



## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Part 208

[CIS No. 2671-20; DHS Docket No. USCIS-2020-0017]

RIN 1615-AC59

### Asylum Interview Interpreter Requirement Modification Due to COVID-19

**AGENCY:** U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

**ACTION:** Temporary final rule; extension.

**SUMMARY:** The Department of Homeland Security (DHS) is extending for a second time the effective date (for 180 days) of its temporary final rule that modified certain regulatory requirements to help ensure that USCIS may continue with affirmative asylum adjudications during the COVID-19 pandemic. This rule also provides that if a USCIS interpreter is unavailable, USCIS will either reschedule the interview and attribute the interview delay to USCIS for the purposes of the asylum employment authorization regulation, or USCIS may, in its discretion, allow the applicant to provide an interpreter.

**DATES:** This temporary final rule is effective from September 20, 2021, through [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. As of September 20, 2021, the expiration date of the temporary final rule published at 85 FR 59655 (Sept. 23, 2020), which was extended at 86 FR 15072 (Mar. 22, 2021), is further extended from September 20, 2021, to [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Andria Strano, Acting 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).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD).

## **SUPPLEMENTARY INFORMATION:**

### **I. Legal Authority to Issue this Rule and other Background**

#### **A. Legal Authority**

The Secretary of Homeland Security (Secretary) takes this action pursuant to his authorities concerning asylum determinations. The Homeland Security Act of 2002 (HSA), Public Law 107-296, as amended, transferred many functions related to the execution of Federal immigration law to the newly created DHS. The HSA amended the Immigration and Nationality Act (INA or the Act), charging the Secretary “with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens,” INA 103(a)(1), 8 U.S.C. 1103(a)(1), and granted the Secretary the power to take all actions “necessary for carrying out” the immigration laws, including the INA, *id.* 1103(a)(3). The HSA also transferred to DHS responsibility for affirmative asylum applications made outside the removal context. *See* 6 U.S.C. 271(b)(3). That authority has been delegated within DHS to U.S. Citizenship and Immigration Services (USCIS). USCIS asylum officers determine, in the first instance, whether a noncitizen’s affirmative asylum application should be granted. *See* 8 CFR 208.4(b), 208.9. With limited exception, the Department of Justice Executive Office for Immigration Review has exclusive authority to adjudicate asylum applications filed by noncitizens who are in removal proceedings. *See* INA 103(g), 240; 8 U.S.C. 1103(g), 1229a. This broad division of functions and authorities informs the background of this rule.

#### **B. Legal Framework for Asylum**

Asylum is a discretionary benefit that generally can be granted to eligible noncitizens who are physically present or who arrive in the United States, irrespective of their status, subject to the requirements in section 208 of the INA, 8 U.S.C. 1158, and implementing regulations, *see* 8 CFR parts 208, 1208.

Section 208(d)(5) of the INA, 8 U.S.C. 1158(d)(5), imposes several mandates and procedural requirements for the consideration of asylum applications. Congress also specified that the Attorney General and Secretary of Homeland Security “may provide by regulation for any other conditions or limitations on the consideration of an application for asylum,” so long as those limitations are “not inconsistent with this chapter.” INA208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B). Thus, the current statutory framework leaves the Attorney General (and, after the HSA, also the Secretary) significant discretion to regulate consideration of asylum applications. USCIS regulations promulgated under this authority set agency procedures for asylum interviews, and require that applicants unable to communicate in English “must provide, at no expense to the Service, a competent interpreter fluent in both English and the applicant's native language or any other language in which the applicant is fluent.” 8 CFR 208.9(g). This requirement means that all asylum applicants who cannot communicate in English must bring an interpreter to their interview. Doing so, as required by the regulation, poses a serious health risk because of the COVID-19 pandemic.

Accordingly, this temporary rule extends the temporary final rule published at 85 FR 59655 for a second time to continue to mitigate the spread of COVID-19 by seeking to slow the transmission and spread of the disease during asylum interviews before USCIS asylum officers. To that end, this temporary rule will extend the requirement in certain instances allowing noncitizens interviewed for this discretionary asylum benefit to use USCIS-provided interpreters during interviews. This temporary rule also provides that if a USCIS interpreter is unavailable, USCIS will either reschedule the interview and attribute the interview delay to USCIS for the purposes of employment authorization under 8 CFR 208.7, or USCIS may, in its discretion, allow the applicant to provide an interpreter.

### **C. The COVID-19 Pandemic**

On January 31, 2020, the Secretary of Health and Human Services (HHS) declared a public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247d), in

response to COVID-19, which is caused by the SARS-CoV-2 virus.<sup>1</sup> On February 24, 2021, the President issued a continuation of the National Emergency concerning the COVID-19 pandemic.<sup>2</sup> Effective July 20, 2021, HHS renewed the determination that “a public health emergency exists and has existed since January 27, 2020 nationwide.”<sup>3</sup> A more detailed background discussion of the COVID-19 pandemic is found in the original temporary rule, as well as in the first extension of this rule, and USCIS incorporates the discussions of the pandemic into this extension with modification. 85 FR 59655; 85 FR 15072.

Since publication of the original temporary rule and first extension, several variants of the virus that causes COVID-19 have been, and continue to be, reported in the United States.<sup>4</sup> Evidence suggests that these variants may spread more quickly and easily than others and at least one variant may be associated with an increased risk of death.<sup>5</sup> The COVID-19 Delta variant was first found in India in October 2020.<sup>6</sup> Cases were discovered in the United States in late January 2021, and Delta has quickly become the predominant virus strain in the United States.<sup>7</sup> It was labeled a Variant of Concern (VOC) by the HHS SARS-CoV-2 Interagency Group (SIG), which defines VOCs as those with evidence of increased transmissibility and severe disease, reduced effectiveness of treatments or vaccines, and diagnostic detection failures.<sup>8</sup>

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<sup>1</sup> HHS, Determination that a Public Health Emergency Exists (Jan. 31, 2020), <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>.

<sup>2</sup> Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic, 86 FR 11599 (Feb. 26, 2021); Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID-19) Outbreak, 85 FR 15337 (Mar. 18, 2020).

<sup>3</sup> HHS, Renewal of Determination that a Public Health Emergency Exists (July 19, 2021), <https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVID-19July2021.aspx>.

<sup>4</sup> Centers for Disease Control and Prevention (CDC), SARS-CoV-2 Variant Classifications and Definitions (Aug. 3, 2021), [https://www.cdc.gov/coronavirus/2019-ncov/variants/variant-info.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fvariant-surveillance%2Fvariant-info.html](https://www.cdc.gov/coronavirus/2019-ncov/variants/variant-info.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fvariant-surveillance%2Fvariant-info.html).

<sup>5</sup> CDC, Variants of the Virus (July 29, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html>.

<sup>6</sup> Cov-Lineages, Global Lineage Report: B.1.617.2 (May 19, 2021); CDC, SARS-CoV-2 Variant Classifications and Definitions (Aug. 03, 2021); CDC, Delta Variant: What We Know About the Science (Aug. 06, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>.

<sup>7</sup> Id.

<sup>8</sup> Id.

As of September 9, 2021, there have been approximately 222,406,582 cases of COVID-19 identified globally, resulting in approximately 4,592,934 deaths. Approximately 40,152,521 cases have been identified in the United States, with about 1,297,399 new cases identified in the 7 days preceding September 5th, and approximately 646,131 reported deaths due to the disease.<sup>9</sup> In the week preceding September 5th, the United States was the country that reported the highest number of new cases, with a 38 percent increase.<sup>10</sup>

On August 23, 2021, the U.S. Food and Drug Administration (FDA) granted approval for the Pfizer-BioNTech COVID-19 vaccine for individuals 16 years and older, now marketed as Comirnaty.<sup>11</sup> Prior to this, the FDA had issued emergency use authorizations (EUAs) for three COVID-19 vaccines, including the Pfizer-BioNTech vaccine.<sup>12</sup> The two other vaccines that continue to be authorized for emergency use are produced by Moderna and Janssen.<sup>13</sup> The Pfizer-BioNTech and Moderna vaccines require two doses to be effective at preventing COVID-19 illness.<sup>14</sup> The Janssen vaccine is a single dose.<sup>15</sup> As of September 9, 2021, approximately 177,433,044 people in the United States had completed a COVID-19 vaccination regimen.<sup>16</sup> While the vaccine is now widely accessible in the United States, geographic data indicates a

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<sup>9</sup> World Health Organization (WHO), Weekly epidemiological update – 7 September 2021 (Sept. 07, 2021), available at <https://www.who.int/publications/m/item/weekly-epidemiological-update-on-covid-19---7-september-2021>; WHO, WHO Coronavirus (COVID-19) Dashboard (Sept. 09, 2021), <https://covid19.who.int/>.

<sup>10</sup> WHO, Weekly epidemiological update.

<sup>11</sup> FDA, FDA Approves First COVID-19 Vaccine (Aug. 23, 2021), <https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine>.

<sup>12</sup> FDA, Learn More About COVID-19 Vaccines From the FDA (content current as of July 12, 2021), <https://www.fda.gov/consumers/consumer-updates/learn-more-about-covid-19-vaccines-fda>.

<sup>13</sup> *Id.* Janssen Biotech Inc., the manufacturer of the third vaccine granted an EUA by the FDA, is a Janssen Pharmaceutical Company of Johnson & Johnson.

<sup>14</sup> CDC, Moderna COVID-19 Vaccine Overview and Safety (updated June 11, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Moderna.html>; CDC, Pfizer-BioNTech COVID-19 Vaccine Overview and Safety (updated June 24, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Pfizer-BioNTech.html>.

<sup>15</sup> CDC, Johnson & Johnson's Janssen COVID-19 Vaccine Overview and Safety (updated June 23, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/janssen.html>.

<sup>16</sup> CDC, COVID Data Tracker – COVID-19 Vaccinations in the United States (Sept. 09, 2021), [https://covid.cdc.gov/covid-data-tracker/#vaccinations\\_vacc-total-admin-rate-total](https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-total-admin-rate-total).

wide disparity in the percentages of fully vaccinated individuals by state, ranging from 39.6 percent in Alabama to 68.4 percent in Vermont, not taking into account United States territories.<sup>17</sup> Health experts still do not know what percentage of people in the U.S. will need to be vaccinated before enough individuals in the community are protected to meaningfully reduce the spread of the disease from person to person, how effective the vaccines are against new variants, and how long the vaccines protect people.<sup>18</sup> Furthermore, hospitalization and mechanical respiratory support may still be required in severe cases of COVID-19 illness, irrespective of vaccination status.<sup>19</sup>

Ongoing research demonstrates that while there is high vaccine effectiveness, fully vaccinated individuals continue to experience breakthrough COVID-19 infections and may be either symptomatic or asymptomatic.<sup>20</sup> As of April 30, 2021, approximately 10,262 breakthrough infections were reported from 46 U.S. states and territories.<sup>21</sup> This is likely a substantial undercount of cases, as CDC states that the current national surveillance system relies on voluntary reporting and data are only available for a small segment of reported cases.<sup>22</sup> The data are further limited because on May 01, 2021, the CDC transitioned from tracking all reported COVID-19 vaccine breakthrough infections to only those among patients who are hospitalized or die.<sup>23</sup> As of August 30, 2021, CDC data from 49 U.S. states and territories

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<sup>17</sup> Id.

<sup>18</sup> CDC, Key Things to Know About COVID-19 Vaccines (updated June 25, 2021), [https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fvaccines%2F8-things.html](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fvaccines%2F8-things.html).

<sup>19</sup> National Institutes of Health (NIH), COVID-19 Treatment Guidelines: Care of Critically Ill Adult Patients with COVID-19 (July 08, 2021), <https://www.covid19treatmentguidelines.nih.gov/management/critical-care/summary-recommendations/>.

<sup>20</sup> CDC, Morbidity and Mortality Weekly Report (MMWR): COVID-19 Vaccine Breakthrough Infections Reported to CDC - United States, January 1-April 30, 2021 (May 28, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7021e3.htm>.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

indicates 12,908 patients with patients with SARS-CoV-2 breakthrough infections were hospitalized or died.<sup>24</sup> Testing is available to confirm suspected cases of COVID-19 infection. At present, the time it takes to receive results varies based on, among other factors, type of test used, laboratory capacity, and geographic location.<sup>25</sup> CDC guidance states that individuals who were exposed to a person with COVID-19 may later develop symptoms and should self-quarantine for 14 days, even with receipt of negative test results.<sup>26</sup>

There are also multiple variants of the virus that have resulted in COVID-19 infections in the United States, including the now predominant Delta variant.<sup>27</sup> While vaccination is key in preventing severe disease like hospitalization or death, it may be less effective in preventing infection or transmission of the Delta variant since it is more contagious.<sup>28</sup> Significant Delta variant-related outbreaks have occurred in the United States in recent months, most recently in Massachusetts after multiple large-scale summer events were held from July 3-17, 2021.<sup>29</sup> After these events, 469 individuals contracted the virus, 74 percent of whom were fully vaccinated, and the outbreak was a major catalyst in the CDC's subsequent guidance to resume indoor mask mandates.<sup>30</sup> According to statistical models and genomic surveillance programs, the Delta

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<sup>24</sup> CDC, COVID-19 Vaccine Breakthrough Case Investigation and Reporting (Sept. 01, 2021), <https://www.cdc.gov/vaccines/covid-19/health-departments/breakthrough-cases.html>.

<sup>25</sup> CDC, Overview of Testing for SARS-CoV-2 (COVID-19) (Aug. 02, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/testing-overview.html>.

<sup>26</sup> CDC, Test for Current Infection (Viral Test) (Aug. 02, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/testing/diagnostic-testing.html>.

<sup>27</sup> CDC, SARS-CoV-2 Variant Classifications and Definitions; Cov-Lineages, Global Lineage Report: B.1.617.2.

<sup>28</sup> CDC, Delta Variant: What We Know About the Science.

<sup>29</sup> CDC, Outbreak of SARS-CoV-2 Infections, Including COVID-19 Vaccine Breakthrough Infections, Associated with Large Public Gatherings — Barnstable County, Massachusetts, July 2021 (Aug. 06, 2021), [www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm](http://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm).

<sup>30</sup> *Id.*

variant now accounts for approximately 98.9 percent of new cases nationally and current data shows that it is having a disproportionately severe impact on unvaccinated populations.<sup>31</sup>

There are numerous challenges to resuming pre-COVID-19 operations, largely due to the emergence of the Delta variant. CDC has posted guidance for states, businesses, and the general public emphasizing the need for continued mask mandates on public transportation and airplanes, as wearing masks that completely cover the mouth and nose reduces the spread of COVID-19.<sup>32</sup> CDC is also encouraging restaurants and bars to maintain social distancing and mask rules and asking individuals to avoid large events and gatherings.<sup>33</sup> As a result of CDC's renewed mask guidance, the Office of Management and Budget (OMB) issued renewed mask guidelines on July 27, 2021, for employees, contractors, and visitors to Federal buildings which went into effect for DHS on July 28, 2021.<sup>34</sup>

Further, CDC predictive modeling forecasts a continued national increase in new cases, hospitalizations, and deaths over four week intervals. By the week ending October 2, 2021, forecasts expect a weekly increase of approximately 430,000 to 1,520,000 new cases, 6,400 to 19,500 new hospitalizations, and 6,900 to 18,000 new deaths, taking into account variations in social distancing and prevention measures across states. Variations beyond social distancing, including the reopening of schools, may also have an impact on these rates.<sup>35</sup> Studies conducted

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<sup>31</sup> CDC, COVID Data Tracker: Variant Proportions (Sept. 07, 2021), <https://covid.cdc.gov/covid-data-tracker/#variant-proportions>; CDC, Delta Variant: What We Know About the Science.

<sup>32</sup> CDC, Requirement for Face Masks on Public Transportation Conveyances and at Transportation Hubs (Aug. 27, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/travelers/face-masks-public-transportation.html>.

<sup>33</sup> CDC, Public Health Guidance for Potential COVID-19 Exposure Associated with Travel (July 02, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>; CDC, Guidance for Organizing Large Events and Gatherings (May 20, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html>; CDC, Considerations for Restaurant and Bar Operators (June 14, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html>.

<sup>34</sup> Department of Homeland Security, Effective Immediately, Updated Mask Guidance for All DHS Workspaces (July 28, 2021).

<sup>35</sup> CDC, COVID-19 Forecasts: Cases (Sept. 08, 2021), [https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/forecasts-cases.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-](https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/forecasts-cases.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-)



early in the pandemic indicated low rates of transmission among children and as of September 9, 2021, approximately 62.5 percent of individuals 12 years of age and older were fully vaccinated.<sup>36</sup> Since these early studies, infection rates have increased as opportunities for transmission, including school and summer camp attendance, expanded.<sup>37</sup> It has been reported that at least 1,000 schools across 35 states have closed for in-person learning because of COVID-19 since the beginning of the 2021 school year.<sup>38</sup> In order to minimize the spread, CDC currently recommends screening, physical distancing, taking precautions when participating in team or close contact sports, and consistent mask use, as inconsistent mask policies have contributed to school outbreaks.<sup>39</sup> Finally, as the annual influenza season approaches, questions and concerns over increased transmission of SARS-CoV-2 and decreases in immunity remain. CDC currently recommends a booster shot beginning in the fall of 2021 for certain individuals who received the Pfizer or Moderna vaccines.<sup>40</sup> CDC's decision to begin booster shots in the fall of 2021 is due to the current information about the vaccine effectiveness and the impact of

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updates%2Fforecasts-cases.html; CDC, COVID-19 Forecasts: Hospitalizations (Sept. 08, 2021), [https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/hospitalizations-forecasts.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fhospitalizations-forecasts.html](https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/hospitalizations-forecasts.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fhospitalizations-forecasts.html); CDC, COVID-19 Forecasts: Deaths (Sept. 08, 2021), [https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/forecasting-us.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2F2019-ncov%2F2Fforecasting-us.html](https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/forecasting-us.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2F2019-ncov%2F2Fforecasting-us.html).

<sup>36</sup> CDC, COVID Data Tracker – COVID-19 Vaccinations in the United States; CDC, Science Brief: Transmission of SARS-CoV-2 in K-12 Schools and Early Care and Education Programs – Updated (July 09, 2021), [https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission\\_k\\_12\\_schools.html](https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission_k_12_schools.html).

<sup>37</sup> Id.

<sup>38</sup> Jeanine Santucci and Grace Hauck, *At least 1,000 schools in 35 states have closed for in-person learning since the start of the school year: COVID-19 updates*, USA TODAY (Sept. 5, 2021), <https://www.usatoday.com/story/news/health/2021/09/05/covid-updates-mu-variant-spreads-hawaii-begs-travelers-stay-away/5735064001/>.

<sup>39</sup> CDC, COVID Data Tracker – COVID-19 Vaccinations in the United States; CDC, Science Brief: Transmission of SARS-CoV-2 in K-12 Schools and Early Care and Education Programs – Updated (July 09, 2021), [https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission\\_k\\_12\\_schools.html](https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission_k_12_schools.html).

<sup>40</sup> CDC, COVID-19 Vaccine Booster Shot (Aug. 20, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/booster-shot.html>.

variants on vaccine effectiveness.<sup>41</sup> A recent study indicated that the infectivity and morbidity rates of COVID-19 are higher in colder climates and the transmissibility of the virus is affected by meteorological factors such as temperature and humidity.<sup>42</sup> This, alongside the increased demand for healthcare resources due to seasonal influenza and the low likelihood that herd immunity will be achieved in 2021, should be taken into account when developing future intervention measures.<sup>43</sup>

## **II. Purpose of this Temporary Rule**

USCIS continues its efforts to protect the health and safety of the employees and the public, including: requiring facial covers for all employees and members of the public above the age of two;<sup>44</sup> limiting the number of employees and members of the public in the office; posting social distance guidelines and asking visitors to answer health screening questions before entering; currently conducting interviews from separate offices to ensure that employees are not in the same room as members of the public; and installing plexiglass where necessary to provide a barrier for employees when social distancing is not possible.

Between March 10, 2021, and August 8, 2021, USCIS conducted 9,136 asylum interviews, for a total of 16,900 interviews since September 23, 2020.<sup>45</sup> The original temporary rule, implemented on September 23, 2020, and its extension implemented on March 22, 2021, and other noted public safety measures have helped mitigate the impact of COVID-19 and have

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<sup>41</sup> Id.

<sup>42</sup> NIH, The role of seasonality in the spread of COVID-19 pandemic (Feb. 19, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7892320/>.

<sup>43</sup> Id.

<sup>44</sup> Facial coverings were part of the initial USCIS COVID mitigation efforts until the CDC and then DHS issued new guidance on May 14, 2021 that fully vaccinated individuals were no longer required to wear masks in DHS space and that temperature checks to enter DHS controlled space were also to be discontinued. On July 28, 2021, DHS issued guidance that all Federal employees, onsite contractors, and visitors, regardless of vaccination status or level of COVID transmission in the local area, are required to wear a mask inside all DHS workspaces and Federal buildings. Further guidance to the public as to the USCIS Response to COVID-19 and Operational Status can be found here: <https://www.uscis.gov/about-us/uscis-response-to-covid-19>.

<sup>45</sup> Between September 23, 2020 and March 10, 2021, USCIS conducted 7,764 asylum interviews. 86 FR at 15074.

been effective in keeping our workforce and the public safe. As of August 9, 2021, there have been 1,927 confirmed cases of COVID-19 exposure among USCIS employees and contractors. The USCIS exposure rate (6.8%) remains below the national average (10.6%) as of August 7, 2021.

Therefore, DHS has determined that it is in the best interest of the public and USCIS employees and contractors to extend the temporary rule for another 180 days. Under this extension with modification, asylum applicants who are unable to proceed with the interview in English will ordinarily be required to proceed with government-provided telephonic contract interpreters provided the applicants speak one of the 47 languages found on the Required Languages for Interpreter Services Blanket Purchase Agreement/U.S. General Services Administration Language Schedule (“GSA Schedule”). If the applicant does not speak or elects to speak a language not on the GSA Schedule, the applicant will be required to bring his or her own interpreter who is fluent in English to the interview and the elected language not on the GSA schedule. DHS is also amending 8 CFR 208.9(h)(1) by allowing, in USCIS’ discretion, an applicant for asylum to provide an interpreter when a USCIS interpreter is unavailable. Specifically, if a USCIS interpreter is unavailable, USCIS will either reschedule the interview and attribute the interview delay to USCIS for the purposes of employment authorization pursuant to 8 CFR 208.7, or USCIS may, in its discretion, allow the applicant to provide an interpreter.

DHS incorporates into this second extension with modification, the justifications, as well as the discussion on the benefits of providing telephonic contract interpreters in reducing the risk of contracting COVID-19 for applicants, attorneys, interpreters, and USCIS employees from the original temporary rule.

### **III. Discussion of Regulatory Change: 8 CFR 208.9(h)<sup>46</sup>**

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<sup>46</sup> The interpreter interview provisions can be found in two parallel sets of regulations: Regulations under the authority of DHS are contained in 8 CFR part 208; and regulations under the authority of the Department of Justice

DHS has determined that there are reasonable grounds for considering potential exposure to SARS-CoV-2, including any emerging variants, as a public health concern and that these grounds are sufficient to continue to modify the interpreter requirement for asylum applicants to lower the number of in-person attendees at asylum interviews. For 180 days following publication of this temporary final rule, DHS will continue to require non-English speaking asylum applicants appearing before USCIS to proceed with the asylum interview using USCIS' interpreter services if they are fluent in one of the 47 languages as discussed in the temporary rule at 85 FR at 59657.<sup>47</sup> DHS is also amending 8 CFR 208.9(h)(1) by allowing, in USCIS' discretion, an applicant for asylum to provide an interpreter when a USCIS interpreter is unavailable. In these limited circumstances, if a USCIS interpreter is unavailable, USCIS will either reschedule the interview and attribute the interview delay to USCIS for the purposes of employment authorization pursuant to 8 CFR 208.7, or USCIS may, in its discretion, allow the applicant to provide an interpreter. The interpreter will be required to follow USCIS COVID-19 protocols in place at the time of the interview, including sitting in a separate office. Once this rule is no longer in effect, asylum applicants unable to proceed with an interview in English before a USCIS asylum officer will be required to provide their own interpreters under 8 CFR 208.9(g).

Allowing an applicant for asylum to provide an interpreter when a USCIS interpreter is unavailable is important and to the benefit of the applicant for several reasons. In some instances, due to a variety of issues including competing demands in other caseloads, contractor availability, and an increased demand for certain languages, USCIS may have knowledge in

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(DOJ) are contained in 8 CFR part 1208. Each set of regulations contains substantially similar provisions regarding asylum interview processes, and each articulates the interpreter requirement for interviews before an asylum officer. *Compare* 8 CFR 208.9(g), *with* 8 CFR 1208.9(g). This temporary final rule revises only the DHS regulations at 8 CFR 208.9. Notwithstanding the language of the parallel DOJ regulations in 8 CFR 1208.9, as of the effective date of this action, the revised language of 8 CFR 208.9(h) is binding on DHS and its adjudications for 180 days. DHS would not be bound by the DOJ regulation at 8 CFR 1208.9(g).

<sup>47</sup> DHS notes that this extension does not modify 8 CFR 208.9(g); rather the extension temporary rule is written so that any asylum interviews occurring while the temporary rule is effective will be bound by the requirements at 8 CFR 208.9(h).

advance of the interview, that a contract interpreter will not be available for a certain language during the time of the interview. In those instances, USCIS may notify the applicant that an interpreter is unavailable and give the applicant an opportunity to provide their own interpreter for that interview and not cause further delay in the case. This will help reduce unnecessary reschedules and prolonged delays and will help alleviate the burden rescheduling the interview could place on all parties involved, including the applicant, the applicant's representative (if applicable), and the local USCIS office. Providing advance notice of the unavailability of an interpreter and the opportunity for applicants to provide their own interpreter will make the process more efficient, reduce the number of delays, and allow applicants to proceed with their interview. This modification to the government-provided telephonic interpreter requirement will not disadvantage applicants who cannot provide their own interpreter. Such an applicant would be in the same position they would have been without this change to the regulation, and if an applicant is unable to locate a competent interpreter once notified of the unavailability of a contract interpreter, the interview will be rescheduled and the reschedule delay will be attributed to USCIS for purposes of employment authorization.

While USCIS cannot safely accommodate every interview being conducted if all applicants are required to bring an interpreter in person, as explained in this preamble, in these limited circumstances where there is advance knowledge of the unavailability of a contract interpreter and an applicant is able to locate a competent interpreter, USCIS may, within its discretion, accommodate the applicant's interpreter by following the same COVID-19 protocols in place at the time of interview that allow applicants and those necessary to participate in the interview to attend interviews in person safely. USCIS will continue to apply the COVID-19 protocols in place at the time of the interview, including relying on available technology to ensure that the officer, applicant, interpreter, witnesses, and legal representative sit in separate

rooms to fully and safely participate in the interview while maintaining social distancing.<sup>48</sup>

Interpreters attending appointments with applicants under these limited circumstances will also be expected to follow the USCIS Visitor Policy requiring face coverings, maintaining social distancing during screening and while in USCIS space, and other guidance regarding exposure to COVID-19.<sup>49</sup> This is consistent with current practices for an applicant who either does not speak a language on the GSA Schedule or elects to speak a language that is not on the GSA Schedule, and thus is required to bring his or her own interpreter to the interview who is fluent in English and the elected language (not on the GSA Schedule).

This rule's modification to 8 CFR 208.9(h)(1), giving USCIS discretion to allow asylum applicants to bring their own interpreter when a contract interpreter is unavailable will help advance the agency's mission to fairly adjudicate immigration benefits. By building in flexibility for USCIS when an interpreter fluent in a language included in the GSA Schedule will be unavailable at the time of an asylum interview, USCIS will be better positioned to leverage its resources. In practice this will involve asylum offices evaluating their office space capacity and available asylum staff on a continuous basis to schedule cases in a manner that is consistent with social distancing guidelines and other noted public safety measures. Because USCIS will not schedule more cases than capacity permits under the COVID-19 guidelines, exceptions made to the government-contract interpreter requirement under this temporary final rule should not result in increased exposure or individuals occupying the same physical space at a given time. These practices will also help address the recent emergence of the Delta variant, which as previously discussed, presents numerous challenges to resuming pre-COVID-19 operations, and which can be mitigated through the safety measures currently employed by USCIS.<sup>50</sup> USCIS will continue

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<sup>48</sup> See USCIS Response to COVID-19: Asylum Appointments, available at <https://www.uscis.gov/about-us/uscis-response-to-covid-19>.

<sup>49</sup> See USCIS Visitor Policy, available at <https://www.uscis.gov/about-us/uscis-visitor-policy>.

<sup>50</sup> See Delta Variant: What We Know About the Science, available at <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html> (last visited Aug. 31, 2021).

to employ the same space planning and scheduling mechanisms to factor in the limited cases where USCIS is unable to provide a contract interpreter. USCIS will therefore have more flexibility to adapt to operational demands by proactively addressing the needs of applicants who would otherwise remain un interviewed.

Given the unique nature of the pandemic and the multiple challenges it has presented in the context of USCIS operations, the agency has had to modify its policies and procedures to adapt. Through the original temporary final rule and the first extension, USCIS adapted its procedures to keep the workforce and public safe while also striving to serve the customer. USCIS has adapted in other ways by developing electronic workflows for conducting interviews and completing the adjudication, and by monitoring language trends and interpreter availability. This second extension with the modification for applicants to bring their own interpreter under certain circumstances, is in keeping with the original goals of the temporary final rule, and gives the agency an opportunity to more effectively meet the needs of individuals seeking protection.

DHS noted in the original temporary final rule and first extension that it would evaluate the public health concerns and resource allocations to determine whether to extend the rule. DHS has determined that extending this rule is necessary for public safety, and accordingly, DHS is extending this rule for 180 days unless it is further extended at a later date. This temporary rule continues to apply to all asylum interviews conducted by USCIS across the nation. USCIS has determined that an extension of 180 days is appropriate given that: (1) the pandemic is ongoing;<sup>51</sup> (2) several variants of the virus are circulating in the United States, with the highly contagious Delta variant as the dominant strain;<sup>52</sup> (3) while vaccines are widely available, data indicates a wide disparity in the percentages of fully vaccinated individuals by state, and fully vaccinated individuals continue to experience breakthrough SARS-CoV-2

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<sup>51</sup> See 86 FR 11599; 85 FR 15337; HHS, Renewal of Determination that a Public Health Emergency exists.

<sup>52</sup> CDC, Delta Variant: What We Know About the Science.

infections;<sup>53</sup> and (4) certain variables, including the reopening of schools and cold weather seasonal changes, are likely to cause an increase in COVID-19 infections.<sup>54</sup> Health experts are still learning how easily variants of the virus can be transmitted and how effectively the currently approved and authorized vaccines provide protection. Prior to the expiration of this extension to the temporary rule with modification, DHS will again evaluate the public health concerns and resource allocations to determine if another extension is appropriate to further the goals of promoting public safety. If necessary, DHS would publish any such extension via a rulemaking in the *Federal Register*.

#### **IV. Regulatory Requirements**

##### **A. Administrative Procedure Act (APA)**

DHS is issuing this extension, including the modification to allow, in USCIS' discretion, an applicant for asylum to provide an interpreter when a USCIS interpreter is unavailable, as a temporary final rule pursuant to the APA's "good cause" exception. 5 U.S.C. 553(b)(B). DHS may forgo notice-and-comment rulemaking and a delayed effective date because the APA provides an exception from those requirements 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); *see* 5 U.S.C. 553(d)(3).

The good cause exception for forgoing notice-and-comment rulemaking "excuses notice and comment in emergency situations, or where delay could result in serious harm." *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004). Although the good cause exception is "narrowly construed and only reluctantly countenanced," *Tenn. Gas Pipeline Co. v. FERC*, 969 F.2d 1141, 1144 (D.C. Cir 1992), DHS has appropriately invoked the exception in this case, for the reasons set forth in this temporary final rule. Additionally, on multiple occasions, agencies have relied

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<sup>53</sup> CDC, MMWR; CDC, COVID Data Tracker – COVID-19 Vaccinations in the United States.

<sup>54</sup> CDC, COVID-19 Forecasts: Cases; NIH, The role of seasonality in the spread of COVID-19 pandemic; Johns Hopkins Bloomberg School of Public Health, *Will There be a Fall 2021 Resurgence of COVID-19 in the U.S.?* (June 17, 2021), <https://publichealth.jhu.edu/2021/will-there-be-a-fall-2021-resurgence-of-covid-19-in-the-us>.



on this exception to promulgate both communicable disease-related<sup>55</sup> and immigration-related<sup>56</sup> interim rules, as well as extend such rules.<sup>57</sup>

DHS is publishing this second extension, with modification, as a temporary final rule because of the continuing COVID-19 crisis and incorporates into this extension with modification the discussion of good cause from the original and extension temporary rules. As discussed earlier in this preamble, on February 24, 2021, President Biden issued a notice on the continuation of the state of the National Emergency concerning the COVID-19 pandemic.<sup>58</sup> Effective July 20, 2021, the Secretary of Health and Human Services renewed the determination that “a public health emergency exists and has existed since January 27, 2020 nationwide.”<sup>59</sup>

As of September 9, 2021, there have been approximately 222,406,582 cases of COVID-19 identified globally, resulting in approximately 4,592,934 deaths; approximately 40,152,521 cases have been identified in the United States, with about 1,297,399 new cases being identified in the 7 days preceding September 5th, and approximately 646,131 reported deaths due to the

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<sup>55</sup> HHS Control of Communicable Diseases; Foreign Quarantine, 85 FR 7874 (Feb. 12, 2020) (interim final rule to enable the CDC “to require airlines to collect, and provide to CDC, certain data regarding passengers and crew arriving from foreign countries for the purposes of health education, treatment, prophylaxis, or other appropriate public health interventions, including travel restrictions”); Control of Communicable Diseases; Restrictions on African Rodents, Prairie Dogs, and Certain Other Animals, 68 FR 62353 (Nov. 4, 2003) (interim final rule to modify restrictions to “prevent the spread of monkeypox, a communicable disease, in the United States.”).

<sup>56</sup> *See, e.g.*, Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 04, 2016) (interim rule citing good cause to immediately require a passport and visa from certain H2-A Caribbean agricultural workers to avoid “an increase in applications for admission in bad faith by persons who would otherwise have been denied visas and are seeking to avoid the visa requirement and consular screening process during the period between the publication of a proposed and a final rule”); Suspending the 30-Day and Annual Interview Requirements From the Special Registration Process for Certain Nonimmigrants, 68 FR 67578, 67581 (Dec. 02, 2003) (interim rule claiming the good cause exception for suspending certain automatic registration requirements for nonimmigrants because “without [the] regulation approximately 82,532 aliens would be subject to 30-day or annual re-registration interviews” over a six-month period).

<sup>57</sup> *See, e.g.*, Temporary Changes to Requirements Affecting H-2A Nonimmigrants Due To the COVID-19 National Emergency: Partial Extension of Certain Flexibilities, 85 FR 51304 (Aug. 20, 2020) (temporary final rule extending April 20, 2020 temporary final rule); CDC, Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 86 FR 34010 (July 01, 2021) (extension order).

<sup>58</sup> 86 FR 11599.

<sup>59</sup> HHS, Renewal of Determination that a Public Health Emergency Exists (July 19, 2021), <https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVID-19July2021.aspx>; HHS, Renewal of Determination that a Public Health Emergency Exists (July 19, 2021); Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic; Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID-19) Outbreak.

disease.<sup>60</sup> In the week preceding September 5th, the United States was the country that reported the highest number of new cases, with a 38 percent increase.<sup>61</sup>

Additionally, at least four notable variants of the virus that causes COVID-19 have been reported in the United States, including the now predominant Delta variant.<sup>62</sup> Evidence suggests that these variants may spread faster and more easily than others and at least one variant may be associated with an increased risk of death.<sup>63</sup> Although vaccines are now widely accessible, there is wide disparity in the percentages of vaccinated individuals by state,<sup>64</sup> and experts still do not know the percentage needed to reach herd immunity, as well as how effective the vaccines are against new variants, and how long vaccines protect people.<sup>65</sup>

Ongoing research demonstrates that while there is high vaccine effectiveness, fully vaccinated individuals continue to experience breakthrough COVID-19 infections and may be either symptomatic or asymptomatic.<sup>66</sup> As of April 30, 2021, 10,262 SARS-CoV-2 breakthrough infections were reported from 46 U.S. states and territories.<sup>67</sup> This data is limited, however, because most breakthrough infections are voluntarily reported, and on May 1, 2021, CDC began tracking breakthrough infections only where a patient is hospitalized or dies.<sup>68</sup> As of August 30, 2021, CDC received reports from 49 U.S. states and territories of 12,908 patients with SARS-CoV-2 breakthrough infections who were hospitalized or died.<sup>69</sup>

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<sup>60</sup> WHO, WHO Coronavirus (COVID-19) Dashboard; WHO, Weekly Epidemiological Update.

<sup>61</sup> WHO, WHO Coronavirus (COVID-19) Dashboard.

<sup>62</sup> CDC, Variants of the Virus.

<sup>63</sup> CDC, Variants of the Virus.

<sup>64</sup> CDC, COVID Date Tracker.

<sup>65</sup> CDC, Key Things to Know About COVID-19 Vaccines.

<sup>66</sup> CDC, MMWR.

<sup>67</sup> Id.

<sup>68</sup> Id.

<sup>69</sup> CDC, COVID-19 Vaccine Breakthrough Case Investigation and Reporting.

The provision allowing an applicant for asylum, in USCIS' discretion, to provide an interpreter when a USCIS interpreter is unavailable, is a measure that allows USCIS and the applicant for asylum to proceed with the interview under the same COVID-19 mitigation procedures that are employed when accommodating other participants in the asylum interview. As previously discussed in Section III of the preamble, the COVID-19 pandemic is a rapidly changing situation, and it is difficult to anticipate how the disruptions caused by the crisis will manifest themselves. Given the unique nature of the pandemic and the multiple challenges it has presented in the context of USCIS operations, the agency has had to modify its policies and procedures to adapt to the COVID-19 public health emergency. USCIS expects the provision to allow USCIS to address this rapidly changing situation caused by the COVID-19 pandemic with more flexibility to best respond to the continuing stream of new asylum applications and the need to adjudicate them promptly. As stated previously, competing demands in other caseloads, contractor availability, and an increased demand for certain languages, have impacted USCIS' ability to consistently provide contract interpreters to applicants at the time of the interview. Throughout the COVID-19 pandemic, USCIS has continued to experience an increase in the affirmative caseload, which, in turn, has created challenges in accommodating the interpretation needs of asylum applicants. Surges in other case types have also required USCIS to divert contract interpreter resources away from affirmative asylum. These increases necessitate an immediate change to address a growing and more diverse population of applicants requesting asylum and needing interpreters.

As discussed in Section III of the preamble, an applicant who either does not speak or elects to speak a language not on the GSA Schedule is required to bring his or her own interpreter to the interview who is fluent in English and the elected language not on the GSA Schedule. Allowing an asylum applicant, in USCIS' discretion, to provide an interpreter when a USCIS interpreter is unavailable, is the equivalent to and is consistent with the practice of allowing an applicant to do the same when a USCIS interpreter is available. It is also

unnecessary to seek comment on the change this temporary rule makes to now allow, in USCIS' discretion, an asylum applicant to provide an interpreter when a USCIS interpreter is unavailable, because the obligation of the applicant will not have changed, the applicant will benefit from being allowed to bring their own interpreter, and the applicant would be in the same position they would have been without this action.

For the reasons stated, including the need to be responsive to the operational demands and challenges caused by the ongoing COVID-19 pandemic, DHS believes it has good cause to determine that ordinary notice and comment procedure is impracticable for this temporary action, including the modification, and that moving expeditiously to make this change is in the best interest of the public.

Based on the continuing health emergency, DHS has renewed mask guidelines and other mitigation measures, and concluded that the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3) apply to this temporary final rule extension with modification. Delaying implementation of this rule until the conclusion of notice-and-comment procedures and the 30-day delayed effective date would be impracticable and contrary to the public interest due to the need to continue agency operations, while continuing to mitigate the risks associated with the spread of COVID-19. Additionally, certain variables, including the reopening of schools, cold weather seasonal changes, and the annual influenza, are likely to cause an increase in infections.

As of August 8, 2021, USCIS had 406,801 asylum applications, on behalf of 638,893 noncitizens, pending final adjudication. Over 94 percent of these pending applications are awaiting an interview by an asylum officer. The USCIS backlog will continue to increase at a faster pace if USCIS is unable to safely and efficiently conduct asylum interviews.<sup>70</sup>

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<sup>70</sup> DHS recognizes that the backlog has increased since the original temporary final rule was extended; however, if all applicants were required to bring their own interpreter as was done pre-COVID-19, the interpreter would generally have to sit in a separate office during the interview to mitigate potential COVID-19 exposure, thereby reducing available office space to schedule additional interviews in a safe manner. This would likely increase the backlog at a faster rate than under this rule.

This temporary final rule extension with modification is promulgated as a response to COVID-19 and emerging variants. It is temporary, limited in application to only those asylum applicants who cannot proceed with the interview in English, and narrowly tailored to mitigate the spread of COVID-19. To not extend such a measure could cause serious and far-reaching public safety and health effects.

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking.

**C. Unfunded Mandates Reform Act of 1995**

This temporary final rule extension with modification 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.

**D. Congressional Review Act**

OMB's Office of Information and Regulatory Affairs has determined that this action is not a major rule as defined by Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act). 5 U.S.C. 804(2). 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.

**E. Executive Order 12866 Executive Order 13563**

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule is designated a significant regulatory action under E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation. DHS, however, is proceeding under the emergency provision of Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously during the current public health emergency.

This action will continue to help asylum applicants proceed with their interviews in a safe manner, while protecting agency staff. As a result of the first temporary rule extension, between March 10, 2021, and August 8, 2021, USCIS conducted 9,136 asylum interviews, with interpreters available telephonically. This second extension of the temporary rule with modification is not expected to result in any additional costs to the government. In addition, even with the provision that would permit, at USCIS' discretion, an applicant for asylum to provide an interpreter when a contract interpreter is unavailable, there are no additional costs to the applicant relative to what would be the requirements if the earlier temporary final rule (TFR) were not extended. As discussed previously in Section III of the preamble, in those limited circumstances where a USCIS interpreter is unavailable and USCIS permits the applicant to provide their own interpreter, the interpreter will be required to follow USCIS COVID-19 protocols in place at the time of the interview, including, but not limited to, sitting in a separate office. Following those COVID-19 protocols will not result in any additional costs for either the applicant or the interpreter.

As previously explained, the contract interpreters will be provided at no cost to the applicant. USCIS already has an existing contract to provide telephonic interpretation and monitoring in interviews for all of its case types. USCIS has provided monitors for many years.

Almost all interviews that utilize a USCIS provided interpreter after this rulemaking would have had a contracted monitor under the status quo. As the cost of monitoring and interpretation are identical under the contract and monitors will no longer be needed for these contract interpreter interviews, the extension of this portion of this rule is projected to be cost neutral or negligible as USCIS is already paying for these services even without this rule.

USCIS anticipates that there would only be limited circumstances where a contract interpreter would be unavailable. As previously discussed in Section III of the preamble, in those limited circumstances where a contract interpreter is unavailable, USCIS will either reschedule the interview and attribute the interview delay to USCIS for the purposes of employment authorization pursuant to 8 CFR 208.7, or USCIS may, in its discretion, allow the applicant to provide an interpreter. In such cases, the applicant would be in the same position they would have been without this action.

DHS recognizes there are both quantitative and qualitative benefits that could be realized by providing an applicant for asylum the opportunity to bring their own interpreter when a contract interpreter is unavailable, such as the costs avoided that would be incurred through rescheduling if a contract interpreter is unavailable – both for the applicant and USCIS, and the overall positive effect on applicants of having their asylum application timely adjudicated. Once this rule is no longer in effect, asylum applicants unable to proceed with an interview before a USCIS asylum officer in English will again be required to provide their own interpreters under 8 CFR 208.9(g).

**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, it is determined that this rule does 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 propose 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, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320. As this action would only span 180 days, USCIS does not anticipate a need to update the Form I-589, Application for Asylum and for Withholding of Removal, despite the existing language on the form instructions regarding interpreters, because it will be primarily rescheduling interviews that were cancelled due to COVID-19. USCIS will post updates on its I-589 website, <https://www.uscis.gov/i-589>, and other asylum and relevant web pages regarding the new interview requirements in this regulation, as well as provide personal notice to applicants via the interview notices issued to applicants prior to their interview.

**List of Subjects in 8 CFR Part 208**

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

Accordingly, for the reasons set forth in the preamble, the Secretary of Homeland Security amends 8 CFR part 208 as follows:

**PART 208 – PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL**

1. The authority citation for part 208 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110-229; 8 CFR part 2; Pub. L. 115-218.

2. Effective from September 20, 2021, through [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 208.9 by revising paragraphs (h) introductory text and (h)(1)(i) to read as follows:



**§208.9 Procedure for interview before an asylum officer.**

\* \* \* \* \*

(h) *Asylum applicant interpreters.* For asylum interviews conducted between September 21, 2021, through [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]:

(1) \*\*\*

(i) If a USCIS interpreter is unavailable, USCIS will either reschedule the interview and attribute the interview delay to USCIS for the purposes of employment authorization pursuant to § 208.7, or USCIS may, in its discretion, allow the applicant to provide an interpreter.

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Alejandro Mayorkas,  
Secretary,  
U.S. Department of Homeland Security.

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