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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1003

[EOIR 25–AB34; AG Order No. 6224–2025]

RIN 1125–AB34

Reducing the Size of the Board of Immigration Appeals

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

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule (“IFR”) amends the Department of Justice (“Department”) regulations relating to the organization of the Board of Immigration Appeals (“Board” or “BIA”) by reducing the Board to 15 members.

DATES:

Effective date: This IFR is effective April 14, 2025.

Comments: Written comments must be submitted on or before May 14, 2025. Comments postmarked on or before that date will be considered timely. The electronic Federal Docket Management System will accept comments until midnight Eastern Time on that date.

ADDRESSES: If you wish to provide comments regarding this rulemaking, you must submit comments, identified by the agency name and referencing RIN 1125–AB34 or EOIR Docket No. 25–AB34, by one of the two methods below.

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the website instructions for submitting comments.

- *Mail:* Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of electronic submission, please direct the mail/shipment to: Stephanie Gorman, Acting Assistant Director, Office of Policy,

Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041. To ensure proper handling, please reference the agency name and RIN 1125–AB34 or EOIR Docket No. 25–AB34 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

FOR FURTHER INFORMATION CONTACT:

Stephanie Gorman, Acting Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone (703) 305–0289.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. The Department also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change.

Each submitted comment should include the agency name and reference RIN 1125–AB34 or EOIR Docket No. 25–AB34 for this rulemaking. Please note that all properly received comments are considered part of the public record and generally may be made available for public inspection at www.regulations.gov. Such information includes personally identifying information (such as name, address, etc.) voluntarily submitted by the commenter. The Department may withhold from public viewing information provided in comments that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of www.regulations.gov.

If you want to submit personally identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONALLY IDENTIFYING

INFORMATION” in the first paragraph of your comment and identify what information you want redacted. The redacted personally identifying information will be placed in the agency’s public docket file but not posted online.

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

www.regulations.gov. The redacted confidential business information will not be placed in the public docket file.

To inspect the agency’s public docket file in person, you must make an appointment with the agency. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for agency contact information.

II. Background

The Executive Office for Immigration Review (“EOIR”) administers the Nation’s immigration court system. Generally, cases commence before an immigration judge after the Department of Homeland Security (“DHS”) files a charging document with the immigration court. *See* 8 CFR 1003.14(a). EOIR primarily decides whether aliens who are charged by DHS with violating immigration law pursuant to the Immigration and Nationality Act (“INA” or “Act”), codified at 8 U.S.C. 1101–1537, should be ordered removed from the United States, or should be granted relief or protection from removal and be permitted to remain in the United States. EOIR’s Office of the Chief Immigration Judge administers these adjudications in immigration courts nationwide.

Many—but not all—decisions of the immigration judges are subject to review by EOIR’s appellate body, the Board, which at full capacity under the current regulations comprises 28 permanent Board members. *See* 8 CFR 1003.1(a)(1), (b). The Board is the highest administrative tribunal for interpreting and applying Federal immigration law.

The Board's decisions can be reviewed by the Attorney General, as provided in 8 CFR 1003.1(g) and (h). Decisions of the Board and the Attorney General are subject to judicial review. INA 242, 8 U.S.C. 1252. The Board issues both precedent and non-precedent decisions, and a decision may be designated as a precedent by a majority vote of permanent Board members. *See* 8 CFR 1003.1(g)(3).

III. Reduction of Number of Board Members

The size of the BIA was last addressed through a rule promulgated in April 2024. *See* Expanding the Size of the Board of Immigration Appeals, 89 FR 22630 (Apr. 2, 2024). At that time, the Department issued a final rule not only addressing comments received in response to the Department's 2020 IFR that expanded the size of the Board from 21 to 23 members, Expanding the Size of the Board of Immigration Appeals, 85 FR 18105 (Apr. 1, 2020), but also adding five additional Board member positions, thereby expanding the size of the Board to 28 permanent members. 89 FR 22630.

The number of permanent Board members has fluctuated over time based on changing circumstances. Throughout the history of the BIA, the number of authorized Board member positions has ranged from as few as 5 members to as many as the current 28 members. *See* Board of Immigration Appeals; Immigration Review Function; Editorial Amendments, 48 FR 8038, 8039 (Feb. 25, 1983). At present, the BIA has 28 authorized Board member positions, the largest in its 85-year history. Over the past 30 years, the primary justification for increasing the number of Board members has been the rising EOIR caseload.¹ *See* Expansion of the Board of Immigration Appeals, 60 FR 29469, 29469 (June 5, 1995); Board Members of the Board of Immigration Appeals, 61 FR 59305, 59305 (Nov. 22, 1996); 23 Board of Immigration Appeals Members, 66 FR 47379, 47379 (Sept. 12, 2001); Board of Immigration Appeals: Composition of Board and Temporary Board Members, 71 FR 70855, 70855–56 (Dec. 7, 2006), *finalized without change* by Board of Immigration Appeals: Composition of Board and Temporary Board Members, 73 FR 33875 (June 16, 2008); Expanding the Size of the Board of Immigration Appeals, 80 FR 31461, 31462 (June 3, 2015); Expanding the

Size of the Board of Immigration Appeals, 83 FR 8321, 8321–22 (Feb. 27, 2018); 85 FR 18106; 89 FR 22631.

However, increasing the size of the Board has not necessarily equated to a corresponding increase in the number of cases adjudicated or a reduction in the pending caseload. Although many factors may have contributed to this outcome—including organizational and administrative challenges—the data demonstrate that increasing the Board's size has not brought about the hoped-for increases in productivity envisioned by prior expansions. Furthermore, increasing the Board beyond a certain size has added structural inefficiencies that further undermine the Board's ability to effectively adjudicate cases.

The Department notes that several commenters on the 2020 IFR expanding the Board raised similar concerns—*i.e.*, that expanding the Board's size would do little to address its pending caseload. *See* 89 FR 22632 (2024 final rule responding to comments on the 2020 IFR). Although the Department further expanded the size of the Board in 2024 notwithstanding those comments, *id.*, the Department has now reconsidered its view and agrees with the commenters who pointed to broader issues affecting the Board's caseload that expanding the Board would not abate.

While the number of Board members authorized by regulation has increased by 13 since 2015, the number of cases completed annually by Board members has exceeded the total number completed in 2015 only three years since then, and the current projection for Fiscal Year 2025 is that completions will be less than in Fiscal Year 2015. *See* EOIR Workload and Adjudication Statistics, *All Appeals Filed, Completed, and Pending* (Jan. 16, 2025), <https://www.justice.gov/eoir/media/1344986/dl?inline>. In short, the data available do not conclusively demonstrate that the increased Board size will lead to increased case adjudications.

Importantly, the expansions have also diminished the Board's ability to meet other critical aspects of its mission. Several commenters on the 2020 IFR expanding the Board also raised these concerns, arguing that the expansion contradicted the Department's stated priorities of maintaining “administrability” and “coherent direction.” *See* 89 FR 22632 (2024 final rule responding to comments on the 2020 IFR). The Department gave those concerns little weight in 2024, but it now recognizes the validity of such concerns and has given them more weight. Accordingly, it now agrees that the Board's current size is far too

unwieldy to provide an appropriate level of administrative oversight and coherent management. The Department has now determined that 15 Board members, the number it had before the start of the multiple waves of expansion over the past decade, is the appropriate size for the Board.

The mission of EOIR is “to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws.” EOIR, *About the Office*, <https://www.justice.gov/eoir/about-office> (last updated Jan. 22, 2025). While the expeditious processing of cases is a cornerstone of EOIR's mission, the Board plays an equally important role in fairly and uniformly interpreting and administering immigration law. The Department now realizes that the recent expansions of the Board did not appropriately account for the impact that the size of the Board has on its ability to meet these other important aspects of its mission.² At this time, the Department believes that the continued expansion of the Board has had significant institutional costs, including effects on the cohesiveness of the Board's decision-making process and the collegiality among Board members, a loss of uniformity in its non-precedent decisions, increased difficulty providing effective leadership, as well as an administrative and supervisory strain on the Board's limited legal staff.

The substantial increase in the number of Board members over the past 10 years has diminished the cohesiveness of the Board's decision-making process, causing the process of issuing precedent decisions to become more time-consuming and challenging. A key purpose of the Board is to publish precedent decisions to provide clear guidance and promote the uniform application of the immigration laws nationwide. *See* 8 CFR 1003.1(d)(1) (providing that “the Board, through precedent decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations”). As the number of Board members has increased, a greater number of votes has been required to reach a majority of Board members to consider a case en banc, as well as to designate a decision

¹ Although most changes to the size of the Board involved increasing the number of permanent Board members, the number of authorized permanent Board members was reduced from 21 to 11 in 2002. Board of Immigration Appeals: Procedural Reforms to Improve Case Management, 67 FR 54878 (Aug. 26, 2002).

² Between 2015 and 2024, the Board added 13 permanent Board member positions. *See* 80 FR 31461 (2015 IFR expanding Board from 15 to 17 members); 83 FR 8321 (2018 final rule expanding Board to 21 members); 85 FR 18105 (2020 IFR expanding Board to 23 members); 89 FR 22630 (2024 final rule expanding Board to 28 members).

as precedent. 8 CFR 1003.1(a)(5), (g)(3). The challenges presented by a higher number of Board members are reflected in the overall decline in the number of precedent decisions issued by the Board over the last 10 years. Even though the number of Board members has increased by 13 since 2015, the number of BIA precedent decisions issued has decreased by half. In 2015, the Board issued 28 precedent decisions, as compared to only 14 precedent decisions in 2024.

Furthermore, having an even number of Board members presents an added challenge in issuing precedent decisions, which require approval by a majority of the permanent Board members. *See* 8 CFR 1003.1(g)(3). Thus, if the Board is evenly divided over whether a case should become precedent, the decision cannot be issued as a precedent absent direction from the Attorney General or a designee of the Attorney General. *Id.* Further, given the numerous other responsibilities of the Attorney General—and of any high-level official she would entrust as a designee—relying on the Attorney General or a designee to direct designation of a Board decision to be published as a precedent would be impractical on a consistent basis. The Department believes that it is important that the number of authorized positions be an odd number to ensure the Board is not prevented from issuing a precedent decision by an evenly divided Board.

In addition, the increasing number of Board members has resulted in greater inconsistency in the Board's non-precedent decisions. Board members exercise independent judgment and discretion in deciding the cases that come before them. *See* 8 CFR 1003.1(d)(1)(ii). The Department recognizes that there will be some level of inconsistency in unpublished decisions, regardless of the size of the Board. However, retaining a 28-member Board only increases the likelihood of such inconsistency and adversely impacts the uniformity of its decisions.

Lastly, the increase in the number of Board members, particularly in the last four years, has not been met with a proportionate increase in the number of attorney advisors, paralegals, and administrative staff, resulting in administrative and supervisory strain on the Board's limited legal staff. Over the last four years, the Department has prioritized immigration-judge and Board-member hiring without prioritizing the hiring of necessary staff to support these positions. At the Board, attorney advisors play a pivotal role in the adjudicatory process, analyzing

administrative records, providing guidance and interpretation of immigration law, and preparing proposed decisions for Board-member consideration. Without sufficient attorney advisors and other support staff, the Board cannot efficiently adjudicate its caseload, no matter how much it increases the number of permanent Board members.

Furthermore, the Department believes that, when previously assessing the expansion of the size of the Board from 23 to 28 permanent members, insufficient weight was given to the authority of the Attorney General to appoint temporary Board members to address any significant fluctuations in the Board's caseload or changes in case processing priorities. *See* 8 CFR 1003.1(a)(4). The appointment of temporary Board members provides a two-fold benefit. First, temporary Board members are appointed for renewable six-month terms and have the authority of a Board member to adjudicate assigned cases, but they do not have the authority to vote on any matter decided by the Board en banc, including whether a decision should be designated as precedent. *See* 8 CFR 1003.1(a)(4) and (5), (g)(3). Thus, the appointment of temporary Board members affords the Department significant flexibility in addressing the Board's case adjudication priorities but does not adversely impact the Board's en banc process.

Second, temporary Board-member appointments play an important role in the long-term interests of EOIR, including through career development and advancement for immigration judges and others serving temporarily in Board-member positions.³

In short, a reduction in permanent Board-member positions will not impede the Board's ability to address exigent circumstances because of the availability of temporary Board members. Further, temporary Board members can be appointed relatively quickly, whereas expanding the Board requires a regulatory change; thus, temporary Board members also provide

added flexibility for shifts in the Board's workload.

In conclusion, the Department believes that reducing the number of Board member positions to 15 would increase the consistency of Board decisions and facilitate an efficient en banc process, thereby improving the quantity and value of Board precedents. Fifteen is an odd number, so it reduces the likelihood of tie votes en banc. It also serves as an appropriate baseline by returning the Board to the number of members it had prior to the wave of expansion that began in 2015. In the Board's experience, particularly considering the period between December 2006 and June 2015 when the Board stood at 15 members compared to the subsequent decade when the Board expanded multiple times and nearly doubled in size, a cohort of 15 members represents a realistic capacity to adjudicate cases in a cohesive and efficient manner without sacrificing quality decision-making or the ability to publish precedents which can aid immigration judges, DHS, practitioners, and aliens in addressing the large backlog of pending cases in immigration courts.

It will also increase the Board's ability to more quickly, effectively, and consistently issue precedent decisions on critical questions involving the interpretation of immigration laws. The Department believes that an increase in the number of precedent decisions will be of greater assistance to immigration judges, DHS, practitioners, and individuals in immigration proceedings and will improve overall efficiency in the immigration court system. In particular, the issuance of Board precedent decisions provides guidance to immigration judges, which increases their efficiency by allowing them to rely on such precedent rather than having to provide their own independent legal analysis on some complex recurring issues. Similarly, DHS officers are bound by Board precedent decisions. *See* 8 CFR 103.10(b). A reduction to 15 Board member positions will allow for the most efficient use of appellate judge resources to adjudicate administrative appeals on a timely basis, thereby balancing the Board's role in interpretation and administration of the law with its overall efficiency. Finally, the reduction in size of the Board, which effectively began in December of 2024, has been implemented through a combination of retirements, voluntary reassignments, the recent government-wide deferred-resignation program, and a reduction-in-force measure.

³ The Attorney General may in her discretion appoint, among others, EOIR immigration judges, administrative law judges, and senior attorneys with at least 10 years of immigration experience to serve as temporary Board members for renewable terms not to exceed six months. 8 CFR 1003.1(a)(4). Serving as a temporary Board member provides a unique opportunity to observe and participate in the Board's adjudicatory process. While temporary Board members are non-voting members of the en banc Board, they may serve as the author or panel member for a precedent decision. These opportunities develop valuable skills and provide experiences that help to strengthen and improve the EOIR career staff.

IV. Public Comments

This rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date because it relates to a matter of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A). The Department nonetheless has chosen to promulgate this rule as an IFR, providing the public with opportunity for post-promulgation comment before the Department issues a final rule on this matter.

V. Regulatory Requirements

A. Administrative Procedure Act

Notice and comment is unnecessary because this is a rule of agency management or personnel as well as a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(a)(2), (b)(A). For the same reasons, this rule is not subject to a 30-day delay in effective date. *See* 5 U.S.C. 553(a)(2), (d).

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (“RFA”), a regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking under 5 U.S.C. 553(b) or other law. 5 U.S.C. 603(a), 604(a). Because this is a rule of internal agency organization and therefore is exempt from notice-and-comment rulemaking, no RFA analysis under 5 U.S.C. 603 or 604 is required for this rule.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, codified at 2 U.S.C. 1501 *et seq.*

D. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

This rule is limited to agency organization, management, or personnel matters and is therefore not subject to review by the Office of Management and Budget pursuant to section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review. Nevertheless, the Department certifies that this regulation has been drafted in accordance with the principles of Executive Order 12866, section 1(b), and Executive Order 13563. Executive Orders 12866 and 13563

direct agencies to assess 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). The benefits of this rule include providing the Department with an appropriate means of responding to issues regarding the size of the Board. The public will benefit from the reduction of the number of Board members because such reduction will help EOIR better accomplish its mission of adjudicating cases in an efficient and timely manner.

E. Executive Order 13132 (Federalism)

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

F. Executive Order 12988 (Civil Justice Reform)

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

G. Paperwork Reduction Act

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

H. Congressional Review Act

This is not a major rule as defined by 5 U.S.C. 804(2). This action pertains to agency organization, management, and personnel and, accordingly, is not a “rule” as that term is used in 5 U.S.C. 804(3). Therefore, the reports to Congress and the Government Accountability Office specified by 5 U.S.C. 801 are not required.

List of Subjects in 8 CFR Part 1003

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

Accordingly, for the reasons stated in the preamble, the Attorney General is amending part 1003 of chapter V of title

8 of the Code of Federal Regulations as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

■ 2. Amend § 1003.1 by revising the third sentence of paragraph (a)(1) to read as follows:

§ 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

(a)(1) * * * The Board shall consist of 15 members.* * *

* * * * *

Dated: April 4, 2025.

Pamela Bondi,

Attorney General.

[FR Doc. 2025–06294 Filed 4–11–25; 8:45 am]

BILLING CODE 4410–30–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2024–0200]

RIN 3150–AL23

List of Approved Spent Fuel Storage Casks: NAC Multi-Purpose Canister (NAC-MPC) System, Certificate of Compliance No. 1025, Amendment No. 9, and Revision to Amendment Nos. 6, 7, and 8

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of May 13, 2025, for the direct final rule that was published in the **Federal Register** on February 27, 2025. This direct final rule amended the NAC International, Inc. Multi-Purpose Canister System listing within the “List of approved spent fuel storage casks” to include Amendment No. 9 and revisions to Amendment Nos. 6, 7, and 8 to Certificate of Compliance No. 1025.

DATES: *Effective date:* The effective date of May 13, 2025, for the direct final rule