

RIN Data

DOJ/EOIR

RIN: 1125-AB18

Publication ID: Fall 2021

Title: Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure

Abstract:

On December 16, 2020, by a rule titled Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure (RIN 1125-AA96) the Department of Justice (Department) amended its regulations regarding appellate procedures to ensure that immigration proceeding appeals are adjudicated in an efficient manner and to eliminate unnecessary remands by the Board of Immigration Appeals. The Department also amended its regulations to promote the final disposition of cases at both the immigration court and appellate levels. The Department is planning to modify or rescind those regulations under this RIN.

Agency: Department of Justice(DOJ)

Priority: Other Significant

RIN Status: Previously published in the Unified Agenda

Agenda Stage of Rulemaking: Proposed Rule Stage

Major: No

Unfunded Mandates: No

CFR Citation: [8 CFR 1003.1](#) [8 CFR 1003.2](#) [8 CFR 1003.3](#) [8 CFR 1003.10](#)

Legal Authority: [5 U.S.C. 301](#) [6 U.S.C. 521](#) [8 U.S.C. 1101](#) [8 U.S.C. 1103](#) [8 U.S.C. 1154-1155](#) [8 U.S.C. 1158](#) [8 U.S.C. 1182](#) [8 U.S.C. 1226](#) [8 U.S.C. 1229](#) [8 U.S.C. 1229a](#) [8 U.S.C. 1229b](#) [8 U.S.C. 1229c](#) [8 U.S.C. 1231](#) [8 U.S.C. 1254a](#) [8 U.S.C. 1255](#) [8 U.S.C. 1324d](#) [8 U.S.C. 1330](#) [8 U.S.C. 1361-1362](#) [28 U.S.C. 509-510](#) [28 U.S.C. 1746](#) sec. 2 Reorg. Plan No. 2 of 1950, 3 CFR 1949–1953, Comp. p. 1002 [sec. 203 of Pub. L. 105–100](#), [114 Stat. 2196–200](#) [secs. 1506 and 1510 of Pub. L. 106–386](#), [114 Stat. 1527–29](#), [1531–32](#) [sec. 1505 of Pub. L. 106–554](#), [114 Stat. 2763A–326 to –328](#)

Legal Deadline: None

Statement of Need:

On December 16, 2020, the Department of Justice (Department) amended the regulations related to processing of appeals and administrative closure. Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 FR 81588 (RIN 1125-AA96). In light of Executive Orders 14010 and 14012, 86 FR 8267 (Feb. 2, 2021) and 86 FR 8277 (Feb. 2, 2021), the Department reconsidered its position on those matters and now issues this proposed rule to revise the regulations accordingly and make other related amendments. This proposed rule clarifies immigration judge and Board of Immigration Appeals (BIA) authority, including providing general administrative closure authority and the ability to sua sponte reopen and reconsider cases. The proposed rule also revises BIA standards involving adjudication timelines, briefing schedules, self-certification, remands, background checks, administrative notice, and voluntary departure. Lastly, the proposed rule removes the EOIR Director's authority to issue decisions in certain cases, removes the ability of immigration judges to certify cases for quality assurance, and revises procedures for the forwarding of the record on appeal, as well as other minor revisions.

Summary of the Legal Basis:

The Attorney General has general authority under 8 U.S.C. 1103(g) to establish regulations related to the immigration and naturalization of noncitizens. Thus, this proposed rule utilizes such authority to propose revisions to the regulations regarding immigration appeals processing and administrative closure.

Alternatives:

Unless the Department relies on litigation to permanently enjoin the December 2020 rule, 85 FR 81588 (Dec. 16, 2020), there are no other alternatives to revise the regulations. Relying on litigation could be extremely time-burdensome and may introduce confusion as to effectiveness of the regulations. Thus, the Department considers this alternative to be an inadequate and inadvisable course of action.

Anticipated Costs and Benefits:

The Department is largely reinstating the briefing schedules that the December 2020 rule revised. As stated in the December 2020 rule, 85 FR at 81650, the basic briefing procedures have remained across rules; thus, the Department believes the costs to the public will be negligible, if any, given that costs will revert back to those established for decades prior to the December 2020 rule. The proposed rule imposes no new additional costs, as much of the proposed rule involves internal case processing. For those provisions that constitute more than simple internal case processing measures, such as the amendments to the BIA's administrative closure authority, they likewise would not impose significant costs to the public. Indeed, such measures would generally reduce costs, as they facilitate and reintroduce various mechanisms for fair, efficient case processing.

Risks:

Without this rulemaking, the regulations will remain enjoined pending litigation (as described in the Alternatives section). This is inadvisable, as litigation typically takes an inordinate time to resolve. The Department highly prefers proactively addressing the regulations through this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	11/00/2021	

Additional Information: Related to EOIR Docket No. 19-0022

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: No

Included in the Regulatory Plan: Yes

RIN Information URL: <http://www.regulations.gov>

Public Comment URL: <http://www.regulations.gov>

RIN Data Printed in the FR: No

Related RINs: Related to 1125-AA96

Agency Contact:

Lauren Alder Reid

Assistant Director, Office of Policy, Executive Office for Immigration Review
Department of Justice
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1800,
Falls Church, VA 22041
Phone: 703 305-0289
Email: pao.eoir@usdoj.gov