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DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

8 CFR Part 281

[Docket No: ICEB–2025–0034]

RIN 1653–AA96

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003 and 1280

[Dir. Order No. 01–2025]

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: Interim final rule; request for comment.

SUMMARY: This interim final rule (''IFR'') amends existing DHS and DOJ regulations. It provides exclusive DHS procedures for the issuance of civil monetary penalties under the Immigration and Nationality Act for aliens who fail to depart voluntarily during the 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. The IFR also transfers the appeals process for these penalties from DOJ's Board of Immigration Appeals to DHS.

DATES:

Effective date: This final rule is effective on June 27, 2025.

Comment date: Comments must be received on or before July 28, 2025.

ADDRESSES: You may submit comments on this IFR, identified by DHS Docket Number ICEB–2025–0034, through the Federal eRulemaking Portal at *http://www.regulations.gov.* All comments must be submitted in English, or an English translation must be provided. Follow the website instructions for submitting comments.

Comments submitted in a manner other than the one listed above, including emails or letters sent to the Departments' officials, will not be considered comments on the rule and may not receive a response from the Departments. The Departments cannot accept any comments that are hand-delivered or couriered. In addition, the Departments cannot accept comments contained on any form of digital media storage devices, such as CDs, DVDs, or USB drives. The Departments are not accepting mailed comments at this time. If you cannot submit your comment using *http://www.regulations.gov,* please see the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT:

For DHS: Office of Regulatory Affairs and Policy, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street SW, Washington, DC 20536; telephone (202) 732–6960 (not a toll-free call) (for questions only—no comments will be accepted at this phone number).

For DOJ: Stephanie Gorman, Acting Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041; telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Instructions for providing comments are in the **ADDRESSES** caption above.

Privacy: You may wish to consider limiting the amount of personal information that you provide in any comment submission you make to the Department, because anyone can electronically search comments in any of DHS's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The Departments may withhold information provided in comments from public viewing that the Departments determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice posted on *https://www.regulations.gov.*

Docket: For access to the docket and to read background documents or comments received, go to *https://www.regulations.gov,* referencing DHS Docket No. ICEB–2025–0034. You may also sign up for email alerts on the online docket to be notified when comments are posted or when the final rule is published.

II. Background and Purpose

A. Civil Monetary Penalty Provisions of the INA

The Immigration and Nationality Act (''INA'' or the ''Act'') authorizes the imposition of numerous civil monetary penalties for various immigration-related violations.[1] Since its enactment, the INA has included several civil monetary penalties against entities that, and persons who, fail to comply with statutory and regulatory requirements designed to prevent aliens' unlawful entry and presence in the United States. For example, the INA has long required carriers, including vessels and airlines, to ensure under pain of civil monetary penalties that aliens being transported to the United States have valid documents for admission. *See, e.g., Screening Requirements of Carriers,* 61 FR 29323 (June 10, 1996) (discussing the history of section 273 of the INA, 8 U.S.C. 1323). The INA has also long imposed civil monetary penalties on employers who knowingly hire, recruit, or refer for a fee aliens without proper work authorization, and on employers who fail to comply with employment verification requirements. *See* INA 274A, 8 U.S.C. 1324a.

Prior to 1996, however, the INA generally did not authorize civil monetary penalties against aliens who violated the immigration laws. In 1996, Congress substantially amended the INA through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA''). Public Law 104–208, 110 Stat. 3009–546. The purpose of IIRIRA was to enhance immigration enforcement and the consequences of violating the nation's immigration laws. H.R. Rep. No. 104–469, pt. 1, at 1, 107 (1996). In furtherance of that purpose,

[1] This rule variously refers to ''fines,'' ''civil penalties,'' and ''civil monetary penalties.'' Those terms are meant to have identical meaning for purposes of this rule.

Congress added three new provisions to the INA that authorize the Attorney General to impose civil monetary penalties against aliens who fail to voluntarily depart the United States during the specified period designated in an order granting voluntary departure, who are subject to a final order of removal and willfully fail or refuse to depart the United States or take certain other actions to thwart their departure or removal, or who are apprehended while illegally entering or attempting to enter the United States.[2]

First, under section 240B(d)(1)(A) of the INA, 8 U.S.C. 1229c(d)(1)(A), Congress authorized the imposition of civil monetary penalties against aliens granted voluntary departure who fail to depart the United States within an allotted period. Public Law 104–208, 110 Stat. 3009–546, 3009–597. Voluntary departure is a discretionary form of relief that allows certain aliens—either before the conclusion of removal proceedings under section 240 of the INA, 8 U.S.C. 1229a (''section 240 removal proceedings''), or after being found removable—to request and be granted permission by an Immigration Judge to depart the United States at their own expense as an alternative to formal removal proceedings and the entry of a formal removal order. *See* INA 240B(a)(1), (b)(1), 8 U.S.C. 1229c(a)(1), (b)(1). Voluntary departure under section 240B of the INA, 8 U.S.C. 1229c, ''allows the Government and the alien to agree upon a *quid pro quo*.'' *Dada* v. *Mukasey,* 554 U.S. 1, 11 (2008). An alien granted this relief avoids a removal order and its attendant consequences and is allowed to depart the United States voluntarily; the Departments avoid the costs of immigration proceedings and the burden of removing an alien. *See id.*

To promote compliance with voluntary-departure orders, Congress imposed a civil penalty of between $1,992 and $9,970, as adjusted for inflation, for failing to depart voluntarily during the period specified. *See* INA 240B(d)(1)(A), 8 U.S.C. 1229c(d)(1)(A); *see also* 8 CFR 280.53(b)(3); *Civil Monetary Penalty Adjustments for Inflation,* 90 FR 1, 2 (Jan. 2, 2025). Additionally, when entering an order granting voluntary departure, the Immigration Judge is required to warn the alien of the consequences of failing to depart during the period specified, including that civil monetary penalties can be assessed. *See* INA 240B(d)(3), 8 U.S.C. 1229c(d)(3).

Second, under section 274D(a)(1) of the INA, 8 U.S.C. 1324d(a)(1), DHS has the authority to impose civil monetary penalties on an alien who is subject to a final order of removal and who willfully fails or refuses to (A) depart the United States pursuant to that order, (B) make a timely application in good faith for travel or other documents necessary for departure, or (C) present for removal at the time and place required by DHS. Most aliens subject to these penalties have been ordered removed at the conclusion of section 240 removal proceedings.[3] During those proceedings, aliens are provided with statutory and regulatory procedural protections including a hearing before an Immigration Judge, an opportunity to contest removal charges and to apply for relief or protection from removal, and an opportunity to offer evidence. Aliens also have the ability to appeal an adverse order to DOJ's Board of Immigration Appeals (''BIA'' or ''Board'') and, generally, petition for review of the removal order by a federal court of appeals. *See* INA 240(b)(4), 8 U.S.C. 1229a(b)(4); *see generally* 8 CFR 1003, 1240. For any alien ordered removed at the conclusion of section 240 removal proceedings, an Immigration Judge must warn the alien of the consequences of failing to depart, including that the alien could be subject to civil monetary penalties. *See* 8 CFR 1240.13(d). The statute provides a civil monetary penalty of not more than $500, which when adjusted for inflation is $998, for each day that the alien is in violation. *See* INA 274D(a), 8 U.S.C. 1324d(a); *see also* 90 FR 3.

Third, section 275(b)(1) of the INA, 8 U.S.C. 1325(b)(1), provides that an alien who is apprehended while entering or attempting to enter the United States improperly is subject to a civil penalty. The penalty, which DHS has adjusted for inflation, ranges from at least $100 to not more than $500 for each entry or attempted entry. *See* 90 FR 3 (Jan. 2, 2025). Aliens who have previously been fined for unlawful entry under this section are subject to twice the amount of the penalty for subsequent violations. *See* INA 275(b)(2), 8 U.S.C. 1325(b)(2).

Additionally, Congress amended section 280(b) of the INA, 8 U.S.C. 1330(b), to establish the Immigration Enforcement Account, Border and Transportation Security. *See* Public Law 104–208, 110 Stat. 3009–651. This account is available to DHS components for the deposit of penalties, including those resulting from departure violations. These monies are then permitted to be used to support DHS activities that enhance immigration law enforcement, such as identifying, investigating, detaining and removing criminal aliens, and the repair, maintenance, and construction of barriers (*e.g.,* a wall) to illegal entry into the United States. *See* INA 280(b)(3)(A)(i)–(iii), 8 U.S.C. 1330(b)(3)(A)(i)–(iii).

Both ICE and United States Customs and Border Protection (''CBP'') have the authority to administer civil monetary penalties related to violations of the immigration laws and immigration court orders. *See* INA 103(a)(1)–(5), 8 U.S.C. 1103(a)(1)–(5) (authorizing the Secretary of Homeland Security to administer and enforce the immigration laws; establish such regulations, prescribe such forms, issue such instructions, and perform such other acts as she deems necessary for carrying out her authority, authorize DHS employees to perform the duties conferred under the INA, and control U.S. borders against the illegal entry of aliens); 8 CFR 2.1; *see also* DHS Delegation No. 7010.3, *Delegation of Authority to the Commissioner of U.S. Customs and Border Protection* (May 11, 2006); DHS Delegation No. 7030.2, *Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement* (Nov. 13, 2004).

B. Civil Monetary Penalty Regulations

In 1952, the former Immigration and Naturalization Service (''INS'') issued regulations at 8 CFR part 280 on the procedures that apply to most civil monetary penalties authorized under the INA. *See* 17 FR 11469, 11534–36 (Dec. 19, 1952). The regulation was

[2] This authority was transferred to the Secretary of Homeland Security as part of the Homeland Security Act of 2002. For a discussion of the Departments' authority to issue this rule and the transfer of immigration enforcement functions to DHS after the Homeland Security Act of 2002, *see* Section III of this preamble.

[3] Under the INA, certain aliens can also be ordered removed by DHS with limited or no review by EOIR. For example, section 235(b)(1) of the INA, 8 U.S.C. 1225(b)(1), provides an expedited removal process for certain aliens. Section 241(a)(5) of the INA, 8 U.S.C. 1231(a)(5), provides for reinstatement of aliens previously ordered removed. Section 238(b) of the INA, 8 U.S.C. 1228(b), provides for an administrative entry of a removal order for non-permanent resident aliens who are aggravated felons. Aliens ordered removed through these processes, however, generally must be detained for removal, *see* INA 235(b)(1)(B)(ii), (B)(iii)(IV), 241(a)(2), 8 U.S.C. 1225(b)(1)(B)(ii), (B)(iii)(IV), 1231(a)(2), which reduces the likelihood of an alien's failure to depart. Therefore, while applicable to all administratively final removal orders, the civil monetary penalties under section 274D(a)(1)(A) of the INA, 8 U.S.C. 1324d(a)(1)(A), for willful failure to depart, and section 274D(a)(1)(C) of the INA, 8 U.S.C. 1324d(a)(1)(C), for failure to present for removal, are most relevant to aliens ordered removed through section 240 removal proceedings. The civil monetary penalty under section 274D(a)(1)(B) of the INA, 8 U.S.C. 1324d(a)(1)(B), could be applied to aliens issued an expedited removal order by DHS who remain detained and who fail to make a timely application in good faith for travel or other documents necessary for departure. However, this is a rare class of aliens.

republished with minor changes in 1957. *See* 22 FR 9765, 9807 (Dec. 6, 1957). The former INS issued these regulations prior to the amendments that Congress made in 1996 to impose additional civil monetary penalties on aliens who unlawfully enter the United States or fail to depart after a voluntary departure or final removal order.

Indeed, since 1957 there have been minimal regulatory updates to 8 CFR part 280. *See* 22 FR 9765, 9807 (Dec. 6, 1957). For example, prior to IIRIRA, the former INS amended 8 CFR part 280 in 1989 to authorize the National Fines Office of the former INS to issue notices of intent to fine and make certain decisions. *See National Fines Office,* 54 FR 18648 (May 2, 1989). Subsequently, DOJ reorganized the immigration regulations to reflect the abolition of the INS and the transfer of immigration enforcement functions to DHS after Congress passed the Homeland Security Act of 2002 (''HSA''), *see* Public Law 107–296, sec. 102, 402, 116 Stat. 2135, 2142, 2177 (codified at 6 U.S.C. 112, 202); *see also* INA 103(a)(1), 8 U.S.C. 1103(a)(1). *See, e.g., Aliens and Nationality; Homeland Security; Reorganization of Regulations,* 68 FR 9824 (Feb. 28, 2003). At that time, DOJ replicated the provisions of 8 CFR part 280 into EOIR's regulations at 8 CFR part 1280 without substantive change. 68 FR 9827. In 2011, DHS and DOJ issued a joint rulemaking in which DOJ amended its regulations to reflect the transfer of enforcement authority to DHS, but the Departments did not otherwise address the existing procedures in 8 CFR part 280. *See Civil Monetary Penalties Inflation Adjustment,* 76 FR 74625, 74628–29 (Dec. 1, 2011). DHS has periodically amended 8 CFR part 280 to reflect annual inflation adjustments mandated by Congress for civil monetary penalties imposed by the Executive Branch, *see, e.g., Civil Monetary Penalty Adjustments for Inflation,* 90 FR 1 (Jan. 2, 2025), but DHS has not amended the procedures that apply to implementing these penalties.

Prior to this IFR, however, 8 CFR part 280 required DHS to apply the following procedures to impose most civil monetary penalties authorized under the INA,[4] including the unlawful entry and failure-to-depart penalties:

- When an authorized DHS employee has a reason to believe that an alien is subject to a civil monetary penalty under the INA, the alien is served a Notice of Intention to Fine (''NIF''). 8 CFR 280.1, 280.11.
- The alien is allowed a 30-day period to respond to the NIF with a written defense, under oath, along with a request for an interview, or choose not to respond to the NIF. 8 CFR 280.12–.13. An immigration officer can extend the 30-day response period for good cause shown. 8 CFR 280.12.
- If requested, a personal interview is held where the alien may present any evidence in opposition to the civil penalty. *Id.*
- An immigration officer then prepares a report summarizing any information, documents, and statements the alien provides in support of why the penalty should not be imposed. The immigration officer also provides a recommendation. 8 CFR 280.13(b).
- The immigration officer submits this report, along with their recommendation as to whether a penalty be issued, to the appropriate deciding official for review. *Id.* The deciding official will then determine whether to sustain the immigration officer's recommended decision and, in so doing, decide whether a penalty will be issued. *Id.*
- Depending on the decision of the deciding official, the alien is notified of the decision and of the opportunity to file an appeal with DOJ's BIA within 30 days of the service of the decision being appealed. *Id.;* 8 CFR 1003.3(a)(2).
- If an alien appeals, DHS may reopen and reconsider its decision if the disposition is to issue no penalties or otherwise grant the benefit requested on appeal. 8 CFR 1003.5(b). However, if a new decision is not made within 45 days of the briefs being received or due, or if the alien does not agree with DHS's new decision, the record of proceeding is immediately forwarded to the BIA. *Id.*
- If the BIA denies the appeal, the original civil penalty stands.

Under the current regulations, aliens are served a copy of the NIF by personal service. *See* 8 CFR 280.11. Personal service generally includes the following: delivery of a copy personally to the alien; delivery of a copy at the alien's residence; delivery of a copy at the office of the alien's attorney; or mailing a copy by certified or registered mail, return receipt requested, addressed to the alien's last known address. *See* 8 CFR 103.8(a)(2). Similarly, DHS also serves the decision and order imposing civil monetary penalties to the alien by personal service. *See* 8 CFR 103.8(c)(1).

Under the appeals process in 8 CFR part 280 (for the three penalties that are the subject of this rule), aliens challenging a civil monetary penalty may appeal to the BIA. *See* 8 CFR 280.51(c). This process has an unpredictable timeframe for a final decision in part because the BIA generally has a significant backlog of cases and often takes years to decide a case. *See, e.g., Matter of Bernardo,* 28 I&N Dec. 781 (BIA 2024) (deciding a case after an appeal was pending for over four years). As of the second quarter of FY 2025, the BIA has 160,098 pending appeals.[5] Pending appeals have increased approximately 330 percent since FY 2015. In FY 2015, there were 37,285 pending appeals at the end of the year.[6]

C. Enforcement History

Although DHS and its predecessor, INS, have had the authority to assess civil monetary penalties for failure to depart and unlawful entry since 1996, DHS did not issue any of these penalties until after Executive Order 13768, *Enhancing Public Safety in the Interior of the United States,* 82 FR 8799 (Jan 30, 2017), was issued. Section 6 of that order directed the Secretary of Homeland Security to ''ensure the assessment and collection of all fines and penalties . . . from aliens unlawfully present in the United States.'' 82 FR 8799, 8800 (Jan. 30, 2017). In response, ICE began issuing penalties under sections 240B(d)(1)(A) and 274D(a)(1) of the INA, 8 U.S.C. 1229c(b)(1)(A) and 8 U.S.C. 1324d(a)(1).[7] In the absence of an alternative, the Departments utilized the civil monetary penalties procedures contained in 8 CFR part 280. As of 2021, ICE had 26 active fines under these two authorities.[8] On January 20, 2021, former President Biden rescinded Executive Order 13768, *see* E.O. 13993, *Revision of Civil Immigration Enforcement Policies and Priorities,* 86 FR 7051 (Jan. 20, 2021), and DHS subsequently rescinded the active

[4] ICE also has the responsibility for enforcing two other sections of the INA which call for civil money penalties: INA 274A, 8 U.S.C. 1324a, and INA 274C, 8 U.S.C. 1324c. Procedures for enforcement of those sections are spelled out explicitly in other regulatory sections, *e.g.,* 8 CFR 270, 274a, and cases brought under those sections are adjudicated by DOJ rather than by DHS, *see generally* 28 CFR 68. Accordingly, enforcement of those penalties is not covered by 8 CFR part 280 and, thus, those penalties are not included within the scope of the IFR.

[5] EOIR, Workload & Adjudication Statistics, *All Appeals Filed, Completed, and Pending* (Apr. 4, 2025), *https://www.justice.gov/eoir/media/1344986/dl?inline* [*https://perma.cc/C6T7-6JUQ*].

[6] *Id.*

[7] Civil monetary penalties under section 275(b) of the INA, 8 U.S.C. 1325(b), were not assessed at that time.

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

decisions to fine and withdrew the active NIFs.[9]

On January 20, 2025, President Trump issued Executive Order 14159, *Protecting the American People Against Invasion,* 90 FR 8443 (Jan. 20, 2025), in response to an ''unprecedented flood of illegal immigration into the United States'' under the Biden Administration. *See id.* at 8443. As relevant to this IFR, the President directed the Secretary of Homeland Security to take ''all appropriate action to ensure the assessment and collection of all fines and penalties that [DHS] 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, and from those who facilitate such aliens' presence in the United States.'' *Id.* at 8444–45.

On March 17, 2025, the ICE Acting Director delegated authority to ICE Enforcement and Removal Operations' (''ERO'') Executive Associate Director (''EAD''), Deputy EAD, and Field Office Directors to administer and enforce these civil fines.[10] The Acting EAD of ERO then re-delegated this authority to ERO Deportation Officers.[11] Pursuant to this delegation of authority, as of June 13, 2025, ICE has initiated nearly 10,000 NIFs for failure-to-depart civil monetary penalties, and aliens or their attorneys have responded in approximately 100 cases to contest the fine, ask for additional time to respond, or request more information.

Related to these efforts, DHS is taking additional action to encourage illegal aliens to depart the United States voluntarily, including aliens who are subject to the failure-to-depart civil monetary penalties, through DHS's CBP Home mobile application (''CBP Home app''), consistent with Presidential Proclamation 10935, *Establishing Project Homecoming,* 90 FR 20357 (May 9, 2025). The CBP Home app allows aliens to register to depart the United States voluntarily, provide required biographical information, and notify DHS after they have departed.[12] DHS offers financial and travel document assistance for some aliens who request it, provides a $1,000 stipend upon confirmation through the app that return has been completed, and rescinds civil monetary fines imposed for failure-to-depart after return has been completed.[13]

D. Purpose and Need for the Rule

Through this IFR, the Departments are streamlining the process for imposing civil monetary penalties on aliens who have entered the United States unlawfully or have failed to depart after being ordered removed or granted voluntary departure.[14] The current process under 8 CFR part 280 was not designed with these penalties in mind. It contains unnecessary procedures and extended timelines that could hinder DHS's ability to impose these penalties swiftly and in proportion to the scale of aliens who have entered the United States unlawfully, including aliens who may have entered lawfully but failed to depart after removal and voluntary departure orders in recent years. The revised process is intended to allow DHS to impose more civil penalties, more quickly, and in proportion to the sheer number of aliens who, in recent years, have unlawfully entered the United States and those who remain after a removal order or voluntary departure order. DHS believes that this effort will, in turn, help deter future unlawful entries and encourage greater compliance with removal and voluntary departure orders consistent with this Administration's focus on securing the border and restoring integrity to our nation's immigration system.

1. Straightforward Nature of the Failure-to-Depart and Unlawful Entry Penalties

DHS believes that the nature of the failure-to-depart and unlawful entry penalties supports the need for more streamlined procedures. The unlawful entry civil penalties under section 275(b) of the INA, 8 U.S.C. 1325(b), typically turn on routine and straightforward determinations of fact that are readily verifiable by DHS. Aliens intercepted while entering or attempting to enter the United States at an improper time or place have, by definition, violated section 275(b) of the INA, 8 U.S.C. 1325(b), and therefore the documented encounter serves as the only fact required to impose the penalty in these instances. For aliens who enter unlawfully and are later encountered in the interior of the United States, ICE and CBP immigration officers typically prepare Form I–213, Record of Deportable/Inadmissible Alien, which documents the apprehension or encounter and includes the alien's immigration history. The information on the Form I–213 is entitled to a strong presumption of reliability, *see Punin* v. *Garland,* 108 F.4th 114, 125 (2d Cir. 2024), and thus will often be sufficient to demonstrate the alien is subject to the fine.

The same is true for the failure-to-depart civil monetary penalties under sections 240B(d) and 274D(a)(1) of the INA, 8 U.S.C. 1229c(d) and 1324d(a)(1). An alien subject to a failure-to-depart penalty has typically already availed himself of the immigration process, has had the opportunity to request relief or protection from removal, was ordered removed or granted voluntary departure, and was made aware of the civil penalties associated with failing to comply with the removal or voluntary departure order.[15] An alien cannot challenge his removal or voluntary departure order during the civil monetary penalty process. Instead, these provisions of the INA principally authorize DHS to impose a civil monetary penalty if two conditions are met: (1) the alien was granted voluntary departure [16] 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).

In the vast majority of cases, United States Government records will sufficiently establish the facts necessary to demonstrate that the alien is subject to these civil monetary penalties. DHS maintains records of an alien's immigration history, including removal and voluntary departure orders, information about any pending appeals or motions to reopen, and copies of any

[9] *Id.*

[10] *See* ICE Deleg. Order No. 003–2025, *Delegation of Authority to Administer and Enforce Certain Provisions Relating to Civil Penalties for Failure to Depart* (Mar. 17, 2025).

[11] *See* ERO Deleg. Order No. DO99–002, *Re-delegation of Authority to Administer and Enforce Provisions Relating to Civil Penalties for Failure to Depart* (Mar. 24, 2025).

[12] *See* CBP, *CBP Home: Assistance to Voluntarily Self Deport, https://www.dhs.gov/cbphome* [*https://perma.cc/CK3X-QM79*] (last visited June 17, 2025).

[13] *Id.; see also* 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-depart-fines-illegal-aliens-who-self-deport* [*https://perma.cc/8RBN-PACA*].

[14] For ease of reading, in some instances this preamble uses the phrase ''failure-to-depart civil monetary penalties'' to cover both civil monetary penalties under section 274D(a)(1) of the INA, 8 U.S.C. 1324d(a)(1), for willful failure to depart after a removal order and civil penalties under section 240B(d)(1)(A) of the INA, 8 U.S.C. 1229c(d)(1)(A), for failure to voluntarily depart under a voluntary departure order.

[15] For a discussion of the various procedures that apply in section 240 removal proceedings, including the warnings that Immigration Judges provide to aliens about the consequences of failing to comply with removal and voluntary departure orders see Section II.A of this preamble above.

[16] In the case of an order granting voluntary departure, the Immigration Judge enters an alternate removal order that becomes effective upon the expiration of the period allowed for voluntary departure unless the alien takes further procedural actions within the specified period. *See* 8 CFR 1240.26(d), 1240.26(c)(3).

orders that could preclude an alien's removal. *See Alien File, Index, and National File Tracking System of Records,* 82 FR 43556, 43559–60 (Sept 18, 2017). Therefore, DHS can confirm that an alien is subject to a final executable removal order or voluntary departure order by verifying that all appeals or motions have been exhausted that would otherwise stay the alien's removal. DHS also maintains certain departure records that can help verify whether an alien has departed.[17]

Moreover, the alien's immigration court records will typically demonstrate that the alien was aware of the obligation to depart the United States and, when combined with the alien's failure to do so, will ordinarily raise a sufficient inference that the alien willfully or voluntary failed to depart. Indeed, when an alien is granted voluntary departure, the alien is informed by the Immigration Judge that the alien must depart within the allotted time and that failing to do so will subject the alien to civil monetary penalties. *See* 8 CFR 1240.26(l). The Immigration Judge also issues a written voluntary departure order that provides further notice of the alien's obligations and potential penalties. *See* INA 240B(d)(3), 8 U.S.C. 1229c(d)(3). An alien who is subject to a final order of removal issued by an Immigration Judge will have received the relevant warning earlier in the proceedings. *See* INA 240(c)(5), 8 U.S.C. 1229a(c)(5); 8 CFR 1240.13(d). As with other records, DHS also has the ability to examine the alien's immigration court documents to verify that the alien received these warnings and was on notice of the departure obligations. Therefore, DHS's decision to impose civil monetary penalties will typically be based on incontrovertible records that establish that alien's liability for the penalty.

Given the straightforward and readily determinable nature of the failure-to-depart penalties, DHS anticipates that aliens will have limited grounds to contest them. For civil penalties under section 240B(d) of the INA, 8 U.S.C. 1229c(d), the BIA has held that an alien's ability to challenge his failure to depart is ''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.'' *Matter of Zmijewska,* 24 I&N Dec. 87, 94 (BIA 2007). For fines under section 274D(a)(1) of the INA, 8 U.S.C. 1324d(a)(1), DHS anticipates that an alien's ability to challenge them will also be limited to similar types of circumstances that indicate that the alien did not willfully fail to comply with a final removal order. Such circumstances might include situations where: (1) the alien did not receive notice of the removal order because it was sent to the wrong address or the alien's attorney did not inform the alien of the order; (2) the alien was not advised of his obligation to depart or of the consequences of failing to depart; or (3) the alien was prevented from departing because of circumstances such as hospitalization, incarceration, or because an embassy declined to issue a passport or travel documents. In these situations, aliens should be able to demonstrate through documentary evidence in their possession that their failure to depart was not voluntary or willful. Such evidence may include medical records after a hospitalization, evidence of a prior incarceration, or a letter from an embassy declining to issue a passport. With respect to lack of notice claims, as discussed above, DHS is often able to verify whether the alien received notice of the removal or voluntary departure order. The alien's failure to comply with the order after receiving notice of the consequences of doing so typically demonstrates that the alien is liable for the penalty absent other evidence.

DHS notes that there are other grounds in section 274D(a)(1) of the INA, 8 U.S.C. 1324d(a)(1), that could subject an alien to a civil monetary penalty and recognizes that this IFR's procedures apply to those penalties as well. Specifically, aliens who are subject to a final removal order can be fined for (1) willfully failing to make a timely application in good faith for travel documents; or (2) willfully failing or refusing to present for removal at the time and place directed by DHS. *See* INA 274D(a)(1)(B), (C), 8 U.S.C. 1324d(a)(1)(B), (C). Although the focus of this IFR is on fines related to failure to depart and unlawful entry, DHS has not excluded these other penalties from this IFR's coverage because these penalties are also readily verifiable by the alien's conduct and United States Government records.

Civil penalties under section 274D(a)(1)(B) of the INA, 8 U.S.C. 1324d(a)(1)(B), typically involve situations where an alien is in detention and the immigration officer is engaged in efforts to remove the alien, and the alien resists those efforts or refuses to take requested action necessary to secure travel documents. In these circumstances, the alien's liability for a civil monetary penalty will typically be based on the alien's actions that indisputably demonstrate that the alien is willfully failing or refusing to assist ICE's efforts to secure or finalize travel documents for the alien, including refusal to sign travel documents or requisite paperwork. *See, e.g., United States* v. *Ashraf,* 628 F.3d 813, 815–17 (6th Cir. 2011) (detailing the circumstances surrounding an alien's criminal conviction for refusal to cooperate with immigration officials to obtain travel documents). The alien's actions are based in fact and on the alien's observable conduct.

Similarly, civil penalties under section 274D(a)(1)(C) of the INA, 8 U.S.C. 1324d(a)(1)(C), for failure to report for removal, when aliens are not in detention, are also typically readily determinable based on an alien's actions. Aliens released from DHS custody after a removal order are issued an Order of Supervision (''OSUP''), Form I–220B. 8 CFR 241.5(a). Aliens released on an OSUP have final orders of removal and must appear at ICE offices for check-ins or to surrender for removal. Aliens released by ICE on OSUPs will be subject to conditions of release and reporting requirements based on the individual facts and circumstances. When ICE directs an alien on an OSUP to report for removal, and the alien fails to report as directed, this failure will typically demonstrate an alien's liability for a civil penalty for willfully failing to present for removal at the time and place directed by DHS absent evidence that the alien's failure to appear was due to circumstances beyond the alien's control.

Additionally, an alien released on an OSUP will normally be given a certain amount of time to provide evidence that the alien has applied for a passport or visited an embassy. ICE communicates this information to the alien in the OSUP. An alien's failure to apply for

[17] DHS acknowledges that it does not maintain comprehensive departure records for all aliens, particularly for aliens who cross land borders. *See Collection of Biometric Data From Aliens Upon Entry to and Departure From the United States,* 85 FR 74162, 74167 (Nov. 19, 2020) (''Persons departing the United States at the land border are not consistently subject to CBP inspection, as they are upon arrival. As a result, land departures may not be recorded accurately.''). However, DHS may rely on an alien's other actions in the United States that could indicate that the alien has failed to depart. Additionally, as discussed in Section II.C of this preamble, DHS is expanding the ability of aliens to provide departure information, such as by enabling aliens to use the CBP Home app to record their intention to voluntarily depart the United States and rescinding outstanding civil penalties for aliens that use the application to voluntarily depart. CBP, *CBP Home Mobile Application* (June 10, 2025), *https://www.cbp.gov/about/mobile-apps-directory/cbphome* [*https://perma.cc/K6WZ-6CZB*]; *see also* 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-depart-fines-illegal-aliens-who-self-deport* [*https://perma.cc/8RBN-PACA*].

travel documents or visit an embassy within the allotted time period may serve to establish that the alien is liable for a civil monetary penalty for willfully failing or refusing to make a timely application in good faith for travel documents.

2. Current Process Does Not Align With These Penalties' Straightforward Nature

As explained in Section II.B of this preamble, the civil monetary penalty procedures in 8 CFR part 280 were designed in 1952 for fines against airlines and carriers that violate certain provisions of the INA designed to control the transport of aliens into the United States. In 1996, Congress authorized DHS's predecessor agency INS to also impose civil monetary penalties on aliens who enter the United States unlawfully or fail to depart. DHS has never updated the procedures in 8 CFR part 280 to account for this new authority because until recently the unlawful entry and failure-to-depart penalties have rarely been used. The Departments have now determined that this IFR is needed because procedures in 8 CFR part 280 do not align with the straightforward and readily determinable nature of these particular penalties and the context in which they arise.

First, the requirement that DHS must serve civil fine notices and civil monetary penalty decisions on the alien in person or by certified mail does not necessarily align with certain statutory requirements. Under the INA, all aliens within the United States, with limited exceptions, must register with DHS and notify DHS of their address and any change of address within ten days from the date of such change. *See* INA 262, 265, 8 U.S.C. 1302, 1305; *see also* 8 CFR 265.1. Moreover, upon initiation of section 240 removal proceedings, aliens are informed of their obligation to update any changes of address with DHS and EOIR. *See* INA 239(a)(1)(F), 8 U.S.C. 1229(a)(1)(F). Therefore, DHS believes that it should be able to serve the alien by routine mail for these civil monetary penalties, as DHS should be able to rely on an alien's responsibilities in reporting his or her address to the Government.

Second, the 30-day timeline for an alien to contest a penalty is unnecessary given both the context of these penalties and their straightforward nature. Most aliens subject to the failure-to-depart penalties have already been warned of their obligations to depart the United States during removal proceedings and that failure to do so may result in a penalty. Similarly, when an immigration officer apprehends an alien for unlawful entry, the officer interviews the alien, decides whether the alien is inadmissible, and informs the alien of the determination. In addition, where civil monetary penalties will be issued, the immigration officer will inform an alien that he or she is subject to civil monetary penalties for unlawful entry. In these circumstances, DHS believes that an alien does not need 30 days to review and respond to the fine because the alien is already on notice that his or her conduct constitutes a violation of the nation's immigration laws that could result in a penalty. Additionally, the need for a more limited appeal period is supported by the straightforward nature of these penalties and the limited grounds to challenge them as discussed above in this Section II.D.1 of this preamble.

The same is true of the in-person interview under 8 CFR 280.12. As discussed above, in the vast majority of cases, the alien's immigration records will demonstrate liability for the penalty. Similarly, for aliens who have entered unlawfully, the fact of apprehension by CBP for crossing the border illegally and the documented encounter will, in most cases, provide the basis for the civil monetary penalty. Accordingly, DHS believes that an in-person hearing adds no value in the context of civil monetary penalties for unlawful entry and failure to depart. Rather, if an alien disputes the penalty, DHS will be able to accurately resolve the challenge through the alien's written submission given the alien has limited grounds to challenge these determinations, as discussed in Section II.D.1 of this preamble.

Finally, an alien's ability under 8 CFR part 280 to appeal a civil penalty decision to the BIA raises similar concerns. As discussed above, 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. The BIA has no unique expertise with these penalties because, until very recently, they have rarely been used. Therefore, the Departments believe that there is no operational need for the BIA to adjudicate administrative appeals of DHS decisions for civil monetary penalties under sections 240B(d), 274D(a)(1), or 275(b) of the INA, 8 U.S.C. 1229c(d), 1324d(a), or 1325(b), because these civil monetary penalties are both set and enforced by DHS and involve readily determinable information within DHS's possession. Accordingly, the Departments believe that BIA appellate review of these penalties is also unnecessary.

3. Need To Ensure That the Procedures Can Be Applied Efficiently and at Scale

Without this IFR, the current procedures under 8 CFR part 280 have the potential to become unnecessarily burdensome and cause unnecessary delay as DHS expands its use of the failure to depart and unlawful entry civil monetary penalties.

The current personal service requirement has already proven to be overly burdensome, costly, and unnecessary. Personal delivery 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. Additionally, 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. Therefore, without the changes in this IFR, the certified mail requirement has the potential to hinder DHS's ability to apply these civil penalties at scale. Additionally, for the reasons discussed in Section IV.E of this preamble, DHS believes that service of these civil monetary penalties by ordinary mail is ''reasonably calculated under all the circumstances, to apprise'' aliens of the fines and ''afford them an opportunity to present their objections.'' *Mullane* v. *Cent. Hanover Bank and Tr. Co.,* 339 U.S. 306, 314 (1950).

The 30-day response period also has the potential to become administratively burdensome as DHS expands its use of these civil monetary penalties. A 30-day period for the alien to respond can lead to a growing number of outstanding NIFs that, when combined with the issuance of subsequent NIFs, can result in a growing backlog of civil penalties cases. As a result of the backlog, DHS would need to devote more time and resources towards managing, tracking, and closing out these NIFs. With more outstanding NIFs to manage, there is also an increased risk that some NIFs will slip through the cracks. As DHS expands the use of these civil monetary penalties, a longer response period has the potential to divert resources away from DHS's other immigration enforcement functions by requiring DHS to spend more time and resources on

simply managing the growing volume of outstanding NIFs.

Furthermore, the 30-day period requires DHS to stand by while the clock runs down. DHS cannot proceed with finalizing the NIF, including initiating the collection process. An administratively finalized NIF must go through ICE finance and the United States Department of the Treasury (''Treasury'') before the collection process can begin. The 30-day period delays Treasury's ability to generate and send collection notices and invoices to aliens. A reduced appeal window affords the alien appellate rights while enabling the collections process to move at a more reasonable pace.

Similarly, ICE has limited resources to conduct interviews, and, if requested by a significant number of aliens, providing these interviews could impact ICE's ability to perform other critical immigration enforcement functions including apprehending, detaining, and removing unlawful aliens. In these circumstances, ICE would likely need to re-calibrate how many civil penalties it could issue at a time and this, in turn, could unnecessarily impede ICE's ability to impose these penalties quickly and at a scale necessary to respond to the significant number of aliens who have unlawfully entered or failed to depart the United States.

The BIA appeal process raises additional concerns. The BIA has a large backlog of cases and appeals, and BIA appeals take a long time to resolve.[18] Indeed, the Departments estimate that the time from when the NIF is served until the final decision is issued could take more than a year given the BIA's backlog of cases. Therefore, if aliens begin appealing these decisions in significant numbers, this could significantly delay DHS's ability to reach final decisions on these fines in a large number of cases.

Moreover, the BIA appeals process itself involves several steps that take time and requires substantial agency resources. When an alien appeals a DHS fine decision, DHS will need to prepare the administrative record and forward it to the BIA. DHS is also responsible for issuing briefing schedules and receiving and forwarding briefs to the BIA.[19] Although these fines are typically relatively straightforward, ICE attorneys will also need to devote time to reviewing and potentially responding to the alien's appeal. Therefore, as DHS continues to expand its use of these civil penalties, BIA appeals involving these fines could occur with some frequency and impose unnecessary burdens on DHS and contribute to the BIA's backlog.

The Departments have considered streamlining the BIA process for appeals involving these civil penalties but have decided that it is more important that EOIR's resources are focused on their statutorily prescribed functions under the INA—adjudicating and reviewing appeals from section 240 removal proceedings and exercising authority with respect to other immigration-related functions explicitly provided in the INA. Indeed, if the BIA were to prioritize these cases over others, that action could impede the BIA's ability to decide other appeals in a timely manner, which could impact DHS's ability to secure final removal orders against aliens consistent with this Administration's enforcement priorities.

DHS acknowledges that it has issued a significant number of penalties to aliens in recent months using the process set forth in 8 CFR part 280, and very few aliens have contested them as discussed above in Section II.C of this preamble. However, DHS must ensure that the civil penalty procedures align with the straightforward nature of these penalties and do not hinder DHS's ability to apply these penalties efficiently in response to the scale of aliens who have violated the immigration laws and are subject to these monetary penalties. The current procedures collectively and individually have the potential to impede DHS's ability to issue and finalize these civil penalties at scale and in a timely and efficient manner that aligns with the straightforward nature and the circumstances under which these civil fines are issued.

The need for this IFR's more streamlined civil monetary penalty process is demonstrated by the sheer number of aliens who are potentially subject to the unlawful entry and failure-to- depart penalties. As noted in Proclamation 10888, *Guaranteeing the States Protection Against Invasion,* ''[o]ver the last 4 years, at least 8 million illegal aliens were encountered along the southern border of the United States, and countless millions more evaded detection and illegally entered the United States.'' 90 FR 8334. DHS estimates that approximately 1.5 million aliens entered or attempted to enter unlawfully (''encounters'') between ports of entry (''POEs'') in fiscal year 2024.[20] In addition, in March 2025, the Secretary of Homeland Security determined ''that an actual or imminent mass influx of aliens is arriving at the southern border of the United States and presents urgent circumstances requiring a continued federal response.'' *Finding of Mass Influx of Aliens,* 90 FR 13622, 13622 (Mar. 25, 2025).

Moreover, DHS data indicates that the percentage of aliens who are ordered removed or granted voluntary departure and whose removal order has not been executed or whose voluntary departure is not confirmed has significantly increased in recent years.[21] In fiscal year (''FY'') 2024, EOIR issued over 282,000 final removal orders, but 90 percent of those removal orders (255,000) were unexecuted, which may indicate a failure of those aliens to depart. In the same year, EOIR granted approximately 8,800 aliens voluntary departure orders, but only about 50 percent of these aliens confirmed their departures.[22] Additionally, based on EOIR Workload and Adjudication Statistics, there were almost 4 million pending section 240 removal proceedings in FY 2024 and even more as of the second quarter of FY 2025.[23] When completed, these cases may result in a substantial number of additional removal orders against aliens. Without additional action, there is a risk that many of these aliens may remain in the United States.

An alien's failure to depart has serious consequences for immigration enforcement and the adjudication of immigration cases. An alien's failure to comply with a removal order risks undermining the authority of

[18] EOIR Workload & Adjudication Statistics, *All Appeals Filed, Completed, and Pending* (Apr. 4, 2025), *https://www.justice.gov/eoir/media/1344986/dl?inline* [*https://perma.cc/C6T7-6JUQ*].

[19] *See* BIA Practice Manual ch.10.3(b), (c) (last visited June 17, 2025) (''Processing''), *available at https://www.justice.gov/eoir/reference-materials/bia/chapter-10/3* [*https://perma.cc/J5XQ-KEGN*].

[20] CBP, *Southwest Land Border Encounters, https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters* [*https://perma.cc/U6W3-GK3R*] (last visited Apr. 15, 2024) (showing monthly U.S. Border Patrol land border encounters).

[21] DHS Office of Homeland Security Statistics analysis of EOIR and DHS data. DHS acknowledges that this data may include aliens who have departed on their own and those who have not provided their departure information to the government prior, during, or after their self-departure. In these circumstances, the government would have this information only if provided by the alien, such as by using the CBP Home app to record their intention to voluntarily depart the United States. *See* CBP, *CBP Home Mobile Application* (June 10, 2025), *https://www.cbp.gov/about/mobile-apps-directory/cbphome* [*https://perma.cc/K6WZ-6CZB*].

[22] *Id.*

[23] EOIR Workload & Adjudication Statistics, *Pending Cases, New Cases, and Total Completions* (Apr. 4, 2025), *https://www.justice.gov/eoir/media/1344791/dl?inline,* [*https://perma.cc/6LXK-X9Q9*]. EOIR statistics reported 3,918,340 pending cases in FY 2024 and 3,923,439 pending cases as of FY 2025 (Second Quarter). The term ''pending cases'' includes all uncompleted cases in removal, deportation, exclusion, asylum-only, and withholding-only proceedings.

immigration courts and the integrity of this nation's immigration laws and processes. An alien's failure to comply also has enforcement costs—DHS must spend limited time and resources locating and apprehending these aliens—in addition to the costs expended by the Departments to prosecute and adjudicate the alien's removal proceedings to completion in the first instance. Similarly, an alien who fails to comply with a voluntary departure order has failed to uphold his end of the bargain despite being granted the privilege of voluntary departure. This action too risks undermining the overall integrity of the immigration system, and it risks further incentivizing aliens to simply ignore removal orders or voluntary departure orders.

Similarly, aliens who enter the United States unlawfully pose a significant strain on DHS resources and American communities and pose a threat to public safety and border security. *See* 90 FR 13622, 13623. DHS acknowledges that encounters between POEs have fallen significantly over the last few months, which DHS believes is a result of the Securing the Border IFR and final rule and the Trump Administration's efforts. *Securing the Border,* 89 FR 48710 (June 7, 2024) (IFR); *Securing the Border,* 89 FR 81156 (Oct. 7, 2024) (final rule); E.O.14165, *Securing Our Borders,* 90 FR 8467 (Jan. 20, 2025); Presidential Proclamation 10888, *Guaranteeing the States Protection Against Invasion,* 90 FR 8333 (Jan. 20, 2025). DHS believes, however, that additional action is needed to ensure that the Government continues to build on this progress and deter future unlawful entries, consistent with the Administration's objective of fully securing the border.

This IFR is 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 orders and voluntary departure orders and to deter unlawful entries. DHS has previously recognized that the efficacy of immigration enforcement measures depends on the Government's ability to apply them quickly and in proportion to the scale of the problem which, in turn, will reduce incentives that aliens may have to violate our nation's immigration laws.[24] Similarly, DHS must be able to do the same with civil monetary penalties covered by this IFR to ensure that these penalties have their intended deterrent effect. In sum, DHS believes that faster processing and broader application of these penalties will more effectively deter illegal entry and aliens illegally remaining in the United States after agreeing to voluntarily depart or receiving an administratively final order of removal.

Therefore, due to the significant increase in illegal immigration in recent years, DHS seeks to update the regulations that govern civil monetary penalties in an effort to maximize the use of all statutory provisions available to increase removal activity, disincentivize aliens from entering or remaining in the United States illegally, promote public safety, and ensure that DHS has an effective, workable process to issue and collect civil monetary penalties. *See* E.O. 14159, 90 FR 8443, 8444–45 (Jan. 20, 2025).

4. Why This IFR Is Needed

For the above discussed reasons, through this IFR, DHS is adding a new 8 CFR part 281 to govern the process for civil monetary penalties for unlawful entry and failure-to-depart to address the above concerns and to better ensure that the process aligns with the straightforward nature of these penalties and the need for DHS to impose them quickly and at scale.

Section IV of this preamble discusses these new procedures in detail. In short, DHS is streamlining the process for assessing and imposing civil penalties by: (1) removing the NIF process; (2) shortening the timeline for an alien to contest a civil penalty decision; (3) creating a simplified process for aliens to c8 u.s.contest civil penalties through a written appeal that will be decided by a DHS supervisory immigration officer, rather than the BIA; and (4) allowing DHS to serve civil monetary penalty decisions and orders by ordinary mail. DOJ is making conforming changes to its regulations.

In comparison to the process set forth in 8 CFR part 280, DHS believes these procedures will reduce potential and unnecessary administrative burdens and allow DHS to reach a final decision more quickly. These changes are needed to ensure that DHS can improve its efforts to impose these penalties while continuing to prioritize the apprehension, detention, and removal of aliens in the United States in violation of the immigration laws.

At the same time, for the reasons discussed more fully in Section IV.E of this preamble, DHS believes that these changes are consistent with due process. Under the new regulation, a supervisory immigration officer must issue a decision that informs the alien of the statutory and factual basis for the penalty and advises the alien of the requirements for filing an appeal. The alien has 15 business days to appeal and can use the appeal form that DHS has developed for these fines. If the alien files a timely appeal, a supervisory immigration officer who did not issue the initial decision will review the record de novo and may request additional evidence or information. DHS has determined that a shortened appeal period, elimination of the option for an in-person interview, and shift from BIA to DHS review better aligns with the nature of these fines, which typically turn on routine and straightforward determinations of fact that can be decided quickly on a written record. The revised process protects an alien's ability to contest the fine and better ensures that DHS can efficiently reach a final decision, which is critical to DHS's ability to 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.

The Departments acknowledge that, in 2021, DHS rescinded the 2018 delegation orders that allowed ICE officers to enforce civil monetary penalties against aliens who unlawfully remained in the United States.[25] At the time, DHS explained that the civil penalty process was ineffective and did not encourage aliens to comply with departure obligations.[26] DHS also cited its need to focus limited enforcement and removal resources on aliens ''posing the greatest risk to national security and public safety in accordance with the [then] current guidance on civil immigration enforcement and removal priorities.'' [27] In an accompanying memo, ICE also noted the resources needed to impose these penalties ''outweigh[ ]'' the amounts that can be collected from ''a transient noncitizen population that generally lacks the means to pay.'' [28]

[24] For example, the Departments issued the Securing the Border IFR in 2024 to address sustained high encounter rates and illegal entries at the southern border. *See* 89 FR 48731. The Departments explained that the changes made in that rule were intended to ''maximize the consequences for those who cross unlawfully or without authorization [by] . . . deliver[ing] consequences swiftly to the highest proportion of individuals who fail to establish a legal basis to remain in the United States,'' 89 FR 48749, which in turn would ''reduce incentives for irregular migration'', 89 FR 48766.

[25] DHS, *DHS Announces Rescission of Civil Penalties for Failure-to-Depart* (Apr. 23, 2021), *https://www.dhs.gov/archive/news/2021/04/23/dhs-announces-rescission-civil-penalties-failure-depart* [*https://perma.cc/3PYD-7GDG*].

[26] *Id.*

[27] *Id.*

[28] *See* Memorandum for Tae D. Johnson, Acting Dir., ICE, from Corey A. Price, Acting Exec. Assoc.

Upon reconsideration, DHS believes that its limited experience implementing those civil monetary penalties in prior years does not demonstrate that these penalties are innately ineffective. At the time ICE rescinded prior failure-to-depart penalties in 2021, ICE had only 26 active penalties.[29] DHS now believes that it is not accurate to draw a broad generalization about the efficacy of these civil penalties based on the limited sample size. More importantly, as explained above, DHS believes that these civil penalties will be most effective if applied quickly and at scale. This IFR is needed to ensure that the process for imposing these penalties does not impede DHS's ability to do so. Indeed, ICE noted that the prior effort to implement the failure-to-depart civil monetary penalties ''pose[d] a significant resource drain to ICE in cases with pending appeals or where ICE [had] not yet issued a final decision to fine.'' [30] This IFR is designed to minimize these burdens by streamlining the process.

Additionally, DHS rescinded the prior delegations in part to focus limited enforcement and removal resources on aliens ''posing the greatest risk to national security and public safety in accordance with the [prior Administration's] guidance on civil immigration enforcement and removal priorities.'' [31] On January 20, 2025, President Trump directed that DHS enforcement resources should be focused on ''the successful enforcement of final orders of removal'' and the ''provisions of the INA and other Federal laws related to the illegal entry and unlawful presence of aliens in the United States.'' *See* E.O. 14159, *Protecting the American People Against Invasion,* 90 FR 8443, 8444 (Jan. 20, 2025). As explained above, that Executive Order also directed the Secretary to take all appropriate action to assess and collect ''all fines and penalties that [DHS] is authorized by law to assess and collect from aliens.'' *Id.* at 8444–45. This IFR is needed to facilitate DHS's ability to meet both directives. Quite simply, this IFR 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 without unnecessarily diverting resources away from ICE's and CBP's missions to apprehend, detain, and remove aliens who have illegally entered and are unlawfully present.

Finally, with respect to ICE's prior determination that the resource burdens outweigh the amount that can be collected from a transient population of aliens that lacks the means to pay, as noted above, this IFR is intended to reduce potential resource burdens by streamlining the process. Moreover, DHS notes that the collection of civil monetary penalties is not the only goal. Maximizing the use of these civil penalties is intended to help incentivize illegal aliens who are subject to them to voluntarily leave the United States. To help achieve this objective, DHS has announced that it will rescind outstanding civil penalties in certain cases where an alien uses the CBP Home app to depart the United States as discussed in Section II.C of this preamble.[32] DHS intends this policy to create greater incentives for aliens who are subject to these penalties to depart, including aliens who do not have the means to pay these fines.[33]

Additionally, DHS, in coordination with Treasury, has made recent improvements to the collection process for the failure-to-depart civil monetary penalties. These efforts are intended to increase the U.S. Government's ability to successfully collect these fines, including through processes that allow DHS to more quickly send civil monetary fine packages to Treasury. On receipt of the civil monetary fine packages, Treasury can begin using its suite of collection methods, including call centers and skip tracing, to locate the alien and collect the fine. These changes to the collections process, in combination with this IFR's changes to the civil monetary penalty process, are intended to better ensure that DHS can more effectively enforce the collection of civil monetary penalties against aliens who choose to remain in the United States unlawfully rather than taking advantage of incentives to depart voluntarily.

In sum, DHS believes that this IFR's streamlined procedures, paired with incentives to depart and recent changes to the collections process, minimize ICE's prior concerns about the effectiveness of these penalties. Moreover, it is DHS's assessment that this IFR would still be needed, even if it does not fully resolve all of the challenges associated with enforcing these penalties against aliens, given the large number of aliens who have entered and remained in the country illegally under the prior Administration.

E. Scope of the Rule

This rule does not change the process for all civil penalties that DHS can impose under the INA. Rather, this rule addresses civil monetary penalties issued under sections 240B(d), 274D(a)(1), and 275(b) of the INA, 8 U.S.C. 1229c(d), 1324d(a), and 1325(b), and creates a revised process only for these specified penalties. The Departments believe it makes sense to streamline the process for adjudicating these penalties while retaining the current process for other INA civil penalties under 8 CFR part 280 that primarily relate to carrier violations.

The revised process is particularly appropriate for these three provisions because it will address a pressing need. Specifically, this IFR is needed to ensure that DHS can efficiently impose civil monetary fines in response to the large number of unlawful entrants and aliens who have failed to depart the United States, a population of high enforcement priority.[34] The Departments do not see a similarly pressing need to modify the process applicable to other civil penalties. In contrast to the potential difficulties that the existing process could create as applied to the large number of aliens in the United States who have entered unlawfully or have failed to depart, based on CBP data from October 1, 2022, to May 5, 2025, 1,428 carrier fines cases were initiated.

Additionally, the civil monetary penalties covered by this rule differ from other penalties that are issued by CBP using the process at 8 CFR part 280. Those penalties largely involve carrier fines that are issued against entities such as airlines, shipping lines, cruise

Dir., Enforcement and Removal Operations, ICE, *Re: Recission of Civil Penalties for Failure to Depart.*

[29] *Id.*

[30] *Id.*

[31] DHS, *DHS Announces Rescission of Civil Penalties for Failure-to-Depart* (Apr. 23, 2021), *https://www.dhs.gov/archive/news/2021/04/23/dhs-announces-rescission-civil-penalties-failure-depart* [*https://perma.cc/3PYD-7GDG*].

[32] *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-depart-fines-illegal-aliens-who-self-deport* [*https://perma.cc/8RBN-PACA*].

[33] In addition to rescinding outstanding civil penalties, DHS has announced that ''aliens who use the CBP Home App to self deport [will] also receive cost free travel and a $1,000 exit bonus paid after their return is confirmed through the app.'' *Id.; see also* Proclamation 10935, *Establishing Project Homecoming,* 90 FR 20357, 20357 (May 9, 2025) (establishing ''Project Homecoming, which will present illegal aliens with a choice: either leave the United States voluntarily, with the support and financial assistance of the Federal Government, or remain and face the consequences'').

[34] *Securing the Border,* 89 FR 48710 (June 7, 2024) (IFR); *Securing the Border,* 89 FR 81156 (Oct. 7, 2024) (final rule); E.O. 14165, *Securing Our Borders,* 90 FR 8467 (Jan. 20, 2025); Presidential Proclamation 10888, *Guaranteeing the States Protection Against Invasion,* 90 FR 8333 (Jan. 20, 2025).

lines, train and bus companies, and international bridge authorities for various violations under the INA. Such violations generally involve a carrier's, or its agent's, failure to meet a requirement of the INA regarding the arrival of alien crewmembers, passengers, and stowaways transported into the United States on their conveyance. Those penalties cover various conduct such as vessels or airlines failing to detain their alien crew until CBP inspection, *see* INA 254(a)(1), 8 U.S.C. 1284(a)(1), or bringing in alien passengers without valid passports and unexpired visas, *see* INA 273(a)(1), 8 U.S.C. 1323(a)(1). Some of these carrier fines may be subject to mitigation or other procedures unique to each authority. *See, e.g.,* 8 CFR part 273 (allowing carriers to seek a reduction, refund, or waiver of a fine imposed under section 273 of the INA, 8 U.S.C. 1323).

In comparison, this rule covers a more limited set of civil monetary penalties, involving aliens who enter the country unlawfully or fail to depart after a removal or voluntary departure order, including taking certain action that impedes removal. Additionally, unlike many of the other civil monetary penalties covered by 8 CFR part 280 applicable to carriers, aliens who are subject to unlawful entry and failure-to-depart penalties cannot seek mitigation. And, as discussed above in Section II.D of this preamble, the vast majority of cases involving the unlawful entry and failure-to-depart penalties typically turn on readily verifiable and straightforward determinations of fact, making it less likely that aliens will have grounds to contest these penalties. The Departments believe that these differences, in combination with the pressing need to address the scale of aliens who are subject to these penalties, supports this rule's more limited approach at this time.

III. Legal Authority

The Attorney General [35] and the Secretary issue this joint IFR pursuant to their respective authorities. The HSA, as amended, transferred many functions related to the execution of Federal immigration law to the newly created DHS. 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), and grants the Secretary the power to take actions ''necessary for carrying out'' the Secretary's authority under the provisions of the INA. INA 103(a)(3), 8 U.S.C. 1103(a)(3). As relevant to this rule, the HSA and the amendments to the INA now provide the Secretary with the authority to issue most civil monetary penalties authorized under the INA, including those authorized under sections 240B(d), 274D(a), and 275(b) of the INA, 8 U.S.C. 1229c(d), 1324d(a), 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); 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 separated immigration functions and responsibilities into three principal components: CBP, ICE, and U.S. Citizenship and Immigration Services (''USCIS''). *See* 6 U.S.C. 211 (CBP); 6 U.S.C. 252 (ICE); 6 U.S.C. 271 (USCIS). ICE is generally responsible for immigration enforcement in the interior of the United States and CBP is generally responsible for immigration enforcement at POEs and along the borders of the United States. ICE and CBP both have the authority to administer civil monetary penalties related to certain violations of immigration law and immigration court orders, including those authorized under sections 240B(d), 274D(a), and 275(b) of the INA, 8 U.S.C. 1229c(d), 1324d(a), 1325(b). *See, e.g.,* 8 CFR part 280.

The Secretary may redelegate or confer any of the DHS functions and authorities with respect to the immigration laws at her discretion to any official, officer, or employee of DHS (including by means of successive redelegations). *See* INA 103(a)(4), 8 U.S.C. 1103(a)(4); 8 CFR 2.1; *see also Authority of the Secretary of Homeland Security; Delegations of Authority; Immigration Laws,* 68 FR 10922, 10922 (Mar. 6, 2003). The Secretary may delegate her authority in any manner she chooses, including by regulation, memorandum, directive, or other method. 8 CFR 2.1. Moreover, under section 102(a)(3) of the HSA, 6 U.S.C. 112(a)(3), all functions of DHS officers, employees, and organizational units are vested 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; *see also* INA 103(g)(1), 8 U.S.C. 1103(g)(1). Immigration Judges within EOIR have authority to conduct section 240 removal proceedings and to issue orders of removal or grant voluntary departure. *See* INA 240, 240B, 8 U.S.C. 1229a, 1229b. And the INA provides that the ''determination and ruling by the Attorney General with respect to all questions of law shall be controlling.'' INA 103(a)(1), 8 U.S.C. 1103(a)(1). Nothing in this IFR alters EOIR's or the Attorney General's authority over section 240 removal proceedings, including their authorities to issue removal orders and grant voluntary departure.

Rather, DOJ's involvement in this rulemaking is necessary because the existing EOIR regulations provide the BIA with appellate authority to review DHS decisions involving certain civil monetary penalties authorized under the INA, including those covered by this rule. *See* 8 CFR 1003.1(b)(4), 1280.1(b). Nothing in the INA precludes the Attorney General from exercising her authority to remove the BIA's appellate authority over these civil monetary penalties imposed by another agency. Rather, the statute—section 103(g)(1) of the INA, 8 U.S.C. 1103(g)(1)—provides authority to DOJ to issue regulations that govern EOIR. Furthermore, the statute, section 103(g)(2) of the INA, 8 U.S.C. 1103(g)(2), states that the Attorney General has authority to establish such regulations as are ''necessary for carrying out'' EOIR's responsibilities. To ensure EOIR's resources are focused on their statutorily prescribed functions under the INA—adjudicating and reviewing appeals from section 240 removal proceedings and exercising authority with respect to other immigration-related functions explicitly provided in the INA—DOJ has determined that it is necessary to amend its regulations to eliminate the BIA's appellate authority over these penalties.

This IFR specifically addresses DHS procedures for imposing civil monetary penalties under sections 240B(d), 274D(a)(1), and 275(b) of the INA, 8 U.S.C. 1229c(d), 1324d(a), 1325(b). Those statutes do not specify the procedures that immigration officers must follow to impose those civil monetary penalties, and they do not require DOJ review of any such fines.[36] Instead, those statutes only define the category of aliens who are subject to the

[35] In Attorney General Order Number 6260–2025, the Attorney General has exercised her authority under 28 U.S.C. 509 and 510 to delegate her authority to issue regulations related to immigration matters within the jurisdiction of EOIR to EOIR's Director.

[36] *Cf., e.g.,* INA 214(c)(14)(A), 8 U.S.C. 1184(c)(14)(A) (allowing for imposition of civil monetary penalties for certain H–2B nonimmigrant program violations only ''after notice and an opportunity for a hearing'').

specified penalties, set the amount, and authorize DHS to impose those penalties. Moreover, section 280 of the INA, 8 U.S.C. 1330, sets forth certain requirements for collecting civil monetary penalties, including those authorized under sections 240B(d), 274D(a)(1), or 275(b) of the INA, 8 U.S.C. 1229c(d), 1324d(a), 1325(b), but does not specify the procedures for assessing and issuing such penalties. Accordingly, the statute gives DHS discretion to employ the procedures it reasonably concludes are appropriate to assess and issue the authorized penalties.[37] *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.'' (quotation marks omitted) (quoting *FCC* v. *Schreiber,* 381 U.S. 279, 290 (1965))).

IV. Discussion of Changes

A. Creation of Part 281

Regulations at 8 CFR part 280 govern DHS's imposition of civil monetary penalties for immigration violations. This IFR adds a new part, 8 CFR part 281, to govern the process for imposing civil monetary penalties under sections 240B(d), 274D(a)(1), and 275(b) of the INA, 8 U.S.C. 1229c(d), 1324d(a)(1), 1325(b).[38] As discussed in Section II.D of this preamble, the updated procedures streamline the process and enhance DHS's ability to issue civil monetary penalties at a scale needed to respond to the large number of aliens who have failed to depart under voluntary departure orders and removal orders in recent years. DHS believes that the updated procedures will allow DHS to more swiftly issue civil monetary penalties against aliens who unlawfully enter the United States and aliens who ignore removal and voluntary departure orders, which in turn will aid DHS's efforts to secure the border by further deterring unlawful entries and unlawful presence. To meet these goals, the IFR removes unnecessary and potentially burdensome procedures that are not statutorily required. In sum, Part 281 enables DHS to better execute its mission of safeguarding our homeland and enforcing the immigration laws, including those related to the illegal entry and unlawful presence. In addition, it is consistent with Executive Order 14159. *See* 90 FR 8443 (Jan. 20, 2025).

This IFR applies prospectively to actions to impose civil monetary penalties that are initiated on or after June 27, 2025. Aliens who had the procedures in 8 CFR part 280 initiated against them at the time of the effective date of this IFR would continue to be subject to those procedures, as well as the related DOJ provisions in 8 CFR parts 1003 and 1280. The IFR states these provisions are controlling where the alien had been served a NIF prior to the effective date of this rule. *See* 8 CFR 281.1(h). Under the rule, the provisions of 8 CFR part 281.1 will be applied prospectively to aliens against whom DHS seeks to impose civil monetary penalties on or after the effective date of this IFR.

B. Initiation of the Civil Penalty Process; Service of Decision and Order

The revised process no longer requires DHS to issue and personally serve NIFs and wait for any responses from the alien prior to issuing a decision. *Compare* 8 CFR 281, *with* 8 CFR 280. Rather, the IFR requires an immigration officer to initiate the process by issuing a decision and order imposing civil monetary penalties under sections 240B(d), 274D(a)(1), or 275(b) of the INA, 8 U.S.C. 1229c(d), 1324d(a)(1), or 1325(b). *See* 8 CFR 281.1(b), (c)(1).

The immigration officer's decision and order will inform the alien of the statutory basis for the penalty and the amount and type of the penalty being imposed, and will include a brief statement of the reasons for the decision. *See* 8 CFR 281.1(c)(1). This requirement ensures that the alien understands the basis for the penalty and has the requisite information in the event that the alien seeks to challenge the immigration officer's decision.

Furthermore, the decision and order will include advisals informing the aliens of their right to appeal, the process for such an appeal, the right to be represented by counsel at their own expense, and an opportunity to provide any supporting evidence or documentation to challenge the penalty. *See* 8 CFR 281.1(c)(2). These short and straightforward advisals are intended to give the alien notice of how to contest the civil penalty decision, including where and how to submit an appeal. These advisals also make clear that the alien can file a written defense or documentary evidence if the alien contests the penalty. *See* 8 CFR 281.1(c)(2)(iii). However, the alien is not required to submit such materials in connection with an appeal; the alien can simply submit a written notice indicating that the alien is appealing the decision.

The IFR also allows DHS to serve the decision and order of civil monetary penalties under sections 240B(d), 274D(a)(1), or 275(b) of the INA, 8 U.S.C. 1229c(d), 1324d(a)(1), or 1325(b), either in person or by routine service, as defined in 8 CFR 103.8(a)(1)(i), which includes regular mail. 8 CFR 281.1(d). As discussed above in Section II.D of this preamble, the existing procedures in 8 CFR part 280 unnecessarily require DHS to use personal service or certified mail to impose these civil penalties. For the reasons discussed in that Section, DHS believes that the Government should be able to serve the alien by routine mail because aliens have a legal obligation to report their address to the Government, including any change of address, aliens are advised of this requirement and DHS facilitates their ability to report any change of address, and DHS officers have access to aliens' address information that is contained in multiple systems, including those maintained by DHS components and EOIR. DHS also believes that this change will be less costly and burdensome than requiring service by certified mail or personal service, and increases DHS's ability to impose these civil monetary penalties.

It is worth noting that an NTA, which carries greater weight because its filing initiates section 240 removal proceedings, can be served by regular mail. INA 239(a)(1), 8 U.S.C. 1229(a)(1). Prior to 1996, the statute required the Government to use certified mail, but IIRIRA amended the provision to allow charging documents to be sent using other forms of mail (deleting the ''certified'' part). *See* INA 239(a)(1), (2), 8 U.S.C. 1229(a)(1), (2), *as amended by*

[37] Other related sections of the INA confirm that DHS has discretion to adopt reasonably appropriate procedures for these penalties. For example, sections 274A and 274C of the INA, 8 U.S.C. 1324a and 1324c, authorize civil monetary penalties against employers for certain immigration-related violations and persons for engaging in immigration document fraud. Those statutes—which Congress last amended in 1996 through IIRIRA, Public Law 104–208, 110 Stat. 3009–546, at the same time it authorized civil monetary penalties that are the subject of this IFR—set forth detailed procedures for DHS to bring civil monetary penalties against employers and aliens under those sections and for DOJ to adjudicate cases seeking such penalties. The language of these statutes demonstrates that when Congress intended to require certain procedures for civil monetary penalties under the INA, it ''knew how to do so.'' *Custis* v. *United States,* 511 U.S. 485, 492 (1994). Congress's omission of similar procedures for civil monetary penalties under sections 240B(d), 274D(a), or 275(b) of the INA, 8 U.S.C. 1229c(d), 1324d(a), 1325(b), indicates that Congress intended to give DHS the discretion to employ procedures that DHS reasonably believes are appropriate for such penalties.

[38] Section 275 of the INA, 8 U.S.C. 1325, also provides for criminal penalties for improper entry. This IFR does not address those provisions.

IIRIRA, Public Law 104–208, div. C, tit. III, secs. 304(a)(3), 308(b)(6), 110 Stat. 3009–546, 3009–587–88, 3009–615. The INA presently 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). In comparison, the INA is silent on the method of service for civil monetary penalties under sections 240B(d), 274D(a), and 275(b) of the INA, 8 U.S.C. 1229c(d), 1324d(a), and 1325(b). Therefore, this IFR will allow DHS to use routine service, including regular mail which in turn will lessen DHS's administrative burdens and appropriately provide an alien notice of the imposition of a civil monetary penalty.

C. Changing How an Alien Contests Civil Penalties

For the civil penalties covered by this IFR, the Departments are also streamlining the unnecessary and drawn-out process described in 8 CFR part 280 that applies when an alien contests a civil penalty. As discussed above, under 8 CFR part 280, an alien has 30 days to contest a civil penalty, which can be extended, can choose to have an in-person interview, and can appeal DHS's final decision to the BIA. Through this IFR, DHS is shortening the 30-day response period and creating a simplified paper appeals process that will be decided by a DHS supervisory immigration officer rather than the BIA.

First, an alien will have 15 business days to file a written notice of appeal to DHS. *See* 8 CFR 281.1(e)(1). If the alien responds by mail, DHS will calculate the timeliness of an appeal based on the date that the alien's appeal is postmarked. *Id.* Extensions to the appeal filing period are prohibited. 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.* The alien must file the notice of appeal in accordance with the filing instructions and to the address provided in the decision. *Id.* If the alien files a notice of appeal, the initial civil penalty decision will remain inoperative during the appeal. *Id.* If the alien does not file a notice of appeal with 15 business days, the initial decision and order imposing the civil monetary penalty will become final. *See* 8 CFR 281.1(f)(3).

Second, if an alien appeals, a supervisory immigration officer who did not issue the initial decision and order will review the alien's appeal within 10 days of receiving the appeal. *See* 8 CFR 281.1(e)(2). The officer may, in his discretion, call for additional briefing or written filings from the alien, and the alien shall 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. *See* 8 CFR 281.1(e)(3).

The supervisory officer will then decide the alien's appeal on the paper record; there is no option for the alien to request an in-person interview. *See* 8 CFR 281.1(e)(2). The record reviewed by the supervisory officer must include the initial decision and order, the evidence contained in the Department's administrative files, and any written filings, briefs, documentary evidence, or other relevant material timely filed by the alien in connection with the alien's appeal. *See* 8 CFR 281.1(e)(3). The officer will review this record de novo, including the initial decision and order imposing the civil monetary penalty, and any written argument and documentary evidence submitted by the alien. *See* 8 CFR 281.1(e)(2). The supervisory officer will issue a final decision on the administrative appeal within 45 days. *Id.*

Finally, the supervisory officer's decision is the final agency action unless the Secretary of Homeland Security certifies the decision for review as discussed below in Section IV.D of this preamble. *See* 8 CFR 281.1(f)(3). An alien cannot appeal the officer's decision to the BIA. Moreover, an alien cannot seek reopening or reconsideration of the decision. However, this IFR preserves DHS's ability to sua sponte reopen a decision at any time to reconsider and reduce or rescind the fine imposed as further discussed below in Section IV.D of this preamble. In sum, a civil penalty decision generally becomes final under the IFR's procedures, and DHS can begin collection efforts: (1) 15 days business days after DHS serves the initial decision and order if the alien does not contest the decision or fails to respond, or (2) no later than 45 days after the alien contests the fine. *See* 8 CFR 281.1(f)(2), (3).

As further discussed above in Section II.D of this preamble, these changes better ensure that DHS can finalize these straightforward civil monetary penalty decisions quickly and at scale, while also relaxing the filing requirements to ensure that if an alien contests the penalty, the alien can do so quickly. A shorter appeal period and a paper review process rather than an in-person interview better align with the straightforward and readily verifiable nature of these penalties. In the vast majority of these cases, DHS documentary evidence or conduct observed by an immigration officer will demonstrate the alien's liability for these penalties. Moreover, an alien will ordinarily possess the necessary information to quickly contest a decision if there are grounds to do so, including, for example, medical records after a hospitalization, criminal records after incarceration, documents indicating that the alien has applied for, or took steps to obtain, travel documents, or similar objective evidence demonstrating that the alien did not voluntarily or willfully fail to depart or did not receive notice of a removal or voluntary departure order. The longer period to contest a fine and ability to ask for an interview under 8 CFR part 280 would not enhance the accuracy, fairness, or reliability of the process for these civil penalties.

Similar reasons support the Departments' decision to remove the BIA's jurisdiction over appeals involving these civil penalties. There is no operational need for the BIA to adjudicate administrative appeals of DHS decisions for civil monetary penalties under sections 240B(d), 274D(a)(1), or 275(b) of the INA, 8 U.S.C. 1229c(d), 1324d(a)(1), or 1325(b), because these civil monetary penalties are both set and enforced by DHS and, as discussed throughout this preamble, are typically based on readily verifiable records and information within DHS's possession. Additionally, the BIA has no expertise with these fines, because only a handful have ever been appealed. Notably, DHS already exercises some review authority following a decision and order. *See* 8 CFR 1003.5(b). Under the current regulations, if an alien appeals DHS's determination, DHS may, rather than forwarding the record of proceeding to the Board, reopen and reconsider its decision if the disposition is to issue no penalties, or otherwise grant the benefit requested on appeal. *Id.* Therefore, this IFR will remove an operationally unnecessary and redundant process from the BIA's jurisdiction as it continues to address its backlog, and better facilitate DHS's internal handling of the civil monetary penalties process.

On the other hand, as explained in Section II.D.3 of this preamble, the BIA appeals process under 8 CFR part 280 could hinder DHS's ability to impose these penalties swiftly and at scale if aliens begin appealing them to the BIA in large numbers. This IFR better ensures that if an alien contests a civil monetary penalty, DHS can swiftly

resolve the alien's appeal within 45 days, compared to the BIA process which takes a much longer amount of time, requires many more steps, and imposes burdens on the Departments' resources.

In sum, the Departments have decided it is more appropriate for DHS to handle the appeals of decisions and orders of civil monetary penalties through this streamlined process under the new part 281. The revised procedures provide aliens with a meaningful opportunity to contest civil monetary penalties while balancing the Departments' interests in operating efficiently and fulfilling their missions.

D. Secretary Certification; DHS's Authority To Reopen

As noted above in Section IV.C of this preamble, under this IFR, a decision imposing a civil monetary penalty against an alien is generally final when either a supervisory immigration officer decides the alien's appeal, or the appeal period expires and no appeal is taken. This IFR, however, includes two exceptions. First, 8 CFR 281(e)(4) clarifies that the Secretary, or the Secretary's designee, may certify for review any decision to issue civil monetary penalties for violations under sections 240B(d), 274D(a)(1), or 275(b) of the INA, 8 U.S.C. 1229c(d), 1324d(a)(1), or 1325(b), and issue a new decision de novo. This change ensures that the Secretary maintains appropriate review authority and executive control over the actions of DHS.

Second, this IFR includes a provision allowing DHS to reopen a covered civil monetary penalty decision, in its sole discretion (*i.e.,* sua sponte), at any time to reconsider the decision and reduce or rescind the fine imposed. Prior to this IFR, the Department had the ability to reopen and reconsider fines rather than refer appeals to the BIA under 8 CFR 1003.5(b). As this IFR removes the BIA and its regulations from the process for the unlawful entry and failure-to-depart civil penalties after this IFR takes effect, DHS is adding a provision at 8 CFR 281.1(f)(1) to clarify that DHS continues to have discretion to reopen and reconsider these fines sua sponte.

The ability to reopen, reconsider, and reduce or rescind fines in its discretion enables DHS to make modifications to fines imposed when it is in the best interest of the parties. For example, as discussed above in Sections II.C and D.4 of this preamble, DHS is currently rescinding fines imposed against aliens who depart the United States voluntarily using the CBP Home app. Therefore, 8 CFR 281.1(f)(1) allows DHS to continue to do so after this IFR goes into effect. Moreover, if an alien is seeking to enter the United States on a visa, DHS may determine that a civil penalty previously imposed must be paid but may decide to reduce the amount of the fine to an amount payable by the alien. Quite simply, the ability for DHS to reopen, reconsider, and rescind or reduce fines provides DHS with flexibility to respond to changing policy goals and enforcement directions, consistent with DHS's broad discretion over whether and how to take enforcement actions against aliens who violate the immigration laws.[39]

Moreover, this authority is appropriate because it will ensure that DHS has a mechanism to reopen, reconsider, and rescind or reduce a civil monetary penalty decision that was issued erroneously if DHS becomes aware of information that calls into question the validity of the decision or the amount of the penalty imposed. In this regard, DHS notes that when a discretionary determination is made by DHS to reopen, reconsider, and rescind or reduce a fine, this change will always be to the benefit of an alien as it results in the reduction or elimination of a fine previously imposed. At the same time, 8 CFR 281.1(f)(1) also makes clear that an alien has no right to seek reopening and reconsideration. DHS believes that allowing aliens to seek reopening and reconsideration, even under a heightened standard, would create an unacceptable risk that a large number of aliens would request reopening, which in turn could impede DHS's ability to issue final decisions quickly and at the scale needed to address the serious challenges created by unchecked illegal immigration and unlawful presence.

E. Ensuring Procedural Safeguards

The procedures in 8 CFR part 281 are consistent with the requirements for due process established by the Supreme Court in *Mathews* v. *Eldridge,* 424 U.S. 319, 335 (1976). In that decision, the Court identified three factors should be considered when a Government action deprives a person of a property interest: (1) ''the private interest that will be affected by the official action''; (2) ''the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards''; and (3) ''the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.'' *Id.*

First, in issuing this IFR, the Departments have sufficiently taken into account an alien's property rights, *i.e.,* the alien's loss of property resulting from imposed civil monetary penalties. In many cases, the civil penalty amount will be modest, particularly for aliens who are subject only to fines for unlawful entry or for failure to depart after a voluntary departure order.[40] Therefore, in these cases, the degree of the potential deprivation is more limited. In other cases, the Departments acknowledge that these civil monetary penalties can involve significant fines, particularly for aliens who fail to depart the United States after a removal order.[41] Even in these cases, however, the Departments believe that this IFR's procedures are sufficient in light of other factors discussed below.

Second, the Departments believe that this IFR's procedures are sufficient to ensure a low risk of error for these civil penalty determinations. As an initial matter, civil penalties for failure-to-depart are generally only issued following the completion of section 240 removal proceedings that resulted in the issuance of an order requiring the alien's departure from the United States. These aliens have already received due process through section 240 removal proceedings, where they have had an opportunity to contest any charges against them with respect to immigration violations and have had an opportunity to apply for relief. Importantly, an Immigration Judge has also typically warned these aliens of the penalties associated with violating certain immigration laws.[42] Aliens subject to section 275(b) of the INA, 8 U.S.C. 1325(b), are by definition intercepted while attempting to violate United States immigration laws. Existing DHS processes provide due process for the determination that the aliens have improperly and illegally

[39] As discussed above in Section II.C. and II. D.4 of this preamble, in 2021, DHS rescinded 26 civil monetary fines it had imposed as it determined they were inconsistent with DHS's policy goals and direction at that time.

[40] As discussed in Section II.A of this preamble, for civil monetary penalties under section 275(b) of the INA, 8 U.S.C. 1325(b), the statutory civil monetary penalty amount, which has been adjusted for inflation, ranges from $100 to $500 per entry or attempted entry, with higher penalties for repeat offenders. For civil monetary penalties under section 240B(d)(1) of the INA, 8 U.S.C. 1229c(d)(1)(A), Congress imposed a civil penalty of between $1,992 and $9,970, as adjusted for inflation, for failing to depart voluntarily during the period specified in the voluntary departure order.

[41] For civil monetary penalties for failure-to-depart after a removal order and for certain related conduct, section 274D(a)(1) of the INA, 8 U.S.C. 1324d(a)(1), provides a civil monetary penalty of not more than $998, after adjusting for inflation, for each day that the alien is in violation.

[42] For a discussion of the various procedural protections available during section 240 removal proceedings, see Section II.A. of this preamble.

entered the United States, and the imposition of a civil monetary penalty is a statutorily authorized consequence of those illegal actions.

Moreover, DHS believes that this IFR's revised procedures will sufficiently ensure that aliens have notice of the penalty decision and have a meaningful opportunity to challenge the decision, if necessary, through a simplified and streamlined process that better aligns with the straightforward nature of these penalties. As discussed above in Section IV.B of this preamble, the immigration officer's decision will contain information that informs the alien of the basis for the civil penalty, and it will provide advisals informing the alien of the right to appeal and the procedures that the alien must follow to file a notice of appeal. *See* 8 CFR 281.1(c). Given the straightforward nature of these penalties, DHS believes this information and these advisals will provide sufficient notice to the alien of the basis for the penalty and how to contest it. *See Mullane* v. *Cent. Hanover Bank & Tr. Co.,* 339 U.S. 306, 314 (1950) (stating that notice under due process must be of a sufficient nature as to reasonably convey the required information).

There are numerous safeguards through statute and regulation as well as real time technology [43] that enable DHS to have the confidence that routine service is ''reasonably calculated under all circumstances, to apprise'' aliens of the fine and ''afford them an opportunity to present their objections.'' *Id.* As noted above, in general, aliens in the United States are under specific statutory and regulatory obligations to register their presence and to keep the U.S. Government apprised of their current address while in the country.[44] Moreover, most aliens subject to the monetary penalties covered by this rule are warned of their address obligations upon initiation of section 240 removal proceedings, *see* INA 239(a)(1)(F), 8 U.S.C. 1229(a)(1)(F), 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.[45] 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. 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. Therefore, DHS believes that using ordinary mail for these civil monetary penalties, sent to the address most recently provided by the alien, is reasonably calculated to apprise aliens of the fine and that any additional benefits of certified mail are outweighed by its costs and DHS's interest in applying these penalties swiftly and at scale to address the sheer number of aliens unlawfully in the United States.

DHS is also simplifying the appeal process as discussed above in Section IV.C of this preamble. The foundation of due process is notice and an opportunity to be heard, and nothing in this rule eliminates either an alien's right to notice or an alien's opportunity to be heard on appeal. Rather, the revised process implements sufficient safeguards to preserve the alien's appellate rights. An alien may trigger an appeal by simply filing a notice of written appeal indicating that the alien is contesting the penalty. The alien may also, but is not required to, submit written argument or documentary evidence contesting the penalty. In either scenario, a supervisory immigration officer who did not issue the initial civil monetary penalty decision will review the record de novo, including the issuing officer's decision, the information that he relied on, and any written materials submitted by the alien. Therefore, the process provides meaningful appellate review by allowing the alien to have an additional layer of review through a supervisory immigration officer, one who was not involved in the initial decision and order of the civil monetary penalties. *See* 8 CFR 281.1(e). The officer may also request additional information from the alien if necessary, and the alien will have an opportunity to provide it.

If, on appeal, a supervisory immigration officer determines that the fine was improper, the notice of decision and order imposing the fine would be withdrawn. As such, DHS believes that these procedures minimize the ''risk of an erroneous deprivation.''

The Departments do not believe that additional procedural safeguards beyond those adopted in this IFR would enhance the reliability, fairness, or accuracy of these civil penalty determinations. As discussed above in Section II.D.1 of this preamble, civil monetary fines typically turn on routine and straightforward determinations of fact and the procedures established in this IFR present little risk of an erroneous deprivation of an alien's interest. *See Mathews* v. *Eldridge,* 424 U.S. at 335. Aliens intercepted while entering or attempting to enter the

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[43] ICE, *Online Change of Address Portal, https://portal.ice.gov/ocoa* (last visited June 10, 2025); *see also,* ICE *How to Change your Address* (Jan. 2025), *https://www.ice.gov/doclib/detention/checkin/changeAddress-en.pdf* [*https://perma.cc/AV3Q-Z2FU*].

[44] DHS acknowledges that, in *Jones* v. *Flowers,* 547 U.S. 220 (2006), the Supreme Court held that ''failure to comply with a statutory obligation to keep [one's] address updated'' does not mean the party ''forfeits his right to constitutionally sufficient notice'' and that the state was required to ''take additional reasonable steps to provide notice'' to a homeowner before taking the owner's real property. *Id.* at 232. The Court explained, however, that ''assessing the adequacy of a particular form of notice requires balancing the interest of the [Government] against the individual interest sought to be protected by [the due process clause]''. *Id.* at 229 (citations and quotations omitted). Here, DHS's interest in swiftly serving notices by ordinary mail, at the most recent address provided by the alien, outweighs any interest an alien may have in receiving notice by certified mail or through other methods of delivery. As an initial matter, this IFR involves civil *monetary* penalties, not the Government's exercise of ''extraordinary power against a property owner—taking and selling a house he owns.'' *Id.* at 239. Although these penalties can amount to substantial fines in some cases, the interests are not the same as those in *Jones.*

On the other side of the ledger, DHS's interests are more substantial than the state's interest—securing tax revenue—that was at issue in *Jones.* ''[C]ontrol over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature'' that must ''weigh heavily in the [due process] balance''. *Landon* v. *Plasencia,* 459 U.S. 21, 34 (1982). As discussed above, DHS believes that it must be able to issue these fines quickly and at scale in response to the large number of aliens in the United States who are in the country illegally and subject to these fines. And DHS assesses that the most reasonable way to accomplish this goal is through this IFR's measures, including the provision allowing immigration officers to send notices by ordinary mail to the most recent address provided by the alien. Indeed, as discussed above, Congress has required aliens to provide up-to-date information about their location in the country, including any change of address, so that DHS can more effectively enforce the nation's immigration laws, which necessarily includes civil penalties. Moreover, in the removal context which is inextricably linked with the failure-to-depart civil monetary penalties, courts have held the Government's use of ordinary mail to serve aliens with notice related to their section 240 removal proceedings is permissible if aliens are warned about their address obligations and an alien's failure to update his address is no excuse. *Dominguez* v. *U.S. Att'y Gen.,* 284 F.3d 1258, 1259–60 (11th Cir.2002) (holding that an alien's due process rights not violated when the legacy INS sent a notice of a removal hearing by regular mail to an address that the alien had provided several years earlier); *see also Matter of Nivelo-Cardenas,* 28 I.&N. Dec. 68, 71 (BIA 2020) (collecting cases). Accordingly, DHS believes that the tax sale context of *Jones* does not transfer to this context, and DHS should be able to serve the alien by routine mail for these penalties, as DHS should be able to rely on both the alien's obligation to keep the Government apprised of his or her address while in the United States, including any change of address and the fact that DHS has provided readily accessible means for the alien to comply with the requirement to keep the Government apprised of his address.

[45] *See* E.O. 14159 *Protecting the American People Against Invasion,* 90 FR 8443, 8444 (Jan. 29, 2025); *Alien Registration Form and Evidence of Registration,* 90 FR 11793 (Mar. 12, 2025) (highlighting the requirement of alien registration, including updated addresses).

United States at an improper time or place are by definition violating section 275(b) of the INA, 8 U.S.C. 1325(b), and therefore the documented encounter serves as the only fact required to impose the penalty in these instances. Similarly, for the failure-to-depart civil penalties, the alien's removal order or voluntary departure order, evidence showing that the alien was aware of the order and was warned of the consequences of failing to depart, and other evidence (including the lack of departure records) indicating that the alien remains in the United States, will generally support an inference that the alien is liable for a civil monetary penalty, at least absent evidence indicating that the alien's failure to comply was not voluntary or willful.[46] Additionally, DHS anticipates that an alien whose failure to depart was not willful or voluntary should typically be able to demonstrate their claim through available documentary evidence within the alien's possession (*e.g.,* evidence of a stay of removal, incarceration, hospitalization, or evidence indicating that the alien has made an application for travel documents or visited their embassy).

Given these circumstances, DHS believes that a 30-day appeal window will not enhance the fairness of the civil penalty process because an alien does not need to prepare a complicated legal defense or evidentiary submission to challenge the civil penalty. Similarly, 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. If an alien, through no fault of his own, did not receive notice of the removal or voluntary departure order or was prevented from complying due to circumstances beyond his control, the alien can provide a written explanation and simple documentary evidence to support the claim. In these circumstances, DHS believes that an in-person interview would not add value. *See Mathews* v. *Eldridge,* 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).

Moreover, DHS believes that retaining BIA appellate review would not add value to the fairness or accuracy of the process for these civil monetary penalties. As discussed above in Section II.D.2, the BIA has no experience adjudicating these civil monetary penalties, and BIA review is unnecessary given these civil penalties typically turn on straightforward issues of fact within DHS's possession, rather than complicated questions of law. Finally, DHS believes that the appellate process provided by this IFR, which will be handled exclusively by DHS, will provide sufficient due process, including a second layer of review by a supervisory immigration officer who was not involved in the initial civil monetary penalty decision.

Finally, DHS believes that retaining the certified mail requirement would not increase the likelihood of aliens receiving notice of these fines. As discussed above in this Section of the preamble, DHS has reason to believe that many aliens will have an incentive to comply with statutory requirements to update their address with DHS, if necessary, because failure to do so can result in criminal consequences. In these circumstances, DHS believes that ordinary mail is reasonably calculated to reach the alien and certified mail would not add additional value. *See Tulsa Pro. Collection Servs., Inc.* v. *Pope,* 485 U.S. 478, 489 (1988) (''We have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice.''). To be sure, a significant percentage of the illegal alien population will not respond to the notice, no matter how it is provided, because these aliens are fugitives hiding from ICE. And a proportion of this same population may fail to update their address to avoid being located. In these circumstances, requiring DHS to do more than send notice by ordinary mail to the last address provided by the alien would only reward an alien's evasion of service. *See Maghradze* v. *Gonzales,* 462 F.3d 150, 154 (2d Cir. 2006) (removal order proper where alien relocated and failed to provide a change of address). It would also impose unreasonable burdens on DHS's ability to utilize its civil monetary penalty authority. *See Mullane,* 339 U.S. at 317–18 (disavowing ''impracticable and extended searches . . . in the name of due process'').

Moreover, the Supreme Court has recognized that mailing notices through regular mail may provide better notice than certified mail or other methods in some circumstances. *See Jones,* 547 U.S. at 234–235. Providing better notice through a change in manner of service utilized is what this IFR intends to do. Indeed, ICE believes that, based on its experience, it is reasonable to assume that the use of regular mail may be more likely to reach aliens, including those who are attempting to evade detection by DHS or who have moved and failed to update their address. Aliens attempting to evade detection, or members of their household, may be more likely to refuse to answer the door for ICE officers, which would make personal service a fruitless option in many cases. The same could be true for certified mail; an alien who is evading detection, or other individuals at the alien's place of residence, may be less likely to sign for a notice from DHS, compared to standard mail where the postal worker simply places the notice in the mailbox at the alien's place of residence. Even if the alien has moved, and has failed to update his or her address, the Supreme Court has recognized that regular mail might result in the current occupant ''scrawl[ing] the [intended recipient's] new address on the notice packet and leav[ing] it for the postman to retrieve, or notify[ing the intended recipient] directly''. *Id.* at 235. And, finally, DHS notes that the regulation does not require DHS to use ordinary mail in every case. *See* 8 CFR 281.1(d). Rather, DHS has discretion to use other methods of delivery, which may be more appropriate depending on the circumstances.

At bottom, DHS acknowledges that, as with any process, including the processes under 8 CFR part 280, there is always a risk that an alien could be issued a civil penalty in error or not receive notice. However, ''procedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases.'' *Mathews,* 424 U.S. at 344. And here, DHS believes that in light of its experience and the straightforward nature of these civil penalty determinations, the risk of error is low. Moreover, this IFR allows DHS, in its sole discretion, to reopen a civil penalty decision to reconsider the determination and reduce or rescind the fine imposed, including if DHS becomes aware of information that indicates that an alien

[46] As discussed above in Section II.D.1 of this preamble, DHS acknowledges that there are other grounds in section 274D(a) of the INA, 8 U.S.C. 1324d(a), that could subject an alien to a civil monetary penalty and this IFR's procedures apply to those penalties as well. Aliens who are subject to a final removal order can be also fined for (1) willfully failing to make a timely application in good faith for travel documents; (2) willfully failing or refusing to present for removal at the time and place directed by DHS. *See* INA 274D(a)(1)(B), (C), (2), 8 U.S.C. 1324d(a)(1)(B), (C), (2). DHS similarly believes that this IFR's revised procedures are appropriate given the straightforward nature of those penalties and the limited grounds that aliens will have to contest them in most cases for the reasons discussed above in Section II.D.1 of this preamble,

was issued a civil monetary penalty erroneously. *See* 8 CFR 281.1(f).

Third, the Government's interest in the revised civil penalty process, including the function involved and the administrative burdens, are substantial under the *Mathews* v. *Eldridge* test. As discussed above in Section II.D.3 of this preamble, the significant increase in illegal immigration under the prior Administration requires DHS to use all of the statutory tools that Congress has provided, including civil monetary penalties, to restore the integrity of the nation's immigration laws and secure the border. DHS is issuing this rule in order to: (1) maximize its effort to use of these civil monetary penalties to disincentivize aliens from entering or remaining in the United States illegally; (2) promote public safety, and (3) ensure that DHS has an effective, workable process to issue these civil monetary penalties.[47] Without this rule, the civil penalty process has the potential to become overly burdensome which, as discussed above in Section II.D.3 of this preamble, could hinder DHS's ability to impose these penalties at scale to achieve this Administration's immigration enforcement and border security objectives. The streamlined process serves the Government interests set forth in Executive Order 14159, *Protecting the American People Against Invasion,* 90 FR 8443 (Jan. 20, 2025), and Executive Order 14165, *Securing Our Borders,* 90 FR 8467 (Jan. 20, 2025).

F. Severability

The changes 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 IFR 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.

[47] Congress has authorized DHS to impose these civil monetary penalties and has specified the amount that can be imposed. The penalties and their amounts reflect Congress's considered judgment that the conduct involved—an alien's unlawful entry and failure to depart—is particularly serious and in some cases substantial fines are necessary to encourage aliens to comply with the immigration laws. *See Mathews* v. *Diaz,* 426 U.S. 67, 79–80 (1976) (''In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.''). *See also Landon,* 459 U.S. at 34 (noting under the *Mathews* test, that ''[t]he Government's interest in efficient administration of the immigration laws is weighty. Further, it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the Executive and the Legislature.'').

V. Statutory and Regulatory Requirements

A. Administrative Procedure Act

For the reasons described below, the Departments have issued this IFR without prior notice and opportunity for comment and without a 30-day delayed effective date. Notwithstanding the explanation below, the Departments nonetheless welcome post-promulgation comment on all aspects of this IFR.

1. Procedural Rule

The Departments may forgo notice-and-comment because this IFR is a rule of ''agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). 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,* 754 F.3d 1002, 1023–24 (D.C. Cir. 2014).

This rule satisfies this standard. The IFR changes only the manner in which the Departments issue and adjudicate civil monetary penalties and the manner in which an alien may contest such penalties. The IFR does not require the imposition of any new penalties or otherwise change the substantive criteria for issuing penalties. It 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). For instance, while this IFR shortens the alien's response period compared to the process in 8 CFR part 280, the procedural rule exception applies to rules that alter the ''timetable for asserting substantive rights'' before an agency. *Lamoille Valley R. Co.* v. *I.C.C.,* 711 F.2d 295, 328 (D.C. Cir. 1983). Moreover, for the reasons discussed in this preamble, DHS believes that the 15-business-day appeal period provides an alien with ample time to contest the penalty. *Cf. id.* (holding that a rule moving up deadlines is not substantive unless ''the time allotted is so short as to foreclose effective opportunity to make one's case on the merits'').

In sum, this IFR pertains solely to agency procedures and practices regarding the processing of cases before DHS and DOJ. This IFR does not diminish or reduce any substantive rights of the parties utilizing those practices and procedures, and it does not change the substantive standards by which DHS evaluates civil monetary penalties under sections 240B(d), 274D(a)(1), and 275(b) of the INA, 8 U.S.C. 1229c(d), 1324d(a)(1), 1325(b).

2. Foreign Affairs

The requirements of 5 U.S.C. 553 do not apply to these regulatory changes because this rule involves a ''foreign affairs function of the United States.'' 5 U.S.C. 553(a)(1). Courts have held that this exception applies when the rule in question ''clearly and directly involves 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. *Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008) (quotation marks omitted). This rule satisfies both standards.

This IFR is intended to facilitate DHS's ability to more effectively use statutorily authorized civil monetary penalties in response to the large number of unlawful entrants and aliens who have failed to depart the United States, a population of high enforcement priority. DHS believes that imposing these penalties at scale will, in turn, create disincentivizes for aliens to enter the United States unlawfully or remain after being ordered removed or granted voluntary departure.

Moving forward with actions like this IFR immediately will allow the United States Government to build on momentum with international partners to address shared challenges to border security and illegal immigration. The United States's border management strategy is predicated on the belief that migration is a shared responsibility among all countries in the region, and Executive Order 14150, *America First Policy Directive to the Secretary of State,* sets out the President's vision that ''the foreign policy of the United States shall champion core American interests and always put America and American citizens first.'' 90 FR 8337 (Jan. 20, 2025). In this regard, the Administration is actively engaged in negotiations including wide-ranging discussions with foreign partners on matters related to border security, such as to reduce illegal immigration [48] and advance

[48] For instance, on January 21, 2025, Secretary of State Marco Rubio spoke with Mexican Foreign Minister Juan Ramon de la Fuente to initiate bilateral talks on migration and security issues. *See Mexico's Top Diplomat Talks Security, Migration with New U.S. Counterpart,* Reuters (Jan. 22, 2025),

security in the United States and the region.[49]

For its foreign policy efforts to succeed in this regard, the United States must demonstrate its own willingness to put in place appropriate measures like this IFR that will allow DHS to more effectively use available tools to disincentivize, prepare for and respond to ongoing migratory challenges and unlawful immigration. This IFR is one part of this Administration's efforts to reduce unlawful migration to the United States, by using all available tools under the INA to increase the consequences for aliens who make the dangerous journey to the United States and enter the country unlawfully. Such efforts will demonstrate to international partners the Unites States's commitment to addressing migratory challenges. As discussed in Section II.D.3 of this preamble, although southern border encounters between POEs have fallen significantly over the last few months, this Administration has made it a priority to take all measures to ensure that DHS maintains operational control at the border in order to prevent large scale migration and our southern border from becoming overrun as occurred under the last Administration. Loss of operational control of the border results in large number of migrants making the dangerous journey to the southern border through neighboring countries.[50] Therefore, delaying implementation of measures like this IFR to combat and deter unlawful migration could undermine the momentum that this Administration has built with foreign partners towards the shared border security challenges.

Moreover, the Administration is actively engaged in negotiations with other countries intended to address the large number of illegal aliens in the United States, including aliens who have failed to comply with removal and voluntary departure orders.[51] These discussions include ensuring that other countries issue travel documents for their nationals for removal in a timely manner and approve removal flights from the United States in a timely manner.[52] These efforts also include coordination with other countries to support the Administration's efforts to encourage aliens to depart the United States voluntarily and return to their home countries, consistent with Presidential Proclamation 10935, *Establishing Project Homecoming,* 90 FR 20357 (May 9, 2025).[53] In sum, these actions 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.

Here too, for these foreign policy efforts to succeed, the United States must demonstrate that it is taking immediate action, including through measures like this IFR, to help achieve the purpose of these international efforts and negotiations: to encourage other countries to cooperate with the United States's efforts to remove illegal aliens and to incentivize aliens to depart the United States voluntarily and return to their home countries. For example, this IFR is intended to encourage removable aliens, through the use of civil penalties, to make efforts to obtain travel documents that other countries, as a result of international negotiations, have agreed to provide.[54] Moreover, as discussed above in Sections II.D and IV.D of this preamble, this IFR supports the Administration's efforts to incentivize aliens to depart the United States voluntarily and return to their home country and, therefore, implicates the United States' efforts to encourage other countries to support the voluntary return of their citizens.

Delaying enforcement measures like those adopted by this IFR would have undesirable consequences on the United States' ongoing foreign policy goals,

https://www.reuters.com/world/americas/mexicos-top-diplomat-talks-security-migration-with-new-us-counterpart-2025-01-22/ [*https://perma.cc/H9D7-USW7*]. On January 23, 2025, President Trump, in his call with Salvadoran President Nayib Bukele, discussed working together to stop illegal immigration and crack down on transnational gangs like Tren de Aragua to advance United States foreign policy objectives. *See* The White House, *Readout of President Donald J. Trump's Call with President Nayib Bukele* (Jan. 23, 2025), *https://www.whitehouse.gov/briefings-statements/2025/01/readout-of-president-donald-j-trumps-call-with-president-bukele/* [*https://perma.cc/XD6K-NZ4S*]. Similarly, Secretary of State Marco Rubio, speaking to Guyanese President Irfaan Ali, emphasized the need to address the crisis of illegal migration, and they both agreed to jointly address this regional challenge. *See* U.S. Department of State, *Secretary Rubio's Call with Guyanese President Ali* (Jan. 27, 2025), *https://www.state.gov/secretary-rubios-call-with-guyanese-president-ali/* [*https://perma.cc/7Y4H-45YG*].

[49] On February 1, 2025, the President expanded the scope of the national emergency declared in Proclamation 10886 of January 20, 2025, 90 FR 8327, to cover ''the failure of Mexico to arrest, seize, detain, or otherwise intercept DTOs, other drug and human traffickers, criminals at large, and illicit drugs,'' and announced ad valorem tariffs on articles that are products of Mexico as set forth in the President's order. *See* E.O. 14194, 90 FR 9117, 9118 (Feb. 1, 2025). Following discussions with the Government of Mexico, and after that country committed to immediately reinforce its northern border with 10,000 members of the Mexican National Guard, the President agreed to delay imposition of the tariffs by one month. *See* E.O. 14198, 90 FR 9185 (Feb. 3, 2025); *Mexico Deploys the First National Guard Troops to U.S. Border After Tariff Threat,* NPR (Feb. 6, 2025), *https://www.npr.org/2025/02/06/nx-s1-5288667/mexico-us-border-tariff-national-guard* [*https://perma.cc/H3HX-SXKE*]; *see also* E.O. 14197, 90 FR 9183 (Feb. 3, 2025) (discussing similar engagement with an international partner in efforts to stem drug trafficking and illegal immigration).

[50] *See, e.g.,* 89 FR at 81186 (noting that when there is a strain on resources due to a large number of aliens crossing the southern border illegally this situation creates ''incentives for migrants to make the dangerous journey to the southern border in the hope that the overwhelmed and under-resourced immigration system will not be able to expeditiously process them for removal'').

[51] For example, on January 26, 2025, the Government of Colombia agreed to accept without restriction all illegal aliens returned to Colombia from the United States, including on U.S. military aircraft, without limitation or delay. *See* The White House, *Statement from the Press Secretary* (Jan. 26, 2025), *https://www.whitehouse.gov/briefings-statements/2025/01/statement-from-the-press-secretary/* [*https://perma.cc/B5MT-2LXE*]. Furthermore, on January 27, 2025, President Trump had a productive conversation with Indian Prime Minister Narendra Modi, after which he said that India will ''do what's right'' in regard to illegal migration. Meryl Sebastian, *Trump Says India 'Will Do What's Right' on Illegal Immigration,* BBC News (Jan. 28, 2025), *https://www.bbc.com/news/articles/cj91z842wlmo* [*https://perma.cc/2NLS-AE8D*].

[52] It is critical to the ability of the United States to remove aliens that the aliens' countries of citizenship timely issue travel documents for their nationals for removal and that the countries approve removal flights from the United States. In bilateral engagements, this Administration has made it clear to other countries that it is their responsibility to facilitate the return of their nationals who do not have a legal basis to remain in the United States. A country's refusal to either issue travel documents for its nationals or authorize removal flights may carry consequences. For example, on January 26, 2025, Colombia's refusal to allow removal flights to land in Colombia led the United States to impose visa restrictions to indicate that reducing illegal immigration and removal of aliens with no legal right to remain in the United States is a critical foreign policy objective of the United States. *See* The White House, *Statement from the Press Secretary* (Jan. 26, 2025), *https://www.whitehouse.gov/briefings-statements/2025/01/statement-from-the-press-secretary/* [*https://perma.cc/B5MT-2LXE*]; U.S. Department of State, *Secretary Rubio Authorizes Visa Restrictions on Colombian Government Officials and their Immediate Family Members* (Jan. 26, 2025), *https://www.state.gov/secretary-rubio-authorizes-visa-restrictions-on-colombian-government-officials-and-their-immediate-family-members/* [*https://perma.cc/2NLS-AE8D*]; U.S. Department of State, *Ending Illegal Immigration in the United States* (Jan. 26, 2025), *https://www.state.gov/ending-illegal-immigration-in-the-united-states/* [*https://perma.cc/7L3M-TDTJ*].

[53] For example, on May 19, 2025, DHS conducted a voluntary charter flight form the United States to Honduras and Columbia, in coordination with those Governments, for aliens who opted to self-deport. *See* DHS, *Project Homecoming Charter Flight Brings Self-Deporters to Honduras, Colombia* (May 19, 2025), *https://www.dhs.gov/news/2025/05/19/project-homecoming-charter-flight-brings-self-deporters-honduras-colombia/* [*https://perma.cc/VXP9-6DSF*]. The participants were welcomed by representatives by representatives from their home governments, who also provided benefits and services to those aliens. *See id.*

[54] As discussed above in Section II.D of this preamble, DHS has authority to issue a civil monetary penalty against aliens who willfully fail or refuse to make efforts to obtain travel documents, willfully refusing to complete forms necessary to obtain travel documents, or willfully fail to report for removal at a time and place designated by DHS. *See* INA 274D(a)(1)(B), (C), 8 U.S.C. 1324d(a)(1)(B), (C).

including efforts to encourage other countries to issue travel documents and to support the United States' efforts to encourage aliens to return voluntarily to their home countries. Quite simply, if the United States is unable to demonstrate, through measures like this IFR, that it is committed to taking quick and robust action to remove aliens and encourage them to depart the United States voluntarily, which depend on international cooperation, countries may be less inclined to engage with the United States on these ongoing efforts in the future.

In addition, the Department of State recently described the foreign affairs aspect of immigration in its determination that ''efforts . . . to control the status, entry, and exit of people . . . across the borders of the United States'' constitute a foreign affairs function of the United States under the APA. In making this determination, the Department of State explained that ''[s]ecuring America's borders and protecting its citizens from external threats is the first priority foreign affairs function of the United States'' and noted that an unsecured border presents a range of threats to U.S. citizens, which can be eliminated or mitigated through the execution of the foreign affairs functions. *See Determination: Foreign Affairs Functions of the United States,* 90 FR 12200 (Mar. 14, 2025). This rulemaking will enable the United States to better achieve the total and efficient enforcement of U.S. immigration law and, accordingly, champion a core American interest in accordance with American foreign policy. *See id.*

3. Immediate Effective Date

The Departments have determined that this rule can take immediate effect, notwithstanding 5 U.S.C. 553(d), for three independent reasons.

First, for the reasons discussed above in Section V.A.1 of this preamble, this final rule relates solely to agency procedure and practice and thus is not subject to the 30-day effective date for ''substantive rules'' under 5 U.S.C. 553(d).

Second, for the reasons discussed in Section V.A.2 of this preamble, this rule involves a ''foreign affairs function of the United States.'' 5 U.S.C. 553(a)(1). Such rules are exempt from all requirements of 5 U.S.C. 553 including the 30-day effective date requirement at 5 U.S.C. 553(d).

Finally, although the Departments have not invoked the ''good cause'' exception at 5 U.S.C. 553(b)(B) as a basis to publish this IFR without prior notice and comment—the Departments have instead invoked the exceptions for procedural rules at 5 U.S.C. 553(b)(A) and for rules related to a ''foreign affairs function of the United States'' at 5 U.S.C. 553(a)(1)—there is ''good cause'' for this rule to take immediate effect pursuant to 5 U.S.C. 553(d)(3). *See Am. Fed'n of Gov't Emp., AFL–CIO* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981) (''different standards govern the applicability of the good cause exception to these requirements''); *see also McChesney* v. *Petersen,* 275 F. Supp. 3d 1123, 1137 (D. Neb. 2016) (''Good cause is more easily shown under [ ] 553(d).'' (citing *U.S. Steel Corp.,* v. *EPA,* 605 F.2d 283, 289 (7th Cir. 1979)), *aff'd sub nom. McChesney* v. *Fed. Election Comm'n,* 900 F.3d 578 (8th Cir. 2018). In assessing ''good cause'' under 5 U.S.C. 553(d)(3), ''an agency should balance 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 its ruling.'' *Omnipoint Corp.* v. *FCC,* 78 F.3d 620, 630 (D.C. Cir. 1996) (citation omitted). For the reasons discussed throughout this IFR, but particularly in Sections II.D.2, 3, 4 and V.A.2 above, the U.S. Government and the public have a strong interest in implementing this IFR quickly. Further, 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, as described in Section V.A.1 of this preamble above, the IFR does not affect any person's substantive rights but instead merely modifies the manner in which the Departments issue and adjudicate civil monetary penalties and how an alien may contest such penalties. Therefore, this IFR is effective on June 27, 2025.

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 that this rule is significant under Executive Order 12866.

This IFR 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 IFR will result in an increase in civil penalties collected by the Treasury. DHS believes that this effort will reduce potential agency resource burdens by streamlining the process, disincentivize future unlawful entries, and encourage greater compliance with removal and voluntary departure orders.

C. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

This 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 IFR is exempt from the notice and comment rulemaking. Therefore, a regulatory flexibility analysis is not required for this rule.

E. 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 IFR 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 IFR 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).

F. Unfunded Mandates Reform Act of 1995

This IFR 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.

G. Congressional Review Act

This IFR 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''). DHS will nonetheless submit this IFR to both houses of Congress and the Comptroller General before the rule takes effect.

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. 01 [55] and Instruction Manual 023–01–001–01 Rev. 01 (''Instruction Manual'') [56] 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.[57]

This IFR 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 IFR 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 IFR 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 IFR is categorically excluded, and no further NEPA analysis or documentation is required.

I. Executive Order 13132 (Federalism)

This IFR 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 IFR would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

J. Paperwork Reduction Act

This IFR 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.* This rule falls under the category of an administrative action or investigation involving an agency against specific individuals or entities and is therefore excluded from Paperwork Reduction Act requirements. 44 U.S.C. 3518(c)(1)(B) and 5 CFR 1320.4(a).

List of Subjects

8 CFR Part 281

Administrative practice and procedure, Immigration, Penalties.

8 CFR Part 1003

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

8 CFR Part 1280

Administrative practice and procedure, Immigration, Penalties.

DEPARTMENT OF HOMELAND SECURITY

Accordingly, for the reasons set forth in the preamble, the Secretary of Homeland Security amends 8 CFR chapter I subchapter B as follows:

■ 1. Add part 281 to read as follows:

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

Sec.

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.

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

(a) *Scope.* Notwithstanding any contrary provision of 8 CFR part 280, and except as otherwise provided in this section, the procedures in this section shall be the sole and exclusive procedures for the issuance and appeal of civil monetary penalties imposed by the Department under sections 240B(d), 274D(a)(1), or 275(b) of the Immigration

[55] DHS, Implementation of the National Environmental Policy Act, Directive 023–01, Revision 01 (Oct. 31, 2014).

[56] DHS, Implementation of the National Environmental Policy Act (NEPA), Instruction Manual 023–01–001–01, Revision 01 (Nov. 6, 2014).

[57] Instruction Manual 023–01–001–01 at V.B(2)(a) through (c) and Appendix A at A–1 and A–2.

and Nationality Act on or after June 27, 2025.

(b) *Authority of immigration officers.* Immigration officers of the Department of Homeland Security, as defined in 8 CFR 1.2, who have reason to believe that an alien has violated any of the provisions of the Act and has thereby become liable to the imposition of a civil monetary penalty under sections 240B(d), 274D(a)(1), or 275(b) of the Act are authorized to both issue decisions imposing civil monetary penalties under sections 240B(d), 274D(a)(1), or 275(b) as provided under paragraph (c) of this section and to review appeals involving such penalties as provided in paragraph (e) of this section.

(c) *Assessment of civil monetary penalty.* (1) *Decision and order.* If the immigration officer decides that a civil penalty shall be imposed under sections 240B(d), 274D(a)(1), or 275(b) of the Act, the decision and order shall contain 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.

(2) *Advisals.* The decision issued under paragraph (c)(1) of this section shall contain the following written information and advisals:

(i) That the alien has a right to an appeal and that a written notice of appeal must be postmarked within 15 business days from the date of service of the immigration officer's decision;

(ii) That any written notice of appeal must be submitted to the Department in accordance with the filing instructions provided in the decision and at the address specified in the decision;

(iii) That if the alien elects to submit a written defense or documentary evidence or both in connection with an appeal, the alien shall file these materials with the notice of appeal;

(iv) That the alien may be represented by counsel of his or her choice at no expense to the United States Government; and

(v) That if the alien does not file a timely written notice of appeal, the immigration officer's decision and order will become final, and the alien will be liable for the assessed civil penalty.

(d) *Service of the decision and order.* Notwithstanding § 103.8(c) of this chapter, the Department will serve the decision and order referenced in paragraph (c) of this section that imposes the civil penalties under sections 240B(d), 274D(a)(1), or 275(b) of the Act either in person or using routine service as outlined in § 103.8(a)(1)(i) of this chapter.

(e) *Appeal.* (1) *Filing requirements.* If the alien contests the immigration officer's decision issued under paragraph (c)(1) of this section, the alien shall file a written notice of appeal with the Department postmarked within 15 business days of the date of service of the decision. The alien may submit a written defense or documentary evidence or both setting forth the reasons why a civil penalty should not be imposed, provided that such materials are filed with the written notice of appeal. The alien shall file the written notice of appeal and any accompanying material with the Department in accordance with the filing instructions and at the address provided in the decision. The initial civil penalty decision under (c)(1) remains inoperative during the appeal period and while a timely administrative appeal is pending.

(2) *Review.* The alien's appeal will be reviewed by a supervisory immigration officer who did not issue the original decision. That designated supervisory immigration officer shall review the record de novo within 10 days after the notice of appeal is filed and may, in the officer's discretion, call for additional briefing or written filings from the alien. If the officer requests additional briefing or written filings from the alien, the alien shall have 15 days from receipt of that request to provide the information. In all cases, the designated supervisory immigration officer shall issue a final decision in writing no later than 45 days after the notice of appeal was filed and shall serve it on the alien in accordance with the rules for service described in paragraph (d) of this section.

(3) *Record.* The record reviewed by the supervisory immigration officer shall include the immigration officer's decision, evidence contained in the Department's administrative files, and any written filings, briefs, documentary evidence, or other relevant material timely filed by the alien in connection with the alien's appeal. If requested by the alien on appeal, the supervisory immigration officer shall provide copies of pertinent documentation and records relevant to the penalty unless such records are law enforcement sensitive or disclosure is prohibited by law.

(4) *Secretary of Homeland Security.* The Secretary of Homeland Security, or the Secretary's designee, may certify for review any decision to issue civil monetary penalties for violations under sections 240B(d), 274D(a)(1), or 275(b) of the Act and issue a new decision de novo.

(f) *Final decision; payment of penalties.* (1) *No further appeal.* There is no further appeal from a final decision and order issued under this section. The alien may not file a motion to reopen or reconsider a decision under this section. However, the Department may reopen a fine determination sua sponte at any time to reconsider the determination and reduce or rescind the fine imposed.

(2) *Notice of final decision.* At such time as the decision and order under this part is final, the supervisory immigration officer who issued the final decision shall furnish a copy of the decision and order to all other relevant immigration officers within the Department as designated by the Secretary of Homeland Security.

(3) *Final agency action.* The supervisory immigration officer's decision issued under (e)(2), or, if no appeal is taken, the decision issued under (c)(1), constitutes final agency action unless the Secretary of Homeland Security, or the Secretary's designee, certifies the decision for review under (e)(4).

(4) *Payment of penalties.* All civil monetary penalties assessed pursuant to sections 240B(d), 274D(a), or 275(b) of the Act shall be made payable to and collected by the Department.

(g) *Civil monetary penalty amounts.* For the current civil monetary penalty amounts for violations of sections 240B(d), 274D(a), or 275(b) of the Act, refer to the provisions in 8 CFR 280.53.

(h) *Grandfathering provision.* The issuance and appeal of civil monetary penalties imposed by the Department under sections 240B(d), 274D(a), or 275(b) of the Act are governed by the procedures provided in 8 CFR part 280, and, as applicable, the appellate procedures provided in 8 CFR parts 1003 and 1280, if the following conditions are met:

(1) A Notice of Intention to Fine under 8 CFR part 280 was issued prior to June 27, 2025; and

(2) That Notice of Intention to Fine was issued under sections 240B(d), 274D(a), or 275(b) of the Act.

§ 282.2 [Reserved]

DEPARTMENT OF JUSTICE

Accordingly, for the reasons set forth in the preamble and by the authority vested in the Director, Executive Office for Immigration Review, by the Attorney General Order Number 6260–2025, the Department of Justice amends 8 CFR parts 1003 and 1280 as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231,

1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

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

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

* * * * *

(b) * * *

(4) Decisions involving administrative fines and penalties, including mitigation thereof, as provided in part 280 of this chapter, except that appeals of decisions imposing any penalty under sections 240B(d), 274D(a)(1), or 275(b) of the Act may not be filed with the Board unless the conditions described in 8 CFR 281.1(h) are met.

* * * * *

PART 1280—IMPOSITION AND COLLECTION OF FINES

■ 4. The authority citation for part 1280 continues to read as follows

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, 1330; 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. 104–134, 110 Stat. 1321.

■ 5. Amend § 1280.1 by revising the first sentence of paragraph (b) to read as follows:

§ 1280.1 Review of fines and civil monetary penalties imposed by DHS.

* * * * *

(b) *Adjudication of civil monetary penalty proceedings.* The Board of Immigration Appeals (Board) has appellate authority to review DHS decisions involving fines and civil monetary penalties imposed under 8 CFR part 280, as provided under 8 CFR part 1003, except that the Board shall have no authority to review any decision imposing a civil monetary penalty under sections 240B(d), 274D(a)(1), or 275(b) of the Act unless the conditions described in 8 CFR 281.1(h) are met. * * *

* * * * *

Kristi Noem,

Secretary of Homeland Security.

Sirce Owen,

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

[FR Doc. 2025–11965 Filed 6–26–25; 8:45 am]

BILLING CODE 9111–CB–P; 4410–30–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[SATS No. PA–172–FOR; Docket ID: OSM–2020–0001; S1D1S SS08011000 SX064A000 256S180110; S2D2S SS08011000 SX064A000 25XS501520]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Pennsylvania regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment proposes to revise the Pennsylvania program to comply with four required amendments and to correct a provision we previously disapproved. The proposed amendment also includes revisions to Pennsylvania's program, including effluent limitations for bituminous underground coal mines, temporary cessation, the definition of Surface Mining Activities, civil penalties, and administrative requirements, as well as other administrative updates and non-substantive corrections.

DATES: Effective July 28, 2025.

FOR FURTHER INFORMATION CONTACT: Thomas J. Koptchak, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220; Telephone: (202) 513–7685; Fax: (412) 937–2177; Email: *tkoptchak@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

II. Submission of the Amendment

By letter dated March 16, 2020, (Administrative Record No. PA 906.00), Pennsylvania sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). This proposed amendment addressed four separate required program amendments codified at 30 CFR 938.16(m), (n), (o), and (mmm), and addresses the term ''augmented seeding.'' In 1983, we disapproved a prior attempted amendment of this term, as reflected in 30 CFR 938.12(d). The submission also includes numerous other revisions to the Pennsylvania program.

We announced receipt of the proposed amendment in the December 17, 2020, **Federal Register** (85 FR 81864). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not receive any public comments related to the amendment, and we did not hold a public hearing or meeting because it was not requested. The public comment period ended January 19, 2021.

III. OSMRE's Findings

After reviewing the proposed amendment, SMCRA, and the Federal regulations, including 30 CFR 938.12, 938.16, 730.5, 732.15, and 732.17, we are approving the amendment as described below. Any revisions that we do not specifically discuss below concerning non-substantive wording, editorial changes, or renumbering of citations are approved here without discussion.

1. *Required Amendment at 30 CFR 938.16(m) (relating to Special Terms and Conditions for Collateral Bonds).*

This required amendment concerns the valuation of collateral bonds. On December 22, 1989, Pennsylvania submitted several proposed amendments that included a proposed restructuring of 25 Pa. Code 86.158. *See* 56 FR 24687, 24693 (May 31, 1991). At that time, Pennsylvania proposed to add