

# Proposed Rules

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

## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review

**8 CFR Parts 1003, 1103, 1208, 1216, 1235, 1240, 1244, and 1245**

[EOIR Docket No. 18–0101; A.G. Order No. 4641–2020]

RIN 1125–AA90

### Executive Office for Immigration Review; Fee Review

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Justice’s Executive Office for Immigration Review (“EOIR”) imposes fees, also known as user charges, for the filing of certain EOIR forms for applications for relief, appeals filed with the Board of Immigration Appeals (“BIA”), and motions to reopen or reconsider. When applicable, the current fee for EOIR applications for relief is \$100, and the fee for motions or appeals is \$110. EOIR last reviewed and updated these fees 33 years ago, in 1986. This proposed rule (“proposed rule” or “rule”) would increase the fees for those EOIR applications, appeals, and motions that are subject to an EOIR-determined fee, based on a fee review conducted by EOIR. This proposed rule would not affect the fees that have been established by the Department of Homeland Security (“DHS”) with respect to DHS forms for applications that are filed or submitted in EOIR proceedings. This proposal does not affect the ability of aliens to submit fee waiver requests, nor does it add new fees. The proposed rule also updates cross-references to DHS regulations regarding fees and makes a technical change regarding requests under the Freedom of Information Act.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before March 30, 2020.

**ADDRESSES:** You may submit comments, identified by EOIR Docket No. 18–0101, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

- *Mail:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041. To ensure proper handling, please reference EOIR Docket No. 18–0101 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.

- *Hand Delivery/Courier:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041.

**FOR FURTHER INFORMATION CONTACT:** Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305–0289 (not a toll-free call).

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. The Department of Justice (“Department” or “DOJ”) also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing these procedures will 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 submissions received should include the agency name and EOIR Docket No. 18–0101 for this rulemaking. Please note that all comments received are considered part of the public record and made available for public inspection at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name,

address, etc.) voluntarily submitted by the commenter.

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

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You also must prominently identify 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 <http://www.regulations.gov>.

Personal identifying information and confidential business information identified 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** section above for agency counsel’s contact information.

##### II. Purpose and Summary of This Proposed Rule

###### A. Legal Authority

In 1988, Congress established the Immigration Examinations Fee Account in the Treasury of the United States. See Public Law 100–459, sec. 209, 102 Stat. 2186 (Oct. 1, 1988) (codified as amended at 8 U.S.C. 1356(m), (n)). Section 286(m) of the Immigration and Nationality Act (“INA”), 8 U.S.C. 1356(m), authorizes DOJ to charge fees for immigration adjudication and naturalization services at a level to “ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants.” Prior to the enactment of section 286(m), EOIR had relied only on government-wide statutory authority under the Independent Offices Appropriations Act of 1952 (“IOAA”), 31 U.S.C. 9701, to

charge fees, also referred to as user charges, to individuals who receive special services from the agency.

EOIR's authority to charge user fees first derived from title V of the IOAA.<sup>1</sup> Under the IOAA, "each service or thing of value provided by an agency . . . to a person. . . is to be self-sustaining to the extent possible." 31 U.S.C. 9701(a).<sup>2</sup> To that end, "[t]he head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency." *Id.* at sec. 9701(b). Such fees must be "fair" and based on Government costs, the value of the service or thing provided to the recipient, the public policy or interest served, and other relevant facts. *Id.*

Circular No. A-25 Revised<sup>3</sup> sets Federal policy regarding user fees assessed for Government services and for the sale or use of Government goods or resources. *Cf. Fed. Power Comm'n v. New England Power Co.*, 415 U.S. 345, 349-51 (1974) (favorably citing Circular No. A-25 as a "proper construction" of the IOAA). The Circular provides guidance to executive branch agencies regarding the scope and type of activities subject to user fees and how to set such user fees. It applies to all Federal activities that convey special benefits to recipients beyond those accruing to the general public. OMB instructs agencies to "[r]eview the user charges for agency programs biennially." Circular No. A-25 Revised at sec. 8(e); *see also* 31 U.S.C. 902(a)(8).

As noted above, the IOAA authorizes a Federal agency to charge user fees. 31 U.S.C. 9701. Section 286 of the INA, 8 U.S.C. 1356, contemplates the collection of certain fees and fines by the Attorney General and the Secretary of Homeland Security.<sup>4</sup> In particular, section 286(m) contemplates that the Attorney General

and the Secretary may charge fees for adjudication and naturalization services at a rate that would ensure recovery of both the full cost of providing all such services, including similar services that may be provided without charge to certain categories of aliens, and any additional administrative costs associated with the fees collected. All adjudication fees that are designated in regulations are deposited in the Immigration Examinations Fee Account ("IEFA") in the Treasury of the United States. *Id.* Deposits into the IEFA "remain available until expended to the Attorney General [or the Secretary] to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the [IEFA]." INA 286(n), 8 U.S.C. 1356(n). All other monies received in payment of fees and administrative fines and penalties are to be deposited into the Treasury as miscellaneous receipts, with exceptions not relevant here, such as for certain nonimmigrant visa payments by residents of the Virgin Islands and Guam. INA 286(c), 8 U.S.C. 1356(c). The Attorney General (and the Secretary under the Homeland Security Act of 2002 (HSA)) have the authority to promulgate regulations to carry out the provisions of section 286. INA 286(j), 8 U.S.C. 1356(j).

**B. Current Practice**

EOIR currently imposes a fee for eight distinct types of filings: Three applications for relief in proceedings before an immigration judge (all of whom serve within the Office of the Chief Immigration Judge ("OCIJ")); three types of appeals to the BIA; and two

motions that may be filed in proceedings before either an immigration judge or the BIA. 8 CFR 1103.7(b).

These filings represent important forms of relief and procedural tools for the parties in immigration proceedings before the OCIJ and the BIA.

- Aliens use the Forms EOIR-42A and EOIR-42B to apply for cancellation of removal, which is a statutorily provided relief from removal if they have relatively lengthy periods of residence in the United States, depending on the alien's status and whether the alien's removal would cause the alien's citizen or resident family members particularly severe hardships, in addition to other eligibility requirements. *See* INA 240A, 8 U.S.C. 1229b. The Form EOIR-40 allows eligible aliens to seek a similar form of relief under prior law.

- Aliens use the Forms EOIR-26, EOIR-29, and EOIR-45 for appeals to the BIA. Such forms, and other procedural mechanisms like motions to reconsider,<sup>5</sup> provide both aliens and the Government with a tool to obtain appellate review and reconsideration of decisions, in order to ensure the correctness of agency decisions in all cases. *See Ayuda, Inc. v. Attorney Gen.*, 848 F.2d 1297, 1301 (D.C. Cir. 1988) (describing the public interest in the "correctness of administrative decisions").

- Finally, motions to reopen are an "important safeguard" used "to ensure a proper and lawful disposition" of immigration proceedings. *Dada v. Mukasey*, 554 U.S. 1, 18 (2008).

For individuals seeking relevant relief before the immigration courts, the fees are as follows:

| Form/motion          | Title  | Fee   |
|----------------------|--|-------|
| EOIR-40              | Application for Suspension of Deportation  | \$100 |
| EOIR-42A             | Application for Cancellation of Removal for Certain Permanent Residents                              | 100   |
| EOIR-42B             | Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. | 100   |
| Motion to Reopen     |  | 110   |
| Motion to Reconsider |  | 110   |

<sup>1</sup> Public Law 82-137, 65 Stat. 268, 290 (1951).  
<sup>2</sup> Title 31 of the U.S. Code was codified by Public Law 97-258, 96 Stat. 877 (1982). Title V of the IOAA, as amended, is codified at 31 U.S.C. 9701.  
<sup>3</sup> Circular No. A-25 was published in 1959. Circular No. A-25 Revised rescinded and replaced Circular No. A-25 and its accompanying Transmittal Memoranda 1 and 2. *See* 58 FR 38142, 38144 (July 15, 1993).  
<sup>4</sup> Following the creation of DHS by the Homeland Security Act of 2002, Public Law 107-296, 116 Stat.

2135, the Attorney General retained the same authorities and functions under the INA and all other laws relating to the immigration and naturalization of aliens as were exercised by EOIR, or by the Attorney General with respect to EOIR, prior to the effective date of the Homeland Security Act. INA 103(g)(1), 8 U.S.C. 1103(g)(1). The Attorney General also retained authority to promulgate regulations; prescribe bonds, reports, entries, and other papers; issue instructions; review administrative determinations in immigration proceedings; delegate authority; and perform other

acts as the Attorney General determines are necessary to carry out the Attorney General's authorities under the immigration laws. INA 103(g)(2), 8 U.S.C. 1103(g)(2).  
<sup>5</sup> There is no assigned form for parties who wish to file a motion to reopen or a motion to reconsider with either an immigration court or the BIA. The Forms EOIR-40, -42A, and -42B are only available in immigration court, while parties may file a motion to reopen or a motion to reconsider with either the immigration court or the BIA.

For individuals who wish to file an appeal or relevant motion with the BIA, the fees are as follows:

| Form/motion                | Title  | Fee   |
|----------------------------|--|-------|
| EOIR–26 .....              | Notice of Appeal from a Decision of an Immigration Judge .....   | \$110 |
| EOIR–29 .....              | Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer .....            | 110   |
| EOIR–45 .....              | Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case ..... | 110   |
| Motion to Reopen .....     | .....  | 110   |
| Motion to Reconsider ..... | .....  | 110   |

EOIR does not require a fee in every circumstance when a party files one of the above-listed applications for relief, appeals to the BIA, or motions. There are certain circumstances when the normal filing fee explicitly does not apply. See 8 CFR 1003.8(a)(2), 1003.24(b)(2). For example, a filing party need not pay the \$110 fee for a Form EOIR–26 if the appeal is from an immigration judge’s custody bond decision. 8 CFR 1003.8(a)(2)(i). An alien in proceedings before an immigration court or the BIA may also apply for a fee waiver, and immigration judges and the BIA have the discretionary authority to waive a fee for an application for relief, appeal, or motion upon a showing that the filing party is unable to pay. See 8 CFR 1003.8(a)(3), 1003.24(d), 1103.7(c).<sup>6</sup>

These EOIR fees relate back to a final rule that the former Immigration and Naturalization Service (“INS”) and EOIR issued in 1986. 51 FR 39993 (Nov. 4, 1986) (codified at 8 CFR 103.7).<sup>7</sup> INS conducted a study in May 1984 of the “policies and practices for user charges,” reviewed the costs and fees, and evaluated the principle of user charges prescribed by Congress in 31 U.S.C. 9701 and the implementing guidelines in OMB Circular A–25. 51 FR 2895, 2895 (Jan. 22, 1986) (proposed rule). Following those analyses, INS and EOIR increased the fees for the applications, motions, and appeals for

which EOIR currently levies a fee (or their precursors). 51 FR at 39993–94. EOIR and INS acted in accordance with the IOAA, 31 U.S.C. 9701, and OMB Circular No. A–25, which the components described as “requir[ing] Federal agencies to establish a fee system in which a benefit or service provided to or for any person [is] self-sustaining to the fullest extent.” *Id.* at 39993. The regulation predated the statutory authority regarding the collection of fees in the current version of section 286(m) of the INA.

In the 1986 rule, EOIR increased the fee for filing motions to reopen and motions to reconsider from \$50 to the current \$110; the fee for filing an appeal from any non-bond decision under the immigration laws in any type of proceedings over which the BIA had appellate jurisdiction, then a Form I–290A, from \$50 to the current \$110; and the fee for an application for suspension of deportation under section 244 of the INA, then a Form I–256A, from \$75 to \$100. *Id.* EOIR and INS explained that these fees were set in accordance with the cost of providing each specific benefit or service at that time. *Id.* However, EOIR and INS set the fees for administrative appeals processes “at less than full cost recovery recognizing long-standing public policy and the interest served by these processes.” *Id.*<sup>8</sup>

Since 1986, the former INS, and subsequently DHS, have promulgated

multiple regulatory changes related to the fees for applications that are controlled by DHS, as currently codified in 8 CFR 103.7 and proposed to be revised in 8 CFR 103.7 and a newly added 8 CFR part 106. See, e.g., 81 FR 73292, 73328–31 (Oct. 24, 2016) (final rule revising the United States Citizenship and Immigration Services (“USCIS”) fee schedule); 84 FR 62280 (Nov. 14, 2019) (proposed rule that would revise and reorganize regulations in 8 CFR chapter I related to fees). EOIR, however, has rarely taken any actions related to its fees in the intervening 33 years, even as its caseload and the costs of adjudication have increased. After Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,<sup>9</sup> EOIR and the former INS jointly updated the fee schedule to account for the new Form EOIR–42, Application for Cancellation of Removal. 62 FR 10312 (Mar. 6, 1997) (interim rule). EOIR set the fee at \$100, the same as the application for suspension of deportation, which is a closely related form of relief that cancellation of removal replaced. *Id.* at 10336; see also *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 58 (BIA 2001) (en banc) (explaining that Congress replaced suspension of deportation with cancellation of removal). In 2004, EOIR published a rule reorganizing 8 CFR 1103.7 to list EOIR forms separately from DHS forms and to otherwise make the regulation clearer for the public, including by listing separately the \$100 fee for Forms EOIR–42A and EOIR–42B. 69 FR 44903 (July 28, 2004). The rule did not change the required fee amounts for filing any EOIR forms, appeals, or motions. *Id.* at 44904.

C. Review of EOIR Fees

EOIR determined that it was necessary to conduct an updated assessment of the costs for processing the forms and motions for which EOIR sets the applicable fees. See Circular No. A–25 Revised at sec. 8 (instructing agencies to conduct biennial reviews).

<sup>9</sup>Public Law 104–208, div. C, 110 Stat. 3009–546 (1996).

<sup>6</sup>DHS recently proposed assessing a fee for Form I–589, Application for Asylum and for Withholding of Removal. See 84 FR 62280, 62318–20 (Nov. 14, 2019). If a filing party uses Form I–589 only for a request for withholding of removal under section 241(b)(3) of the INA or protection from removal under the regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), then no fee will be assessed.

<sup>7</sup>Following the passage of the HSA, which transferred the functions of the INS to the newly created DHS, the Attorney General reorganized the regulations codified in title 8 of the Code of Federal Regulations and transferred those parts involving EOIR’s administrative review functions to a new chapter V. See 68 FR 9824 (Feb. 28, 2003). The current DHS regulation on fees remains at 8 CFR 103.7, but the relevant regulation for EOIR on fees was moved to 8 CFR 1103.7. *Id.* at 9833. Note that DHS has proposed adjusting and reorganizing its regulations on fees at proposed 8 CFR 103.7 and proposed 8 CFR part 106. See 84 FR 62280.

<sup>8</sup>At the time, the U.S. Court of Appeals for the D.C. Circuit affirmed that the Attorney General had the authority under the IOAA to impose fees for these immigration services because the fees were imposed for a “service or thing of value.” *Ayuda*, 848 F.2d at 1299–1301. The court explained that the appeals to the BIA and motions to reopen or reconsider were “procedural devices that redound to the obvious, substantial, and direct benefit of specific, identifiable individuals, individuals who have themselves invoked those procedures.” *id.* at 1301, and cited with approval the district court’s finding that the fees imposed were reasonable. *id.* at 1299 n.5; see also *Ayuda, Inc. v. Attorney Gen.*, 661 F. Supp. 33, 35–36 (D.D.C. 1987). The district court had noted that the fees were the product of an “extensive agency-wide review, utilizing careful cost accounting and full public notice and comment” and were no greater than the actual cost of providing services or, in the case of appeals to the BIA and motions to reopen or reconsider BIA decisions, were set to an amount lower than cost recovery. *Ayuda*, 661 F. Supp. at 36 & n.9.

Despite the instruction in the Chief Financial Officers Act, 31 U.S.C. 902(a)(8), for agencies' Chief Financial Officers to review user fees biennially, it has been 35 years since EOIR last conducted a thorough review of the costs and appropriateness of the fees for the applications, appeals, and motions

for which EOIR levies a fee. The fees have remained static, not accounting for inflation or any other intervening changes in EOIR's processing costs. EOIR is now proposing this rule to remedy the failure to update the fees in past years. The mismatch between fees and the underlying costs of review has

become more of a burden on the immigration adjudication system as aliens overall have begun filing more of these fee-based forms and motions. In just FY 2018, the U.S. taxpayer subsidization for these filings was \$44,379,247.<sup>10</sup>

| Form                              | Receipts<br>FY 2009 | Receipts<br>FY 2018 | FY 2018<br>cost to agency | FY 2018<br>fees<br>charged <sup>11</sup> | FY 2018<br>U.S. taxpayer<br>subsidization |
|-----------------------------------|---------------------|---------------------|---------------------------|--|---|
| EOIR-26 .....                     | 19,052              | 31,956              | \$31,158,697              | \$3,515,160                              | \$27,643,537                              |
| EOIR-29 .....                     | 4,314               | 2,075               | 1,462,481                 | 228,250                                  | 1,234,231                                 |
| EOIR-40 .....                     | 206                 | 158                 | 48,566                    | 15,800                                   | 32,766                                    |
| EOIR-42A .....                    | 5,272               | 3,426               | 1,053,084                 | 342,600                                  | 710,484                                   |
| EOIR-42B .....                    | 16,327              | 30,421              | 10,954,602                | 3,042,100                                | 7,912,502                                 |
| Motion to Reconsider (OCIJ) ..... | 747                 | 2,442               | 339,975                   | 268,620                                  | 71,355                                    |
| Motion to Reopen (OCIJ) .....     | 11,324              | 17,741              | 2,710,293                 | 1,951,510                                | 758,783                                   |
| MTRs (BIA) <sup>12</sup> .....    | 10,071              | 7,662               | 6,858,409                 | 842,820                                  | 6,015,589                                 |
| Total .....                       | 67,313              | 95,881              | 54,586,107                | 10,206,860                               | 44,379,247                                |

In the spring of 2018, EOIR conducted a comprehensive study using activity-based costing to determine the cost to EOIR for each type of application, appeal, and motion for which EOIR levies a fee under 8 CFR 1103.7(b).<sup>13</sup> The study proceeded in three phases: (1) Data collection, (2) process mapping, and (3) activity-based costing. First, EOIR gathered survey data and consulted with staff in the OCIJ and the BIA to determine the appropriate staff levels and time required to process and adjudicate each application, appeal, or motion and studied data from the Office of Personnel Management ("OPM") and the General Services Administration ("GSA") to determine the average salary rates for applicable staff levels, including both Federal employees and EOIR contractors. Second, EOIR developed step-by-step process maps, with assigned times and staff levels, for how each application, appeal, or motion is processed in the OCIJ and the BIA. These estimates were validated by staff in the OCIJ and the BIA. Finally, EOIR allocated the salary costs from the GSA and OPM data to each step in the process, based on the time the step takes, the average salary of the responsible staff, and the percentage of total cases in which the step occurs.

OMB Circular A-25 Revised encourages Federal agencies to recover the full cost of providing specific

services to users, as well as associated costs. OMB Circular A-25 Revised at secs. 5-6. Full costs include, but are not limited to, an appropriate share of the following:

- Direct and indirect personnel costs, including salaries and fringe benefits, such as medical insurance and retirement;
- Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;
- Management and supervisory costs; and
- Costs of enforcement, collection, research, establishment of standards, and regulation. *Id.* at sec. 6(d)(1).

Congress has provided that DOJ may set EOIR fees for providing adjudication and naturalization services at a level that will ensure recovery of the full costs of providing all such services. *See* INA 286(m), 8 U.S.C. 1356(m).

In this fee study, however, for a variety of reasons, EOIR included only direct salary costs and did not include the overhead costs, cost of non-salary benefits, or costs that stem from processing corresponding applications or documents that may be filed in conjunction with those items for which EOIR charges a fee. With regard to overhead costs, many of these costs occur without respect to the number of

applications, appeals, or motions (for which EOIR levies a fee) processed by the agency and are therefore very difficult to quantify in a calculation of cost for individual filings. With respect to non-salary benefits, EOIR excluded such benefits because not every employee is eligible for, or takes advantage of, these benefits; the non-salary costs to the Government and to the employee also vary drastically depending on which combination of benefits an employee selects. As such, to avoid potential inaccuracies in the calculation of overhead and non-salary benefits, EOIR has decided to include only the currently known, quantified costs in determining what is a sufficient fee level under section 286(m) of the INA. EOIR's decision not to include overhead and non-salary benefits in the calculation of actual costs also accounts for the public interest in having non-parties bear some of the cost burden for filing documents associated with proper application of the law as it pertains to the statutory right to appeal or apply for certain forms of relief. Further, EOIR did not include in the cost evaluation the many applications and associated documents commonly appended to, or associated with, the forms (*e.g.*, asylum applications requiring processing and adjudication following the processing and granting of a motion to reopen).

<sup>10</sup> This cost to taxpayers was calculated by comparing the actual processing costs, *see infra*, to the current filing fees. Form EOIR-45 is omitted from the following table because no such forms were filed in FY 2018.

<sup>11</sup> Approximately 36% of these fees were not received due to fee waiver approvals. The impact of the waivers themselves is to provide a Government subsidy because the Government absorbs required costs on behalf of an individual

who is subject to the fee. The taxpayer subsidization, therefore, is greater than the number provided in this chart.

<sup>12</sup> These numbers include both motions to reopen and motions to reconsider filed at the Board level.

<sup>13</sup> Activity-based costing is the Federal Accounting Standards Advisory Board's preferred costing methodology. *See* Federal Accounting Standards Advisory Board, *Statement of Federal*

*Financial Accounting Standards 4*, at 41 (July 31, 1995) (specifically noting that activity-based costing has "gained broad acceptance" and encouraging Federal agencies to study its potential for their operations), *reprinted in FASAB Handbook of Federal Accounting Standards and Other Pronouncements, as Amended* (June 30, 2017), [http://files.fasab.gov/pdf/files/2018\\_fasab\\_handbook.pdf](http://files.fasab.gov/pdf/files/2018_fasab_handbook.pdf).

The study demonstrated that the applications, appeals, and motions

under 8 CFR 1103.7(b) currently have the following processing costs for EOIR:

1. OCIJ Applications and Motions

| Form                       | Current fee | Average processing cost (to nearest \$) | Current fee percentage of processing cost |
|----------------------------|-------------|---|---|
| EOIR-40 .....              | \$100       | \$307                                   | 33  |
| EOIR-42A .....             | 100         | 307                                     | 33  |
| EOIR-42B .....             | 100         | 360                                     | 28  |
| Motion to Reopen .....     | 110         | 153                                     | 72  |
| Motion to Reconsider ..... | 110         | 140                                     | 79  |

2. BIA Appeals and Motions

| Form                       | Current fee | Average processing cost (to nearest \$) | Current fee percentage of processing cost |
|----------------------------|-------------|---|---|
| EOIR-26 .....              | \$110       | \$975                                   | 11  |
| EOIR-29 .....              | 110         | 705                                     | 16  |
| EOIR-45 .....              | 110         | 677                                     | 16  |
| Motion to Reopen .....     | 110         | 895                                     | 12  |
| Motion to Reconsider ..... | 110         | 895                                     | 12  |

III. Provisions of the Proposed Rule

The activity-based cost analysis demonstrates that EOIR’s processing costs consistently exceed the assessed fees for these EOIR applications for relief, appeals, and motions. Although EOIR is an appropriated agency, EOIR has determined that it is necessary to update the fees charged for these EOIR forms and motions to more accurately reflect the costs for EOIR’s adjudications of these matters. At the same time, however, EOIR recognizes that these applications for relief, appeals, and motions represent statutorily provided relief and important procedural tools that serve the public interest and provide value to those who are parties to the proceedings by ensuring accurate administrative proceedings. *See Ayuda*, 848 F.2d at 1301. As DHS is the party opposite the alien in these proceedings, EOIR’s hearings provide value to both aliens seeking relief and the Federal interests that DHS represents. Given that EOIR’s cost assessment did not include overhead costs or costs of non-salary benefits (e.g., insurance), recovery of the processing costs reported herein is appropriate to serve the objectives of the

IOAA and the public interest. The proposed fees would help the Government recoup some of its costs when possible and would also protect the public policy interests involved.<sup>14</sup> EOIR’s calculation of fees accordingly factors in both the public interest in ensuring that the immigration courts are accessible to aliens seeking relief and the public interest in ensuring that U.S. taxpayers do not bear a disproportionate burden in funding the immigration system.<sup>15</sup> Consistent with past practice of this and other agencies,<sup>16</sup> EOIR has rounded the proposed fees to the nearest five-dollar increment for all but the motions to reopen and reconsider before the immigration courts. For those two motion types, the fee is a rounded average of actual costs, as the actual costs of \$153 and \$140 were close enough to provide one standard fee to prevent rejection of filings due to confusion over the differing amounts. This is especially important because the fee amounts for these motions before the BIA are exactly the same based on actual costs.

Accordingly, EOIR proposes the following fee changes:

1. Increase the fee for Form EOIR-26 from \$110 to \$975.
2. Increase the fee for Form EOIR-29 from \$110 to \$705.
3. Increase the fee for Form EOIR-40 from \$100 to \$305.
4. Increase the fee for Form EOIR-42A from \$100 to \$305.
5. Increase the fee for Form EOIR-42B from \$100 to \$360.
6. Increase the fee for Form EOIR-45 from \$110 to \$675.
7. Increase the fee for filing a motion to reopen or reconsider from 110 before both the OCIJ and the BIA to 145 if either motion is filed before the OCIJ, and 895 if either motion is filed before the BIA.

The table below includes, for each form, the current fee, the proposed fee, and the fee collection difference between the current and proposed fees based on FY 2018 form receipts. We also include a column that notes what today’s fee is in 1986 dollars. It is more meaningful to compare inflation-adjusted figures because the fees have not been adjusted for inflation since they were initially set in 1986.

| Form/motion   | Current fee | Current fee (in 1986 dollars) | Proposed fee | FY 2018 receipts | Current fee assessments | Proposed fee assessments | Fee assessment difference |
|---------------|-------------|-------------------------------|--------------|------------------|-------------------------|--------------------------|---------------------------|
| EOIR-26 ..... | \$110       | \$252.63                      | \$975        | \$31,956         | \$3,515,160             | \$31,157,100             | \$27,641,940              |

<sup>14</sup> While ability to pay is considered in justifying taxes, it is generally of “very limited value when assessing a fee which is supposedly related as closely as reasonably possible to the cost of servicing each individual recipient.” *Nat’l Cable Television Ass’n v. FCC*, 554 F.2d 1094, 1109 (D.C.

*Cir.* 1976). An agency may, however, take such into consideration if it is in the public interest.

<sup>15</sup> In making that calculation, EOIR determined that fees that DHS has proposed for Form I-589, Application for Asylum and for Withholding of Removal, will not be assessed if only withholding

of removal or relief under CAT are requested, without a request for asylum relief.

<sup>16</sup> EOIR’s and USCIS’s current fees are all multiples of 5. *See* 8 CFR 103.7, 1103.7. DHS has proposed a rule on fees that would likewise set fees in multiples of 5. *See* 84 FR 62280.

| Form/motion                  | Current fee | Current fee (in 1986 dollars) | Proposed fee | FY 2018 receipts | Current fee assessments | Proposed fee assessments | Fee assessment difference |
|------------------------------|-------------|-------------------------------|--------------|------------------|-------------------------|--------------------------|---------------------------|
| EOIR-29 .....                | 110         | 252.63                        | 705          | 2,075            | 228,250                 | 1,462,875                | 1,234,625                 |
| EOIR-40 .....                | 100         | 229.66                        | 305          | 158              | 15,800                  | 48,190                   | 32,390                    |
| EOIR-42A .....               | 100         | 229.66                        | 305          | 3,426            | 342,600                 | 1,044,930                | 702,330                   |
| EOIR-42B .....               | 100         | 229.66                        | 360          | 30,421           | 3,042,100               | 10,951,560               | 7,909,460                 |
| MTR OCIJ <sup>17</sup> ..... | 110         | 252.63                        | 145          | 20,183           | 2,220,130               | 2,926,535                | 706,405                   |
| MTR BIA <sup>18</sup> .....  | 110         | 252.63                        | 895          | 7,662            | 842,820                 | 6,857,490                | 6,014,670                 |
| EOIR-45 .....                | 110         | 252.63                        | 675          | 0                | 0                       | 0                        | 0                         |

These proposed fee changes are reflected in the following charts:

#### 1. OCIJ Proposed Fees

| Form/motion                | Title  | Fee (current) | Fee (proposed) |
|----------------------------|--|---------------|----------------|
| EOIR-40 .....              | Application for Suspension of Deportation .....  | \$100         | \$305          |
| EOIR-42A .....             | Application for Cancellation of Removal for Certain Permanent Residents.                             | 100           | 305            |
| EOIR-42B .....             | Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. | 100           | 360            |
| Motion to Reopen .....     | .....  | 110           | 145            |
| Motion to Reconsider ..... | .....  | 110           | 145            |

#### 2. BIA Proposed Fees

| Form/motion                | Title   | Fee (current) | Fee (proposed) |
|----------------------------|---|---------------|----------------|
| EOIR-26 .....              | Notice of Appeal from a Decision of an Immigration Judge .....                                    | \$110         | \$975          |
| EOIR-29 .....              | Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer.            | 110           | 705            |
| EOIR-45 .....              | Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case. | 110           | 675            |
| Motion to Reopen .....     | .....   | 110           | 895            |
| Motion to Reconsider ..... | .....   | 110           | 895            |

These proposed changes would assign a different fee for a motion to reopen or a motion to reconsider that is filed with the immigration court in the OCIJ than for a motion to reopen or a motion to reconsider that is filed with the BIA. Due to differences in the processing steps for these motions between the OCIJ and the BIA, and different staff costs across the components, these fee differences more accurately reflect the substantially higher processing costs of a motion to reopen or a motion to reconsider before the BIA while not assigning an unduly high fee as a matter of public policy on parties who wish to file a motion to reopen or a motion to reconsider with the immigration courts.

Consistent with current practice, the OCIJ and the BIA would continue to entertain requests for fee waivers and have the discretionary authority to waive a fee for an application or motion

upon a showing that the filing party is unable to pay. *See* 8 CFR 1003.8(a)(3), 1003.24(d), 1103.7(c).

The proposed rule also proposes technical edits. First, it proposes updates to EOIR's cross-references throughout 8 CFR chapter V to conform with DHS's proposed revisions to 8 CFR 103.7 and proposed addition of 8 CFR part 106, both regarding fees. *See* 84 FR 62280. DOJ uses forms for applications published by DHS in immigration proceedings, and per DOJ regulations, the fees for those forms are governed by 8 CFR 103.7. *See* 8 CFR 1103.7(b)(4)(ii). DHS currently lists fees for all of its applications in 8 CFR 103.7, including DHS applications that EOIR may also adjudicate—*e.g.*, Forms I-191, I-485, Supplement A to Form I-485, I-601, I-821, and I-881. DHS is proposing to move most of those provisions to a new 8 CFR part 106 and specifically to a new 8 CFR 106.2. *See* 84 FR at 62359–63. DOJ is not proposing any revisions to 8 CFR 1103.7(b)(4)(ii) in this rule that would change its longstanding use of DHS forms and fees. Rather, EOIR is proposing to revise its regulations

regarding fees that currently cross-reference 8 CFR 103.7—*e.g.*, 8 CFR 1003.8, 1003.24, and 1103.7—to make changes conforming to DHS's proposed rulemaking.

Second, the proposed rule provides that, although DHS is proposing a 50 fee for asylum applications, which are submitted on DHS Form I-589, no fee would apply where an applicant submits a Form I-589 for the sole purpose of seeking withholding of removal under section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) or protection from removal under the regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)—or both—in a removal proceeding. *See* 84 FR at 62360–61 (proposed 8 CFR 106.2(a)(20)). The fees for applications published by DHS and used in immigration proceedings are governed by DHS regulations, and DOJ is not proposing any revisions to 8 CFR 1103.7(b)(4)(ii) that would change its longstanding use of DHS forms. *See* 8 CFR 1103.7(b)(4)(ii); 8 CFR 103.7;

<sup>17</sup> These numbers include both motions to reopen and motions to reconsider filed at the immigration court level.

<sup>18</sup> These numbers include both motions to reopen and motions to reconsider filed at the Board level.

proposed 8 CFR 106.2. DHS does not adjudicate applications for withholding of removal under the INA or protection under the CAT regulations, and DHS has not proposed to charge a fee for such applications. Rather, DHS proposed to set a fee that applies to the extent an applicant files a Form I-589 for the purpose of seeking asylum. See 84 FR at 62360-61 (proposed 8 CFR 106.2(a)(20)). Thus, in proceedings before an immigration judge, a 50 fee would apply to a Form I-589 if the applicant seeks asylum. The fee would not apply if the applicant filed the Form I-589 for the sole purpose of applying for withholding of removal under the INA or protection under the CAT.

Third, the proposed rule would change 8 CFR 1103.7(d) to reflect the proper regulation regarding requests under the Freedom of Information Act. The section, as currently drafted, incorrectly refers to 28 CFR 16.11.

Finally, the proposed rule would make technical corrections to fee-related citations to EOIR's own regulations.

**IV. Regulatory Requirements**

*A. Regulatory Flexibility Act*

The Department has reviewed this proposed regulation in accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, tit. II, 110 Stat. 847, and has determined that this rule would not have a significant economic impact on a substantial number of small entities. The rule would not regulate "small entities" as that term is defined in 5 U.S.C. 601(6). Only individuals, rather than entities, are responsible for paying the fees affected by this proposed rule, though they may pay the fee through a representative.

*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. Congressional Review Act*

This rule is not a major rule as defined by the Congressional Review Act. 5 U.S.C. 804(2). This rule would not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for

consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

*D. Executive Orders 12866, 13563, and 13771*

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 using the best available methods to quantify costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and, for all qualifying regulations, to identify at least two existing regulations for elimination.

This rule has been drafted in accordance with the principles of Executive Order 12866, section 1(b), and Executive Order 13563. The Department considers the proposed rule to be a "significant regulatory action" under section 3(f)(3) of Executive Order 12866 because it materially alters user fees, but it is not an economically significant action because the annual effect on the economy is less than \$100 million annually. Accordingly, the proposed regulation has been submitted to OMB for review. This proposed rule would impose transfer payments between the public and the Government and is not expected to impose any new cost burdens that will need to be offset under Executive Order 13771. Thus, this proposed rule is not expected to be subject to the requirements of Executive Order 13771.

In the spring of 2018, EOIR conducted a comprehensive study using activity-based costing to determine the cost to EOIR for each type of application, appeal, and motion for which EOIR levies a fee under 8 CFR 1103.7(b). EOIR's methodology for conducting this comprehensive study was as follows:

First, in the survey-data phase, EOIR gathered survey data and consulted with OCIJ and BIA experts to determine the appropriate staff positions involved and the average time required to process and adjudicate each fee-based form or motion. EOIR also researched data from

OPM and the GSA to determine the average salary rates for the applicable staff positions, including both Federal employees and EOIR contractors.

Second, in the process-mapping phase, EOIR developed step-by-step process maps, with assigned times and staff positions, for each fee-based form or motion processed in the OCIJ and the BIA. OCIJ and BIA experts validated any assumptions made during the process-mapping phase.

Third, in the activity-based-costing phase, EOIR allocated the salary costs from the GSA and OPM data to each step in the process, based on the amount of time the step takes, the average salary of the responsible staff, and the percentage of total cases in which the step occurs. As discussed above, EOIR did not include other costs, such as the overhead costs for EOIR space that is used for processing applications, fringe benefits received by EOIR staff and contractors, interpreter costs, Federal Records Center costs, non-EOIR government agency costs, or the costs and time to process any non-fee-based application that is submitted in conjunction with a motion to reopen or reconsider. See 8 CFR 1003.23(b)(3) ("Any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents."). These costs were not included in the analysis because they represent costs that are incurred regardless of processing fee-based motions or forms or because they are not applicable in every adjudication of a fee-based motion or form, and DOJ did not employ a methodology to assign such costs equitably to various motion or form types.

EOIR used this methodology to calculate an estimated cost for processing each form or motion for which EOIR levies a fee. The results of the activity-based-costing analysis are as follows:

1. EOIR-40, Application for Suspension of Deportation

| Staff level              | Total cost, by staff level |
|--------------------------|----------------------------|
| Immigration Judge .....  | \$277.51                   |
| Judicial Law Clerk ..... | 17.78                      |
| Legal Assistant .....    | 12.08                      |
| Interpreter .....        | 0.00                       |
| <b>Total .....</b>       | <b>307.38</b>              |

| Process category     | Total cost, by process category |
|----------------------|---------------------------------|
| Administrative ..... | \$12.08                         |

| Process category        | Total cost, by process category |
|-------------------------|---------------------------------|
| IJ Prep Time .....      | 77.66                           |
| In-Court Time .....     | 149.58                          |
| Written Decisions ..... | 68.06                           |
| <b>Total .....</b>      | <b>307.38</b>                   |

2. EOIR-42A, Application for Cancellation of Removal for Certain Permanent Residents

| Staff level              | Total cost, by staff level |
|--------------------------|----------------------------|
| Immigration Judge .....  | \$277.51                   |
| Judicial Law Clerk ..... | 17.78                      |
| Legal Assistant .....    | 12.07                      |
| Interpreter .....        | 0.00                       |
| <b>Total .....</b>       | <b>307.38</b>              |

| Process category        | Total cost, by process category |
|-------------------------|---------------------------------|
| Administrative .....    | \$12.08                         |
| IJ Prep Time .....      | 77.66                           |
| In-Court Time .....     | 149.58                          |
| Written Decisions ..... | 68.06                           |
| <b>Total .....</b>      | <b>307.38</b>                   |

3. EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents

| Staff level              | Total cost, by staff level |
|--------------------------|----------------------------|
| Immigration Judge .....  | \$315.74                   |
| Judicial Law Clerk ..... | 32.27                      |
| Legal Assistant .....    | 12.08                      |
| Interpreter .....        | 0.00                       |
| <b>Total .....</b>       | <b>360.10</b>              |

| Process category        | Total cost, by process category |
|-------------------------|---------------------------------|
| Administrative .....    | \$12.08                         |
| IJ Prep Time .....      | 74.91                           |
| In-Court Time .....     | 149.58                          |
| Written Decisions ..... | 123.52                          |
| <b>Total .....</b>      | <b>360.10</b>                   |

4. Motion To Reopen (OCI)

| Staff level              | Total cost, by staff level |
|--------------------------|----------------------------|
| Immigration Judge .....  | \$103.61                   |
| Judicial Law Clerk ..... | 41.17                      |
| Legal Assistant .....    | 7.99                       |
| <b>Total .....</b>       | <b>152.77</b>              |

| Process category        | Total cost, by process category |
|-------------------------|---------------------------------|
| Administrative .....    | \$7.99                          |
| IJ Prep Time .....      | 38.95                           |
| Written Decisions ..... | 105.83                          |
| <b>Total .....</b>      | <b>152.77</b>                   |

5. Motion To Reconsider (OCI)

| Staff level              | Total cost, by staff level |
|--------------------------|----------------------------|
| Immigration Judge .....  | \$90.76                    |
| Judicial Law Clerk ..... | 41.17                      |
| Legal Assistant .....    | 7.99                       |
| <b>Total .....</b>       | <b>139.92</b>              |

| Process category        | Total cost, by process category |
|-------------------------|---------------------------------|
| Administrative .....    | \$7.99                          |
| IJ Prep Time .....      | 38.95                           |
| In-Court Time .....     | 0.00                            |
| Written Decisions ..... | 93.97                           |
| <b>Total .....</b>      | <b>139.92</b>                   |

6. EOIR-26, Notice of Appeal From a Decision of an Immigration Judge

| Staff level                         | Total cost, by staff level |
|-------------------------------------|----------------------------|
| Legal Assistant (GS-05/06/07) ..... | \$5.42                     |
| Legal Assistant (GS-08/09) .....    | 66.64                      |
| Admin Staff (GS-08/09) .....        | 198.23                     |
| Paralegal .....                     | 83.12                      |
| Attorney .....                      | 537.52                     |
| Board Member .....                  | 76.38                      |
| Digital Image Processor .....       | 7.75                       |
| <b>Total .....</b>                  | <b>975.05</b>              |

| Process category                 | Total cost, by process category |
|----------------------------------|---------------------------------|
| Initial Processing .....         | \$140.68                        |
| Case Screening/Preparation ..... | 116.44                          |
| Decision and Adjudication .....  | 647.22                          |
| Final Processing .....           | 70.71                           |
| <b>Total .....</b>               | <b>975.05</b>                   |

7. EOIR-29, Notice of Appeal to the Board of Immigration Appeals From a Decision of a DHS Officer

| Staff level                         | Total cost, by staff level |
|-------------------------------------|----------------------------|
| Legal Assistant (GS-05/06/07) ..... | \$5.42                     |
| Legal Assistant (GS-08/09) .....    | 66.64                      |
| Admin Staff (GS-08/09) .....        | 121.49                     |
| Paralegal .....                     | 83.12                      |
| Attorney .....                      | 344.01                     |
| Board Member .....                  | 76.38                      |

| Staff level                   | Total cost, by staff level |
|-------------------------------|----------------------------|
| Digital Image Processor ..... | 7.75                       |
| <b>Total .....</b>            | <b>704.81</b>              |

| Process category                 | Total cost, by process category |
|----------------------------------|---------------------------------|
| Initial Processing .....         | \$63.94                         |
| Case Screening/Preparation ..... | 116.44                          |
| Decision and Adjudication .....  | 453.71                          |
| Final Processing .....           | 70.71                           |
| <b>Total .....</b>               | <b>704.81</b>                   |

8. EOIR-45, Notice of Appeal From a Decision of an Adjudicating Official in a Practitioner Disciplinary Case

| Staff level                                  | Total cost, by staff level |
|--|----------------------------|
| Legal Assistant (GS-08/09) .....             | \$33.32                    |
| Admin Staff (LIE, LA, or SA; GS-08/09) ..... | 172.65                     |
| Attorney .....                               | 387.02                     |
| Board Member .....                           | 76.38                      |
| Digital Image Processor .....                | 7.75                       |
| <b>Total .....</b>                           | <b>677.11</b>              |

| Process category                | Total cost, by process category |
|---------------------------------|---------------------------------|
| Initial Processing .....        | \$115.10                        |
| Decision and Adjudication ..... | 496.72                          |
| Final Processing .....          | 65.30                           |
| <b>Total .....</b>              | <b>677.11</b>                   |

9. Motion To Reopen/Reconsider (BIA)

| Staff level                                  | Total cost, by staff level |
|--|----------------------------|
| Legal Assistant (GS-05/06/07) .....          | \$5.42                     |
| Legal Assistant (GS-08/09) .....             | 66.64                      |
| Admin Staff (LIE, LA, or SA; GS-08/09) ..... | 118.30                     |
| Paralegal .....                              | 83.12                      |
| Attorney .....                               | 537.52                     |
| Board Member .....                           | 76.38                      |
| Digital Image Processor .....                | 7.75                       |
| <b>Total .....</b>                           | <b>895.12</b>              |

| Process category                 | Total cost, by process category |
|----------------------------------|---------------------------------|
| Initial Processing .....         | \$60.75                         |
| Case Screening/Preparation ..... | 116.44                          |
| Decision and Adjudication .....  | 647.22                          |
| Final Processing .....           | 70.71                           |
| <b>Total .....</b>               | <b>895.12</b>                   |

As discussed above, these estimated costs calculated from the study



demonstrate that EOIR’s processing costs exceed the currently assessed fees for every fee-based form or motion processed by EOIR. Accordingly, the proposed rule would raise fees for these filings.

To determine the economic impact of the proposed rule, EOIR then compared current fee collection levels and the fee collections that would have been generated by the proposed fees, as applied to filings from FY 2018.<sup>19</sup> In FY 2018, EOIR received more than 95,000 applications, appeals, and motions for which EOIR levies a fee. If fees had been collected for each of those filings at the current fee levels, EOIR would have collected \$6.7 million in revenue. If, instead, the aforementioned FY 2018 filings had been charged the fees proposed by this rule, fee revenue for that fiscal year would have been approximately \$53.7 million. In sum,

the proposed rule would cause applicants to pay approximately \$47 million in fee revenue beyond that which would be expected if the filing fees were not changed. Comparing current fee collection levels with fee collections that would have been generated by the proposed fees in inflation-adjusted dollars<sup>20</sup> show that the total revenue would have been approximately \$15.7 million, or a difference of approximately \$9 million. EOIR, however, does not require a fee in every circumstance when a party files one of the affected forms or motions. Instead, there are certain circumstances when the normal filing fee does not apply, and the proposed rule would not impact immigration judges’ and the BIA’s discretionary authority to waive a fee upon a showing that the filing party is unable to pay. *See* 8 CFR

1003.8(a)(2)–(3), 1003.24(b)(2), (d), 1103.7(c). Therefore, the actual fee collection that results from this proposed rule may in fact be lower than stated above, which would result in a lower cost to applicants than the collection projections outlined in this cost analysis.

Though the proposed fees may seem high as compared to the current fees, the agency has not increased its fees since 1986. Taken over the 33-year timespan from 1986 to 2019, the proposed fee increases would represent compound annual growth rates ranging from 0.82 percent to 6.84 percent. As demonstrated in the chart above, these increases are marginal in terms of inflation-adjusted dollars. While EOIR recognizes that the new fees will be more burdensome, fee waivers are still possible for those who seek them.<sup>21</sup>

| Form/motion    | Current fee | Proposed fee | Percent increase | Compound annual growth rate since 1986 (percent) |
|----------------|-------------|--------------|------------------|--|
| EOIR–40 .....  | \$100       | \$305        | 205              | 3.33   |
| EOIR–42A ..... | 100         | 305          | 205              | 3.33   |
| EOIR–42B ..... | 100         | 360          | 260              | 3.84   |
| MTR OCIJ ..... | 110         | 145          | 32               | 0.82   |
| EOIR–26 .....  | 110         | 975          | 886              | 6.84   |
| EOIR–29 .....  | 110         | 705          | 641              | 5.79   |
| EOIR–45 .....  | 110         | 675          | 614              | 5.65   |
| MTR BIA .....  | 110         | 895          | 814              | 6.56   |

*E. Executive Order 13132: Federalism*

This rule will not have substantial direct effects on the States, on the relationship between the Federal 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 would 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.

<sup>19</sup> Data documenting the FY 2018 filings were obtained from the EOIR Database (EOIRDB) on August 7, 2019.

<sup>20</sup> This calculation was made by applying the consumer price index from 1986 (109.6) to the real dollars calculation as compared to 2019 (252.9). Bureau of Labor Statistics, Historical Consumer Price Index for All Urban Consumers, <https://www.bls.gov/cpi/tables/supplemental-files/>

*G. Paperwork Reduction Act*

This rule does not propose new “collection[s] of information” as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (codified at 44 U.S.C. 3501–3521) (PRA), and its implementing regulations, 5 CFR part 1320. There are no substantive changes to the forms as a result of this rulemaking; the only changes being proposed are revisions to the fee amounts for the existing forms for which EOIR sets the fees. The Department will be coordinating separately regarding updates to the existing forms under the PRA.

*historical-cpi-u-201901.pdf* (last accessed August 5, 2019).

<sup>21</sup> Aliens can request fee waivers by filing Form EOIR–26A with the BIA. The form requires the alien’s signature and reporting of assets and expenses, all of which the BIA will evaluate in its discretion. If the fee waiver request does not support the waiving of the fee, and a payment does not accompany the filing, the filing will not be deemed properly filed. 8 CFR 1003.8(a)(3). When

**List of Subjects**

*8 CFR Part 1003*

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

*8 CFR Part 1103*

Administrative practice and procedure, Aliens, Immigration.

*8 CFR Part 1208*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 1216*

Administrative practice and procedure, Aliens.

the case is before the immigration court, aliens may file a fee waiver request via motion that substantiates the filing party’s inability to pay the fee. If such motion is not granted, the filing will not be deemed properly filed. 8 CFR 1003.24(d). While the immigration judge has discretion as to whether to grant the motion, no such grant will occur if the underlying application for relief is a DHS form and DHS regulations prohibit such waiver. 8 CFR 1103.7(c).

**8 CFR Part 1235**

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

**8 CFR Part 1240**

Administrative practice and procedure, Aliens.

**8 CFR Part 1244**

Administrative practice and procedure, Immigration.

**8 CFR Part 1245**

Aliens, Immigration, Reporting and recordkeeping requirements.

**Authority and Issuance**

Accordingly, for the reasons set forth in the preamble, the Attorney General is proposing to amend title 8, chapter V of the Code of Federal Regulations as follows:

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

■ 1. The authority 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.

**§ 1003.8 [Amended]**

■ 2. Section 1003.8 is amended by removing the citation “8 CFR 103.7(a)” and adding, in its place, the citation “§ 1103.7(b)” in paragraph (a)(4)(ii).

**§ 1003.24 [Amended]**

■ 3. Section 1003.24 is amended by removing the citation “8 CFR 103.7” and adding, in its place, the words “8 CFR 103.7 and 8 CFR part 106” in paragraphs (a) and (c).

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

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

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

■ 5. Section 1103.7 is amended by:

■ a. Removing the citation “8 CFR 103.7(a)(1)” and adding, in its place, the citation “8 CFR 103.7(a)” in paragraph (a)(3);

■ b. Removing the citation “8 CFR 103.7(a)(2)” and adding, in its place, the words “8 CFR 103.7(c) and 8 CFR 106.1” in paragraph (a)(3);

■ c. Removing the citation “8 CFR 103.7” and adding, in its place, the words “8 CFR 103.7 and 8 CFR part 106” in paragraph (b)(4)(ii); and

■ d. Revising paragraphs (b)(1) and (2), (b)(4)(i), and (d) to read as follows:

**§ 1103.7 Fees.**

\* \* \* \* \*

(b) *Amounts of Fees—(1) Appeals.* For filing an appeal to the Board of Immigration Appeals, when a fee is required pursuant to 8 CFR 1003.8, as follows:

Form EOIR–26. For filing an appeal from a decision of an immigration judge—\$975.

Form EOIR–29. For filing an appeal from a decision of an officer of the Department of Homeland Security—\$705.

Form EOIR–45. For filing an appeal from a decision of an adjudicating official in a practitioner disciplinary case—\$675.

(2) *Motions.* For filing a motion to reopen or a motion to reconsider, when a fee is required pursuant to 8 CFR 1003.8 or 1003.24, as follows:

Motion to reopen or motion to reconsider before the immigration court—\$145.

Motion to reopen or motion to reconsider before the Board of Immigration Appeals—\$895.

\* \* \* \* \*

(4) *Applications for Relief—(i) Forms published by the Executive Office for Immigration Review.* Fees for applications for relief shall be paid in accordance with 8 CFR 1003.8(b) and 1003.24(c) as follows:

Form EOIR–40. Application for Suspension of Deportation—\$305.

Form EOIR–42A. Application for Cancellation of Removal for Certain Permanent Residents—\$305.

Form EOIR–42B. Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents—\$360.

(ii) *Forms published by the Department of Homeland Security.* The fees for applications published by the Department of Homeland Security and used in immigration proceedings are governed by 8 CFR 106.2. Consistent with 8 CFR 106.2, no fee shall apply to a Form I–589 filed with an immigration judge for the sole purpose of seeking withholding of removal under section 241(b)(3) of the Act or protection under the Convention Against Torture regulations.

\* \* \* \* \*

(d) *Requests for records under the Freedom of Information Act.* Fees for production or disclosure of records under 5 U.S.C. 552 may be waived or reduced in accordance with 28 CFR 16.10.

**PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL**

■ 6. The authority for part 1208 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229.

**§ 1208.7 [Amended]**

■ 7. Section 1208.7 is amended by removing the citation “§ 103.7(c)” and adding, in its place, the citation “8 CFR 106.3” in paragraph (c).

**PART 1216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS**

■ 8. The authority for part 1216 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

**§ 1216.4 [Amended]**

■ 9. Section 1216.4 is amended by removing the citation “§ 103.7(b)” and adding, in its place, the citation “§ 106.2” in paragraph (a)(1).

**§ 1216.5 [Amended]**

■ 10. Section 1216.5 is amended by removing the citation “§ 103.7(b)” and adding, in its place, the citation “§ 106.2” in paragraph (b).

**§ 1216.6 [Amended]**

■ 11. Section 1216.6 is amended by removing the citation “§ 103.7(b)(1)” and adding, in its place, the citation “§ 106.2” in paragraph (a)(1).

**PART 1235—INSPECTION OF PERSONS APPLYING FOR ADMISSION**

■ 12. The authority for part 1235 continues to read as follows:

**Authority:** 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32; Title VII of Public Law 110–229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458).

**§ 1235.1 [Amended]**

■ 13. Section 1235.1 is amended by:

■ a. Removing the citation “§ 103.7(b)(1)” and adding, in its place, the citation “§ 103.7(d)” in paragraphs (e)(1)(iii) and (e)(2); and

■ b. Removing the citation “§ 103.7(b)(1)” and adding, in its place, the citation “§ 103.7(d)” in paragraph (f)(1).

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

■ 14. The authority 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).

#### § 1240.11 [Amended]

■ 15. Section 1240.11 is amended by:  
 ■ a. Removing the words “§ 103.7(b)(1) of 8 CFR chapter I” and adding, in their place, the words “§ 1103.7(b)(1) of this chapter” in paragraph (f); and  
 ■ b. Removing the citation “8 CFR 103.7(b)(1)” and adding, in its place, the words “§ 1103.7(b)(4) of this chapter” in paragraph (f).

#### § 1240.20 [Amended]

■ 16. Section 1240.20 is amended by removing the words “§ 103.7(b) of 8 CFR chapter I” and adding, in their place, the words “§ 1103.7(b) of this chapter” in paragraph (a).

### PART 1244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

■ 17. The authority for part 1244 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

#### § 1244.6 [Amended]

■ 18. Section 1244.6 is amended by removing the words “§ 103.7 of this chapter” and adding, in their place, the citation “8 CFR 106.2”.

#### § 1244.20 [Amended]

■ 19. Section 1244.20 is amended by removing the citation “8 CFR 103.7(b)” and adding, in its place, the citation “8 CFR 106.2” in paragraph (a).

### PART 1245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 20. The authority for part 1245 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1255; section 202, Public Law 105–100, 111 Stat. 2160, 2193; section 902, Public Law 105–277, 112 Stat. 2681; Title VII of Public Law 110–229.

#### § 1245.7 [Amended]

■ 21. Section 1245.7 is amended by removing the words “§ 103.7 of this chapter” and adding, in their place, the words “8 CFR 103.7 and 8 CFR 103.17” in paragraph (a).

#### § 1245.10 [Amended]

■ 22. Section 1245.10 is amended by removing the words “§ 103.7(b)(1) of this chapter” and adding, in their place, the citation “8 CFR 106.2” in paragraph (c).

#### § 1245.13 [Amended]

■ 23. Section 1245.13 is amended by:

- a. Removing the citation “§ 103.7(b)(1)” and adding, in its place, the citation “§ 106.2” in paragraph (e)(1);
- b. Removing the citation “§ 103.7(b)(1)” and adding, in its place, the citation “§ 103.7(a)(2)” in paragraph (e)(2); and
- c. Removing the citation “§ 103.7(b)(1)” and adding, in its place, the citation “§ 106.2” in paragraphs (g), (j)(1), and (k)(1).

#### § 1245.15 [Amended]

■ 24. Section 1245.15 is amended by:

- a. Removing the words “§ 103.7(b)(1) of this chapter” and adding, in their place, the citation “8 CFR 106.2” in paragraph (c)(2)(iv)(A);
- b. Removing the citation “§ 103.7(c)” and adding, in its place, the citation “§ 106.3” in paragraph (c)(2)(iv)(B);
- c. Removing the citation “§ 103.7(b)(1)” and adding, in its place, the citation “§ 106.2” in paragraph (h)(1);
- d. Removing the citation “§ 103.7(b)(1)” and adding, in its place, the citation “§ 103.2(a)(2)” in paragraph (h)(2); and
- e. Removing the citation “§ 103.7(b)(1)” and adding, in its place, the citation “§ 106.2” in paragraphs (n)(1), and (t)(1).

#### § 1245.20 [Amended]

■ 25. Section 1245.20 is amended by removing the citation “§ 103.7(b)(1)” and adding, in its place, the citation “§ 106.2” in paragraphs (d)(1), (f), and (g).

#### § 1245.21 [Amended]

■ 26. Section 1245.21 is amended by:

- a. Removing the words “§ 103.7(b)(1) of this chapter” and adding, in their place, the citation “8 CFR 106.2” in paragraph (b)(2); and
- b. Removing the citation “8 CFR 103.7(b)(1)” and adding, in its place, the citation “8 CFR 106.2” in paragraphs (h) and (i).

Dated: February 19, 2020.

**William P. Barr,**  
*Attorney General.*

[FR Doc. 2020–03784 Filed 2–27–20; 8:45 am]

**BILLING CODE 4410–30–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2020–0102; Product Identifier 2019–NM–184–AD]

RIN 2120–AA64

### Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 2000–17–09, AD 2008–04–19 R1, and AD 2015–26–09; and to terminate all requirements of AD 2018–18–05, which applies to ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. AD 2018–18–05 requires updating the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations and terminates the relevant requirements of AD 2000–17–09, AD 2008–04–19 R1, and AD 2015–26–09. Since AD 2018–18–05 was issued, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by April 13, 2020.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.

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

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.