



DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 103

[DHS Docket No. ICEB-2021-0015]

RIN 1653-AA85

Immigration Bond Notifications

AGENCY: U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS).

ACTION: Final Rule.

SUMMARY: On August 8, 2023, DHS issued an interim final rule which amended the regulations to authorize ICE to serve bond-related notices to obligors electronically. The rule allowed DHS to electronically serve demand and other immigration bond notices for delivery, order of supervision, or voluntary departure bonds to obligors who consent to electronic service. DHS is now issuing this final rule that introduces no substantive changes from the interim final rule.

DATES: The effective date of this final rule is [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Sharon Hageman, Deputy Assistant Director, Office of Regulatory Affairs and Policy, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street SW, Washington, D.C., 20536. Telephone 202-732-6960 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Purpose of the Regulatory Action

The Department of Homeland Security (DHS) published an interim final rule (IFR) on August 8, 2023,¹ that established that DHS may electronically serve demand notices, and other bond notices for delivery, order of supervision, or voluntary departure bonds for obligors who consent to electronic service. *See* 8 CFR 103.6(g) and (h). This final rule adopts the IFR provisions in 8 CFR 103.6(g) and (h) to electronically serve bond-related notices to obligors who consent to electronic service. This final rule also amends typographical errors, updates terminology for accuracy, and restructures regulatory text for clarity and consistency in 8 CFR 103.6(g) and (h). This final rule introduces no substantive changes from the IFR.

B. Legal Authority

The Homeland Security Act of 2002, Pub. L. No. 107-296, section 102, 116 Stat. 2135 (Nov. 25, 2002), 6 U.S.C. 112, and the Immigration and Nationality Act of 1952 (INA), as amended, section 103(a)(1), 8 U.S.C. 1103(a)(1), charge the Secretary of DHS (the Secretary) with administration and enforcement of the immigration and naturalization laws. The Secretary promulgates this final rule under the broad authority to administer DHS, and the authorities provided under the Homeland Security Act of 2002, the immigration and nationality laws, and other delegated authority.

Over the past twenty years, Congress and the Executive Branch have promoted the use of electronic transactions and electronic records when feasible instead of relying solely upon in-person or paper transactions. Under the Government Paperwork Elimination Act (GPEA), Pub. L. No. 105-277, tit. XVII, section 1703, 112 Stat. 2681,

¹ Immigration Bond Notifications, 88 FR 53358 (Aug. 8, 2023).

2681-749 (Oct. 21, 1998), 44 U.S.C. 3504 note, federal agencies are required, when practicable, to provide the option of electronic maintenance, submission, or disclosure of information as a substitute for paper transactions. More recently, on June 28, 2019, the Office of Management and Budget (OMB) and the National Archives and Records Administration (NARA) jointly issued a memorandum that encouraged agencies to consider cost-effective opportunities to transition related business processes to an electronic environment.² Offering electronic processes in place of paper or in-person transactions has the benefits of making it “easier for the public to connect with the Federal Government, and apply for and receive services, improving customer satisfaction. Electronic records . . . reduce processing times and decrease the probability of lost or missing information . . . [and] . . . greatly improve agencies’ ability to provide public access to Federal records, promoting transparency and accountability.” Executive Office of the President, *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations*, at 100 (June 2018). The GPEA establishes the means for the use and acceptance of electronic signatures (e-signatures). This rule will enhance the ability of U.S. Immigration and Customs Enforcement (ICE) to fully implement the GPEA.

The Electronic Signatures in Global and National Commerce Act (E-SIGN Act), 15 U.S.C. 7001-7031, effective for most purposes on October 1, 2000, allows electronic records and signatures to be given the same effect as paper and ink documents. *See* 15 U.S.C. 7001(a). The E-SIGN Act provides “legal parity” for electronic records with paper records, when the procedures an agency adopts for the creation, maintenance, and retention of electronic records comply with the Federal Records Act and NARA

² Office of Management and Budget, Transition to Electronic Records (OMB/NARA M-19-21) (June 28, 2019), <https://www.archives.gov/files/records-mgmt/policy/m-19-21-transition-to-federal-records.pdf>.

guidelines governing digitization of records.³ Except for records maintained by government agencies (other than contracts to which it is a party), the E-SIGN Act does not require any person to agree to use or accept electronic records. *Id.* sec. 7001(b)(2); *see also* 12 CFR 609.910(a) (noting that under the E-SIGN Act, “E-commerce is optional; all parties to a legally valid transaction must agree to the electronic use before it can be used”).⁴ ICE intends to comply with this requirement by obtaining consent from immigration bond sureties and obligors to send electronic notices.

The Secretary is charged with the administration and enforcement of laws relating to the immigration and naturalization of noncitizens and “shall . . . prescribe such forms of bond” as deemed necessary for carrying out the authority under the INA. *See* INA 103(a)(1), (3), 8 U.S.C. 1103(a)(1), (3). Additionally, where a noncitizen is arrested on a warrant and detained pending a decision on removal from the United States, the Secretary may be authorized to “release [the noncitizen] on . . . (A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by [the Secretary of Homeland Security].” INA 236(a)(2), 8 U.S.C. 1226(a)(2). Further, the Secretary “at any time may revoke a bond” authorized under INA 236(a)(2), re-arrest the noncitizen, and detain them. INA 236(b), 8 U.S.C. 1226(b). Under the terms and conditions provided in Form I-352, *Immigration Bond*, “Federal law shall apply to the interpretation of the bond.” ICE and the Department of Justice (DOJ) approve several types of immigration

³ Robert A. Wittie & Jane K. Winn, *Electronic Records and Signatures under the Federal E-Sign Legislation and the UETA*, 56 Bus. Law. 293, 314 (2000).

⁴The provisions of the E-SIGN Act are generally inapplicable to federal government agencies. *See* 15 U.S.C. 7003(b)(1) (“The provisions of [E-SIGN Act] shall not apply to-- (1) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;”). The Office of Management and Budget (OMB) has concluded that based on the legislative history, Congress explicitly excluded governmental transactions from coverage under the E-SIGN Act. *See* OMB Guidance on Implementing the Electronic Signatures in Global and National Commerce Act, M-00-15, Attachment at p.3., (September 2000), available at Memoranda 00-10 -- OMB Procedures and Guidance on Implementing the Government. The White House (archives.gov) and ESIGN guidance.PDF (archives.gov), updated by OMB M-04-04, E-Authentication Guidance for Federal Agencies (Dec. 16, 2003). Accordingly, although the electronic consent complies with E-SIGN requirements, such compliance is not required of DHS.

bonds such as delivery bonds, 8 CFR 236.1(c)(10); voluntary departure bonds, 8 CFR 240.25(b), 8 CFR 1240.26(b)(3)(i), (c)(3)(i); and order of supervision bonds, 8 CFR 241.5(b).

With respect to cash bonds, the Secretary delegated to the ICE Director the authority to “issue and execute detainers and warrants of arrest or removal, detain aliens, release aliens on bond and other appropriate conditions as provided by law. . . .”⁵ With respect to surety bonds, the Secretary delegated to the ICE Director the “[a]uthority to approve surety bonds issued pursuant to the immigration laws, to determine whether such surety bonds have been breached, and to take appropriate action to protect the interests of the United States with respect to such surety bonds.”⁶

C. Background

ICE’s mission is to protect America through criminal investigations and enforcing immigration laws to preserve national security and public safety.⁷ ICE secures the nation’s borders by enforcing more than 400 federal statutes and issuing a wide range of notices, decisions, and other documents to entities including universities, businesses, courts, and noncitizens.⁸ Generally, Department of Homeland Security (DHS) regulations authorize ICE to serve notices, decisions, and other documents in person or through the U.S. Postal Service. DHS regulations distinguish between “personal” and “routine” service of notices, decisions, and other documents. *See* 8 CFR 103.8(a).

⁵ DHS Delegation No. 7030.2, *Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement*, ¶ 2(T) (signed Nov. 13, 2004) (effective Mar. 1, 2003), https://www.ice.gov/doclib/foia/policy/7030.2_DelegationAuthority_03.01.2003.pdf.

⁶ DHS Delegation No. 7030.2, *supra* note 4, ¶ 2(U). In this context, “surety bonds” is used in the same manner as it is used in 8 CFR 103.6(b)(1) to include immigration bonds underwritten by a surety company or posted by an entity or individual who deposits cash equal to the face amount of the bond as security for performance.

⁷ *See* U.S. Immigration and Customs Enforcement, <https://www.ice.gov/mission> (last visited Nov. 14, 2024).

⁸ The preamble of this Final Rule uses “noncitizen” as equivalent to the statutory term “alien.” *See Barton v. Barr*, 590 U.S. 222, 226 n.2 (2020) (quoting 8 U.S.C. § 1101(a)(3)).

Current regulations define personal service as personal delivery; delivery at a person's home or usual residence by leaving a copy with a person of suitable age and discretion; delivery at an attorney's or corporate office by leaving a copy with a person in charge; mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his or her last known address; or notifying the party by electronic mail and posting the decision to the party's account with U.S. Citizenship and Immigration Services (USCIS) if so requested by the party. 8 CFR 103.8(a)(2); *cf.* 8 CFR 103.8(a)(3) (providing additional methods for "personal service involving notices of intention to fine"). Personal service of initiating notice and of notice of any decision is required in any proceeding initiated by DHS that has a proposed adverse effect on the recipient, except as provided in section 239 of the INA. 8 CFR 103.8(c)(1). If the recipient is confined to a penal or mental institution or hospital, or if the recipient is a minor under the age of 14 or mentally incompetent, personal service to additional entities or individuals may be required. 8 CFR 103.8(c)(1) and (2).

When personal service is not required, the regulations allow routine service to be used. *See* 8 CFR 103.8(d). Routine service includes mailing a notice by ordinary mail addressed to the affected party or the party's attorney or representative at his or her last known address or notifying the party by electronic mail and posting the decision to the party's USCIS account if so requested by the party. 8 CFR 103.8(a)(1); *see also* 8 CFR Part 292 (Representation and Appearances); and 8 CFR Part 1292 (Representation and Appearances).

D. Immigration Bonds

An immigration bond is a formal written guarantee by an obligor (an individual, entity, or surety company) posted as security for the amount noted on the face of the immigration bond. The bond assures ICE that the obligor will perform the obligations for the type of bond indicated on Form I-352, *Immigration Bond*. The posting of immigration

bonds can occur with the deposit of cash in the full principal amount of the bond, known as “cash bonds,”⁹ or where a surety company and its agent agree to pay the amount of the bond if there is a substantial violation of the bond’s terms and conditions, known as a “surety bond.” ICE approved 20,494 immigration bonds in 2023,¹⁰ of which 15,323 (75 percent) were cash bonds and 5,171 (25 percent) were surety bonds. If the noncitizen performs the conditions set forth in the bond, the bond will be cancelled. If the noncitizen substantially violates the conditions of the bond, the bond will be considered breached.

See 8 CFR 103.6(e).

An immigration bond may be posted by a surety company or a cash bond obligor.¹¹ Surety bonds are bonds underwritten by a surety company certified to issue bonds on behalf of the federal government. *See generally 8 CFR 103.6(b)* (identifying the parties that may serve as sureties on immigration bonds). Under the terms of the bond contract, the surety is the obligor, the agent that posts a bond on behalf of a surety is a co-obligor, the noncitizen (on whose behalf the bond is issued) is the principal, and ICE is the beneficiary of all bonds it authorizes. An acceptable surety is either a company that appears on the current Department of the Treasury Circular 570 as a company holding a certificate of authority to underwrite federal bonds pursuant to 31 U.S.C. 9304-9308 or is an entity or individual who deposits the amount of the bond with ICE. *See 8 CFR 103.6(b)(1).* The surety (obligor) and its agent (co-obligor) guarantee the performance and fulfillment of the noncitizen’s duties as set forth in the bond form. *See Form I-352, at 1 (rev. 11/23).*¹²

⁹ An immigration bond secured by a cash deposit posted by an individual, law firm, non-profit organization, or other entity.

¹⁰ Immigration Bond Statistics maintained by ICE’s Bonds Branch, Financial Service Center-Burlington, as of January 17, 2024.

¹¹ Provided that the surety company or cash bond obligor satisfies all the requisite steps for ICE to accept the bond payment.

¹² Department of Homeland Security, Immigration and Customs Enforcement (Nov. 2023), <https://www.ice.dhs.gov/doclib/forms/i352.pdf>.

ICE approves and issues three different types of bonds.

- **Delivery Bonds:** To release a noncitizen from DHS custody while removal proceedings are pending.
- **Voluntary Departure Bonds:** To ensure a noncitizen who is granted voluntary departure leaves the United States on or before the voluntary departure date set by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA).
- **Order of Supervision Bonds:** To ensure noncitizens released on an order of supervision comply with the material terms of the supervised release.

Out of the 20,494 immigration bonds that ICE issued in 2023, 91 percent were delivery bonds, 9 percent were voluntary departure bonds, and fewer than 1 percent were order of supervision bonds.¹³

To trigger an obligor's performance, ICE issues a demand notice, Form I-340, *Notice To Obligor To Deliver Alien*. DHS regulations authorize ICE to use personal service as defined by 8 CFR 103.8 to deliver demand notices issued on delivery bonds so ICE can confirm receipt (the date the obligor receives the demand notice). ICE confirms receipt of demand notices (proof of service) issued on delivery bonds to confirm that timely notice was provided to an obligor of their duty to surrender a noncitizen at an ICE office on the designated date. For breach notices,¹⁴ cancellation notices, and notices of bond breach reconsideration decisions, DHS regulations authorize ICE to use routine mail service to

¹³ Immigration Bond Statistics maintained by ICE's Bond Management Unit, Non-Detained Management Division, Enforcement and Removal Operations, as of January 17, 2024.

¹⁴ Immigration bonds are contracts subject to a regulatory scheme with the result that ICE bond breach determinations are reviewed by a court under the arbitrary and capricious standard of review set forth in the Administrative Procedure Act (APA), 5 U.S.C. 706(2)(A). *See United States v. Gonzales & Gonzales Bonds & Ins. Agency, Inc.*, 728 F. Supp. 2d 1077, 1087-92 (N.D. Cal. 2010); *Safety Nat'l Cas. Corp. v. DHS*, 711 F. Supp. 2d 697, 701 & 708-09 (S.D. Tex. 2008), *rev'd in part on other grounds*, *AAA Bonding Agency Inc. v. DHS*, 447 F. App'x 603 (5th Cir. 2011); *United States v. Minnesota Trust Co.*, 59 F.3d 87, 90 (8th Cir. 1995).

the obligor's last known address. 8 CFR 103.8(a)(1). ICE uses routine mail service as well to issue invoices and demand letters to surety companies and their agents, either by ordinary mail or a mail method that allows ICE to track and confirm delivery, or by email (electronically) with the co-obligors' consent.

If the noncitizen performs the conditions set forth in the bond, the bond will be cancelled. 8 CFR 103.6(c). ICE will send a demand notice to notify the obligor to deliver the noncitizen. 8 CFR 103.6(g). If the noncitizen substantially violates the conditions of the bond, the bond will be considered breached. 8 CFR 103.6(e).

Depending on the type of bond and action in accordance with the bond, ICE may issue certain bond notices. The IFR and this final rule currently apply to the following circumstances¹⁵ when ICE may serve a bond notice electronically to obligors:

1. *Delivery Demand.* Form I-340, *Notice to Obligor to Deliver Alien*, instructs the bond obligor to surrender the noncitizen to an ICE Office or to an immigration court on a designated date.¹⁶

2. *Breach Notice.* Form I-323, *Notice – Immigration Bond Breached*, informs the obligor that a condition of the bond was substantially violated, notating the date the bond was breached, and apprises the obligor of the right to file an administrative appeal of the breach determination.¹⁷

3. *Cancellation Notice.* Form I-391, *Notice – Immigration Bond Cancelled*, informs the obligor that substantial compliance with the conditions of the bond was performed and that, for cash bonds, the deposit will be refunded.¹⁸

¹⁵ However, the list is non-exhaustive in the sense that more types of notices could be subject to electronic notice in the future. The rule does not limit electronic service to these four types of bond notices.

¹⁶ Form I-340 (rev. Dec. 2023).

¹⁷ Form I-323 (rev. Oct. 2020). See 8 CFR 103.6(e).

¹⁸ Form I-391 (rev. Mar. 2023).

4. Bond Breach Reconsideration. Form 71-042, Notice of Bond Breach

Reconsideration Decision, rescinds a bond breach issued in error and informs the obligor either that the bond has been reinstated or cancelled.¹⁹ For surety bonds that have been breached, ICE issues an invoice with information about the government's collection processes to satisfy the requirement to notify the co-obligors of the demand for payment under 31 CFR 901.2. ICE may issue a demand letter to the co-obligors summarizing the facts supporting the breach determination and attaching documents that support the determination that a debt is owed.

In April 2023, ICE launched the Cash Electronic Bonds Online System (CeBONDS), a web-based system that provides the public an automated, secure online capability to verify bond information and post cash immigration bonds for detained noncitizens. CeBONDS also provides the capability for ICE to serve electronic notices to cash bond obligors who consent to receive bond notices electronically. CeBONDS has allowed obligors to initiate and process immigration bonds online without having to visit an ICE office in person, making the process more convenient for the public. Currently, the electronic service capability is being further developed and finalized, and the system has not electronically served bond notices to obligors yet.

E. Interim Final Rule

On August 8, 2023, DHS published the IFR, which authorized ICE to serve bond-related notices electronically to obligors who consent to electronic delivery of service.²⁰ DHS received 37 public comments before the close of the comment period. Most of the comments received do not focus on the limited scope of the rule, which only authorizes ICE to serve bond related notices electronically to consenting recipients. Rather,

¹⁹ Form 71-042 (rev. Jan. 2013).

²⁰ Immigration Bond Notification, 88 FR 53358 (Aug. 08, 2023); 8 CFR 103.6(g)-(h).

commenters expressed opposition to ICE's CeBONDS, primarily in the context of confirming bond information and posting payments electronically, and voiced concerns about the system's reliability and accessibility. DHS considered all public comments before issuing this final rule. A discussion of the public comments and responses follows later in this preamble.

F. Changes from the Interim Final Rule

The IFR amended regulations to allow ICE to serve bond-related notices (such as Form I-340, Form I-391, Form 71-042, or Form I-323) electronically to obligors who consent to electronic delivery of service; these notices may pertain to delivery, order of supervision, or voluntary departure immigration bonds, such as bond breach or cancellations, and other immigration bond related notices. 8 CFR 103.6(g)-(h). As discussed in the comment and response sections below in this final rule, DHS has considered the input provided by commenters in response to the IFR. The changes from the IFR amend typographical errors, update terminology for accuracy, and restructure regulatory text for clarity and consistency in 8 CFR 103.6(g) and 8 CFR 103.6(h). This final rule introduces no substantive changes.

Technical and Clarifying Changes

In this final rule, DHS is updating the terms "notice" and "notification," "receipt" to "proof of service," and "obligor" to "bond obligor." DHS is updating "notification" to "notice," to clarify the difference between the two. While the IFR used the terms "notification" and "notice" interchangeably, this final rule provides clarity and differentiation between the terms. "Notification" refers to the email that alerts the obligor to log into the CeBONDS system to view the bond notice. Notifications do not include any substantive or personal information. "Notice" refers to the forms related to bonds that are issued and served by ICE via CeBONDS. Opening the notice in the ICE bond system

will constitute proof of service. Similarly, “receipt” is updated to “proof of service” which better describes when an obligor opens a notice in CeBONDS.

II. Discussion of Public Comments on the Interim Final Rule

A. Summary of Public Comments

DHS received 37 public comments from a variety of persons and entities, including businesses, nonprofits, advocacy organizations, and individual members of the public. DHS reviewed all the public comments received in response to the IFR and addresses those comments in this final rule. Commenters primarily expressed concern about CeBONDS’s technical issues, processing times, and potential implications on a noncitizen’s liberty. DHS addresses these issues in more detail below. DHS reiterates that receiving bond-related notices electronically is entirely voluntary and ICE will continue to send notices by mail if ICE cannot confirm proof of service.

Several comments are concerned with technical issues related to posting bond payments electronically and concerns on whether the in-person payment option would remain available based on the promulgation of the IFR. The IFR and this final rule authorizes ICE to electronically serve immigration bond notices after a noncitizen has been released from custody following a bond payment by the obligor.²¹ This final rule does not change the obligor’s option to post bonds in-person, nor the requirements of the obligor as listed in Form I-352.

Some commenters requested additional time for the public to comment. DHS reviewed all the timely-filed public comments received in response to the IFR and addressed relevant comments in this final rule, grouped by subject. DHS received several comments on subjects unrelated to electronic bond notices that are outside the scope of

²¹ In instances where the noncitizen has been granted voluntary departure by an IJ or the BIA, a noncitizen may not necessarily be in detention and may be posting bond to satisfy the requirements for the relief.

the IFR. DHS has not individually responded to these comments but has summarized out of scope comments and provided a general response.

B. Comments Expressing Support

Comment: Commenters expressed their appreciation for DHS's efforts to improve the efficiency of the immigration bond process by modernizing the bond payment system. One commenter stated, “[i]f the system in this interim rulemaking helps build and promote a fair and efficient immigration process through equitable and impartial monitoring and enforcement it would be beneficial to the public.” This commenter recommended that this rulemaking should be considered for approval once the agency has reviewed all the public comments received.

Response: DHS appreciates the support from the commenters. DHS seeks to make it easier for the public to connect with ICE and improve customer satisfaction. Authorizing ICE to serve notices electronically to consenting obligors may reduce processing times and decrease the probability of lost or missing information. Specifically, serving electronic immigration bond notices will likely increase efficiency and reduce the cost of mail delivery by providing electronic transmission of bond notices. DHS appreciates these commenters' support for the IFR and did not make any changes in this final rule based on the comments.

C. Comments Expressing Opposition

Comment: The majority of commenters expressed general opposition to the rule, including some comments that were outside the scope of this rule. Some commenters stated that the CeBONDS system is inaccessible, dysfunctional, and inconsistently implemented across ICE facilities. Other commenters stated the rule imposes various hurdles to using CeBONDS and that the lack of accessibility and transparency of CeBONDS hinders the effectiveness of the system. Commenters stated that CeBONDS needs to be user friendly, accessible, simple, and transparent. Commenters suggested

DHS narrow the issue of notifications until CeBONDS accessibility and dysfunctional issues are addressed or defer the rule, so the system does not further perpetuate these challenges.

Response: The IFR did not implement CeBONDS. Rather, the rule allows ICE to serve bond notices (demand notices, bond breach, bond cancellation, and other bond notices) electronically to obligors who consent to receive electronic service, which is currently one of many functions of CeBONDS. Electronic service may reduce burdens, cost, and increase convenience to the public. Electronic notices provide expedited delivery and improve recordkeeping by tracking when notifications are sent and read. ICE will continue to make improvements to CeBONDS to decrease any technical issues experienced by users.

D. Administrative Procedure Act (APA)

Comment: Commenters stated ICE failed to provide timely and consistent information on its intent to fully transition to CeBONDS prior to implementing the rule.²² Commenters pointed out that the IFR stated “ICE ERO is currently developing CeBONDS.” *See* 88 FR at 53360. One commenter stated that ICE did not provide the public with sufficient notice and an opportunity to comment by setting the same date for the rule’s effective date and the deadline for public comment. The commenter continued by stating this does not align with the APA which “typically requires agencies to give the public [g]eneral notice of [a] proposed rulemaking by publication in the Federal Register, and then to provide interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments regarding the proposed rule.”²³

²² *See* 5 U.S.C. 553(b)–(c); *see also*, e.g., *Pickus v. U.S. Bd. of Parole*, 507 F.2d 1107, 1113 (D.C. Cir. 1974) (inapplicability of notice-and-comment requirement to agency actions “‘relating to practice or procedure’ means technical regulation of the form of agency action and proceedings . . . [and] should not be deemed to include any action which goes beyond formality and substantially affects the rights of those over whom the agency exercises authority”).

²³ *Dep’t of Educ. v. Brown*, 600 U.S. 551, 557–58 (2023).

Numerous commenters requested DHS provide more time for the public to review and comment on the rule and its objectives, and then convene a public hearing.

Response: The IFR and this final rule did not implement CeBONDS. This rule only authorizes an additional optional procedure for ICE to serve bond related notices (demand notices, bond breach, bond cancellation, and other bond notices) to obligors who consent to receive those notices electronically. *See* 8 CFR 103.6(g)-(h). Neither DHS nor ICE are removing or limiting any of the current methods of service found in 8 CFR 103.8(a)(1) or (2). For these reasons, DHS believes that these changes are procedural in nature, improve the effectiveness and efficiency of agency operations, and do not alter substantive rights. Therefore, because the IFR and this final rule are procedural, notice and opportunity for public comment are not required by the APA. *See* 5 U.S.C. 553(b)(A). DHS nevertheless invited the public to comment on the IFR and considered all timely-filed comments submitted during the 30-day public comment period.

DHS believes the 30-day comment period was sufficient to allow for meaningful public input as evidenced by the 37 timely-filed public comments received. The IFR stated that “[c]omments providing the most assistance to DHS will reference a specific portion of the IFR, explain the reason for any recommended change, and include the data, information, or authority that supports the recommended change.” Commenters generally did not explain in their submissions what additional issues they would raise during a longer comment period or what issues would be deliberated during a public hearing after a longer comment period, but the number of comments—as well as their breadth—reflects an adequate consideration of issues during the comment period. Additionally, commenters primarily focused on the CeBONDS system, its capability and functionality, rather than the actual regulatory amendments on electronic service. In short, there is no indication that the comment period was insufficient.

Notably, the APA does not require a specific comment period length, *see* 5 U.S.C. 553(b), (c), and although Executive Orders 12866 and 13563 recommend a comment period of at least 60 days, a 60-day period is not required. DHS is not aware of any case law holding that a 30-day comment period is categorically insufficient. Indeed, some courts have found 30 days to be a reasonable comment period length. For example, the D.C. Circuit has stated that, although a 30-day period is often the “shortest” period that will satisfy the APA, such a period is generally “sufficient for interested persons to meaningfully review a proposed rule and provide informed comment,” even when “substantial rule changes are proposed.” *Nat'l Lifeline Ass'n v. FCC*, 921 F.3d 1102, 1117 (D.C. Cir. 2019) (citing *Petry v. Block*, 737 F.2d 1193, 1201 (D.C. Cir. 1984)). Here, because the IFR did not require a public comment period under the APA and expanded service options for obligors, DHS believes the 30-day comment period was sufficient for interested persons to meaningfully review the rule and provide informed comment.

E. Privacy

Comment: Some commenters stated their preference to pay bonds in person and receive bond notices via mail because they are concerned about the security of their personal information. One commenter stated ICE has not published a Privacy Impact Assessment (PIA) to address how obligors’ information entered into CeBONDS will be protected. The commenter highlighted ICE website’s claim that it had “initiate[d] the Bonds Management Program PIA in January 2023.”²⁴ However, the commenter was unable to locate the PIA information and assumes that ICE has not conducted a stand-alone PIA for CeBONDS. Further, the commenter stated that the documents ICE claims

²⁴ U.S. Immigration and Customs Enforcement, *Post a Bond*, <https://www.ice.gov/detain/detention-management/bonds> (last visited Sept. 6, 2023).

to have updated regarding privacy risks fail to indicate such updates. The commenter asserts the public has not been informed about the privacy impact of ICE's collection of information from obligors and ICE's statements about the updates are misleading.

Response: Commenters' comments are focused on the obligor's personal information entered in CeBONDS rather than the purpose of the rule, which allows ICE to serve bond-related notices to obligors who consent to receive those notices electronically. *See* 8 CFR 103.6(g)-(h).

Prior to the deployment of CeBONDS in 2023, the Bond Management Information System/Web Version (BMIS Web)²⁵ and Bonds Online System (eBONDS) PIA were updated to assess the privacy risks associated with CeBONDS and to document ICE's privacy protections for the collection and maintenance of information on noncitizens and obligors involved in the processing and posting of immigration bonds.²⁶ Separately, due to the expansion of online bond posting capabilities, ICE initiated the Bonds Management Program PIA in January 2023 and will provide the PIA to the public once it is available.²⁷

F. Consent to Electronic Service

Comment: Commenters stated their confusion regarding the option to opt-in to receive electronic bond notifications. Commenters stated the IFR implies obligors may choose to consent to receive notifications, which contrasts with obligors' requirement to consent to receive notifications as a prerequisite to use CeBONDS. One commenter stated that state laws, rules, and regulations can differ on how individuals "opt in or out"

²⁵ U.S. Immigration and Customs Enforcement, *Privacy Impact Assessment Update for the Bond Management Information System* (Jan. 19, 2011), <https://www.dhs.gov/sites/default/files/publications/ice-pia-005-v2-bmis-web-2011.pdf>.

²⁶ U.S. Immigration and Customs Enforcement, *Privacy Impact Assessment Update for the Bonds Online System (eBONDS) Phase Two* (Jan. 24, 2013), <https://www.dhs.gov/sites/default/files/publications/ice-pia-008-a-ebonds-2013.pdf>.

²⁷ U.S. Immigration and Customs Enforcement, *Post a Bond, What steps has ICE taken to ensure CeBONDS provides data privacy and security as part of its processes?* (last updated Sept. 17, 2024), <https://www.ice.gov/detain/detention-management/bonds>.

of receiving electronic mail. Commenters urged ICE to clearly convey to the public, obligors, and noncitizens the methods ICE will use to provide notifications about noncitizens conditions of release and what will constitute consent to electronic service.

Response: This rule authorizes ICE to serve bond related notices to obligors who consent to receive those notices electronically. *See 8 CFR 103.6(g)-(h).* ICE will not utilize the electronic system to serve notices to obligors who have not consented to receiving electronic notices. As updates are made to the CeBONDS system, ICE will provide further guidance to users. ICE will add specific information that obligors may opt in to communicate electronically and consent to electronic delivery of bond notices and any other bond-related notices via CeBONDS and by electronic mail. Consent will mean that the obligor agrees to check their CeBONDS account, alerts, messages, and associated email to stay apprised of the important notices and information.

In instances where the obligor fails to open a notice electronically after receiving the notification and the system cannot confirm electronic proof of service, the CeBONDS system will generate a new notice that will be sent via mail as required by the regulations. If the obligor's address (mailing or email) changes after posting a bond, the obligor must promptly update contact information in CeBONDS or submit Form I-333, *Obligor Change of Address*, to ICE with the obligor's new address.

As noted in the IFR and in this final rule, an obligor must agree to receive bond related notices electronically. *See 8 CFR 103.6(g)-(h).* The option to "opt in" to receive immigration bond related notices does not vary from state to state. Federal regulations, specifically in this rule, are not subject to state "opt in" laws or rules.

If the obligor does not wish to post a bond or receive bond notices electronically, the obligor may still post the bond in-person at an ICE office and receive the notice by mail. In these instances, contact the nearest ICE office for guidance.

General service of electronic notifications or notices to the noncitizen is outside the scope of this rule as this rule specifically pertains to electronic service of bond notices to the obligors.

G. Proof of Electronic Service

Comment: Commenters stated the action of logging into CeBONDS should not constitute proof of receipt of the notification and that clicking a link or opening a document through CeBONDS does not guarantee that the individual accessing the notice understands its contents. Commenters explained CeBONDS can and does fail, logging obligors out at random—regardless of whether the obligor has seen the notice. Additionally, commenters stated the mechanism to validate receipt of service is insufficient. One example raised by a commenter outlined that, if an obligor used their work email address to log into CeBONDS and later departs from that place of employment, there is no way to validate receipt of the bond notice. Commenters expressed concern and questioned how ICE will track unopened electronic notifications in CeBONDS and verify users' email addresses.

Commenters requested ICE inform the public about how it intends to track notifications and provide the public a meaningful chance to voice its preferences, to ensure related accountability from ICE. Commenters stated the IFR does not specify a timeline when ICE will reissue a bond notification via mail to the CeBONDS users who do not open the notification. Furthermore, the IFR does not state if ICE will take action pending someone's receipt of paper-based notifications. One commenter stated that DHS and ICE should provide clear procedures that ensure notifications to CeBONDS users and confirm receipt of notification prior to engaging in adverse actions towards the obligor and noncitizen. Another commenter suggested adding a checkbox to the confirmation message.

A commenter stated CeBONDS financially impacts obligors, as these events can determine whether ICE will return funds paid as bonds. If an obligor fails to receive timely notification of a breach, their opportunity to appeal the bond breach determination is limited, which may lead to the forfeiting of the bond amount.

Response: The ability to confirm delivery of electronic notices is essential to this rule which authorizes ICE to serve electronic notices. Importantly, an obligor merely logging into the CeBONDS account in and of itself does not constitute proof of electronic service. While some commenters voiced concerns about the technical issues, such as the system logging obligors out at random, the obligors can log back in to review these notices again at any time, as they will continue to be available in their CeBONDS accounts. As described further below, CeBONDS captures detailed information regarding the actions executed through the system and the electronic process to satisfy the requirements for electronic service. Electronic notices (Form I-340, Form I-391, Form 71-042, or Form I-323) are sent to the obligor's CeBONDS account. When the notices are sent to the obligor's CeBONDS account, a separate email notification is generated and sent to the obligor's email address on file to notify the obligor to log into their CeBONDS account. ICE captures a timestamp of these actions in the CeBONDS system—logging specifically the month, day, year, hour, minute, and ante or post-meridiem when the notices are sent to the obligor's CeBONDS account—e.g., “Form I-340 Sent to Obligor.” When the obligor opens the notice in CeBONDS, the system will track the action that the obligor has opened the notice—“Form I-340 Viewed by Obligor”—and log the timestamp. This event constitutes the point in time when the obligor received service of the notice. At each step of this process, CeBONDS tracks the actions taken in the system by all users, including the actions of the obligor.

If the obligor does not open the notice, a new notice will be sent via mail to the last known address. *See* 8 CFR 103.6(g) and (h) (specifying the backup method of service as

certified mail for demand notices and ordinary mail for breach, bond cancellation, and other bond notices). During this time, when the notice is sent electronically and then via mail, generally, there is no impact to the noncitizen, as ICE will not take any custody action until service is completed and there is proof of service. Generally, ICE will confirm proof of service electronically or via certified mail for demand notices prior to taking any actions against the noncitizen. If the obligor's address (mailing or email) changes after posting a bond, the obligor must promptly update their address information in CeBONDS or submit Form I-333, *Obligor Change of Address*, to ICE with the obligor's new address. If the obligor does not update their address and contact information, ICE will use the last updated address to serve the notice via mail.

To the extent that the commenters express concerns that the information about this timeline was not set forth in detail in the IFR, ICE did not provide a specific timeline for when it will reissue a bond notice via mail because ICE is continuously improving the system and implementing updates to better serve the public needs and improve communication. Therefore, as ICE seeks to implement various updates, this may impact the timeframe when a notice is mailed to the obligor. As technology improves, or related updates are made to CeBONDS, the information on the ICE website will also be updated for stakeholders' awareness. ICE notes, however, that the IFR specified that if ICE could not confirm proof of service of electronic notice, ICE would reissue the notices by an appropriate mailing method. 8 CFR 103.6(g)-(h). Additionally, as stated throughout this rule, if an obligor receives a notice electronically or by mail, and does not understand the content of the notice, the obligor can contact the nearest ICE office for guidance irrespective of how the notice was served.

There is no data to suggest that CeBONDS will result in an increase in bond breaches. DHS believes the use of electronic notices may improve notification delivery time because these specific bond notices cannot be lost through physical mail, and obligors

will receive a notification immediately via electronic means. Furthermore, obligors have the option to print or view the notice in CeBONDS at any time. This may reduce the possibility that an obligor will not be able to appeal a bond breach determination in time, because there is less likelihood of potential delays or errors associated with electronic mail service which would otherwise lead to the forfeiting of the bond amount.

H. Governmental Actions and Interference with Constitutionally Protected Property Rights

Comment: Commenters raised concerns that the rule implicates governmental takings of private property. A commenter indicated that the inefficiencies and delays caused by CeBONDS during the electronic payment process impacted property interests of the detained noncitizens and the obligors' bond funds. Another commenter stated that CeBONDS users' inability to access information through the system could result in governmental takings of bond payments. As such, the commenter disagreed with DHS' determination that the rule did not cause a taking of private property or have taking implications under Executive Order 12630, *Governmental Actions and Interference with Constitutionality Protected Property Rights*. Specifically, a commenter pointed that CeBONDS financially impacts obligors, as the bond notices served electronically are associated with events that can determine whether ICE will return the paid bond funds. If obligors fail to receive timely bond notices, their appeal rights may be affected for breach notices, which could lead to the forfeiting of paid bonds. It could also lead to obligors not requesting a refund of the paid bond amounts. The commenter stated that "the potential increases in the Breached Bond Discretionary Fund (BBDF) are linked directly to the prospect of expanding immigration detention bed space, a system with a record of abuses

and medical neglect.” Furthermore, the commenter referenced a report indicating that ICE held more than \$200 million in unclaimed bond funds in 2018.²⁸

Response: DHS does not agree with commenters’ concerns that this rule would lead to the taking of private property or have taking implications under Executive Order 12630. This rule narrowly provides a regulatory framework that allows ICE to serve certain bond notices electronically for obligors who consent to electronic service. *See* 8 CFR 103.6(g)-(h). To confirm proof of service of an electronic bond notice, the system captures the exact date and time that the notices were opened. Notably, the rule provides safeguards in instances where electronic service is not confirmed. ICE must effectuate service via mail, which would be the equivalent method of service for an obligor who opts out of electronic service. Thus, an obligor who consented to electronic service would be in the same procedural posture as an obligor who opts to receive service by mail, as they would have the same due process rights and appellate opportunities. Accordingly, the rule itself would not lead to any changes in the course of action that would normally follow after the bond notices have been served by mail. In this aspect, the rule would have no impact on property rights nor implications of any governmental takings.

There is no data to suggest that CeBONDS will result in an increase in bond breaches. DHS believes the use of electronic service may improve delivery time because these specific bond notices cannot be lost through physical mail, and obligors will receive a notification immediately via electronic means. This benefit is expected to reduce the likelihood that an obligor will be unable to appeal a bond breach determination in time, which would otherwise lead to the forfeiting of the bond amount.

²⁸ Stanford Law School Immigrants’ Rights Clinic et al., *Following the Money: New Information about the Federal Government’s Billion Dollar Immigration Detention and Bond Operations* (May 9, 2019), <https://law.stanford.edu/publications/following-the-money-new-information-about-the-federal-governments-billion-dollar-immigration-detention-and-bond-operations/>.

DHS appreciates the concerns raised by the commenters. The IFR and this final rule do not impact an individuals' ability to receive notices traditionally through the U.S. Postal Service, but rather authorizes ICE to issue bond-related notices to obligors electronically should obligors consent to receive them. That said, DHS believes that authorizing this electronic system will improve delivery time, thereby reducing the likelihood that an obligor will be unable to appeal a bond breach determination, which may lead to the forfeiting of the bond amount.

I. Cost Analysis

Comment: A commenter indicated that ICE's cost-analysis for this rule is deficient because the cost-analysis fails to address at least two critical issues. *See* 88 FR at 53 366–69. First, the cost-analysis is silent about any investment by ICE to ensure that the proposed framework for notifications to CeBONDS users will comply with the requirements of the Rehabilitation Act of 1973.²⁹ Second, the cost-analysis does not include any costs that the notification-scheme may pose to CeBONDS users. The commenter urges ICE to clarify to the public whether CeBONDS users may be subject to any such costs. A commenter stated CeBONDS financially impacts obligors, as these events can determine whether ICE will return funds paid as bonds. If an obligor fails to receive timely notification of a breach, their opportunity to appeal the bond breach determination is limited, which may lead to the forfeiting of the bond amount.

One commenter stated that ICE facilities require travel tickets for detained noncitizens before being released but if the noncitizen is not released on the scheduled day, the obligors would incur additional travel costs with having to travel to the ICE facility again and prolong the noncitizen's detention.

²⁹ Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*

Response: Regarding the first point, section 508 of the Rehabilitation Act of 1973 requires that when Federal departments and agencies develop, procure, maintain, or use electronic and information technology, they ensure that the electronic and information technology is accessible to individuals with disabilities who are Federal employees, applicants for employment, or members of the public. ICE ensures policies meet 508 compliances. ICE accessibility policies and procedures ensure all employees, contractors, and members of the public, regardless of any disability, have access to, and use of, all ICE Information and Communication Technology. CeBONDS, which utilizes electronic bond notifications outlined in this final rule, was tested by DHS for section 508 compliance on July 17, 2023, and found to be compliant.³⁰

To the extent that the commenter references travel costs associated with the noncitizen's release, this comment pertains to the costs associated with posting a bond. It does not pertain to costs related to implementing this rule for electronic service of bond notices, which are applicable at later stages after the noncitizen has already been released on bond.

The IFR authorized ICE to serve bond-related notices electronically to obligors who consent to receiving those notices electronically. DHS only accounted for the impacts to create an online account and noted that there can be additional technology-related costs for obligors without access to the internet. Obligors who consent to electronic service of notices will receive those notices without charge.

Finally, DHS believes that authorizing electronic service will improve the timely delivery of notices, thereby reducing the likelihood that an obligor will be unable to appeal a bond breach determination, which may lead to the forfeiting of the bond amount.

³⁰ See ICE Directive 8014.1, *Section 508 Accessibility* (Mar. 3, 2023), https://www.ice.gov/doclib/foia/policy/8014.1_Section508_Accessibility.pdf.

J. Family Impact

Comment: Commenters stated DHS failed to examine the rule's implications on the mental, financial, and well-being of families. Specifically, a commenter stated DHS did not appraise the Treasury and General Government Appropriations Act, in which agencies assess the impact of proposed agency actions on the well-being of a family.³¹ The commenter stated that ICE must provide notifications to CeBONDS users that contain critical information about the posting or status of an immigration bond. By its very nature, such information, and its present inaccessibility to many CeBONDS users, stand to have significant impacts on any family within the United States with a relative who is subject to an immigration bond. One commenter stated that ICE should explain why it believes this rule would not impact the well-being of a family.

Response: DHS concluded that the rule does not have an impact on family-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999. However, the comments do not focus on the rule which allows ICE the ability to serve electronic bond notices to obligors who opt-in to receive those notifications. The rule allows obligors to consent to electronic service, at their discretion, and provides a backup procedure of service by mail. *See* 8 CFR 103.6(g)-(h).

For obligors who consent to electronic notifications, they will receive an alert to log into their CeBONDS account. No personal information is included in the notification, but it simply alerts the obligor to log into CeBONDS. Electronic notices are served to only obligors who consent to receive those notifications. As discussed in Section II., G. *Proof of Service*, CeBONDS incorporates a timestamp when an obligor views the notice in the system. Viewing of the notice by the obligor constitutes service of the notice. At each

³¹ Commenter cited to Actions - H.R.4328 - 105th Congress (1997-1998): Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, H.R.4328, 105th Cong. (1998), <https://www.congress.gov/bill/105th-congress/house-bill/4328/actions>.

step of this process, CeBONDS tracks all user actions taken in the system, including the actions of the obligor.

If the obligor does not open the notice, then DHS cannot confirm proof of service of the notice. Therefore, a new notice will be sent via mail to the last known address. *See 8 CFR 103.6(g)-(h).* During this time, when the notice is served electronically and then via mail, DHS does not anticipate that there will be any impact to the noncitizen.

Given the narrow regulatory framework for this rule and the safeguards in place, DHS does not believe that the rule pertaining to an alternate method of service would create any adverse impact on families. There is no data indicating that there is a correlation between adding another method of service and any negative effects to families. DHS is making no changes to its assessment of the impact of the regulation on families in this final rule.

K. Inequality and Inaccessibility

1. General

Comment: Commenters raised concerns that CeBONDS disproportionately impacts vulnerable populations including those with limited English proficiency, mental impairments or competency issues, limited technological literacy, physical disabilities, health problems or need of medical attention, people of color, indigenous groups, low-income and -resources, and limited access to computers and internet, financial establishments, and others. Commenters explained that using CeBONDS specifically burdens the populations who have limited English proficiency, lack the access to computers with internet, or lack online bank accounts. The commenters state that these burdens perpetuate inequalities toward those with low-incomes and increase racial disparities and injustices because most detained noncitizens are low-income and people of color. The commenters expressed that lack of income and knowledge of the CeBONDS system will impede noncitizens from receiving official immigration bond

documents. Commenters suggested ICE preserve the option of posting immigration bonds in person to facilitate payment accessibility for everyone, irrespective of race or income level.

Response: DHS recognizes there may be difficulties faced by vulnerable populations navigating the immigration process due to various factors. This rule authorizes ICE to serve bond-related notices electronically to obligors who consent to electronic delivery of service and is not dependent on how CeBONDS operates for posting bonds. The IFR and this final rule provide a regulatory framework for obligors who consent to electronic service, at their discretion, and provide a backup procedure of service by mail. *See* 8 CFR 103.6(g)-(h). The option to receive electronic service is offered to all obligors and does not change the existing process of in-person bond payment and service of bond notices. The scope of this rule is limited to electronic service of bond notices. While the rule does not implement CeBONDS, ICE will utilize this immigration bond delivery system to effectuate service to those obligors who consent to electronic service.

DHS designed CeBONDS to alleviate various burdens on the public such as posting bonds at an ICE facility, provide bond information in real time, increase record keeping and tracking, and expedite delivery of immigration bond notices. CeBONDS serves as an additional alternative method for conducting transactions electronically to better serve the needs of obligors who face accessibility barriers and resource constraints and does not replace the current existing process for posting bonds and receiving notices.

The Coronavirus disease (COVID-19) pandemic prompted a shift in certain ICE business processes and highlighted the need to develop online capabilities to mitigate the risks associated with person-to-person contact, especially for those with vulnerable health risks. CeBONDS provides the public with the online capability to make requests for bond information, update contact information, upload necessary documents to verify eligibility

to post the bond, post cash immigration bonds electronically for eligible detained noncitizens, and receive bond notices electronically.

Obligors who are concerned with accessibility or other factors continue to have the option to post bonds in-person and receive notices by mail. As elaborated in the sections below, DHS includes additional options and alternatives for those with limited means and accessibility. Any obligor who has a question about posting a bond in person can contact the nearest ICE office for guidance. ICE will continue to work with obligors who want to pay bonds at an ICE office and provide obligors assistance in-person. ICE offices have access to an ICE-wide 24/7 language services contract for interpretation (oral), translation (written), and transcription (audio to text).³²

Moreover, DHS has Department-wide policy directives to ensure nondiscrimination for individuals with disabilities served by DHS-conducted programs and activities. Consistent with the requirements of the Rehabilitation Act of 1973 and Department of Homeland Security Directives, CeBONDS was designed to be section 508 compliant. If the format of any material on its website or system interferes with an individual's ability to access the information due to an issue with accessibility caused by a disability as defined in the Rehabilitation Act, the user can contact the ICE Section 508 Coordinator for assistance.³³

2. Language Barrier

Comment: Commenters stated that noncitizens and obligors have difficulty navigating CeBONDS due to language barriers. Commenters stated the ICE landing page³⁴ is only accessible in English and Spanish and therefore deters payment from those with limited

³² U.S. Immigration and Customs Enforcement, *Language Access Information and Resources* (last updated May 7, 2024), <https://www.ice.gov/detain/language-access>.

³³ U.S. Immigration and Customs Enforcement, *Site Policies* (last updated Aug. 6, 2024), <https://www.ice.gov/site-policies#accessibility>.

³⁴ U.S. Immigration and Customs Enforcement, *Post a Bond, Frequently Asked Questions, How to Pay a Bond?*, <https://www.ice.gov/detain/detention-management/bonds> (last visited Aug. 25, 2023).

English or Spanish proficiency or may force obligors to rely on third parties for payment putting them at risk of fraud.

Commenters stated the failure to provide translation into the languages of greatest frequency violates DHS's obligations to provide equal access to speakers of other languages and suggests DHS increase accessibility. Another commenter urged DHS to include a requirement that DHS examine the feasibility of translating the website into languages of greatest frequency and ensure that a mechanism exists for people with limited English proficiency to pay bonds in person.

Response: DHS recognizes the importance of being able to communicate effectively with individuals, including those with Limited English Proficiency (LEP). However, the rule authorizes an additional procedure for ICE to serve bond related notices (demand notices, bond breach, bond cancellation, and other bond notices) to obligors who consent to receive those notices electronically. This regulation does not implement CeBONDS. Therefore, if CeBONDS is not a viable option, LEP individuals continue to have the option to visit an ICE office for assistance to post a bond.

Currently the CeBONDS landing page is available in English and Spanish.³⁵ From the Spanish landing page, obligors are able to select their preferred language from the drop-down menu in the web browser.³⁶ Furthermore, ICE offices have access to an ICE-wide 24/7 language services contract for interpretation and translation, and guidance and best practices materials for identifying LEP individuals and their primary language to secure the necessary interpretation and translation services for them. ICE offices are pursuing

³⁵ U.S. Immigration and Customs Enforcement, *Pagar una fianza ICE* (last updated Sept. 17, 2024), <https://www.ice.gov/es/fianzas>.

³⁶ *Is CeBONDS accessible to people with limited English proficiency?*, *supra* note 36.

several initiatives to help promote communication with LEP individuals encountered at ICE offices functions.³⁷

DHS is striving to improve CeBONDS' accessibility for those with language barriers and limited resources by providing an alternative language on its website, instructions to select their preferred language through their web browser, and equipping the offices with language access programs to communicate with obligors.³⁸ Consistent with Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, and DHS³⁹ and ICE's Language Access Plan,⁴⁰ DHS will continue to assess and consider ways to enhance the system to expand accessibility, including the possibility of adding languages.

Although not all ICE forms are translated into languages most frequently used,⁴¹ ICE is committed to ensuring that external LEP stakeholders (including members of the public who seek access to programs, and noncitizens who are subject to ICE enforcement actions and/or are in ICE custody) have meaningful access to its programs, services, and activities by providing quality language assistance services in a timely manner. ICE will consider processes for enhancing language access services for programs and activities that include external stakeholders, provided that such processes do not unduly burden the Agency mission.

3. Bank Account

³⁷ U.S. Immigration and Customs Enforcement, *Language Access Plan* (June 14, 2015), <https://www.dhs.gov/sites/default/files/publications/ICE%20Language%20Access%20Plan.pdf>.

³⁸ *Id.*

³⁹ U.S. Department of Homeland Security, *Language Access at the Department of Homeland Security* (last updated Feb. 28, 2024), <https://www.dhs.gov/language-access>.

⁴⁰ Language Access Plan, *supra* note 39.

⁴¹ To the extent that the commenter believes that DHS may be violating its obligations to provide equal access to speakers of other languages, DHS notes that Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, 65 FR 50121 (Aug. 11, 2000), “does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.” *Id.* at 50121-22. The commenter has not provided any specific citations to show that CeBONDS violates any Federal law.

Comment: Commenters stated that obligors are financially limited and lack access to banking services (whether managed or traditional), which increases the difficulty to post bonds and prolongs detention. Some commenters stated, without evidence, that over 63 million adults in the United States have limited to no access to bank accounts and services and therefore cannot use web applications like CeBONDS. Commenters suggested DHS ensure that the process of posting bonds does not create financial hardship on obligors or noncitizens and consider that there are almost six million U.S. households in which no adult has a bank account.⁴²

Commenters stated the lack of payment options impedes equal access to pay bonds and creates a two-tiered system: obligors with financial resources who can post bonds quickly and obligors without resources that will experience delays, denials, and confusion. Another commenter stated the coronavirus pandemic highlighted the inequalities and differences in access to things society otherwise deemed ubiquitous, such as the internet and bank accounts.

Another commenter asserted that CeBONDS has associated higher fees than paying a bond with a money order.

Commenters stated their confusion in learning the components of bank wiring systems and routing numbers. To post bonds, obligors can use either Fedwire, a system for the electronic transfer of funds operated by the Federal Reserve Bank; or the Automated Clearing House (ACH), an electronic network of banks that allows the transfer of money from one account to the other.⁴³ These payment options require identification, access to a computer or smartphone with internet capabilities, and access

⁴² Federal Deposit Insurance Corporation, *2021 FDIC National Survey of Unbanked and Underbanked Households*, <https://www.fdic.gov/analysis/household-survey/index.html> (last visited Aug. 25, 2023).

⁴³ U.S. Immigration and Customs Enforcement, *Post a Bond, Frequently Asked Questions, How can I pay a bond if I have little to no access to banking services, internet, or computing devices?*, <https://www.ice.gov/detain/detention-management/bonds> (last visited on Aug. 25, 2023).

to a financial institution. One commenter stated using ACH was complicated and prolonged the process almost two weeks compared to paying the bond at an ICE facility. Another commenter stated the ICE's Bond Management Handbook⁴⁴ claims obligors can pay bonds in cash, i.e., currency, money order, certified check, or cashier's check which does not require a bank account. The commenter added that obligors may prefer to pay bonds with cash at an ICE office instead of going to a bank and dealing with the Fedwire or ACH systems. Another commenter stated, without evidence, that most obligors do not have access to a local bank or bank accounts (managed or traditional) which increases the difficulty to post bonds and prolongs detention.

Another commenter suggested CeBONDS accept other payment methods that do not require a bank account.

Response: Commenters' comments are specific to payment of bonds rather than the authorization of ICE to serve bond notices to obligors who consent to receive those notices electronically.

ICE will continue to work with obligors who walk into an ICE office to post bonds. Obligors who post bonds at an ICE office are not required to have access to banking services in order to post bonds on behalf of noncitizens. While cash is not accepted at an ICE office, obligors can post bonds using a cashier's check or money order which can be acquired without a bank account. Furthermore, money orders can be purchased in places other than financial entities. Nevertheless, this rule does not impact or change the current method of payment, process of payment, or acceptable forms of payment. This rule focuses on electronic service of bond notices to consenting obligors.

⁴⁴ U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, *Bond Management Handbook*, 23 (Aug. 19, 2014), https://www.ice.gov/doclib/foia/dro_policy_memos/eroBondManagementHandbook2018-ICFO-31476.pdf.

Obligors who prefer to post a bond using CeBONDS have the option to use either Fedwire or an ACH to post an immigration bond, both of which charge for the use of service, with fees ranging from \$0.20 to \$1.50 per transaction.⁴⁵ Separately, there are no fees associated with the use of the CeBONDS system.

Obligors without access to banking services may use an immigration bond company to post a bond or work with community-based organizations across the country that assist with immigration bonds.⁴⁶

4. Computer and Internet

Comment: A majority of commenters stated that DHS is unreasonable and should not assume obligors and noncitizens have access to computers, smart phones, etc., with reliable internet especially for people of color and low-income communities. Although the administration pushes to expand internet access, a large majority of people still do not have internet access. Commenters stated over 42 million people across the United States lack access to broadband and access to computers varies widely according to income levels. Commenters stated that obligors and noncitizens do not have routine or readily available computers or the internet to check emails. This mechanism falls short of meaningful access to important information.

A commenter stated obligors with limited financial resources may rely on public libraries for computer and internet access to use CeBONDS. Another commenter indicated the struggles of the U.S. public library system and the movement to increase reliance on technology when technological access facilitated through public libraries is decreasing across the country is terribly timed.

⁴⁵ Federal Reserve Bank Services, *FedNow Service 2024 Fee Schedule*, www.frbservices.org/resources/fees/fednow-2024 (last visited July 24, 2024).

⁴⁶ U.S. Immigration and Customs Enforcement, *Post a Bond, Frequently Asked Questions, How can I pay a bond if I have little to no access to banking services, internet, or computing devices?* (last updated Sept. 17, 2024), <https://www.ice.gov/detain/detention-management/bonds>.

One commenter requested clarification if the bond documents are electronic, how will obligors receive those notifications and documents without these resources? Commenters suggested DHS ensure bond payments be completed in person and require ICE to accept in-person payments.

Response: DHS does not expect this rule to prevent any individual from paying an immigration bond because the rule pertains to ICE's ability to send electronic bond notices to obligors who consent to receive those notifications.

DHS assessed the impacts to the affected populations, and considered whether bond obligors would face technology costs to utilize these services. There are a variety of means by which obligors can access internet services to receive electronic notifications, including the use of smart phones, personal computers, or community services that can provide those services. The cost of these are either low or no-cost, such as the use of libraries or free Wi-Fi services which are publicly available across the United States.

The use of electronic service is voluntary. If the obligor does not open the notice in CeBONDS, a new notice will be sent via certified mail for demand notices and via ordinary mail for any other bond-related notice pertaining to this rule ICE does not expect this rule to prevent any obligors from paying immigration bonds.

L. Detention

1. Prolonged Detention

Comment: Commenters raised concerns of prolonged detention for noncitizens who are granted bonds because CeBONDS lacks up-to-date information. Commenters stated that CeBONDS take days or weeks to process bond payments—making the release of a noncitizen unpredictable compared to in-person payment which are processed the same day along with the release of the noncitizen. Commenters stated that CeBONDS prolongs a noncitizen's release because payments are only accepted between 9 a.m. and 3 p.m. in the time zone of the facility where the noncitizen is detained.

Another commenter asserted that ICE developed a one-size-fits-all approach to an issue that should be tailored to the needs of those who pay (often thousands of dollars) to secure the liberty of those detained.

Some commenters described the impact of prolonged detention on the noncitizen's mental health, finances, and families without providing data. A commenter stated that noncitizens are losing large periods of their lives being detained in prison which makes it harder for the noncitizen to reintegrate into society. The commenter wrote that incarcerated individuals experience trauma from the prison system, other inmates, and the correctional officers, due to incredibly inhumane treatment.

Response: The rule authorizes ICE to serve bond-related notices (ICE Form I-340, ICE Form I-391, ICE Form 71-042, or ICE Form I-323) electronically to obligors, who consent to electronic service, that pertain to delivery, order of supervision, or voluntary departure immigration bonds, such as bond breach or cancellations, and other immigration bond related notices. *See* 8 CFR 103.6(g)-(h).

Bond-related notices applicable to this rule are issued to the obligor months or years after the bond was posted and when the noncitizen is not in custody. Any correlation between the posting of bonds via CeBONDS and release dates, if applicable, is expected to be de minimis. Bond-related notices to which this rule applies are issued to obligors after the bond has been accepted by ICE and the noncitizen is not in custody. When the obligor starts the process of posting a bond, there has already been a custody determination. ICE will review the bond to confirm the bond matches the custody determination and verify nothing prevents the bond from being posted. Additionally, ICE must verify the funds have been transferred to ICE for the bond amount. The process to notify the detention facility after a bond is approved is the same for all bond posting methods (in-person, eBONDS, CeBONDS) and is not the type of notice that is encompassed under the regulations at 8 CFR 103.6(g)-(h).

If the obligor does not open the notice, a new notice will be sent via mail to the obligor's last known address. *See 8 CFR 103.6(g)-(h).* During this time, when the notice is served electronically and later via mail, there is no impact to the noncitizen. Generally, ICE will confirm proof of service electronically or via certified mail for demand notices prior to taking any actions.

CeBONDS is updated with information in real time during the bond posting process. Since CeBONDS was deployed, about 10,537 bonds have posted. Of those posted bonds, less than 1 percent, or 680 posted bonds, had release dates of 2 or more days after a bond was posted. More than 99 percent, or more than 9,850 posted bonds, had release dates within 2 days. Based on this information, there is little evidence that the use of CeBONDS results in "days or weeks" of delay. DHS will continue to make improvements to CeBONDS and other sites to decrease technical issues experienced.

2. Impact on Proceedings

Comment: A commenter indicated that DHS' shift to electronic notifications through CeBONDS, a system that is flawed and still under development, would undermine the liberty interests of noncitizens eligible for release from detention and increase the number of cases on the immigration court's detained docket. The commenter noted that the bond notifications could impact the outcome of removal proceedings for individuals released on bond, including instances where the notices inform obligors to bring the noncitizen to important appointments, but the deficiencies in service result in a noncitizen's failure to appear.

Response: There is no indication that this rule on electronic service of certain limited bond notices would impact removal proceedings or the custody status after a noncitizen has been released. This rule provides a regulatory framework to allow ICE to serve certain bond notices electronically for obligors who consent to electronic service. Under the rule, if the electronic notification system fails, the obligor would receive service by

mail, which would be the equivalent method of service for an obligor who opts out of electronic service. Given the safeguards, the rule itself would not lead to any changes on the course of action that would normally follow when the bond notifications have been served by mail. An obligor who consents to electronic service would be in the same procedural posture as an obligor who opts to receive service by mail, as they would have the same due process rights and appellate opportunities. In this aspect, there is no correlation between electronic service of bond notices and a noncitizen's removal proceeding or custody status.

DHS believes that the use of electronic notices could potentially improve notification delivery time because these specific bond notices cannot be lost through physical mail and service via electronic means is instantly effectuated. As described in Section II.G., *Proof of Service*, the system is designed to capture the date and time of the actions taken to effectuate electronic service—namely, when the notification is sent and when the notice is opened by the obligor. Thus, electronic notices could improve the likelihood of a noncitizens' appearance at ICE appointments and court appearances and reduce the likelihood that an obligor will be unable to appeal a bond breach determination in time.

M. CeBONDS Instructions (in-person and online)

Comment: Commenters stated the inconsistent information and lack of guidance provided by DHS and on the CeBONDS webpage complicate an already complex and difficult process for obligors to pay a bond for the release of a noncitizen. Obligors are subjected to inconsistent policies and practices at offices which hinder their ability to use CeBONDS.

Commenters expressed that obligors may not understand whether there is an option to pay in person and urge DHS and ICE to clarify, publicize, and enforce this option. Commenters stated that CeBONDS was deployed without notice or guidance to the public or proper training to ICE staff which has caused a multitude of problems.

Commenters stated that detention centers are operating under arbitrary rules, taking up to several days to process bonds. One commenter described being asked to provide business cards and authorization letters, which are not qualifying documents. Another commenter experienced the inability of the ICE staff to provide next steps after ICE deemed a noncitizen “not releasable” despite the existence of a bond order, slow email responses from the general Helpdesk, and slow response times from local ICE offices processing bonds because bond processing is still constrained to specific local business hours.

Commenters stated that ICE employees are unfamiliar with the CeBONDS and unable to answer routine questions or provide crucial information such as where the bond request is being handled. One commenter stated ICE explained that bond requests were handled out of state, making it more difficult to obtain contact information, and suggested the commenter to wait until the next day, delaying release. Commenters stated the need to make several phone calls or emails to reach an ICE employee who was able to answer any bond-related questions.

Commenters requested all public facing materials and web content provide consistent guidance, explicitly state what factors are considered when determining if bonds can be paid in person, and allow obligors the option to pay bonds in person at ICE facilities.

Response: Commenters’ comments focus on using CeBONDS and public information on posting bonds. However, the purpose of the rule is to authorize ICE to serve bond-related notices electronically to obligors who consent to receive electronic bond related notices. *See 8 CFR 103.6(g)-(h).*

Prior to the deployment and implementation of CeBONDS, all ICE staff at ICE offices processing bonds were provided training on the system.

CeBONDS provides an online capability for bond obligors to request bond information and post cash immigration bonds for detained noncitizens determined by the IJ or ICE to be eligible for release on bond. The process and procedures ICE officials

utilize to verify an obligor's eligibility to post a bond, to approve the bond and payment, and to release the noncitizen from ICE custody are the same for bonds posted in CeBONDS, eBONDS, and walking into an ICE office.

The ICE website provides a video tutorial on using CeBONDS, a section on frequently asked questions, and categorically lists acceptable documents applicable to the obligor.⁴⁷

As listed on the ICE website, an obligor must provide at least one (1) document to ICE from the applicable category below.⁴⁸

U.S. Citizen

- U.S. Passport
- U.S. Birth Certificate
- U.S. Citizen Born Abroad Document
- USCIS Naturalization Certificate
- State-issued Driver's License (only REAL ID Card)
- State-issued ID Card (only REAL ID Card)
- Military Identification Card

Legal Permanent Resident (LPR)

- Permanent Resident Card (commonly known as a "Green Card")
- Military Identification Card

Non-Profit Organization

- IRS Letter 947—(Letter of Determination)
- SS4 IRS Notification Letter (Employer identification number [EIN] approval letter)
- Letter of authorization from the non-profit for representative/obligor posting the bond
- Representative's identification

Law Firms

- SS4 IRS Notification Letter (Employer identification number [EIN] approval letter)
- Letter of authorization from the law firm for representative/obligor posting the bond
- Representative's identification

Noncitizen Posting a Voluntary Departure (VD) or Order of Supervision Bond

- Form I-862, Notice to Appear
- VD Order (for VD Bond)
- IJ Order (for Order of Supervision Bond)
- ICE Form I-220B (Order of Supervision)
- Form I-765 - Employment Authorization Document (EAD)

⁴⁷ U.S. Immigration and Customs Enforcement, *Post a Bond* (last updated Sept. 17, 2024), <https://www.ice.gov/detain/detention-management/bonds>.

⁴⁸ U.S. Immigration and Customs Enforcement, *Post a Bond* (last updated Sept. 17, 2024), <https://www.ice.gov/detain/detention-management/bonds>.

ICE continues to allow obligors to post a bond in person at the appropriate ICE office. ICE will continue to work with obligors who want to pay bonds in person at an ICE office. DHS continues to work to improve the system and the process but makes no changes to the rule in response to these comments.

N. Technical Issues

Comment: Commenters stated that CeBONDS has numerous technical issues, and frequently crashes, which prevents payment and creates uncertainty whether the request or system failed. Commenters stated CeBONDS relies on human approvals at every stage of the bond-posting process, which results in lengthy wait times, or worse, the denial or failure of bond-posting requests. A commenter stated their payment was not instantaneous and waited over four hours for ICE to accept and process the bond request. Commenters stated they did not receive any information such as confirmation, receipt of payment, or status update while waiting for ICE to accept and process the bond request.

Commenters stated CeBONDS does not contain accurate, up-to-date information. One commenter experienced a delay for several days between Executive Office for Immigration Review (EOIR), a sub-agency of the DOJ, setting a bond and information being properly entered into CeBONDS. Failures by the CeBONDS system to contain accurate, up-to-date information has frustrated sponsors attempting to pay bonds for bond-eligible noncitizens who provided the necessary documentation, leading to the noncitizens' prolonged detention. Another commenter stated after uploading documents to CeBONDS, the commenter needed to provide additional copies because the ICE employee was unable to locate the documents in CeBONDS. Commenters stated CeBONDS lacks a real-time way to solve problems that forces obligors to engage with ICE agents for help, and request status updates and information. Other commenters experienced slow email responses from the general Helpdesk and slow response times from local ICE offices processing bonds. Other commenters stated the ICE Information

Technology (IT) support staff are unable to respond or provide timely remedies for detained noncitizens.

Commenters stated CeBONDS is difficult and confusing to navigate regardless of English proficiency. Commenters stated that CeBONDS increases the complexity of paying bonds and using the system should not require obligors to be technologically savvy.

Response: These comments are focused on technical and functional issues related to CeBONDS, but this rule does not implement this system. Rather, the rule authorizes ICE to serve bond related notices to obligors who consent to receive those notices electronically. Additionally, commenters did not provide specific dates or times of alleged outages.

DHS has made various system updates to CeBONDS to improve functionality. Since CeBONDS deployed in April 2023, the system has not experienced any unscheduled system-wide outages, crashes, or failures. Furthermore, the number of customer-reported issues or incidents has substantially decreased. Comparably, from April to June 2023, there were 783 customer reported issues or incidents. That number was reduced by 62 percent or 487 reported issues or incidents from October to December of the same year.

CeBONDS does not contain information from EOIR. Once a request to post bond is received either via CeBONDS or in-person at an ICE office, the process for validating all the bond information is the same and is performed by an ICE official. An obligor can utilize the CeBONDS system's comment section to communicate (send comments or upload documents) in real time with ICE officials throughout the bond process.

CeBONDS payments are made via Fedwire or ACH. Depending on the time of day the payment is made, Fedwire payments are settled the same day and ACH payments typically settle 1 to 2 business days after they have been initiated. After the payment has been completed between the financial institutions, ICE can verify the payment. Next, the

obligor will upload the payment receipt and bond contract and submit these documents. Thereafter, the obligor will receive correspondence via email and in their CeBONDS account that their request is under ICE review. Once the review and payment are confirmed, the obligor will receive an email and their CeBONDS account will reflect that the bond has been approved. When the noncitizen is released from custody, the obligor will receive correspondence via email and in their CeBONDS account that the noncitizen has been released from custody. At each step in the bond posting process, the actions from ICE and the obligor are both tracked in CeBONDS.

The system does not require anyone to be technologically savvy. ICE has provided a tutorial along with frequently asked questions on the ICE.gov/bonds webpage to assist obligors. The tutorial is provided in English and Spanish. Additionally, obligors can contact their local ICE office for assistance or email any system related questions or concerns to ICECeBONDS-Helpdesk@ice.dhs.gov.

O. In-Person Bond Payment

Comment: The majority of commenters requested ICE allow obligors the option to pay bonds in-person indefinitely. Commenters stated that paying bonds in-person is quicker and completed within hours compared to CeBONDS which takes days to process. One commenter stated that eliminating the option of in-person bond payments to transition to CeBONDS will stymie obligors from complying with ICE requirements.

Another commenter stated that bond notices delivered by mail increases the assurance of noncitizens and obligors receive and sign all notices. Without evidence, the commenter stated paying bonds in-person can reduce the likelihood of fraud and increase noncitizens presence for court hearings.

Another commenter stated paying bonds in person facilitates an efficient process and alleviates stressful situations for noncitizens and obligors when dealing with immigration detention. The commenter continued that if ICE intended this electronic system provide

organizations with a more convenient way to pay bonds, then it should honor its intention and maintain the option of in-person payments. This will ensure that the bond payment system is truly responsive to the needs of the community it serves and does not create unnecessary barriers for those grappling with challenging circumstances.

One commenter suggested that in-person bond payment would increase ICE funds because CeBONDS is too difficult to understand, and obligors do not have bank accounts or computers.

Commenters stated the IFR does not intend to refuse obligors from posting bonds in-person. However, commenters asserted this contradicts the practice at ICE facilities and information on the ICE website.⁴⁹

Commenters stated that ICE's informational webpage fails to inform the public when ICE may accept an in-person bond payment. Commenters expressed that obligors may not know or understand if there is an option to pay in person and urges DHS and ICE to clarify, publicize, and enforce this option.

Response: The rule does not impact the payment methods of obligors. This rule provides a regulatory framework that allows ICE to serve certain bond notices electronically for obligors who consent to electronic service. Notably, the rule provides safeguards in instances where electronic service is not confirmed, for which ICE must effectuate service via mail, which would be the equivalent method of service for an obligor who opts out of electronic service.

To assure the notice is opened by the obligor, CeBONDS will track the timestamp when the notice is viewed in the system. Viewing of the notice in the system constitutes when the obligor is served with the notice. At each step of this process, CeBONDS tracks

⁴⁹ U.S. Immigration and Customs Enforcement, *Post a Bond* (last updated Sept. 17, 2024), <https://www.ice.gov/detain/detention-management/bonds>.

the actions taken in the system and the actions of the obligor. Furthermore, the notice in CeBONDS is available to the obligor anytime the obligor logs into the system.

If the obligor does not open the notice, a new notice will be sent via ordinary or certified mail (depending on the notice) to the last known address.

The requirements of the obligor are not dependent on how the obligor posts bond (in-person or electronically). Therefore, obligors who post a bond as security for performance and fulfillment of the bonded noncitizen's obligations to the government are not impacted. The obligor still must comply with the requirements in the contract with ICE.

Regarding the comment about ICE funds increasing with in-person payment, there is no data to support this statement, and is irrelevant because the option of in-person payment is not removed by this rule. If electronic payment is unattainable, obligors can continue to use the in-person system.

Obligors can still pay bonds in person. The intent of the IFR and this final rule are to improve the service delivery of bond notices to obligors. It does not impact an individual's ability to pay in person. The rule authorizes ICE to serve bond-related notices to obligors who opt-in to receive those notices electronically.

From April 2023 to January 2024, 7,424 obligors paid bonds using CeBONDS or in-person. Forty percent of obligors (3,021) used CeBONDS and 60 percent (4,400) paid bonds in-person at an ICE facility. This highlights that the ability to pay in person remains an option. Any obligor who has a question about posting a bond in person can contact the nearest ICE office for guidance.

P. Out of Scope

1. Alternatives to Detention

Comment: One commenter provided a comment regarding ICE's Alternatives to Detention (ATD) program, which uses case management and technology tools to support

noncitizen compliance with release conditions while on ICE’s non-detained docket. The commenter suggested that DHS propose a mechanism for seizing and/or shutting off such electronic monitoring devices remotely for noncitizens who abscond. Additionally, the commenter noted various sources and statistics to indicate an increase in the use of ATD technology and stated that there are issues associated with such technology, such as inefficiency, lack of punishments for violations, and no deportations for noncitizens under SmartLink. The commenter generally raised concerns on releasing noncitizens under the ATD program; noncitizens working unlawfully; and how such releases may be perceived by human smugglers, cartels, and migrants.

Response: This comment is beyond the scope of the IFR and this final rule because it does not relate to immigration bond notifications or electronic service of immigration bond related notices. ICE’s ATD program is utilized to ensure that a noncitizen complies with their release conditions.⁵⁰ The IFR and this final rule are not intended to address any such issues. Thus, no further response is required for this comment.

2. 31 U.S.C. 5103, Legal tender

Comment: One commenter stated the rule challenges 31 U.S.C. 5103 which requires the acceptance of any legal tender for all debts, public charges, taxes, and dues.

Response: Section 5103 of Title 31 of the U.S. Code provides that “United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.” The commenter did not explain how this statute is relevant to electronic service of bond notices and why this rule implicates the statute. If the commenter is implying that the statute requires the

⁵⁰ U.S. Immigration and Customs Enforcement, ICE Alternatives to Detention (last updated June 24, 2024), <https://www.ice.gov/features/atd>.

government to accept cash payments from an obligor, such comment is outside of the scope of this rule, as the rule focuses on electronic service of bond notices. Nevertheless, in the context of posting bond payments through CeBONDS, the commenter's interpretation misconstrues the meaning of the statute. The statute establishes what constitutes legal tender in the United States and does not impose a requirement on the government to accept cash payments.⁵¹ Congress enacted this statute to "establish and maintain a uniform national currency" to avoid having a "system in which individual states can issue their own currency, or declare things other than federally-issued money to constitute legal tender." *Genesee Scrap & Tin Baling Co. v. City of Rochester*, 558 F. Supp. 2d 432, 437 (W.D.N.Y. 2008). In any event, given that the statute does not have any bearing on immigration bond notifications and electronic service, this comment is beyond the scope of this rule and requires no further response.

III. Statutory and Regulatory Requirements

DHS developed this final rule after considering numerous statutes and executive orders related to rulemaking. The below sections summarize the analyses based on a number of these statutes or executive orders.

A. Administrative Procedure Act

The Department has forgone the Administrative Procedure Act's ("APA") delayed-effective-date procedure in implementing this rule because the APA's requirement for a 30-day delayed effective date applies to substantive rules, *see* 5 U.S.C. 553(d), whereas

⁵¹ *See, e.g., Tennessee Scrap Recyclers Ass'n v. Bredesen*, 556 F.3d 442, 458 (6th Cir. 2009) (city ordinance requiring payment by check, money, or payment vouchers only did not violate or implicate 31 U.S.C. 5103); *Genesee Scrap & Tin Baling Co. v. City of Rochester*, 558 F. Supp. 2d 432, 434 (W.D.N.Y. 2008) (city ordinance specifying that cash may not be used for transactions did not violate 31 U.S.C. 5103); *In re Reyes*, 482 B.R. 603, 606 (D. Ariz. 2012) (requiring debtors to make plan payments using only certified funds, automatic wage withdrawals, or electronic transfers did not violate 31 U.S.C. 5103). As the bankruptcy court *In re Reyes* explained, narrowly interpreting the statute "to forbid all but cash payments 'would strain logic.'" 482 B.R. at 606.

this rule, like the IFR, is a rule of agency organization, procedure, or practice, *see 5 U.S.C. 553(b)(A)*. In the IFR, ICE invoked the procedural rule exception to bypass notice-and-comment rulemaking. ICE, in citing the D.C. Circuit’s “oft-cited formulation,” explained the procedural-rule exception “covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.” *JEM Broad. Co., Inc. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994) (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980)); *see also Mendoza v. Perez*, 754 F.3d 1002, 1023-24 (D.C. Cir. 2014). The IFR merely added another method (e.g., electronic service) for ICE to serve bond-related notifications for anyone enrolling in or using an ICE electronic bonds systems. ICE is not removing or limiting any of the current methods of service found in 8 CFR 103.8(a)(1) or (2). These changes were procedural in nature, improve the effectiveness and efficiency of agency operations, and did not alter substantive rights.

The same is the case with this rule.

Even if the 30-day delayed-effective-date requirement did apply, the Department would find good cause to make this rule effective sooner. 5 U.S.C. § 553(d)(3). The IFR is already in effect and the changes in the final rule are merely clarifying or technical. None of the amendments implicate the justifications for the 30-day waiting period. The purpose of the waiting period is “to give affected parties time to adjust their behavior before the final rule takes effect.” *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1485 (9th Cir. 1992). Here, however, that purpose would not be served by delaying the effective date of the rule: The IFR has been in effect since September 7, 2023, and finalizing the provisions in this rule does not require anyone to change their conduct or to take any particular steps in advance of the effective date. *See United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (noting that the “legislative history of the APA” indicates that the waiting period “was not intended to unduly hamper agencies from

making a rule effective immediately,” but intended “to ‘afford persons affected a reasonable time to prepare for the effective date of a rule . . . or to take other action which the issuance may prompt’ ” (citing S. Rep. No. 752, 79th Cong., 1st Sess. 15 (1946); H.R. Rep. No. 1980, 79th Cong., 2d Sess. 25 (1946))). In fact, ICE has already implemented the IFR and the public will not need to adjust its behavior at all following the issuance of this final rule. Because there were no substantive changes from the IFR, the public has had sufficient notice of the provisions in this final rule and a delay in the rule’s effective date is unnecessary.

B. Executive Orders 12866, 13563, and 14094: Regulatory Review

Executive Order 12866, *Regulatory Planning and Review*, as amended by Executive Order 14094, *Modernizing Regulatory Review*, and Executive Order 13563, *Improving Regulation and Regulatory Review*, 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

Summary of the Analysis

DHS estimates the effects of the final rule relative to a baseline condition without the 2023 IFR.⁵² DHS estimates that the final rule will have public costs and unquantified benefits, and result in cost-savings and unquantified benefits to the government. The overall quantified impact of this rule is a net savings of \$561,317 discounted at 3 percent and \$182,870 discounted at 7 percent, with unquantified benefits expected to outweigh the unquantified costs. The rule is expected to expedite delivery and improve the reliability of service of bond-related notices. In accounting for the costs and cost-savings of this final rule, ICE has assumed that all obligors will adopt electronic service within the first year of the publishing of this final rule. New bond obligors who consent to enrolling in CeBONDS or eBONDS will use electronic notifications as a feature of using these systems, though they will have the option to utilize physical notification under certain circumstances, such as an obligor lacking the means to access the internet. Lastly, while the analysis assumes that bond obligors will enroll in these services sooner rather than later, full adoption may ultimately depend on several factors, such as obligors being made aware of these changes, understanding the benefits of these provisions, and possessing the means to access the internet. Table 1 summarizes the findings of this regulatory impact analysis (RIA).

Table 1. OMB Circular A-4 Accounting Statement 2023 (millions)

Category	Impact	Source
Benefits		
Annualized Monetized Benefits (\$ Mil)	(3%)	-
	(7%)	-

⁵² OMB Circular A-4 states that “the benefits and costs of a regulation are generally measured against a no-action baseline: an analytically reasonable forecast of the way the world would look absent the regulatory action being assessed.” Nov. 9, 2023, <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf> (last visited September 26, 2024). Consistent with OMB Circular A-4, DHS has analyzed finalization of the IFR as compared to a state of the world that (hypothetically) lacks the IFR. The “without-IFR baseline” is the primary baseline. This rule has no effects relative to a state of the world that includes the IFR (i.e., a “with-IFR baseline”), because this rule’s changes relative to the IFR are clarifying and technical in nature and have no real-world effects on the government or the public.

Annualized Quantified, but Unmonetized, Benefits	--	--
Unquantified Benefits	Improved program delivery. Reduced paper waste.	RIA
Costs		
Annualized Monetized Costs (\$ Mil)	(3%)	.544
	(7%)	.584
Annualized Quantified, but Unmonetized, Costs	--	--
Unquantified Costs	Cost to public to access electronic system.	RIA
Transfers		
Annualized Monetized Transfers	--	--
From Whom to Whom	--	--
Other Analyses		
Effects on State, Local, and/or Tribal Governments	No Impact	FR
Effects on Small Business	Undetermined	FR
Effects on Wages	--	--
Effects on Growth	--	--

Background and Purpose of Final Rule

As part of its mission to enforce U.S. immigration laws, ICE currently issues a wide range of notices, decisions, and other documents to entities such as, but not limited to, universities, businesses, noncitizens, courts, and employees. Prior to the IFR, the rules on service limited ICE to serving documents in person or by certified, registered, or regular mail. However, serving documents in this manner can take more time and be more costly compared to electronic methods of service. The final rule confirms the IFR in authorizing ICE to serve electronic bond-related notices and notifications to obligors who enroll in CeBONDS and eBONDS.

Currently, ICE uses certified mail for the service of demand notices issued on delivery bonds so that ICE can confirm the date upon which an obligor receives the demand notice. Since 2010, ICE has employed eBONDS, which is a web-based system

used primarily by surety agents and ICE to facilitate the ICE immigration bond management process. This system was implemented to allow surety agents the option to post surety bonds electronically for noncitizens determined by ICE to be eligible for release on bond. Additionally, eBONDS was built with functionality that included the ability to serve electronic bond-related notifications to surety companies and their agents within eBONDS for those companies who opted-in to electronic service, but due to the regulatory requirements under 8 CFR 103.8(a)(1) and 103.8(a)(2) for personal and routine service (pre-IFR), that capability has not been implemented in eBONDS.⁵³ Similarly, ICE has developed CeBONDS to allow cash bond obligors to post cash immigration bonds online without obligors having to appear in person at an ICE office. CeBONDS offers to individuals posting cash bonds all the conveniences that eBONDS provides to surety companies. This final rule authorizes ICE to serve bond-related notices and notifications electronically for those who consent, setup an account, and utilize the eBONDS and CeBONDS systems.

Time Horizon for the Analysis

ICE estimates the economic effects of this final rule will be sustained indefinitely. ICE assumes a 10-year timeframe to outline, quantify, and monetize the costs and benefits of the rule, and to demonstrate its net effects. DHS expresses quantified impacts in 2023 dollars and uses discount rates of 3 and 7 percent, pursuant to Circular A-4.

Analysis Considerations

With regard to bond-related notifications, ICE derived quantitative estimates of the costs that will be saved in ICE's operations, attributable to ICE serving the notifications electronically rather than through a non-electronic method. In order to calculate these

⁵³ U.S. Dep't of Homeland Security, *Privacy Impact Assessment Update for the Bonds Online System (eBONDS) Phase Two* (Jan. 24, 2013), <https://www.dhs.gov/sites/default/files/publications/ice-pia-008-a-ebonbs-2013.pdf>.

estimates, this analysis assumes that full use of eBONDS and CeBONDS will entail that current obligors adopt electronic notifications as they become familiar with the changes presented in this final rule. Based on input from ICE subject matter experts, this analysis also assumes that all current bond obligors will adopt these services within the first year of publishing this rule to realize the benefits of electronic bond-related notifications and will elect to use these services sooner rather than later. While the analysis assumes that all bond obligors will utilize these systems, full adoption may ultimately depend on several factors, such as obligors being made aware of these changes, understanding the benefits of these provisions, and possessing the means to access the internet.⁵⁴ Lastly, this estimate does not account for any change in the total number of notices that will occur in the future, or under circumstances when ICE needs to send paper notices by mail if emails fail, or the possibility of less than full adoption by the public. With this final rule, obligors utilizing CeBONDS and eBONDS will automatically enroll in electronic notifications upon consent, though they will have the option to utilize physical service under certain circumstances—such as an obligor lacking the means to access the internet.

Affected Population

The final rule affects ICE officers and all bond obligors who post immigration bonds online using CeBONDS or eBONDS. Once ICE has the ability to serve electronic notifications to bond obligors, ICE will begin to serve all bond-related notices electronically to any obligor who chooses to post a bond electronically.

⁵⁴ ICE subject matter experts expressed that they expect nearly every obligor to utilize these systems, and that in the first year of the CeBONDS system being active only approximately five percent of obligors pay bonds in person. This analysis assumes the percentage of in-person payments will decline over time as adoption continues. Commenters and stakeholders did not present data that challenged this assumption broadly but provided anecdotal evidence of certain obligors not being able to use the electronic systems and needing an in-person option. DHS is committed to maintaining an in-person payment option for such exceptions, but for the purpose of not inserting additional uncertainty into this analysis, DHS has not changed this assumption.

To account for these populations, ICE utilized its Bond Management Information System (BMIS) to collect and analyze data on surety companies and their agents that post bonds and data on individual obligors who post cash bonds. Using this information, ICE found that an average of 41,820 cash bonds were posted annually by obligors between fiscal years (FYs) 2018 and 2020. Additionally, ICE found that between FYs 2018 and 2020, a total of 15 agents and 11 surety companies posted ICE immigration bonds on behalf of surety bond obligors. Combined, these representatives posted bonds for an average 8,190 obligors. Table 2 displays this information below by fiscal year and category of bonds.

Table 2. Total Bonds Posted by Cash and Surety Obligors

Category	FY 2018	FY 2019	FY 2020	Average
Surety Bonds	8,081	9,098	7,391	8,190
Cash Bonds	49,793	50,135	25,531	41,820
Total	57,874	59,233	32,922	50,010

Source: DHS/ICE Bond Management Information System (BMIS)

Baseline

This section details the regulatory baseline for this final rule. The table below provides a summary of the anticipated changes to baseline conditions due to this final rule.

Table 3: Summary of Expected Impacts

Provision	Description of Change	Affected Population	Cost Impact	Benefit Impact

<p>Serve Bond-Related Notices Electronically</p>	<p>The electronic service process entails serving immigration (ICE) bond-related notices electronically and sending email notifications that notices have been posted to their account to bond obligors who have posted a bond using the eBONDS and CeBONDS systems.</p>	<ul style="list-style-type: none"> • All bond obligors who post immigration bonds online using the CeBONDS or eBONDS system. • Federal Government 	<ul style="list-style-type: none"> • Familiarization costs • Potential technology costs • Opportunity costs to create an CeBONDS account • Program cost savings 	<ul style="list-style-type: none"> • Improved program delivery • Expedited service process
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Operational Baseline

Currently, ICE uses routine service as defined by 8 CFR 103.8(a)(1) to serve breach notices, cancellation notices, and notices of bond breach reconsideration decisions. ICE performs the routine service by sending ordinary mail to the obligor's last known address. ICE also uses routine service to serve invoices and demand letters to surety companies and their agents, sending them either by ordinary mail, an alternative mailing method that allows ICE to track and confirm delivery, or email (with the co-obligors' consent).

Additionally, ICE uses personal service as defined by 8 CFR 103.8(a)(2)⁵⁵ to effect service of demand notices issued on delivery bonds so that ICE may confirm the date on which the obligor receives the demand notice. Currently, for ICE, "personal service" may be utilized through any of the following methods: personal delivery; delivery at a person's home or usual residence by providing a copy to a person of suitable age and discretion; delivery at the office or residence of an attorney or representative; or mailing

⁵⁵ Except that portion of 8 CFR 103.8(a)(2) that is applicable solely to USCIS.

by certified or registered mail, with return receipt requested, to a person's last known address.

To establish a baseline analysis for all bond-related notices, ICE calculated the average number of notices served by mail per year, of each type of immigration bond, based on data from fiscal year 2018 to 2020 (Table 4). ICE found the average number of all types of notices per year to be 45,358.

Table 4: Types of Immigration Bond Notices

Notice Type	Average Annual Number of Notices Mailed (FY 2018-2020)
I-391 Cash Bond Cancellations	15,317
I-340 Cash Bond Obligor to Deliver Noncitizen	12,020
I-323 Cash Bond Breaches	7,128
I-340 Surety Bond Obligor to Deliver Noncitizen	6,080
I-391 Surety Bond Cancellations	2,841
I-323 Surety Bond Breaches	1,412
Surety Bond Motion to Reopen or Reconsider	306
Cash Bond Motion to Reopen or Reconsider	254
Total:	45,358

Source: DHS/ICE Bond Management Information System (BMIS)

ICE anticipates that, in the absence of this rulemaking, the agency would continue to serve all bond-related notices using personal or routine service, at a cost to both the federal government and the recipients. ICE would still be required to process and serve notices manually, and bond obligors would continue to receive physical notifications via an authorized form of paper-based service.

Costs of the Final Rule

This alternative electronic method of ICE's process for serving bond notices will introduce familiarization, technology, and opportunity costs to the affected populations.

Quantified Costs

Familiarization - A likely impact of the final rule is that various individuals and other entities will incur costs associated with familiarization with the provisions of the rule. Familiarization costs involve the time spent reviewing and learning the provisions of a rule. Various offices throughout ICE may review the rule to determine how they are subject to the final rule. To the extent these entities are directly regulated by the rule, familiarization costs will be incurred, and those familiarization costs are a direct cost of the rule.

In addition to those being directly regulated by the rule, a wide variety of other entities will likely choose to read the rule and incur familiarization costs. For example, surety companies and noncitizens may want to become familiar with the provisions of this rule. At approximately 18,250 words, ICE estimates the time to read the final rule is approximately 61 to 73 minutes per person, resulting in opportunity costs of time. Congruent with other DHS impact analyses, ICE assumes the average professional reads technical documents at a rate of 250 to 300 words per minute.⁵⁶ An entity, such as a surety company may have more than one person who reads the final rule. Using the average hourly rate of total compensation of \$44.27 for all occupations (both civilian and private),⁵⁷ ICE estimates that the opportunity cost of time will range from \$44.88 to \$53.86 per individual who must read and review the final rule (in 2023 dollars).⁵⁸

⁵⁶ See 87 FR 10570 (Feb. 24, 2022) and 87 FR 18078 (Mar. 29, 2022).

⁵⁷ Average hourly total compensation \$44.27 = (\$45.42 civilian workers + \$43.11 private industry workers) ÷ 2. Total Compensation for civilian workers and private industry workers, U.S. Dep't of Labor, Bureau of Labor Statistics, *Employer Costs for Employee Compensation – December 2023*, (March 13, 2024), https://www.bls.gov/news.release/archives/ecec_03132024.pdf.

⁵⁸ Calculation: Average total compensation for civilian and private industry (\$44.27 = (\$45.42 + 43.11) ÷ 2), multiplied by the (lower and upper bound) number of hours required to read the rule (1.014 and 1.217, respectively), equate to the per individual opportunity cost of time required to read the rule (\$44.88 to \$53.86, respectively). Word count estimated as of March 25, 2024.

While the analysis assumes all bond obligors will utilize these systems, there are many factors which may impact the adoption of CeBONDS, such as awareness of the system and internet access. Given this, ICE provides an estimate for the number of people that will familiarize themselves with this rule based on expected users. To estimate this population, ICE utilized counts of bond obligors⁵⁹ and surety companies⁶⁰ between FY 2018 and FY 2020 to derive an annual average of 41,846 obligors (41,820 cash obligors + 11 surety companies + 15 agents). Assuming that at least one person from each entity or party will be responsible for reading the final rule, the total familiarization cost will range from \$1,878,048 to \$2,253,826 (in 2023 dollars).⁶¹ The average of this estimated range for familiarization for bond obligor entities, \$2,065,937, is used in the accounting of the first year of the cost of this final rule.

Account Creation—In accounting for the costs of electronic bond-related notices, ICE considered whether bond obligors or surety companies will face opportunity costs to utilize eBONDS and CeBONDS. For ICE to send notifications electronically to bond obligors, the bond obligors will need to create a personal account to access bond-related notices and process bond payments. ICE estimates the time to create this account is no more than 10 minutes. Using the average total rate of compensation as \$44.27⁶² per hour for all occupations, ICE estimates that the opportunity cost of time will be \$7.38 per individual (or surety company) who creates an account. To estimate this population, ICE

⁵⁹ Data was obtained from the DHS/ICE BMIS (obtained July 16, 2021, see Table 2). An average of 41,820 cash bonds were posted annually between 2018 and 2020. ICE used the average cash bonds posted as an estimate of the number of cash bond obligors. Cash bonds are generally posted by noncitizens or loved ones.

⁶⁰ This includes surety agents who post bonds on behalf of obligors. ICE found that between fiscal year 2018 and 2020, a total of 15 agents and 11 surety companies posted ICE immigration bonds on behalf of surety bond obligors.

⁶¹ Range for total familiarization cost: lower bound $\$44.88 \times 41,846 = \$1,878,048$; upper bound $\$53.86 \times 41,846 = \$2,253,826$.

⁶² Average hourly total compensation \$44.27 = (\$45.42 civilian workers + \$43.11 private industry workers) ÷ 2. Total Compensation for civilian workers and private industry workers, U.S. Dep’t of Labor, Bureau of Labor Statistics, *Employer Costs for Employee Compensation – December 2023*, (Mar. 13, 2024), https://www.bls.gov/news.release/archives/ecec_03132024.pdf.

utilized a 3-year average population count⁶³ of bond obligors between fiscal year 2018 and 2020 (from table 2) and assumes that all obligors will enroll into the program within the first year of implementation. The estimated total opportunity cost during the first-year adoption period for the current obligor population is \$308,823.⁶⁴ To account for surety companies and surety agents, ICE also utilized BMIS to account for each representative which posted surety bonds between fiscal year 2018 and 2020, determining that a total of 15 agents and 11 surety companies had posted immigration bonds. The estimated total opportunity cost during the first-year adoption period for this population to adopt these systems is \$191.88.⁶⁵

Lastly, in order to determine the cost of new obligors entering the pool and creating new accounts over the time horizon, ICE utilized prior cash bond obligor population data from fiscal years 2018 to 2020 to project that an average of 41,820 new cash bond obligors will create accounts each year. This will equate to a total cost to the public of \$3,086,316 over 10 years.

CeBONDS Development & Maintenance –CeBONDS began development in April of 2021, with the total development cost for ICE being estimated at roughly \$1,507,000. The maintenance costs for ICE have been estimated to be \$150,000 annually.⁶⁶ Similar to eBONDS, without this rule, ICE would still develop and implement CeBONDS to allow obligors to post cash bonds electronically, and ICE would continue to serve all bond-related notices using personal or routine service. Therefore, ICE did not include these development and maintenance costs as a part of the total costs in this analysis since the

⁶³ Data was obtained from the DHS/ICE BMIS and utilized the number of unique Tax Identification Numbers (TIN) for bond obligors within a given set of years (obtained July 16, 2021).

⁶⁴ \$308,361.60 = \$7.38 × 41,820 annual average number of unique cash bond obligors (see Table 2).

⁶⁵ \$191.88 = \$7.38 × 26 annual average number of surety companies and surety agents FY2018-FY2020.

⁶⁶ Estimates provided by ERO, Bond Management Unit, July 14, 2022.

development and operation of the CeBONDS system is occurring independent of this final rule.

Unquantified Costs

ICE also identified additional unquantified costs that will result from this final rule.

Technology – In accounting for the costs of electronic bond-related notices and notifications, ICE considered whether bond obligors will face technology costs to utilize these services, namely the cost to access the internet. There are a variety of means by which obligors can access the internet to receive electronic bond-related notices and notifications, including the use of smart phones or personal computers. Due to the high prevalence and wide-ranging public and private access the internet, including access to free Wi-Fi in public and private locations, access to computers and internet at public libraries, as well as likely connections to family and friends who have ready access to the internet, ICE expects bond obligors who opt for electronic service will be able to gain access with de minimis cost. Furthermore, obligors can still opt out of electronic service and follow the same practice as in the baseline case. It is unclear how many obligors will choose to use the in-person option, but since the rule provides greater flexibility by permitting electronic service while retaining the existing method for paying bonds, ICE does not expect the rule to induce substantive access costs.

Validity Check—In creating the online account for obligors, ICE will perform a validity check as part of the sign-up process for receiving electronic bond-related notices and notifications, as users cannot complete their account creation if their email is not first validated. The time burden to perform this check will be based on how long it takes for ICE to submit a verification email to the provided email address and confirm the accuracy of that address. However, because this process will likely be automated via computer software that is already available to ICE (see CeBONDS system development costs), ICE does not expect this process to produce a substantive cost.

Total Estimated Costs

Table 5 summarizes the quantified impact of this final rule. The total monetized costs of the rule do not include the development and annual maintenance costs required to operate the CeBONDS system given that they are not tied to this final rule, as discussed above. The 10-year costs of the final rule are approximately \$4.63 million and \$4.09 million (in 2023 dollars) at 3 and 7 percent discount rates, respectively, and include the opportunity costs of familiarization and setting up an online account.

Table 5: Total Estimated Quantified Costs

Year	Undiscounted	Discounted at 3%	Discounted at 7%
1	\$ 2,374,761	\$ 2,305,593	\$ 2,219,402
2	\$ 308,632	\$ 290,915	\$ 269,571
3	\$ 308,632	\$ 282,442	\$ 251,935
4	\$ 308,632	\$ 274,215	\$ 235,454
5	\$ 308,632	\$ 266,228	\$ 220,050
6	\$ 308,632	\$ 258,474	\$ 205,654
7	\$ 308,632	\$ 250,946	\$ 192,200
8	\$ 308,632	\$ 243,637	\$ 179,626
9	\$ 308,632	\$ 236,540	\$ 167,875
10	\$ 308,632	\$ 229,651	\$ 156,893
Total	\$ 5,152,445	\$ 4,638,641	\$ 4,098,661
Annualized		\$ 543,790	\$ 583,557

Cost Savings of the Final Rule

This alternative method of ICE's process for serving bond-related notices and issuing electronic bond-related notifications is expected to reduce labor costs for the government by reducing the time needed to process these notices, and it will eventually significantly reduce, if not eliminate, the costs of material items such as postage and paper that would otherwise be incurred for notices that are physically mailed. As mentioned above, ICE calculates quantitative benefits based on the assumption that new obligors are incentivized toward adoption into the eBONDS and CeBONDS systems within the first year of publishing this final rule.

Cost Savings Due to Electronic Bond-Related Service Process

Mailing Cost Savings—ICE estimated the cost-savings to government that will be obtained from a 100 percent adoption of electronic bond-related service process to be \$609,594 per year (in 2023 dollars). To arrive at the full cost savings estimate, ICE calculated the average cost of sending physical notices by certified or first-class mail. Specifically, ICE calculated the time required for an ICE official to collect, process, and place in the mail each physical notice, which was 5 minutes. ICE divided the 5 minutes by 60 minutes per hour, and multiplied by \$59.24, which is the fully loaded average hourly wage based on a General Schedule Grade 11, Step 10 salary, with a “Rest of U.S.” locality adjustment of 16.82 percent.⁶⁷ ICE based the fully loaded wage rate on the wage rate of \$45.19 per hour, adjusted upward by 31.1 percent to account for compensation for benefits (in addition to wages).⁶⁸ This calculation resulted in an estimated labor cost of \$4.94 per mailing. ICE then added this labor cost to the cost of materials (for the envelope, paper, etc.)⁶⁹ and the postage per notice (which varies depending on the type of notice) to determine the various costs per notice. ICE then multiplied this total by the number of pieces that are mailed per notice (which also varies depending on the type of notice), and by the average total number of notices issued for each type. Table 6 displays how the total cost of \$609,594 was derived.

Table 6: Government Cost Savings of Bond-Related Notices

Notice Type	Average Number of Notices Mailed (FY 2018-2020)	Cost Per Notice	Total Cost
I-391 Cash Bond Cancellations	15,317	\$ 5.61	\$ 85,928

⁶⁷ U.S. Office of Personnel Mgmt., Pay & Leave (January 2024), https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/24Tables/html/RUS_h.aspx (last visited Nov. 15, 2024).

⁶⁸ U.S. Dep’t of Labor, Bureau of Labor Statistics, *Employer Costs for Employee Compensation – December 2023* (Mar. 13, 2024), https://www.bls.gov/news.release/archives/ecec_03132024.pdf.

⁶⁹ Cost per notice estimates provided by ERO Bond Management Unit and include, when applicable, costs for certified mail, postage, paper, envelopes, and materials (such as toner/ink), as of July 26, 2021.

I-340 Cash Bond Obligor to Deliver Alien	12,020	\$ 10.52	\$ 126,450
I-323 Cash Bond Breaches	7,128	\$ 10.52	\$ 74,987
I-340 Surety Bond Obligor to Deliver Alien	6,080	\$ 42.07	\$ 255,786
I-391 Surety Bond Cancellations	2,841	\$ 11.22	\$ 31,876
I-323 Surety Bond Breaches	1,412	\$ 21.04	\$ 29,708
Surety Bond Motion to Reopen or Reconsider	306	\$ 11.22	\$ 3,433
Cash Bond Motion to Reopen or Reconsider	254	\$ 5.61	\$ 1,425
Totals	45,358	\$ 13.44	\$ 609,594

Total Estimated Quantified Savings

Table 7 summarizes the quantified cost savings of this final rule. The total monetized savings of the rule includes the average cost savings for ICE of replacing physically mailed notices (by certified, registered, or regular mail) with electronic bond-related notices in the CeBONDS system, as well as emailed notifications. In order to capture these cost savings over the time horizon of the analysis, ICE assumed a constant average rate of notices over a 10-year period. Thus, this estimate does not account for any change in the total number of notices that may occur in the future, or circumstances under which ICE needs to send paper notices by mail if emails fail, or the possibility of less than full adoption by the public. The 10-year cost-savings of the final rule in 2023 dollars are \$5.1 million and \$4.2 million at 3 and 7 percent discount rates, respectively.

Table 7: Total Estimated Quantified Cost Savings

Year	Undiscounted	Discounted at 3%	Discounted at 7%
1	\$ 609,594	\$ 591,839	\$ 569,714
2	\$ 609,594	\$ 574,601	\$ 532,443
3	\$ 609,594	\$ 557,865	\$ 497,610
4	\$ 609,594	\$ 541,616	\$ 465,056
5	\$ 609,594	\$ 525,841	\$ 434,632
6	\$ 609,594	\$ 510,525	\$ 406,198
7	\$ 609,594	\$ 495,655	\$ 379,624
8	\$ 609,594	\$ 481,219	\$ 354,789
9	\$ 609,594	\$ 467,203	\$ 331,579
10	\$ 609,594	\$ 453,595	\$ 309,887
Total	\$ 6,095,937	\$ 5,199,958	\$ 4,281,531

Annualized		\$	609,594		\$	609,594
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Unquantified Benefits of the Final Rule

This alternative method of ICE’s process, serving bond-related notices electronically and issuing electronic bond-related notifications, is expected to increase efficiency, accessibility, expedited delivery, and reliability of bond notices to the obligor. These benefits are described in more detail below.

Program Delivery—By serving bond-related notices electronically via the CeBONDS system and making bond obligors responsible for ensuring that electronic bond-related notifications can be received by email, ICE expects it will significantly reduce the number of bond-related notices that are not received by the obligor. A random sample of 100 delivery cash bonds that were declared as being breached during calendar years 2017-2019 indicates that approximately 28 percent of demand notices sent by certified mail to the obligor’s address of record were returned as undeliverable or unclaimed.⁷⁰ The electronic bond-related service process will significantly reduce the occurrence of notices being lost in the mail during delivery, while still providing notifications in the event that obligors move from their physical address or are away from that address for an extended period of time. This process is also expected to reduce the likelihood that an obligor would miss the opportunity to appeal a bond breach determination in time, which would otherwise lead to the forfeiting of the bond amount. Additionally, in creating the online account for obligors, ICE will perform a validity check as part of the sign-up process for receiving electronic bond-related notices, as users cannot create an online account if their email is not validated. This use of a verified email address will ensure that the notifications have a high probability of being successfully delivered

⁷⁰ Data obtained internally by DHS/ICE BMIS, Financial Service Center-Burlington, as of March 8, 2021.

electronically to an email address that the obligor uses, ensuring that the notification reaches its proper recipient.

ICE also intends to expedite delivery of notifications. For example, when an obligor chooses to post a bond online and receive bond-related notifications electronically, the system is designed to notify the obligor immediately by email when a notice has been issued. ICE, in turn, will also be able to confirm immediately the date that the cash bond obligor opens and views the notice. In this way, recipients can receive notifications without being present at their physical mailing address as long as they have access to the Internet.

Paperless Records—The changes due to this final rule are consistent with the types of changes now being made across the federal government regarding the mechanisms through which federal offices deliver documents to the public. In accordance with the Government Paperwork Elimination Act,⁷¹ electronic notifications will significantly reduce the use of paper and physical storage space.

Alternative Analysis

Before proposing service of electronic bond-related notifications, ICE evaluated one alternative option that would affect the entities subject to the rule requirements, namely the no action alternative. The details of this option are described below, and Table 8 presents the unquantified costs and benefits for this alternative.

Table 8: Summary of Alternatives

Action	Benefits	Costs

⁷¹ See Pub. L. No. 105-277, tit. XVII, section 1703, 112 Stat. 2681, 2681-749 (Oct. 21, 1998), 44 U.S.C. 3504.

<ul style="list-style-type: none"> • Take No Action 	<ul style="list-style-type: none"> • No familiarization, technology, or opportunity cost to public. 	<ul style="list-style-type: none"> • Cost to process nonelectronic mail. • Nonalignment with the Government Paperwork Elimination Act. • No improvement in program delivery. • Costs to maintain physical records.
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Alternative: Take No Action

ICE considered a “no action” alternative under which ICE would continue to serve bond-related notices to obligors for immigration bonds using personal or routine service, at a cost to both the federal government and the recipients.

The opportunity costs associated with electing a “no action” alternative would be equivalent to the current average cost to ICE of sending physical notices by certified or first-class mail, which ICE estimated to be \$573,470 per year. ICE would still be required to process and mail notices by hand, and bond obligors would continue to receive physical notifications. This alternative also means that ICE would not be acting in alignment with government-wide efforts to shift agencies’ business processes and recordkeeping to a fully electronic environment as encouraged by statutes like the Government Paperwork Elimination Act,⁷² and more recently, the joint memorandum issued by OMB and the National Archives and Records Administration⁷³ requiring the government to store records electronically. Additionally, this alternative of “no action” would also not result in any cost savings with regard to system development or deployment, because the eBONDS systems was already built and deployed independent of this final rule and the CeBONDS system is already being built and deployed independent of this final rule.

⁷² Pub. L. No. 105-277, tit. XVII, section 1703, 112 Stat. 2681, 2681-749 (Oct. 21, 1998), 44 U.S.C. 3504.

⁷³ Office of Management and Budget, Transition to Electronic Records (OMB/NARA M-19-21) (June 28, 2019), <https://www.archives.gov/files/records-mgmt/policy/m-19-21-transition-to-federal-records.pdf>.

The cost savings and benefits associated with this action involve the development, familiarization, technology, and opportunity costs associated with implementing this final rule. Absent the requirement to use the CeBONDS system, bond obligors would not face the potential costs associated with learning about the final rule, acquiring the necessary technological means to access the internet, or the expended time in creating an eBONDS or CeBONDS account.

Additionally, any preference by obligors either to maintain physical records or to receive nonelectronic mail notices has already been considered in the development of final rule. As part of the process of deciding to post a bond electronically with ICE, the obligor will be informed that bond notices will be served electronically, and the obligor must agree to receive them electronically as well as bond-related electronic notifications. If the obligor does not wish to post a bond electronically or receive bond notices and notifications electronically, the obligor may post the bond in person at an ICE office and receive notices and other bond-related information via another form of authorized paper-based service.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. However, a regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking; therefore, since this action is exempt under the APA, it is not subject to the regulatory flexibility analysis requirements.⁷⁴

D. Small Business Regulatory Enforcement Fairness Act of 1996

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, DHS wants to assist small entities in understanding this final rule

⁷⁴ See 5 U.S.C. 604(a).

so that they can better evaluate the effects on them and participate in the rulemaking. If the final rule would affect your small business, organization, or governmental jurisdiction, and you have questions concerning the provisions or options for compliance; please consult ICE using the contact information provided in the **FOR FURTHER INFORMATION** section above.

E. Congressional Review Act

This final rule is not a major rule as defined by 5 U.S.C. 804, also known as the “Congressional Review Act,” as enacted in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, 110 Stat. 847, 868 *et seq.* This final rule would 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 the ability of U.S.-based companies to compete with foreign based companies in domestic and export markets. A report about the issuance of this final rule has been submitted to Congress and the Comptroller General of the United States.

F. Unfunded Mandates Reforms Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Unfunded Mandates Reform Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any year. Though this final rule would not result in such an expenditure, DHS does discuss the effects of this rule elsewhere in this preamble.

G. Paperwork Reduction Act—Collection of Information

All Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a rule under the Paperwork

Reduction Act of 1995 (PRA), Pub. L. 104-13, 109 Stat. 163 (codified at 44 U.S.C. 3501 *et seq.*). Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from OMB for the collection and the collection displays a valid OMB control number. *See* 44 U.S.C. 3506, 3507.

With respect to immigration bonds, regardless of using either eBONDS or CeBONDS, there would be no changes to the reporting burden for the existing collection of information associated with Form I-352, *Immigration Bond* (OMB control number 1653-0022) or Form I-333, *Obligor Change of Address* (OMB control number 1653-0042). There are no substantive changes to those forms because of this rule. If DHS identifies any impacts that would modify or create a new collection, DHS will submit a revision to OMB at that time.

H. Executive Order 13132: Federalism

A rule has implications for federalism under Executive Order 13132, *Federalism*, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. DHS has analyzed this final rule under Executive Order 13132 and determined that it does not have implications for federalism.

I. Executive Order 12988: Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, *Civil Justice Reform*, to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

J. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

DHS analyzed this final rule under Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. DHS has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

K. National Environmental Policy Act (NEPA)

The U.S. Department of Homeland Security Management Directive (MD) 023-01, Rev. 01 establishes procedures that DHS and its Components use to comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500–1508.

CEQ regulations allow federal agencies to establish categories of actions, which do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1508.4. The DHS Categorical Exclusions are listed in IM 023-01-001-01 Rev. 01, Appendix A, Table 1.

For an action to be categorically excluded, MD 023-01 requires the action to satisfy each of the following three conditions:

- (1) The entire action clearly fits within one or more of the Categorical Exclusions;
- (2) The action is not a piece of a larger action; and
- (3) No extraordinary circumstances exist that create the potential for a significant environmental effect. IM 023-01-001-01 Rev. 01 § V(B)(2)(a)-(c). If the action does not clearly meet all three conditions, DHS or the Component prepares an Environmental

Assessment or Environmental Impact Statement, according to CEQ requirements, MD 023-01, and IM 023-01-001-01 Rev. 01.

ICE has analyzed this rule under MD 023-01 Rev. 01 and IM 023-01-001-01 Rev.01. ICE has made the determination that this rulemaking action is one of a category of actions, which does not individually or cumulatively have a significant effect on the human environment. This final rule clearly fits within the Categorical Exclusion found in IM 023-01-001-01 Rev. 01, Appendix A, Table 1, number A3(d): “Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.” This final rule is not part of a larger action. This final rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this final rule is categorically excluded from further NEPA review.

L. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, because it would not have a substantial direct effect 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.

M. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights

This final rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*.

N. Executive Order 13045: Protection of Children from Environmental Health

Risks and Safety Risks

Executive Order 13045 requires agencies to consider the impacts of environmental health risk or safety risk that may disproportionately affect children. DHS has reviewed this final rule and determined that this final rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children. Therefore, DHS has not prepared a statement under this executive order.

O. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This final rule does not use technical standards. Therefore, DHS did not consider the use of voluntary consensus standards.

P. Family Assessment

DHS has determined that this final rule action will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681).

List of Subjects

Administrative practice and procedures, Authority delegations (government agencies), Fees, Freedom of Information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Regulatory Amendments

Accordingly, DHS amends chapter I of title 8 of the Code of Federal Regulations as follows:

PART 103--IMMIGRATION BENEFITS; BIOMETRIC RECORDS;

AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1356b, 1372; 31 U.S.C. 9701; Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 101 et seq.); Pub. L. 112-54, 125 Stat 550 (8 U.S.C. 1185 note); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112-54; 125 Stat. 550; 31 CFR part 223.

2. Amend § 103.6 by revising paragraphs (g) and (h) to read as follows:

§ 103.6 Immigration bonds.

* * * * *

(g) *Delivery bond notices to surrender aliens.* Notwithstanding the requirements of § 103.8 for the service of other notices, ICE may serve demand notices electronically to bond obligors who consent to electronic delivery of service, or by any mail service that allows delivery confirmation to cause an alien who has been released from DHS custody on an immigration bond to appear at an ICE office or an immigration court. An electronic record from the ICE bonds system showing that the bond obligor opened the demand notice will constitute valid proof of service of the notice. If ICE cannot confirm proof of service of the electronic notice, ICE will issue a new demand notice to the bond obligor's last known address using any mail service that allows delivery confirmation.

(h) *Bond breach, bond cancellation, and other bond notices.* Notwithstanding the service requirements for demand notices in paragraph (g) of this section, ICE may serve any other bond-related notices that pertain to delivery, order of supervision, or voluntary departure immigration bonds, such as bond breach or cancellation notices, electronically to obligors who consent to electronic delivery of service, or by ordinary mail. An electronic record from the ICE bonds system showing that the bond obligor opened the bond-related notice will constitute valid proof of service of the notice. If ICE cannot confirm proof of service of the electronic notice, ICE will reissue another notice to the bond obligor's last known address using ordinary mail.

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Secretary,

U.S. Department of Homeland Security

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