hired from certificates—including through category rating—the pass over rules in 5 U.S.C. 3318 generally apply. See *also Dean* v. *Department of Labor,* 808 F.3d 497, 507 (Fed. Cir. 2015); *Jarrard* v. *Department of Justice,* 669 F.3d 1320, 1323 (Fed. Cir. 2012). The court in *Gingery* ruled that the current text in 5 CFR 302.401(b) is invalid, on grounds that it does not provide pass-over protections generally available to preference-eligible applicants under 5 U.S.C. 3318(b)(1) (since renumbered as 5 U.S.C. 3318(c)(1)), or the pass-over protections specifically available to preference eligibles with 30-percent or more compensable service-connected disabilities under 5 U.S.C. 3318(b)(2) and (b)(4) (since renumbered as 5 U.S.C. 3318(c)(2) and (c)(4)). *See* 550 F.3d at 1353–54.

OPM issued guidance on the *Gingery* decision on February 9, 2009, and clarified this guidance on March 12, 2009. However, OPM has not yet amended the text of the regulation. We are proposing to amend section 302.401(b) of our regulations to conform to the pass-over procedures in 5 U.S.C. 3318(c).

OPM notes that Public Law 114–137, the Competitive Service Act of 2015, recently amended 5 U.S.C. 3318 and 3319 to permit the use of shared certificates. This proposed rule does not address the Competitive Service Act. OPM will initiate a separate regulatory action to implement the Competitive Service Act.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 302

Government employees.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

Accordingly, OPM is proposing to revise 5 CFR part 302 as follows:

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

■ 1. The authority citation for part 302 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 3317, 3318, 3320, 8151, E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 *et seq.*

■ 2. Amend § 302.101 to revise paragraph (c)(6) and to add paragraph (c)(11) to read as follows:

§ 302.101 Positions covered by regulations.

* * * * *

(c) * * *

(6) Positions included in Schedule A (see subpart C of part 213 of this chapter) for which OPM agrees with the agency that the positions should be included hereunder and states in writing that an agency is not required to fill positions according to the procedures in this part.

* * * * *

(11) Appointment of persons with intellectual disabilities, severe physical disabilities, or psychiatric disabilities to positions filled under 5 CFR 213.3102(u).

■ 3. Revise § 302.401(b) to read as follows:

§ 302.401 Selection and appointment.

* * * * *

(b) *Passing over a preference applicant.* When an agency, in making an appointment as provided in paragraph (a) of this section, passes over the name of a preference eligible, it shall follow the procedures in 5 U.S.C. 3318(c) and 3319(c)(7) as described in the *Delegated Examining Operations Handbook.* An agency may discontinue consideration of the name of a preference eligible for a position as described in 5 U.S.C. 3318(c).

[FR Doc. 2016–28783 Filed 11–29–16; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1240

[EOIR No. 180; AG Order No. 3780–2016]

RIN 1125–AA25

Procedures Further Implementing the Annual Limitation on Suspension of Deportation and Cancellation of Removal

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice proposes to amend the regulations of the Executive Office for Immigration Review (EOIR) governing the annual statutory limitation on cancellation of removal and suspension of deportation decisions. First, the rule proposes to eliminate certain procedures created in 1998 that were used to convert 8,000 conditional grants of suspension of deportation and cancellation of removal to outright grants before the end of fiscal year 1998. The need for such procedures ceased to exist after the end of fiscal year 1998. Second, the Department proposes to authorize immigration judges and the Board of Immigration Appeals (Board) to issue final decisions denying applications, without restriction, regardless of whether the annual limitation has been reached. This proposed amendment would decrease the high volume of reserved decisions that results when the annual limitation is reached early in the fiscal year; reduce the associated delays caused by postponing the resolution of pending cases before EOIR; and provide an applicant with knowledge of a decision in the applicant's case on or around the date of the hearing held on the applicant's suspension or cancellation application.

DATES: Written comments must be submitted on or before January 30, 2017. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until midnight Eastern Time at the end of that day.

ADDRESSES: Please submit written comments to Jean King, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041. To ensure proper handling, please reference RIN No. 1125–AA25 or EOIR docket No. 180 on your correspondence. You may submit comments electronically or view an electronic version of this proposed rule at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jean King, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041; telephone (703) 605–1744 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. EOIR also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. To provide the most assistance

to EOIR, comments should reference a specific portion of the rule; explain the reason for any recommended change; and include data, information, or authority that support such recommended change.

All comments submitted for this rulemaking should include the agency name and EOIR Docket No. 180. Please note that all comments received are considered part of the public record and made available for public inspection at *www.regulations.gov*. Such information includes personally identifiable information (such as a person's name, address, or any other data that might personally identify that individual) voluntarily submitted by the commenter.

If you want to submit personally identifiable information as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONALLY IDENTIFIABLE INFORMATION'' in the first paragraph of your comment and identify what information you want redacted.

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

Personally identifiable information and confidential business information provided as set forth above will be placed in the agency's public docket file, but not posted online. To inspect the agency's public docket file in person, you must make an appointment with agency counsel. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for agency counsel's contact information.

II. Background

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA''), Public Law 104–208, div. C, 110 Stat. 3009–546, added section 240A(e) to the Immigration and Nationality Act (''INA'' or the ''Act''), Public Law 82–414, 66 Stat. 163 (1952) (codified as amended in scattered sections of 8, 18, and 22 U.S.C.), by establishing an annual limitation on the number of aliens who may be granted suspension of deportation or cancellation of removal followed by adjustment of status.[1] The annual limitation is as follows:

> [T]he Attorney General may not cancel the removal and adjust the status under this section, nor suspend the deportation and adjust the status under section 244(a) (as in effect before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), of a total of more than 4,000 aliens in any fiscal year.

INA sec. 240A(e)(1), 8 U.S.C. 1229b(e)(1).

In February 1997, EOIR reached the fiscal year 1997 annual limitation and the Chief Immigration Judge directed immigration judges to reserve decisions in suspension of deportation cases that they intended to grant. *See* 63 FR 52134, 52134 (Sep. 30, 1998). These instructions were intended to serve as a temporary measure to provide the Department with time to consider how best to address the annual limitation. *See id.*

On October 3, 1997, the Department issued an interim rule, which authorized immigration judges and the Board to grant applications for suspension of deportation and cancellation of removal only on a ''conditional basis.'' 62 FR 51760, 51762 (Oct. 3, 1997). On October 15, 1997, the Chief Immigration Judge instructed immigration judges to convert previously reserved grants of suspension and cancellation to conditional grants.

On November 19, 1997, Congress enacted the Nicaraguan Adjustment and Central American Relief Act (''NACARA''), Public Law 105–100, title II, 111 Stat. 2160, 2193–2201, which amended section 240A(e) of the Act. NACARA reaffirmed the annual limitation of 4,000 grants but exempted from the limitation certain nationals of Guatemala, El Salvador, and the former Soviet bloc countries. *See* NACARA sec. 204, 111 Stat. at 2200–01. Moreover, NACARA provided for an additional 4,000 suspension/cancellation grants to increase the annual limitation to a total of 8,000 for fiscal year 1998 only. *Id.*

On September 30, 1998, the Department issued the current interim rule to: (1) Create a process to convert 8,000 conditional grants to outright grants before the end of fiscal year 1998, *see* 63 FR at 52138–39 (codified at 8 CFR 1240.21(b)); and (2) establish a new procedure for processing applications for suspension and cancellation in order to avoid exceeding the annual limitation, *see id.* at 52139–40 (codified at 8 CFR 1240.21(c)).

First, in order to utilize the 8,000 grants available in fiscal year 1998, the rule provided for converting the first 8,000 conditional grants made since October 1997 to outright grants of suspension/cancellation in order of the date the conditional grant was issued by the immigration judge or the Board. *See id.* at 52138 (codified at 8 CFR 1240.21(b)(1)). Any conditional grants remaining after 1998 were to be converted to outright grants in fiscal year 1999 when a grant became available. *See id.* at 52139 (codified at 8 CFR 1240.21(b)(3)).

Additionally, in an effort to preserve as many grants as possible in fiscal year 1998, the rule required nationals of Nicaragua and Cuba who received a

[1] The Department has considered whether section 240A(e) of the Act can be interpreted as imposing an annual limitation on adjustments of status only, rather than on the immigration judge or Board's decision to grant an application for cancellation of removal or suspension of deportation. The Department has determined that section 240A(e) does not apply only to adjustments of status. The language and history of that section indicates that Congress intended ''cancellation/suspension'' and ''adjustment of status'' to be a single inseparable process, and that the 4,000 annual limitation applies to the entire process. To be sure, in other sections of the Act, Congress has distinguished between the act of granting relief to an alien and the process of adjusting the alien's status to lawful permanent resident. *See* INA sec. 208, 209 (8 U.S.C. 1158, 1159(b)). But section 240A(b)(1) of the Act indicates that Congress did not intend to separate the act of granting cancellation of removal or suspension of deportation from adjustment of status in section 240A.

Further justification for the Department's interpretation is found in section 240A(e)(1) of the Act which provides that: ''[t]he numerical limitation under this paragraph shall apply to the aggregate number of decisions in any fiscal year to cancel the removal (and adjust the status) of an alien, or suspend the deportation (and adjust the status) of an alien under this section . . . .'' INA sec. 240A(e)(1) (8 U.S.C. 1229b(e)(1)). The use of the phrase ''aggregate number of decisions'' indicates that Congress intended the 4,000 annual limitation to apply to ''decisions'' and not just the ministerial act of adjusting an alien's status to lawful permanent resident.

The legislative history of section 240A(e) also supports the Department's interpretation. When initially passed by the House of Representatives, the annual limitation provision stated that: ''[t]he number of adjustments under this paragraph shall not exceed 4,000 for any fiscal year.'' *See* Immigration in the National Interest Act of 1996, H.R. 2202, 104th Cong. sec. 304 (as passed by House, March 21, 1996). Although the language of the House Bill was never signed into law, many of its provisions were later added to IIRIRA, including section 240A(e) of the Act which was amended and enacted as follows: ''The Attorney General may not cancel the removal and adjust the status under this section, nor suspend the deportation and adjust the status under section 244(a) . . . of a total of more than 4,000 aliens in any fiscal year.'' Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA''), Public Law 104–208, div. C, sec. 304(a), 110 Stat. 3009–546, 3009–596. The significance of this amendment is a shift from a limitation only on adjustments to a limitation on cancellation of removal (or suspension of deportation) *and* adjustment of status, which confirms that Congress intended ''cancellation/suspension'' and ''adjustment of status'' to be a single inseparable process for purposes of applying the 4,000 annual limitation.

conditional grant of suspension or cancellation to first pursue adjustment under section 202 of NACARA, because NACARA exempts the adjustment of status of certain nationals from the annual limitation. *See* NACARA sec. 202, 111 Stat. at 2160. The rule directed the former Immigration and Naturalization Service (INS) to notify all Cuban and Nicaraguan applicants to appear at an INS office to apply for NACARA adjustment before December 31, 1998. *See* 63 FR at 52138–39 (codified at 8 CFR 1240.21(b)(2)(i)). The rule provided that ''[a]n alien who fail[ed] to appear to perfect his or her request for NACARA adjustment . . . [had] his or her conditional grant of suspension of deportation or cancellation of removal automatically converted . . . to a grant of suspension of deportation or cancellation effective December 31, 1998.'' *Id.* at 52139 (codified at 8 CFR 1240.21(b)(2)(vi)). Second, the rule established a procedure for future processing of suspension of deportation and cancellation cases under the annual limitation. Specifically, the rule eliminated the conditional grant process, stating that ''[t]he Immigration Court and the Board shall no longer issue conditional grants . . . .'' *Id.* at 52138 (codified at 8 CFR 1240.21(a)(2)). Instead, under the interim rule, immigration judges and the Board may issue grants of suspension or cancellation in chronological order until grants are no longer available in a fiscal year.[2] When grants are no longer available in a fiscal year, ''further decisions to grant or *deny* such relief shall be reserved'' until grants become available in a future fiscal year.[3] *Id.* at 52140 (codified at 8 CFR 1240.21(c)(1)) (emphasis added). With respect to denials, the rule further clarified that immigration judges and the Board ''may deny without reserving decision or may pretermit those suspension of deportation or cancellation of removal applications in which the applicant has failed to establish statutory eligibility for relief.'' *Id.* However, the rule prohibits immigration judges and the Board from basing such denials ''on an unfavorable exercise of discretion, a finding of no good moral character on a ground not specifically noted in section 101(f) of the [INA], a failure to establish exceptional or extremely unusual hardship to a qualifying relative in cancellation cases, or a failure to establish extreme hardship to the applicant and/or qualifying relative in suspension cases.'' *Id.*

III. Rationale for the Proposed Amendments

The Department proposes to make three amendments to the current rule before it is finalized. First, the Department proposes to eliminate the current text of paragraph (b), which established a procedure to convert 8,000 conditional grants of suspension of deportation and cancellation of removal to outright grants before the end of fiscal year 1998 and to convert some conditional grants to grants of adjustment of status under NACARA. *See* 8 CFR 1240.21(b). The need for such procedures ceased to exist after fiscal year 1998. Second, the Department proposes to amend the interim rule to allow immigration judges and the Board to issue final decisions denying cancellation and suspension applications, without restriction, regardless of whether the annual limitation has been reached. Under the proposed rule, after the annual limitation has been reached, only grants would be required to be reserved. *Contra* 8 CFR 1240.21(c)(1). Finally, the Department proposes to make a technical amendment to the current text of 8 CFR 1240.21(c).

A. Elimination of Current Text of Paragraph (b)

The Department has determined that the current text of paragraph (b) in the interim rule should be removed. As discussed, that section was added to address a discrete issue that required resolution before the end of fiscal year 1998: the interaction between the September 1997 interim rule authorizing immigration judges and the Board to grant applications for suspension and cancellation on a ''conditional basis'' and the enactment of NACARA in November 1997, which added 4,000 grants to the statutory annual limitation, creating a total of 8,000 available grants for fiscal year 1998. Specifically, the issue before the Department was how best to convert 8,000 conditional grants to outright grants before the end of fiscal year 1998. Pursuant to 8 CFR 1240.21(b)(1), the Department successfully converted all 8,000 conditional grants to outright grants in fiscal year 1998. Additionally, the Department was able to preserve grants for use in fiscal year 1998 by offering Nicaraguan and Cuban nationals who received a conditional grant of suspension or cancellation in 1997 an opportunity to pursue adjustment under NACARA pursuant to the procedures in 8 CFR 1240.21(b)(2). Any applicants who did not apply for adjustment under NACARA (or whose applications were denied) automatically received a grant of cancellation or suspension by the end of fiscal year 1998. Given that the purpose of these provisions has been achieved, the Department now proposes to remove the current text of paragraph (b). This amendment will not affect any applicant who has applied or will apply for cancellation of removal, suspension of deportation, or NACARA relief.[4]

B. Authorizing Issuance of Denials

The Department proposes to amend the interim rule to allow immigration judges and the Board to issue final decisions denying applications after the annual limitation has been reached. This amendment would (1) decrease the high volume of reserved decisions that results from reaching the annual limitation early in the fiscal year; (2) reduce the associated delays caused by postponing the resolution of pending cases before EOIR; and (3) provide an applicant with knowledge of a decision in the applicant's case on or around the date of the hearing held on the applicant's suspension or cancellation application.

As an initial matter, the Department notes that this proposed amendment is permitted by the INA. Section 240A(e)(1) of the INA limits the number of aliens who may be granted suspension of deportation or cancellation of removal to 4,000 aliens in any fiscal year. The statute, however, does not prohibit the issuance of denials

[2] As explained in the rule's preamble, future grants were to be issued on a first-in-time basis, but only when numbers became available. *See* 63 FR at 52136–37. As a general matter, the immigration courts and the Board continue to follow the first-in-time rule. However, a limited number of grants that would count against the annual limitation are held in reserve, if needed, to allow immigration judges and the Board to grant relief in high priority cases. Such priority cases currently include, for example, cases of aliens who are being held in detention. Other categories of cases may be designated as priorities in the future as a result of exigent circumstances.

[3] The rule's preamble explained: ''[p]ersons with reserved decisions will be considered to be 'in proceedings' while their decision is reserved. They normally cannot be removed from the country while they are still in proceedings. Neither can they receive any form of relief until the Immigration Court or the Board takes further action.'' 63 FR at 52137.

[4] Paragraph (b) contains other sections concerning the conversion of conditional grants into outright grants in fiscal year 1998. Paragraph (b)(4) allows INS to file a motion to reopen within 90 days after the alien's conditional grant is converted into a final grant. Paragraph (b)(5) enables an alien with a conditional grant to remain eligible for conversion to an outright grant in fiscal year 1998 notwithstanding the alien's departure from the United States. Paragraph (b)(3) provides a rule for conditional grants on appeal to the Board to be converted when a grant is available. As discussed, the conversion process was completed in fiscal year 1998 and remaining grants were converted in 1999. Therefore, the Department has determined that these provisions can be eliminated because they no longer have any continuing effect.

of suspension of deportation or cancellation of removal applications once the annual limitation is reached. Therefore, the current regulation at 8 CFR 1240.21(c)(1), which prohibits immigration judges and the Board from issuing grants and some denials of suspension of deportation or cancellation of removal applications once the annual limitation is reached, is not mandated by statute.

In recent years, immigration judges and the Board have reached the annual 4,000 limitation early in the fiscal year. By May 23, 2011, approximately 3,800 applications had been granted. Procedures were instituted to halt further decisions so as not to exceed the annual limitation.[5] As a result of reaching the annual limitation early in fiscal year 2011, a backlog of reserved decisions to grant or deny applications was created. EOIR estimates nearly 1,400 decisions were reserved after May 23, 2011. EOIR reached the annual limitation even earlier in fiscal year 2012 because of the fiscal year 2011 backlog. By February 6, 2012, approximately 3,500 applications had been granted. Throughout the remainder of fiscal year 2012, approximately 3,547 decisions were reserved. Given the number of cases being carried over from fiscal year 2012, EOIR reached 3,500 grants in the first two months of fiscal year 2013. Throughout the remainder of fiscal year 2013, approximately 5,250 decisions were reserved. EOIR estimates that approximately 1,967 of these applications would have been denied in fiscal year 2013 if the decision had not been reserved.[6] Because of the large number of decisions that were reserved in fiscal year 2013, the annual limitation was not lifted at the beginning of fiscal year 2014. Instead, immigration judges were required to reserve all decisions in non-detained suspension and cancellation of removal cases unless notified that a grant was available. To comply with the annual limitation, a total of approximately 6,405 decisions had to be reserved throughout fiscal year 2014. Of these cases, 4,890 were identified as potential grants and 1,814 were identified as potential denials. Therefore, the entire 4,000 grants available for fiscal year 2015 must be allocated to cases that were reserved in fiscal year 2014 and identified as potential grants. In sum, as the multi-year backlog grows, more total cases are held, and aliens must wait longer for resolution of their cases.[7]

Allowing immigration judges and the Board to issue denials even after the annual limitation is reached would significantly reduce the number of reserved decisions. This would also reduce administrative burden and scheduling complications, as well as related costs, associated with suspension and cancellation of removal cases subject to the annual limitation.[8] In turn, the amendment would allow the Department to better meet the objectives of expeditious processing of removal proceedings.

Finally, the proposed amendment would provide final case resolution to more individuals applying for suspension of deportation and cancellation of removal.[9] An applicant would have knowledge of a decision to grant, reserve, or deny the application at or near the date of the hearing in which the immigration judge considered the applicant's application for suspension or cancellation. As a result, an applicant whose case is denied would be able to determine whether to file an appeal from the immigration judge's decision with the Board or get the applicant's affairs in order and apply for any other relief for which an applicant remains eligible. Additionally, an applicant who is advised that the applicant's case is reserved, because the applicant's case has not been denied, would now have greater certainty in knowing that the applicant likely will be granted cancellation or suspension once grant numbers become available.[10]

For these reasons, the Department is proposing to amend the regulations at 8 CFR 1240.21(c)(1) to provide that, even after the annual limitation is reached, immigration judges and the Board may issue decisions denying the suspension of deportation or cancellation of removal application without restriction.[11]

C. Technical Amendment to 8 CFR 1240.21(c)

The final sentence of the introductory text of § 1240.21(c) of the current rule states that ''[t]he awarding of such relief shall be determined according to the date the order granting such relief becomes final as defined in §§ 1003.1(d)(3) and 1003.39 of this chapter.'' The citation to § 1003.1(d)(3), which relates to the Board's scope of review, is erroneous. Therefore, the Department proposes to replace the reference to § 1003.1(d)(3) with a reference to § 1003.1(d)(7), which appropriately relates to finality of decisions.

IV. Response to Comments Received on the 1998 Interim Rule

The Department received the following comments in response to the 1998 interim rule.

One commenter stated that the rule does not implement the intent of Congress because it does not limit the number of aliens granted cancellation or suspension by the immigration courts. The commenter suggests that section 240A(e) of the Act requires denial of relief and deportation of aliens for whom one of the 4,000 slots is not available at the time the case is completed. The Department does not interpret section 240A(e) in this manner. Rather, the Department construes the annual limitation as a restriction on when, not whether, EOIR may grant suspension of deportation or cancellation to an alien who falls outside of the annual allotment of 4,000 slots. Accordingly, the interim rule was necessary for the Department to create a procedure for reserving a decision

[5] The statutory limitation of 4,000 grants was reached in September 2012, once the remaining 200 grants had been allocated.

[6] The precise number of reserved decisions that will ultimately result in denials cannot be determined because of the variety of possible case outcomes (including the withdrawal of the application or the grant of another form of relief).

[7] A reserved decision is not a final decision and cannot be appealed by either party. Unlike a conditional grant, no benefits accrue when a decision is reserved. *See* Executive Office for Immigration Review, Operating Policies and Procedures Memorandum 12–01: Procedures on Handling Applications for Suspension/Cancellation in Non-Detained Cases Once Numbers are no Longer Available in a Fiscal Year 3–5 (February 3, 2012) (indicating that reserved decisions may be rendered as ''draft oral decisions'' or ''draft written decisions'' that may become final decisions when a number in the queue is available); *see also* 63 FR at 52137 (preamble to the rule explained that ''[p]ersons with reserved decisions will be considered to still be 'in proceedings' while their decision is reserved . . . [and cannot] receive any form of relief until the Immigration Court or the Board takes further action''); 8 CFR 1003.1(b) (jurisdiction of Board of Immigration Appeals over decisions of immigration judges).

[8] At present, when a denial is reserved, immigration judges and court staff spend significant resources preparing a draft decision. Moreover, when the annual limitation is lifted each fiscal year, an immigration judge must again review the decision before issuing it. *See* EOIR, OPPM 12–01, *supra* (outlining current procedures immigration judges and court staff must follow to reserve denial decisions).

[9] This result is also consistent with views expressed by one commenter to the 1998 rule. *See* Section III *infra.*

[10] Moreover, an applicant who receives a denial may be able to appeal to the Board sooner, rather than having to wait in the queue for a denial, and then potentially having to go back in the queue if the Board grants the appeal and remands to the immigration judge for a new decision.

[11] This regulatory amendment mirrors the solution adopted in February 1997 when EOIR reached the fiscal year 1997 annual limitation. *See* 63 FR 52134. Specifically, that directive reserved the adjudication of grants of suspension of deportation or cancellation of removal while allowing immigration judges and the Board to continue to issue denials of such relief.

granting a suspension or cancellation of removal application until a number becomes available.

In addition, one commenter expressed concern about the ''adverse effect on applicants of the reservation of decision procedure.'' The commenter states that the ''reservation of decision results in a secret determination causing the applicant to remain in proceedings with no knowledge of a decision for an undeterminable amount of time. Although the applicant will have presented his or her best case and evidence and had his or her day in court, the applicant will be unable to make any decisions about the future or get affairs in order in case of a denial.'' The Department shares these concerns. As noted above, the proposed amendment would provide final case resolution to more individuals applying for suspension of deportation and cancellation of removal, thereby providing greater certainty and eliminating concerns about a ''secret determination'' process. In addition, the alien would be able to appeal the denial, whereas at present a reserved decision is not appealable until the decision is issued.

Moreover, two commenters asked why aliens with reserved decisions could not receive advance parole to travel outside of the United States or work authorization while their cases were pending. EOIR does not have jurisdiction over work authorization and advance parole. These issues may be raised with the Department of Homeland Security (DHS) which does have such jurisdiction.

Finally, two commenters discussed the procedures designed to convert 8,000 conditional grants to outright grants in fiscal year 1998. As discussed above, all conditional grants were converted into outright grants by 1999. Therefore, the proposed rule would eliminate the procedures created to convert 8,000 conditional grants of suspension of deportation and cancellation of removal to outright grants before the end of fiscal year 1998. Accordingly, the Department does not address these comments.

V. Regulatory Requirements

A. Regulatory Flexibility Act

The Department has reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The rule will not regulate ''small entities,'' as that term is defined in 5 U.S.C. 601(6).

B. Unfunded Mandates Reform Act of 1995

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

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

D. Executive Orders 12866 and 13563: Regulatory Planning and Review

The Department has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and, therefore, it has not been reviewed by the Office of Management and Budget. Nevertheless, the Department certifies that this regulation has been drafted in accordance with the principles of Executive Order 12866, section 1(b), and Executive Order 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Additionally, it calls on each agency to periodically review its existing regulations and determine whether any should be modified, streamlined, expanded, or repealed to make the agency's regulatory program more effective or less burdensome in achieving its regulatory objectives.

The Department is issuing this proposed rule consistent with these Executive Orders. This rule would affect the adjudication of suspension of deportation and cancellation of removal cases after the annual limitation under section 240A(e) has been reached. The Department expects this rule would reduce the number of reserved suspension of deportation and cancellation of removal cases once the annual limitation has been reached. Further, this rule will have a positive economic impact on Department functions because it will significantly reduce the administrative work and scheduling complications associated with suspension of deportation and cancellation of removal cases subject to the annual limitation. While this rule would remove all the current restrictions on issuing denials, immigration judges and the Board will still be required to provide a legal analysis for all decisions denying a suspension of deportation or cancellation of removal application. Accordingly, the Department does not foresee any burdens to the public as a result of this proposed rule. To the contrary, it will benefit the public by saving administrative costs and allowing earlier resolution of cases.

E. Executive Order 13132: Federalism

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

F. Executive Order 12988: Civil Justice Reform

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

G. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

List of Subjects

8 CFR Part 1240

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

Accordingly, for the reasons stated in the preamble, part 1240 of chapter V of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

■ 1. The authority citation for part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1182, 1186a, 1186b, 1225, 1226, 1227, 1228, 1229a, 1229b, 1229c, 1252 note, 1361, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681).

■ 2. Amend § 1240.21 by:

■ a. Removing and reserving paragraph (b); and

■ b. Revising paragraphs (c) introductory text, and (c)(1) to read as follows:

§ 1240.21 Suspension of deportation and adjustment of status under section 244(a) of the Act (as in effect before April 1, 1997) and cancellation of removal and adjustment of status under section 240A(b) of the Act for certain nonpermanent residents.

* * * * *

(c) *Grants of suspension of deportation or cancellation of removal in fiscal years subsequent to fiscal year 1998.* On and after October 1, 1998, the Immigration Court and the Board may grant applications for suspension of deportation and adjustment of status under section 244(a) of the Act (as in effect prior to April 1, 1997) or cancellation of removal and adjustment of status under section 240A(b) of the Act that meet the statutory requirements for such relief and warrant a favorable exercise of discretion until the annual numerical limitation has been reached in that fiscal year. The awarding of such relief shall be determined according to the date the order granting such relief becomes final as defined in §§ 1003.1(d)(7) and 1003.39 of this chapter.

(1) *Applicability of the Annual Limitation.* When grants are no longer available in a fiscal year, further decisions to grant such relief must be reserved until such time as a grant becomes available under the annual limitation in a subsequent fiscal year.

* * * * *

Dated: November 21, 2016.

Loretta E. Lynch,

Attorney General.

[FR Doc. 2016–28590 Filed 11–29–16; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2016–9452]

14 CFR Part 21

Airworthiness Criteria: Glider Design Criteria for Stemme AG Model Stemme S12 Powered Glider

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed design criteria.

SUMMARY: This notice announces the availability of and requests comments on the proposed design criteria for the Stemme AG model Stemme S12 powered glider. The Administrator finds the proposed design criteria, which make up the certification basis for the Stemme S12, acceptable.These final design criteria will be published in the **Federal Register**.

DATES: Comments must be received on or before December 30, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–9452 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Rutherford, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106, telephone (816) 329–4165, facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the design criteria, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will consider all comments received on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these airworthiness design criteria based on received comments.

Background

On January 08, 2016, Stemme AG submitted an application for type validation of the Stemme S12 in accordance with the Technical Implementation Procedures for Airworthiness and Environmental Certification Between the FAA and the European Aviation Safety Agency (EASA), Revision 5, dated September 15, 2015. The Stemme S12 is a two-seat, self-launching, powered glider with a liquid cooled, turbocharged engine mounted in the center fuselage, an indirect drive shaft, and a fully-foldable, variable-pitch composite propeller in the nose. It is constructed from glass and carbon fiber reinforced composites, features a conventional T-type tailplane, and has a retractable main landing gear. The glider has a maximum weight of 1,984 pounds (900 kilograms) and may be equipped with an optional dual-axis autopilot system. EASA type certificated the Stemme S12 under Type Certificate Number (No.) EASA.A.054 on March 11, 2016. The associated EASA Type Certificate Data Sheet (TCDS) No. EASA.A.054 defined the certification basis Stemme AG submitted to the FAA for review and acceptance.

The applicable requirements for glider certification in the United States can be