States. For these foreign policy efforts to continue to succeed, DHS must continue to demonstrate its own commitment to this foreign policy objective, including by encouraging aliens to take advantage of these expanded opportunities that the United States Government has secured through international efforts. The IFR directly and clearly serves this purpose by incentivizing aliens to comply with departure obligations, including through these expanded departure options, and by imposing consequences on those who fail to depart.

⁵⁶ *See e.g., Securing the Border*, 89 FR 48710, 48759–62 (June 7, 2024); *see also Asylum Eligibility and Procedural Modifications*, 84 FR 33829, 33842 (June 16, 2019).

In addition to the IFR’s clear and direct involvement in foreign affairs, the Departments believed that issuing the rule after notice and comment, and with a delayed effective date, could have led to definitely undesirable international consequences. As discussed in the IFR, these consequences include negative impacts to border security, which is a shared regional problem, and DHS’s inability to capitalize on the momentum that the United States Government had achieved in encouraging countries to support the return of their citizens, including those with outstanding removal and departure orders. In this regard, the Departments disagree with commenters that claimed that the Departments did not demonstrate an immediate need for the IFR because this Administration’s asylum policies at the southern border had already reduced irregular border encounters. The IFR acknowledged that encounters between POEs at the southern border had decreased significantly from their historic highs under the prior Administration. *See* 90 FR 27455. The Departments explained, however, that the IFR would help DHS to continue to build on the then-recent progress that DHS had achieved at the southern border. *See* 90 FR 27446, 27455–56. The Departments note that DHS was encountering nearly 1,000 aliens per day at the southern border only six months prior to the IFR’s publication and nearly 2,000 aliens per day between June and December 2024.⁵⁷ Therefore, although encounter numbers had declined when the IFR was issued in large part due to the Administration’s border policies, DHS reasonably believed at the time that there was a substantial risk that, without additional tools in place at the southern border encounters, like this IFR, encounters could once again increase.

Further, the Departments also disagree with the claim that the Departments did not demonstrate an immediate need to implement the rule under the foreign affairs exception because these civil monetary penalties have been authorized for many years but rarely used, and DHS has mainly applied them to aliens in the interior. As an initial matter, regardless of the past administrations’ policies, this Administration has made clear that that the rapid return of illegal aliens to their home countries is a critical foreign policy objective of the United States and

⁵⁷ *See* Nationwide Encounters, U.S. Customs and Border Protection (Sept. 16, 2026), <https://www.cbp.gov/newsroom/stats/nationwide-encounters> (select Region: “US SW Land Border” and Component: U.S. Border Patrol).

it has conducted its recent foreign policy efforts consistent with this objective. In the months prior to issuing this IFR, the Administration had been engaged in discussions with several countries aimed at ensuring that those countries promptly issue travels documents to facilitate the return of their nationals. Moreover, in the weeks prior to issuing the IFR, the President directed the Secretary of State and the Secretary of Homeland to take all appropriate “actions to enable the rapid departure of illegal aliens from the United States”⁵⁸ including assisting aliens with obtaining travel documents or relocating to another country and providing financial incentives and support to such aliens. The President also directed the Secretaries to notify aliens that should they choose not to take advantage of these incentives they will face consequences, including civil fines covered by this rule.

In light of these efforts, the Departments explained that by issuing the IFR immediately DHS would be able to capitalize on these recent foreign policy efforts by encouraging aliens, through the use of civil penalties, to take advantage of these expanded opportunities achieved through international discussions and cooperation, to depart the United States. The Departments also explained that the IFR would allow the U.S. Government to build on this foreign policy momentum by demonstrating to other countries that it is committed to using all necessary tools to facilitate the rapid departure of illegal aliens and that other nations should support the Administration’s continued efforts to achieve this objective. Quite simply, if the United States is unable to demonstrate, through measures like the IFR, that it is committed to taking quick and robust action to remove aliens and encourage them to depart the United States voluntarily, which depends in large part on international cooperation, countries may be less inclined to engage with the United States on these ongoing efforts in the future. Accordingly, the Departments believe that, contrary to commenters’ claim, immediate issuance of this rule was appropriate and necessary to avoid undesirable international consequences.

iii. Good Cause

Commenters also argued that the Departments lacked good cause to make the IFR effective immediately upon publication, and one commenter asserted that the Departments

improperly invoked the good cause exception under 5 U.S.C. 553(b)(B) to issue and immediately implement the IFR without prior notice and comment. Commenters argued that the IFR does not respond to sudden or unforeseeable emergency, and any need for the IFR was an emergency of DHS’s own making—i.e., DHS’s own decision to restart issuing civil penalty program despite previously ending that program in 2021 after determining that civil penalties were ineffective and legally vulnerable. Commenters also argued that the public burden imposed by immediate implementation, particularly on immigrant communities and service providers far outweighs any government benefit from accelerating enforcement.

Response: As an initial matter, the Departments note that the IFR did not invoke good cause under 5 U.S.C. 553(b)(B) to dispense with notice and comment. Rather, the Departments issued the IFR under the procedural rule exception under 5 U.S.C. 553(b)(A) and the foreign affairs exception under 5 U.S.C. 553(a)(1) and invoked good cause under 5 U.S.C. 553(d)(3) solely to make the rule effective upon publication. Section 553(d)(3) permits an agency to waive the standard 30-day delayed-effective-date requirement when it finds good cause for the rule to take immediate effect, balancing the agency’s need for immediate implementation against affected persons’ need for a reasonable amount of time to prepare for the effective date of its ruling. As explained in the IFR and reaffirmed here, the Departments determined that the ordinary reason for delay in a rule’s effective date, to give members of the regulated community time to prepare and adjust their behavior, does not apply here because the IFR does not affect any person’s substantive rights. Rather, it merely modifies the manner in which DHS issues and adjudicates civil monetary penalties and how an alien may contest such penalties. Moreover, the Departments found that the benefits of immediate implementation, ensuring uniformity, and administrative efficiency in the imposition and collection of civil monetary penalties, outweighed any need for affected parties to prepare for the effective date and adjust their behavior accordingly as this rule does not affect substantive right. Thus, the Departments conclude that invocation of the good cause under 553(d)(3) was lawful and appropriate.

iv. Comment Period Duration

Comment: Commenters argued that the 30-day post-promulgation comment window was inadequate given the breadth and complexity of the rule,

which alters established practices related to assessing and collecting civil penalties under the three INA provisions. Commenters also cited Executive Order 12866, Regulatory Planning and Review, 58 FR 51735, 51740, directing agencies to “afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days” and argued that the abbreviated timeframe prevented comprehensive analysis of the rule’s many substantive changes.

Response: As an initial matter, commenters did not suggest or indicate what additional issues the comment period precluded them from addressing; to the contrary, the comments received reflect both a breadth and a level of detail which suggests that the period was more than sufficient. *Cf. City of Waukesha v. EPA*, 320 F.3d 228, 246 (D.C. Cir. 2003) (“In [showing prejudice] in the context of a violation of notice-and-comment requirements, petitioners may be required to demonstrate that, had proper notice been provided, they would have submitted additional, different comments that could have invalidated the rationale for the revised rule.”).

The APA does not prescribe any specific minimum duration for public comment periods. While agencies often provide a 30-day period for proposed rules, and sometimes longer for complex or economically significant rulemakings, the statute simply requires that agencies generally afford interested parties an opportunity to participate through submission of written data, views, or arguments.

Although not required to do so, the Departments nonetheless provided a 30-day comment period following publication of the IFR on June 27, 2025, accepting comments through July 28, 2025. That period afforded the public a meaningful opportunity to review the IFR and provide input. Indeed, federal courts have presumed 30 days to be a reasonable comment period length. *See Nat’l Lifeline Ass’n v. Fed. Commc’n’s Comm’n*, 921 F.3d 1102, 1117 (D.C. Cir. 2019). Here, the detailed public comments the Departments received are evidence that the 30-day period was sufficient for the public to meaningfully review and provide informed comments. *See, e.g., Little Sisters of the Poor Saints Peter and Paul Home*, 140 S. Ct. at 2385 (“The object [of notice and comment], in short, is one of fair notice.”) (citation omitted).

The Departments received and carefully considered all timely submissions. Providing a 30-day

⁵⁸ Proclamation 10935, 90 FR 20357, 20357 (May 9, 2025).

window for comments on a rule of limited procedural scope is consistent with longstanding administrative practice and the guidance reflected in Executive Orders 12866 and 13563, which encourage agencies to provide meaningful participation. The Departments' post-promulgation comment process thus satisfied the APA's requirements and furthered its purposes of transparency and public involvement, even though prior notice and comment were not legally required under 5 U.S.C. 553(a)(1) and (b)(A).

2. E.O. 12866 Analysis

Comment: One commenter asserted that the IFR would impose substantial new economic burdens on affected aliens and their households, with potentially significant aggregate impacts. They contended that the IFR's increased and accelerated civil monetary penalties, particularly daily fines approaching \$1,000 for failure to depart following a final order of removal, could result in liabilities large enough to cause long-term financial hardship, including wage garnishment, asset seizure, and bankruptcy. They further stated that these costs would likely fall disproportionately on low-income individuals and mixed-status families, potentially creating spillover effects for U.S. citizen spouses and children and exacerbating economic insecurity in immigrant communities. The commenter also argued that the IFR may generate billions of dollars in annual penalties, and that DHS's retention of penalty revenues could create institutional incentives to maximize fine issuance. They maintained that the IFR was implemented without sufficient economic analysis or public input and recommend alternatives such as means-based penalties, hardship waivers, or installment plans, independent review mechanisms, and pilot implementation to evaluate real world economic effects before nationwide implementation.

Response: The Departments do not agree that this rule needs additional economic analysis or that it was adopted without considering financial impacts. As previously discussed, the rule does not create any new fines, change who can be fined, or increase the dollar amounts Congress has already set; it only changes the internal process DHS uses to issue and review those fines. Any financial hardship, including possible collection actions, comes from the underlying law and from an alien's choice to remain in the United States after being ordered to leave, not from these procedural updates. DHS's goal is to encourage people to follow removal

and departure orders and to deter unlawful entry, not to generate revenue, and DHS will cancel most failure to depart fines when eligible aliens use the CBP Home app to leave the country. OMB has reviewed the rule as significant under Executive Order 12866. DHS has weighed the limited added economic effects of these process changes against their enforcement benefits, and the Departments provided a 30-day comment period and considered economic and other feedback before finalizing the rule.

IV. Severability

The changes made by the IFR, as amended by this final rule, impact provisions that are not necessarily interrelated and can function independent of one another. As such, the Departments believe that most of the provisions of this final rule can function sensibly and independently of other provisions. Therefore, in the event that any provisions in this rule are invalidated by a reviewing court, the Departments intend the remaining provisions to remain in effect to the fullest extent possible.

V. Statutory and Regulatory Requirements

A. Administrative Procedure Act

The Departments have determined that this rule can take immediate effect notwithstanding the 30-day delayed effective date requirement in 5 U.S.C. 553(d).

Generally, there is good cause for this rule to take immediate effect. *See* 5 U.S.C. 553(d)(3). This rule generally adopts the provisions of the IFR, with one change to help mitigate the potential effect of mail delays that could impact the amount of time an alien has to contest a civil penalty. *See* 5 U.S.C. 553(d)(1) (excepting from the delayed effective date requirements substantive rules that grant or recognize an exemption or relieve a restriction). The purpose of the 30-day waiting period is "to give affected parties time to adjust their behavior before the final rule takes effect." *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1485 (9th Cir. 1992). Here, however, that purpose would not be served by delaying the effective date of this final rule or the rule's amendment to account for mail delays because the public does not need advanced notice in order to conform their behavior to the rule.

This final rule largely adopts the provisions of the IFR, which took effect on June 27, 2025. Consequently, aliens and legal service providers who may represent such aliens have long been on

notice of those procedures and processes this rule adopts. *See United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (noting that the "legislative history of the APA" indicates that the waiting period "was not intended to unduly hamper agencies from making a rule effective immediately," but intended "to 'afford persons affected a reasonable time to prepare for the effective date of a rule . . . or to take other action which the issuance may prompt'" (citing S. Rep. No. 752, 79th Cong., 1st Sess. 15 (1946); H.R. Rep. No. 1980, 79th Cong., 2d Sess. 25 (1946))). Indeed, the Departments have consistently communicated an intent to finalize the IFR.⁵⁹ The fact that the IFR's effective date was recently stayed⁶⁰ does not change the Departments' determination—the brief period between the entry of the stay on October 5, 2026, and October 14, 2026, does not alter the fact that the public operated under the rule's provisions for more than a year and has long been on notice of the Departments' intent to make them final.

Similarly, the change this final rule makes does not alter the calculus merely because it has not been part of the status quo under the IFR for the past year. The minor amendment is designed to benefit aliens by recognizing that an alien's untimely appeal may nonetheless be accepted if the late appeal was caused by a mail delay. *See* 5 U.S.C. 553(d)(1). Even so, it relates solely to agency procedure and practice and thus is not subject to the 30-day effective date for "substantive rule[s]" under 5 U.S.C. 553(d). The procedural rule exception "covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency." *JEM Broad. Co., Inc. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994) (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980)); *see also Mendoza v. Perez*, 54 F.3d 1002, 1023–24 (D.C. Cir. 2014). The amendment in this final rule

⁵⁹ *See* 2026 Unified Agenda, RIN 1653-AA96, Imposition and Collection of Civil Penalties for Certain Immigration-Related Violations, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202510&RIN=1653-AA96> [<https://perma.cc/T87D-AN6A>] (showing August 2026 as the expected timeline for publication of this final rule); Def.'s Opp'n to Pls.' Mot. to Compel, *Maria L. v. Mullin*, No. 1:25-cv-13471 (DDC filed May 11, 2026), dkt. 69 ("Third, the Interim Final Rule ("IFR") Plaintiffs challenge is currently the subject of ongoing final rulemaking. The agencies are reviewing comments, including the comment Plaintiff Immigration Legal Resource Center ("ILRC") submitted, and will issue a final rule in due course.").

⁶⁰ *See Maria L. v. Mullin*, No. CV 25-13471-GAO, 2026 WL 2983111 (D. Mass. Sept. 30, 2026).

does not change an alien's right to appeal a penalty under the IFR's 15-business day appeal deadline and therefore "impose[s] no new substantive obligations or burdens upon the parties' rights and interests." *Am. Fed'n of Lab. & Cong. of Indus. Organizations v. Nat'l Lab. Rels. Bd.*, 57 F.4th 1023, 1043 (D.C. Cir. 2023) (quoting *EPIC v. U.S. Dep't of Homeland Sec.*, 653 F.3d 1, 6 (D.C. Cir. 2011)).⁶¹ Rather, while the amendment directs aliens to provide evidence of a mail delay in connection with an untimely appeal, this simply establishes a clear process for the agency to evaluate such a claim. Therefore, this evidentiary requirement is merely a procedural step, not a substantive change to the right to appeal itself.

In finding good cause to bypass the 30-day delayed effective date requirement, the Departments have "balanc[ed] the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable [amount of] time to prepare for the effective date of [the rule]." *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996) (citation omitted). Here, the balance tips sharply in favor of immediate implementation. The United States Government and the American people have a strong interest in making the final rule effective immediately to ensure that DHS can continue implementing the IFR's provisions. As discussed in Section I.B. of this preamble, the IFR has reduced agency resource burdens by streamlining the civil penalty process and has allowed DHS to exercise its statutorily authorized civil penalty authority at scale in response to the large number of aliens who have unlawfully entered the United States or have failed to comply with removal and voluntary departure orders in recent years. In turn, this has allowed DHS to encourage greater compliance with such orders and provides DHS with another tool to disincentive future unlawful entries at the border.

B. Executive Order 12866 (Regulatory Planning and Review)

Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Sept. 30, 1993), and Executive Order 13563, Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011), 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. The Office of Management and Budget has determined this rule is significant under Executive Order 12866.

This final rule will allow DHS to more quickly impose a greater number of civil penalties on aliens who have unlawfully entered the United States and those who remain after a removal or voluntary departure order. DHS has not assessed the extent to which this final rule will result in an increase in civil penalties collected by the Government. DHS believes that this effort will reduce potential agency resource burdens by streamlining the process, discourage future unlawful entries, and encourage greater compliance with removal and departure orders.

C. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

This final rule is not an Executive Order 14192 regulatory action because it is being issued with respect to an immigration-related function of the United States. The rule's primary direct purpose is to implement or interpret the immigration laws of the United States (as described in section 101(a)(17) of the INA, 8 U.S.C. 1101(a)(17)) or any other function performed by the United States Federal Government with respect to aliens. See OMB Memorandum M-25-20, Guidance Implementing Section 3 of Executive Order 14192, titled "Unleashing Prosperity Through Deregulation" at 5-6 (Mar. 26, 2025).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 ("RFA"), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. A regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking. This final rule finalizes an IFR that was exempt from the notice-and-comment rulemaking. Therefore, a regulatory flexibility analysis is not required.

However, even assuming that this rule is not exempt from notice-and-comment procedures and therefore not exempt from the requirements of the RFA, the Departments have reviewed this rule in accordance with the RFA. The Secretary of Homeland Security and the Acting Director of EOIR certify that this rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

First, aliens are not "small entit[ies]" as defined by the RFA. See 5 U.S.C. 601(6) (defining "small entity" as having the same meaning as "small business," "small organization," and

"small government jurisdiction" as defined in 5 U.S.C. 601(3)-(5)).

Second, to the extent that legal service organizations qualify as "small entities," any economic effects of this rule on such organizations would not be significant under the RFA. The rule will not economically impact representatives of aliens in contesting these penalties. It does not limit the fees they may charge or the number of cases a representative may ethically accept under the rules of professional responsibility. For example, the IFR's changes to the procedures for contesting a civil penalty do not change the overall requirement that aliens must respond to a civil penalty notice to challenge the penalty; rather the IFR simply changed the procedures for how that appeal is filed, in what time frame, and which U.S. Government officials are responsible for adjudicating the appeal. The IFR's changes to shorten the appeal period required legal service providers to adjust to these new timelines. The Departments expect, however, that legal service organizations have quickly acclimated to this change without substantial disruption. Indeed, the IFR was in effect for over a year, and the appeal rate increased under the IFR compared to the pre-IFR process for these civil penalties under 8 CFR part 280. Thus, any costs incurred in adapting to the IFR's timelines were not significant under the RFA. And the one change in this final rule to the IFR's provisions is not expected to increase such costs significantly (if at all) given that it discretely applies to demonstrated mail delays.

In any event, this rule does not limit or otherwise dictate the fees that legal service providers may charge or the number of civil penalty cases the organization may ethically and competently accept. See *Mid-Tex Elec. Co-op., Inc. v. FERC*, 773 F.2d 327, 342-43 (D.C. Cir. 1985) (concluding "an agency may properly certify that no regulatory flexibility analysis is necessary when it determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule" and stating that legislative history of the RFA "gives rise to an inference that Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy").

Moreover, any effects this rule may have on legal service organizations, other representatives of aliens, or other entities that provide services to aliens subject to civil penalty procedures are

⁶¹ The Departments further maintain that the 15-day appeal deadline is likewise a procedural change, rather than a substantive one, for the reasons explained in the IFR. 90 FR 27454.

indirect. The rule does not impose reporting, recordkeeping, staffing, fee, or other compliance requirements on those entities. Rather, it establishes procedures governing DHS's issuance and review of civil penalties and the process by which an alien may seek administrative review of a penalty determination. Although a legal service organization or other representative may choose to adjust its internal practices in response to procedures or timelines applicable to its clients, any such effects result from the entity's provision of services to affected aliens and not from a regulatory requirement imposed directly on that entity by this rule. The RFA does not require an agency to assess indirect effects on small entities that are not themselves subject to the rule's requirements. Accordingly, the Departments do not treat such indirect effects as regulatory compliance costs imposed on small entities by this rule.⁶²

E. Unfunded Mandates Reform Act of 1995

This final rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Congressional Review Act

This final rule is not a "rule" as defined by the Congressional Review Act, Public Law 104-121. *See* 5 U.S.C. 804(3)(C) (defining the term "rule" to exclude "any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties"). The Departments will nonetheless submit this final rule to both houses of Congress and the Comptroller General before the rule takes effect.

G. Privacy Act

In accordance with the Privacy Act of 1974, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER) System of Records

Notice provides privacy coverage supporting the final rule consistent with system purpose ("To track the process and results of administrative and criminal proceedings, including compliance with court orders and hearing dates, against individuals who are alleged to have violated the INA or other laws enforced by DHS") and categories of records in the system. 89 FR 55638 (July 5, 2024).

Additionally, DHS/CBP-023 Border Patrol Enforcement Records, System of Records Notice provides coverage supporting the final rule consistent with system purpose ("Enforcement-related data including: Case number, record number, and other data describing an event involving alleged violations of criminal, immigration, or other laws (location, date, time, event category, types of criminal or immigration law violations alleged, types of property involved, use of violence, weapons, or assault against DHS personnel or third parties, attempted escape, and other related information); CBP encounter management information, including: Category (event categories describe broad categories of criminal law enforcement, such as smuggling and human trafficking), agent or officer, location of officer or officer's vehicle, date/time initiated, date/time completed, assets used for encounter (bike, horse, vehicle, etc.), results of the encounter, and any agent or officer notes and comments."), 81 FR 72601 (Oct. 20, 2016).

H. National Environmental Policy Act

DHS and its components analyze final actions to determine whether the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. 4321 *et seq.*, applies to them and, if so, what degree of analysis is required. DHS Directive 023-01 Rev. 01⁶³ and Instruction Manual 023-01-001-01 Rev. 01 ("Instruction Manual") establish the policies and procedures that DHS and its components use to comply with NEPA.

NEPA allows Federal agencies to establish categories of actions ("categorical exclusions") that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment ("EA") or environmental impact statement ("EIS"). An agency is not required to prepare an EA or EIS for a proposed action "if the proposed agency

action is excluded pursuant to one of the agency's categorical exclusions." 42 U.S.C. 4336(a)(2). The Instruction Manual, Appendix A, lists the DHS Categorical Exclusions. For an action to be categorically excluded under DHS's Instruction Manual, the action must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.

This final rule is categorically excluded from DHS's NEPA implementing procedures, because it satisfies all three relevant conditions. First, the Departments have determined that the IFR fits clearly within categorical exclusions A3(a) of DHS's Instruction Manual, Appendix A, for the promulgation of rules of a "strictly administrative or procedural nature." This final rule merely changes the procedures that DHS and DOJ apply when assessing civil monetary penalties authorized under certain sections of the INA. This change in procedures does not result in a change in their environmental effect. Second, this final rule is a standalone rule and is not part of any larger action. Third, the Departments are not aware of any extraordinary circumstances that would cause a significant environmental impact. Therefore, this final rule is categorically excluded, and no further NEPA analysis or documentation is required.

I. Executive Order 13132 (Federalism)

This final rule would 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 Departments believe that this FR would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

J. Paperwork Reduction Act

This final rule does not impose any new reporting or recordkeeping requirements or call for a collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 8 CFR Part 281

Administrative practice and procedure, Immigration, Penalties.

⁶² *See* U.S. Small Business Administration, Office of Advocacy, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act 22-23 (Aug. 2017), <https://advocacy.sba.gov/wp-content/uploads/2019/06/How-to-Comply-with-the-RFA.pdf> (explaining that courts have held that the RFA requires analysis of impacts on small entities directly regulated by a rule, rather than indirect effects on entities that provide services to or otherwise interact with directly affected persons); *Mid-Tex Elec. Coop., Inc.*, 773 F.2d at 342-43; *see also Am. Trucking Ass'ns, Inc. v. EPA*, 175 F.3d 1027, 1044 (D.C. Cir. 1999).

⁶³ DHS, Implementation of the National Environmental Policy Act, Directive 023-01, Revision 01 (Oct. 31, 2014).

Amendments to the Regulations
DEPARTMENT OF HOMELAND
SECURITY

Accordingly, the interim final rule amending 8 CFR part 281, which was published at 90 FR 27439 on June 27, 2025, is adopted as final with the following change:

PART 281—IMPOSITION AND
COLLECTION OF PENALTIES UNDER
SECTIONS 240B(d), 274D(a)(1), and
275(b) OF THE ACT

■ 1. The authority citation for part 281 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1229c, 1253, 1322, 1323, 1325, 1324d, 1330; 5 U.S.C. 301; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 101 *et seq.*); 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221–223, 226, 227, 230; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 2. Amend 281.1, by redesignating paragraphs (e)(2) through (e)(4) as (e)(3) through (e)(5) and adding new paragraph (e)(2) to read as follows:

§ 281.1 Exclusive procedures for civil
monetary penalties under sections 240B(d),
274D(a)(1), and 275(b) of the Act.

* * * * *

(e) * * *

(2) *Appeals affected by mail delay.* An alien who files an appeal after the 15-business days filing period prescribed in paragraph (e)(1) of this section and asserts that the untimely filing resulted from delayed or untimely mail delivery of the immigration officer’s decision must include with the appeal a written explanation and any available documentary evidence demonstrating the mail delay. An alien who files an appeal after the 15-business day filing period prescribed in paragraph (e)(1) of this section may also produce contemporaneous, time-stamped evidence of deposit of their mailed appeal directly from the U.S. Postal Service (“USPS”) or their chosen commercial carrier. If ICE determines that the appeal was filed after the deadline due to mail delay beyond the alien’s control, ICE will accept the appeal as timely filed and consider it on the merits. In making this

determination, ICE will consider the mailing and actual receipt dates, the cause and length of the delay, and the alien’s good faith efforts in pursuing the appeal after receipt. ICE’s determination will be case by case considering all evidence presented with the appeal.

* * * * *

DEPARTMENT OF JUSTICE

■ Accordingly, for the reasons set forth in the preamble, and by the authority invested in the Director, Executive Office for Immigration Review, the Attorney General Order Number 6260–2025, the interim final rule amending 8 CFR parts 1003 and 1280, which was published at 90 FR 27439 on June 27, 2025, is adopted as final without change.

Markwayne Mullin,
Secretary, U.S. Department of Homeland Security.

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

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