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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

[CIS No. 2670–20; Docket No: USCIS 2020–0013]

RIN 1615–AC57

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1208

[A.G. Order No. 5577–2022]

RIN 1125–AB08

Security Bars and Processing; Delay of Effective Date

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security; Executive Office for Immigration Review, Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: On December 23, 2020, the Department of Homeland Security (''DHS'') and the Department of Justice (''DOJ'') (collectively, ''the Departments'') published a final rule (''Security Bars rule''), to clarify that the ''danger to the security of the United States'' standard in the statutory bar to eligibility for asylum and withholding of removal encompasses certain emergency public health concerns and to make certain other changes. This rule would have made a noncitizen ineligible for asylum if, among other things, the noncitizen was physically present in a country in which a communicable disease was prevalent or epidemic, and the Secretary of Homeland Security and the Attorney General determined that the physical presence in the United States of noncitizens coming from that country would cause a danger to the public health. That rule was scheduled to take effect on January 22, 2021, but, as of January 21, 2021, the Departments delayed the rule's effective date for 60 days to March 22, 2021. The Departments subsequently further delayed the rule's effective date to December 31, 2021, and most recently to December 31, 2022. In this rule, the Departments are further extending the delay of the effective date of the Security Bars rule until December 31, 2024. The Departments are soliciting comments both on the delay until December 31, 2024, and whether the effective date of the Security Bars rule should be delayed beyond that date.

DATES:

Effective date: As of December 28, 2022, the effective date of the final rule published December 23, 2020, at 85 FR 84160, which was delayed by the rules published at 86 FR 6847 (Jan. 25, 2021), 86 FR 15069 (Mar. 22, 2021), and 86 FR 73615 (Dec. 28, 2021), is further delayed until December 31, 2024.

Submission of public comments: Comments must be submitted on or before February 27, 2023.

ADDRESSES: You may submit comments on this rule, identified by DHS Docket No. USCIS 2020–0013, through the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the website instructions for submitting comments. Comments submitted in a manner other than the one listed above, including emails or letters sent to the Departments' officials, will not be considered comments on the rule and may not receive a response from the Departments. Please note that the Departments cannot accept any comments that are hand-delivered or couriered. In addition, the Departments cannot accept comments contained on any form of digital media storage devices, such as CDs, DVDs, and USB drives. The Departments are not accepting mailed comments at this time. If you cannot submit your comment by using *http://www.regulations.gov,* please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services (''USCIS''), Department of Homeland Security, by telephone at (240) 721–3000 (not a toll-free call) for alternate instructions.

FOR FURTHER INFORMATION CONTACT:

For USCIS: Rená Cutlip-Mason, Chief, Division of Humanitarian Affairs, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20588–0009; telephone (240) 721–3000 (not a toll-free call).

For the Executive Office for Immigration Review: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, Department of Justice, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to submit comments on this action to further delay the effective date of the Security Bars rule by submitting relevant written data, views, or arguments. To provide the most assistance to the Departments, comments should reference a specific portion of the rule; explain the reason for any recommendation; and include data, information, or authority that supports the recommended course of action. Comments must be submitted in English, or an English translation must be provided. Comments submitted in a manner other than those listed above, including emails or letters sent to the Departments' officials, will not be considered comments on the rule and may not receive a response from the Departments.

Instructions: If you submit a comment, you must include the agency name and the DHS Docket No. USCIS 2020–0013 for this rulemaking. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to the Departments. The Departments may withhold information provided in comments from public viewing that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at *http://www.regulations.gov*.

Docket: For access to the docket and to read background documents or comments received, go to *http://www.regulations.gov,* referencing DHS Docket No. USCIS 2020–0013. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

II. Background

On December 23, 2020, the Departments published the Security Bars rule to amend existing regulations to clarify that in certain circumstances there are ''reasonable grounds for regarding [a noncitizen] [1] as a danger to the security of the United States'' or ''reasonable grounds to believe that [a noncitizen] is a danger to the security of the United States'' based on emergency public health concerns generated by a communicable disease, making the noncitizen ineligible to be granted asylum in the United States under section 208 of the Immigration and Nationality Act (''INA'' or ''the Act''), 8 U.S.C. 1158, or the protection of withholding of removal under the Act or subsequent regulations (because of the threat of torture).[2] The rule was scheduled to take effect on January 22, 2021.

On January 20, 2021, the White House Chief of Staff issued a memorandum asking agencies to consider delaying, consistent with applicable law, the effective dates of any rules that had been published and had not yet gone into effect for the purpose of allowing the President's appointees and designees to review questions of fact, law, and policy raised by those regulations. *See* Memorandum for the Heads of Executive Departments and Agencies from Ronald A. Klain, Assistant to the President and Chief of Staff, *Re: Regulatory Freeze Pending Review* (Jan. 20, 2021), *available at* 86 FR 7424 (Jan. 28, 2021). As of January 21, 2021, the Departments delayed the effective date of the Security Bars rule to March 22, 2021, then further delayed the effective date of the Security Bars rule to December 31, 2021, and most recently delayed the effective date of the Security Bars rule to December 31, 2022, consistent with that memorandum and a preliminary injunction in place with respect to a related rule, as discussed below. *See* Security Bars and Processing; Delay of Effective Date, 86 FR 6847 (Jan. 25, 2021); Security Bars and Processing; Delay of Effective Date, 86 FR 15069 (Mar. 22, 2021) (''March 2021 Delay IFR''); Security Bars and Processing; Delay of Effective Date, 86 FR 73615 (Dec. 28, 2021) (''December 2021 Delay IFR'').

III. Basis for Delay of Effective Date

A. Impact of Injunction Against Implementation of Global Asylum Final Rule

As stated in the March 2021 Delay IFR, the Departments had good cause to further delay the Security Bars rule's effective date without advance notice and comment because implementation of the Security Bars rule was infeasible due to a preliminary injunction against a related rule.[3] Specifically, the Security Bars rule relies on revisions to the Departments' regulations previously made on December 11, 2020, by a separate joint rule, Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review (''Global Asylum final rule'').[4] The Global Asylum final rule was scheduled to become effective before the Security Bars rule. However, on January 8, 2021, 14 days prior to the effective date of the Security Bars rule, in *Pangea Legal Services* v. *Department of Homeland Security (''Pangea II''),* a district court preliminarily enjoined the Departments ''from implementing, enforcing, or applying the [Global Asylum final] rule . . . or any related policies or procedures.'' [5] The preliminary injunction remains in place. Thus, implementation of the Security Bars rule continues to be infeasible.

The Security Bars rule relies upon the regulatory framework that was established in the Global Asylum final rule in applying bars to asylum eligibility and withholding of removal during credible fear screenings for noncitizens in the expedited removal process.[6] The expedited removal process allows for the removal of certain noncitizens from the United States without a removal proceeding before an immigration judge under section 240 of the Act, 8 U.S.C. 1229a. A noncitizen who expresses a fear of persecution or torture, a fear of return, or an intention to apply for asylum during the course of the expedited removal process is referred to a USCIS asylum officer for a credible fear screening to determine if the noncitizen has a credible fear of persecution or torture in the country of removal.[7] If the asylum officer determines that a noncitizen has a credible fear of persecution or torture, DHS may either: (1) refer the noncitizen to an immigration court by initiating removal proceedings under section 240 of the INA, 8 U.S.C. 1229a (''section 240 removal proceedings''), where the noncitizen may seek relief or protection, or (2) retain jurisdiction over the noncitizen's asylum claim for further consideration in an interview pursuant to 8 CFR 208.9(b).[8]

On July 9, 2020, the Departments published a Notice of Proposed Rulemaking for the Security Bars rule (''2020 Security Bars NPRM''), which proposed regulatory text to apply the security bars during credible fear screenings.[9] This proposal would have modified the then-existing regulatory framework, which instructed that, even if the noncitizen might have been subject to a bar to asylum eligibility or withholding of removal (including the ''danger to the security of the United States'' bars underlying the Security Bars rule), the potential applicability of that bar would not have impacted their credible fear determination.[10] The modification in the Security Bars NPRM would have applied these security bars during the credible fear screening rather than during a full removal hearing. The 2020 Security Bars NPRM justified the application of the security bars in the credible fear determination process as necessary to allow DHS to quickly remove individuals covered by the expanded security bars to asylum eligibility and withholding of removal, rather than sending potentially barred individuals to section 240 removal proceedings, for consideration of further relief or protection from removal before an immigration judge, which can take more time.[11] The 2020 Security Bars

[1] For purposes of the discussion in this rule, the Departments use the term ''noncitizen'' to be synonymous with the term ''alien'' as it is used in the INA. *See* Immigration and Nationality Act, 101(a)(3), 8 U.S.C. 1101(a)(3).

[2] *See* Security Bars and Processing, 85 FR 84160 (Dec. 23, 2020).

[3] *See* 86 FR at 15070.

[4] *See* 85 FR 80274 (Dec. 11, 2020).

[5] *Pangea Legal Servs.* v. *U.S. Dep't of Homeland Sec.,* 512 F. Supp. 3d 966, 977 (N.D. Cal. 2021). By issuing this rule to further delay the effective date of the Security Bars rule, the Departments are not indicating a position on the outcome thus far in *Pangea II.*

[6] *See, e.g.,* 85 FR at 84176 (''As noted, the [Security Bars] final rule is not, as the [2020 Security Bars] NPRM proposed, modifying the regulatory framework to apply the danger to the security of the United States bars at the credible fear stage because, in the interim between the NPRM and the final rule, the Global Asylum [final rule] did so for all of the bars to eligibility for asylum and withholding of removal.''); *id.* at 84189 (describing changes made in the Security Bars rule ''to certain regulatory provisions not addressed in the proposed rule as necessitated by the intervening promulgation of the Global Asylum [final rule]'').

[7] *See* INA 235(b)(1)(A)(ii), (B), 8 U.S.C. 1225(b)(1)(A)(ii), (B); *see also* 8 CFR 235.3(b)(4)(i), 1235.3(b)(4)(i).

[8] *See* 8 CFR 208.2(a)(1)(ii), 208.30(f), 1208.2(a)(1)(ii), 1235.6(a)(1)(i).

[9] Security Bars and Processing, 85 FR 41201, 41216–18 (July 9, 2020).

[10] *See id.* at 41207.

[11] *See id.* at 41210–12.

NPRM further explained that applying the security bars during credible fear screenings was necessary to reduce health and safety dangers to both the public at large and DHS officials.[12]

On December 11, 2020, while the Departments were reviewing the comments submitted in response to the 2020 Security Bars NPRM, the Global Asylum final rule was published.[13] The Global Asylum final rule changed the governing regulations to apply all bars to asylum eligibility and withholding of removal during credible fear screenings.[14] Most relevant, the Global Asylum final rule changed the then-existing regulatory framework described above, in which evidence of a bar to asylum eligibility or withholding of removal did not have any impact on a credible fear determination (even though the bars would be part of the ultimate adjudication of asylum eligibility or withholding of removal before the Executive Office for Immigration Review), to a framework that instead required asylum officers to apply all of the bars to asylum eligibility or withholding of removal during credible fear screenings.[15]

On December 23, 2020, the Security Bars rule was published. In that final rule, the Departments revised the text from the 2020 Security Bars NPRM to explicitly rely on the intervening changes made by the Global Asylum final rule.[16] As a result, the regulatory text of significant portions of the Security Bars rule relies upon and repeats broader regulatory text established by the Global Asylum final rule, such as applying bars to asylum eligibility and withholding of removal during credible fear screenings.[17] The Security Bars rule assumed that the Global Asylum final rule would be in effect, and, therefore, the Security Bars rule did not make additional changes to the credible fear framework.[18]

The Security Bars rule, if it were to become effective as published, would bar two broad categories of noncitizens who ''pose a danger to the security of the United States'' from eligibility for asylum, statutory withholding of removal, and withholding of removal under regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (''CAT'') [19]; and would alter the screening processes for eligibility for CAT deferral of removal in credible fear interviews.[20] The Security Bars rule provided that, if an asylum officer determined that a noncitizen was subject to the bars outlined in the rule, the asylum officer would screen the noncitizen for potential eligibility for deferral of removal under the CAT regulations (''CAT deferral of removal'') by determining whether it was ''more likely than not'' that the noncitizen would be tortured in the prospective country of removal.[21]

As a result of the interplay between the two rules, implementation of the Security Bars rule would violate the injunction against the application, implementation, or enforcement of the Global Asylum final rule and related policies or procedures. Effective implementation of the Security Bars rule relies on the application of the asylum and withholding of removal bars to eligibility at the credible fear screening stage, as established by the Global Asylum final rule.[22] Accordingly, implementing the Security Bars rule would effectively reinsert or rely upon regulatory provisions enjoined by the *Pangea II* court. In other words, under the *Pangea II* injunction, it would be impermissible to apply the bars to asylum eligibility and withholding of removal outlined in the Security Bars rule to noncitizens in the credible fear screening process. Given these circumstances, the Departments believe that the Security Bars rule, which could not be implemented as designed, would not necessarily provide the framework for achieving its intended goals.

B. Impact of Asylum Processing IFR

On March 29, 2022, the Departments published an interim final rule titled Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers (''Asylum Processing IFR'').[23] The Asylum Processing IFR became effective on May 31, 2022.[24] The Asylum Processing IFR amended the governing regulations to allow USCIS asylum officers to adjudicate the asylum applications of individuals subject to expedited removal who are found to have a credible fear of persecution or torture.[25]

The Asylum Processing IFR also amended certain regulations modified in part by the Security Bars rule to return to the regulatory framework governing credible fear screening standards and, with limited exceptions, applicability of mandatory bars at the credible fear screening stage that had been in place before the Global Asylum final rule was promulgated.[26] In particular, the Asylum Processing IFR revised the regulations governing the credible fear screening process to apply the longstanding ''significant possibility'' standard in screenings for statutory withholding of removal and CAT protection claims.[27] And, with limited exceptions, the Asylum Processing IFR revised the regulatory framework to return to longstanding regulations to screen for eligibility for asylum and statutory withholding of removal without applying bars to asylum and withholding of removal in the credible fear screening process.[28] The regulatory changes made by the Asylum Processing IFR do not include the applicability of the bars outlined in the Security Bars rule.[29]

If the Security Bars rule were to become effective as published, then, when combined with the changes made by the Asylum Processing IFR to the regulations governing the credible fear screening framework and standards, the result would be to create confusing and nonsensical regulatory text. The Asylum

[12] *See id.* at 41210.

[13] 85 FR at 80274.

[14] *See id.* at 80391.

[15] *See id.*

[16] 85 FR at 84174–77.

[17] *Compare e.g., id.* at 84194–98 (revisions to 8 CFR 208.30, 235.6, 1208.30, 1235.6, and other provisions in the Security Bars rule), *with, e.g.,* 85 FR at 80390–80401 (revisions to same sections in the Global Asylum final rule).

[18] *See* 85 FR at 84175 (''The Departments note that the final rule is not, as the NPRM proposed, modifying the regulatory framework to apply the danger to the security of the United States bars at the credible fear stage. In the interim between the NPRM and the final rule, the Global Asylum [final rule] did so for all of the bars to eligibility for asylum and withholding of removal.'').

[19] CAT, Dec. 10, 1984, S. Treaty Doc. No. 100–20 (1988), 1465 U.N.T.S. 85.

[20] *See id.* at 84160, 84174.

[21] *See id.* at 84194–95.

[22] As the Departments explained in the Security Bars rule, the intervening Global Asylum final rule made changes to the credible fear screening framework to provide that noncitizens receiving positive credible fear determinations be placed in asylum-and-withholding-only proceedings, rather than section 240 removal proceedings. *See* 85 FR at 84188. The Security Bars rule relied upon this change made in the Global Asylum final rule to provide that noncitizens who receive positive credible fear determinations under the Security Bars rule would be placed in such asylum-and-withholding-only proceedings rather than section 240 removal proceedings, unless they were removed to third countries. *See id.* The Security Bars rule also assumes that the Departments are using the reasonable possibility of persecution or torture standards for withholding of removal claims in the credible fear screening context, which is also based on a change that was made in the Global Asylum final rule. *See id.* at 84188, 84191.

[23] *See* 87 FR 18078.

[24] The implementation of the Asylum Processing IFR is taking place in a phased manner, beginning with a small number of individuals, and will grow as USCIS builds operational capacity over time. *See* 87 FR at 18185.

[25] *See id.* at 18089.

[26] *See id.* at 18084, 18091–94.

[27] *See id.* at 18084, 18091–92.

[28] *See id.* at 18121–22, 18084, 18092–94.

[29] *See id.* at 18121–22, 18084, 18091–94.

Processing IFR revised regulatory language in 8 CFR 208.30, 235.6, 1003.42, 1208.30, and 1235.6 that the Security Bars rule assumed would be in effect, but which now no longer exists in the CFR. For example, in 8 CFR 208.30(f), the Security Bars rule revised the regulatory language that existed at the time to incorporate the ''more likely than not'' standard, which is related to evaluating eligibility for CAT deferral of removal when an individual is subject to the security bars outlined in the Security Bars rule.[30] The Asylum Processing IFR revised 8 CFR 208.30(f) significantly, so the regulatory text that existed at the time of the publication of the Security Bars rule no longer exists in the current version of 8 CFR 208.30(f) in the CFR.[31] Additional examples include 8 CFR 208.30(e)(4), (e)(5), 235.6(a)(2), 1003.42(d)(1), 1208.30(e), (g)(2), and 1235.6(a)(2). *Compare, e.g.,* 85 FR at 84191, 84196 (portion of Security Bars rule amending 8 CFR 235.6(a)(2) to ''reflect the new screening standard for potential eligibility for deferral of removal'' established in the Global Asylum final rule by providing for the next procedural steps ''[i]f an asylum officer determines that the [noncitizen] has not established a credible fear of persecution, reasonable possibility of persecution, reasonable possibility of torture, or that it is more likely than not that the [noncitizen] would be tortured''), *with, e.g.,* 87 FR at 18220 (portion of Asylum Processing IFR amending the same section, 8 CFR 235.6(a)(2), to omit any reference to a ''reasonable possibility of persecution, reasonable possibility of torture, or [whether] it is more likely than not that the [noncitizen] would be tortured'').

Further, if the Security Bars rule were to become effective as published, the regulations would not coherently interrelate when viewed individually or as a whole, which would create substantial confusion and disorder in the credible fear screening process. The intervening Asylum Processing IFR has made significant changes to the regulations governing the credible fear screening framework and standards, and because these changes are incompatible with applying the Security Bars rule according to its terms, these intervening regulatory changes further justify delaying the effective date of the Security Bars rule.

Accordingly, the Departments are further delaying the effective date of the Security Bars rule until December 31, 2024, due to the aforementioned litigation and the intervening Asylum Processing IFR. The Departments believe that a delay of two years, rather than a shorter delay, is appropriate. If the injunction against implementation of the Global Asylum final rule were lifted, the Departments would need to consider how the regulatory changes that the Asylum Processing IFR made to the credible fear screening framework and standards impact the regulatory text of the Security Bars rule. Given the numerous procedural inconsistencies between the Asylum Processing IFR and the Security Bars rule, as discussed above, the Departments believe that determining how to feasibly apply both rules (or whether such application is feasible at all) would require substantial time. Also, as discussed below, the Departments are planning to issue a notice of proposed rulemaking to modify or rescind the Security Bars rule in the near future. The Departments would need to consider whether attempting to apply the Security Bars rule at all would be consistent with any policy considerations raised by that forthcoming NPRM to modify or rescind the Security Bars rule.

C. Rulemaking To Modify or Rescind Security Bars Rule

The Departments are reconsidering the Security Bars rule in light of the Administration's policies of ensuring the safe and orderly reception and processing of asylum seekers, consistent with public health and safety, strengthening the asylum system, and removing barriers that impede access to immigration benefits, with the additional context of the complex relationship between the Global Asylum final rule and the Security Bars rule and the court's injunction in *Pangea II*.[32] The Departments are reevaluating whether the Security Bars rule provides the most appropriate and effective framework for achieving its goals of mitigating the spread of communicable diseases, including COVID–19, among certain noncitizens in the credible fear screening process, as well as DHS personnel and the public. The Departments are working to publish a separate NPRM in the near future to solicit public comments on whether to modify or rescind the Security Bars rule (''forthcoming Security Bars NPRM'').[33] The Departments, in publishing the December 2021 Delay IFR, anticipated that this rulemaking would be complete by December 31, 2022. However, competing priorities have resulted in delays in publishing the forthcoming Security Bars NPRM. In light of the limits on the Departments' resources, they have been required to prioritize efforts based on the most pressing needs, which include, but are not limited to, litigation constraints, *see, e.g.,* Deferred Action for Childhood Arrivals, 87 FR 53152 (Aug. 30, 2022), and building an orderly process to address increasing numbers of individuals coming to the United States, *see, e.g.,* Asylum Processing IFR, 87 FR 18078.

Accordingly, the Departments are further delaying the effective date of the Security Bars rule until December 31, 2024. The Departments believe that, rather than a one-year delay, as they issued in December of 2021, a two-year delay of the effective date will better ensure that there is sufficient time to complete notice-and-comment rulemaking to modify or rescind the Security Bars final rule, even in the event that circumstances require shifting departmental priorities and resources. The Departments believe that a two-year delay will allow sufficient time for the Departments to issue the forthcoming Security Bars NPRM, give careful and meaningful consideration to comments received on the forthcoming Security Bars NPRM, and issue a final rule.

In the March 2021 Delay IFR, the Departments explained that they were considering amending or rescinding the Security Bars rule and sought public comments on whether the Security Bars rule should be revised or revoked and information on alternative approaches that may achieve the best public health outcome consistent with the Administration's immigration policy goals.[34] The Departments received 66 comments in response to the March 2021 Delay IFR. As stated in the December 2021 Delay IFR, the Departments plan to address comments regarding modification or rescission of the Security Bars rule in a separate rulemaking. *See* 86 FR at 73617. A number of the commenters expressed

[30] *See* 85 FR at 84194–95.

[31] *See* 87 FR at 18219.

[32] *See, e.g.,* E.O. 14010, 86 FR 8267 (Feb. 2, 2021) (Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border); E.O. 14012, 86 FR 8277 (Feb. 2, 2021) (Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans); *see also* Executive Office of the President, Office of Management and Budget, Office of Information and Regulatory Affairs, Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions, Security Bars and Processing, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1615-AC57*.

[33] Members of the public may follow the progress of the forthcoming Security Bars NPRM on the Administration's Unified Agenda of Regulatory and Deregulatory Actions, which is available at *https://www.reginfo.gov/public/do/eAgendaMain*.

[34] *See* 86 FR at 15069, 15071.

support or opposition to the substance of the Security Bars rule as part of their response to the Departments' March 2021 Delay IFR. Although a few of the commenters supported the Security Bars rule, the majority of the commenters opposed the rule. Subsequently, the Departments published the December 2021 Delay IFR on December 28, 2021, in which they ''continue[d] to welcome data, views, and information regarding the effective date of the Security Bars rule.'' 86 FR at 73617. The Departments received 15 unduplicated comments in response to the December 2021 Delay IFR, 13 of which expressed opposition to the Security Bars Final Rule. Two commenters supported implementation of the Security Bars Final Rule without specifically discussing a delay beyond December 31, 2021, although one stated that the policy should not be delayed. Among commenters who opposed the Security Bars final rule, one suggested it be ''delayed indefinitely,'' and two supported further delay of the rule while also urging rescission of the rule. Additionally, four commenters—including one joint comment of 135 non-governmental organizations—urged immediate rescission of the final rule rather than continuing to delay its effective date. Finally, some commenters responding to the March 2021 Delay IFR specifically addressed the question of a delayed effective date. Two of these commenters urged the Departments to implement the Security Bars rule without further delay, and one supported the delay. To the extent the comments received in response to each IFR delaying the effective date of the Security Bars rule address the substance of the Security Bars rule beyond the question of the effective date, including suggestions to modify or rescind the rule, the Departments will consider those comments, and the comments on the forthcoming Security Bars NPRM, in promulgating a final rule based on that NPRM.

To the extent the comments received in response to the March 2021 Delay IFR and the December 2021 Delay IFR address the further delay of the Security Bars rule, the Departments have considered those comments and have determined that a two-year further delay is most appropriate. Several commenters, as noted, opposed delay, but the Departments have concluded that a further delay of at least some length is necessary to ensure the Departments are not required to try to apply both the Asylum Processing IFR and the Security Bars rule without sufficient time to consider the many inconsistencies between those rules. Another commenter, as noted, suggested an indefinite delay, but the Departments believe an indefinite delay is unnecessary at this time because the Departments' forthcoming Security Bars NPRM will be completed at some point in the near future, and, once that rulemaking process is finalized, that rulemaking could obviate the need for an indefinite delay by modifying or rescinding the Security Bars rule. Finally, the remaining commenters who mentioned the possibility of further delay did not cite any specific reasons for a delay of a particular length, and the Departments have concluded that two years is an appropriate duration. The Departments acknowledge the desire of some commenters to rescind the Security Bars rule without further delaying its effective date. However, as discussed in this rule, the Departments intend to publish the forthcoming Security Bars NPRM in the near future to address the issue of possible modification or rescission. The Departments note that thousands of comments were received in response to the 2020 Security Bars NPRM. The Departments anticipate that they may similarly receive a substantial volume of comments in response to the forthcoming Security Bars NPRM. They accordingly believe it is prudent to delay the Security Bars rule's effective date for two years to ensure sufficient time to carefully review, consider, and respond to comments in promulgating a final rule—especially in light of the Departments' potentially competing rulemaking priorities—and avoid the need for additional IFRs to further delay the Security Bars rule's effective date before the anticipated final rule can become effective. *See Massachusetts* v. *E.P.A.,* 549 U.S. 497, 527 (2007) (''[A]n agency has broad discretion to choose how best to marshal its limited resources and personnel to carry out its delegated responsibilities.'').

The Departments recognize that the COVID–19 public health emergency is highly dynamic and continues to pose health and safety risks for noncitizens held in congregate settings, particularly at holding and detention facilities; for agency personnel; and for the public.[35] As the COVID–19 public health emergency has continued to evolve, the Departments continue to reconsider and reevaluate how best to mitigate the spread of COVID–19 and which actions are most appropriate in accordance with their legal authorities.

IV. Request for Comment on Further Delay of the Effective Date of the Security Bars Rule

The Departments continue to welcome data, views, and information regarding the effective date of the Security Bars rule. The Departments also are soliciting comments on whether the effective date should be delayed beyond December 31, 2024. The Departments note that comments addressing whether the Security Bars rule should be modified or rescinded should be submitted in response to the forthcoming Security Bars NPRM, and not in response to this interim final rule.

V. Regulatory Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (''APA''), agencies must generally provide ''notice of proposed rule making'' in the **Federal Register** and, after such notice, ''give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.'' 5 U.S.C. 553(b)–(c). In the December 2021 Delay IFR, the Departments notified the public that they were considering ''whether the effective date of the Security Bars rule should be extended beyond [the December 31, 2022] date'' and specifically ''solicit[ed] comments'' on such a delay. 86 FR at 73615; *see also id.* at 73617 (welcoming any ''data, views, and information regarding the effective date of the Security Bars rule,'' including comments on whether the effective date ''should be extended beyond December 31, 2022, if the *Pangea II* injunction is still in effect or if other intervening events occur''). As discussed above, the Departments have considered the comments received in response to the notice and request for comments in the December 2021 Delay IFR and have decided for the reasons articulated above to delay the effective date of the Security Bars rule until December 31, 2024. Both the *Pangea II* injunction and intervening events such as the publication of the Asylum Processing IFR make continued delay of the Security Bars rule necessary. In addition, a two-year delay appropriately allows the Departments sufficient time to both (1) consider how the Security Bars rule would interact with the Asylum Processing IFR if the *Pangea II* injunction were lifted and both rules were to be implemented simultaneously, and (2) complete the forthcoming Security Bars NPRM regarding whether to modify or rescind

[35] *See* Public Health Determination and Order Regarding Suspending the Right to Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists, 87 FR 19941, 19942, 19950–52 (Apr. 6, 2022).

the Security Bars rule as well as complete a final rule following careful consideration of comments received.

Further, even if the Departments had not fulfilled the notice-and-comment requirements of the APA, agencies are not required to engage in pre-promulgation notice and comment under 5 U.S.C. 553(b) and (c) when an agency ''for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). Consistent with the March 2021 Delay IFR and the December 2021 Delay IFR, the Departments have determined that the good cause exception applies to this rule because implementation of the Security Bars rule has not been—and continues to not be—feasible due to a preliminary injunction against a related rule. Furthermore, as discussed above, the implementation of the Asylum Processing IFR also impacts the feasibility of the Security Bars rule. The Security Bars rule's reliance upon and interplay with the Global Asylum final rule, as explained above, mean that implementation of the Security Bars rule would risk violating the *Pangea II* injunction. The preliminary injunction remains in place. It is therefore unnecessary for the Departments to provide notice and an opportunity to comment because any comments received cannot and will not affect the injunction underlying the need for delay. *See EME Homer City Generation, L.P.* v. *E.P.A.,* 795 F.3d 118, 134–35 (D.C. Cir. 2015) (explaining that the good cause exception applied because ''commentators could not have said anything during a notice and comment period that would have changed'' the agency's response to a judicial decision).

B. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 and 13563 direct agencies to assess the costs, benefits, and transfers of available 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. Pursuant to Executive Order 12866, the Office of Information and Regulatory Affairs of the Office of Management and Budget determined that this rule is ''significant'' under Executive Order 12866 and has reviewed this regulation.

C. Regulatory Flexibility Act

The Departments have reviewed this rule in accordance with the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164 (1980), as amended (codified at 5 U.S.C. 601 *et seq.*), and have determined that this rule to further delay the effective date of the Security Bars rule (85 FR 84160) will not have a significant economic impact on a substantial number of small entities. Neither the Security Bars rule, nor this rule to delay its effective date, regulates ''small entities'' as that term is defined in 5 U.S.C. 601(6). Only individuals, rather than entities, are eligible to apply for asylum and related forms of relief, and only individuals are placed in immigration proceedings.

D. 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 are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48; *see also* 2 U.S.C. 1532(a).

E. Congressional Review Act

This rule is not a major rule as defined by section 804 of the legislation commonly known as the Congressional Review Act, *see* Public Law 104–121, sec. 251, 110 Stat. 847, 868 (1996) (codified in relevant part at 5 U.S.C. 804) (''CRA''). 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. The Departments have complied with the CRA's reporting requirements and have sent this rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1).

F. 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, the Departments believe that this rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

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

H. Paperwork Reduction Act

This rule does not create new, or revisions to existing, ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This rule does not have ''[T]ribal implications'' because it does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) requires no further agency action or analysis.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Merrick B. Garland,

Attorney General, U.S. Department of Justice.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1658; Project Identifier MCAI–2022–01597–R; Amendment 39–22293; AD 2022–27–08]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bell Textron Canada Limited Model 407 helicopters. This AD was prompted by