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RIN 1125–AA83

Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances

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

ACTION: Final rule.

SUMMARY: On March 27, 2019, the Department of Justice (the Department) published in the **Federal Register** an Advanced Notice of Proposed Rulemaking (ANPRM) to solicit public comments regarding whether the Department should allow practitioners who appear before the Executive Office for Immigration Review (EOIR) to engage in limited representation or representation of a noncitizen during only a portion of the case, beyond what the regulations permitted. On September 30, 2020, after reviewing the comments to the ANPRM, the Department published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM). The NPRM proposed to amend the regulations to allow practitioners the option of entering a limited appearance to assist pro se individuals with drafting, writing, or filing applications, petitions, briefs, and other documents in proceedings before EOIR, as opposed to requiring the practitioner to enter an appearance to become the ''practitioner of record'' and thereby to accept certain obligations and responsibilities. This final rule responds to comments received in response to the NPRM and adopts the proposed rule with changes as described below. Specifically, this final rule permits practitioners to provide document assistance to pro se individuals by entering a limited appearance through new Forms EOIR–60 or EOIR–61, without requiring the practitioner to become the practitioner of record or to submit a motion to withdraw or substitute after completing the document assistance.

DATES: This rule is effective November 14, 2022.

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

SUPPLEMENTARY INFORMATION:

I. Background

The Immigration and Nationality Act (INA) provides that noncitizens appearing before an immigration judge ''shall have the privilege of being represented, at no expense to the Government, by counsel of the [noncitizen]'s choosing who is authorized to practice in such proceedings.'' INA 240(b)(4)(A), 8 U.S.C. 1229a(b)(4)(A); *see also* INA 292, 8 U.S.C. 1362 (''In any removal proceedings before an immigration judge . . . the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel . . . as [the person concerned] shall choose.''); 8 CFR 1003.16(b) (''The [noncitizen] may be represented in proceedings before an Immigration Judge by an attorney or other representative of [the person concerned's] choice in accordance with 8 CFR part 1292, at no expense to the government.'').

The Department has promulgated regulations that establish rules of procedure before the immigration courts and the Board of Immigration Appeals (BIA), including rules specifying who is authorized to provide representation and standards of professional conduct governing those authorized to provide representation. *See* 8 CFR Subpart A (BIA rules of procedure); 8 CFR Subpart C (immigration court rules of procedure); 8 CFR Subpart G (rules of professional conduct for practitioners); 8 CFR 1292.1 (describing individuals authorized to provide representation before EOIR). Under those regulations, individuals authorized to provide representation—*i.e.,* attorneys, law students, law graduates, reputable individuals, accredited representatives, and accredited officials—are known as ''practitioners.'' 8 CFR 1003.101(b); *see also* 8 CFR 1292.1. In order to become the ''practitioner of record,'' which authorizes and requires the practitioner to appear before EOIR on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings, practitioners must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR–27) or a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR–28). 8 CFR 1003.3(a)(3), 1003.17(a), 1003.38(g), 1292.4(a). When a practitioner enters an appearance using these forms, that individual is the practitioner of record in the case for which the appearance form was filed, unless and until the immigration judge or the BIA grants a motion to withdraw or substitute. 8 CFR 1003.17(a)(3), 1003.38(g)(3), 1292.4(a).

Prior to a 2015 final rule, an entry of appearance in immigration court through the filing of a Form EOIR–28 required a practitioner to represent a noncitizen in all proceedings before the immigration court, including removal and bond proceedings if the noncitizen was detained.[1] *See* Separate Representation for Custody and Bond Proceedings, 80 FR 59500 (Oct. 1, 2015). The 2015 final rule allowed practitioners to enter an appearance to represent a noncitizen in ''custody or bond proceedings only, any other proceedings only, or for all proceedings.'' 8 CFR 1003.17(a). In sum, a practitioner can enter an appearance to be a practitioner of record in one of three capacities: (1) all proceedings, to include removal, deportation, exclusion, credible and reasonable fear, or any other proceeding type, and custody or bond; (2) custody or bond proceedings only; or (3) all proceedings other than custody and bond proceedings. A practitioner who enters an appearance in one of the three capacities becomes

[1] The 2015 amendment did not alter the rules for entering an appearance before the BIA. A separate entry of appearance was already required when an appeal was filed with the BIA from a decision of an immigration judge or a District Director decision. *See* 8 CFR 1003.38(g).

the practitioner of record for the designated proceeding(s). That practitioner then has certain obligations and responsibilities, including completing written filings, making appearances in court, and accepting service of documents, unless and until the immigration judge permits withdrawal or substitution of counsel. *See* 8 CFR 1003.17(b). Separate appearances in custody and non-custody proceedings are permitted under that final rule, and this rule does not alter that. As has been the case since 2015, a noncitizen remains ''pro se'' in any type of proceeding in which a practitioner has not entered an appearance to be the practitioner of record. For example, if a practitioner entered an appearance to be practitioner of record in custody or bond proceedings only, the noncitizen would remain ''pro se'' in all proceedings other than custody or bond proceedings. *See* 80 FR at 59500 (authorizing a practitioner to enter an appearance solely for custody or bond proceedings before the immigration court, such that noncitizen would appear pro se for all other proceedings if no practitioner has entered an appearance for those other proceedings).

For many years, members of the public have requested that the Department modify EOIR's regulations to allow practitioners to engage in limited appearances before EOIR on behalf of pro se noncitizens, without the practitioner being obligated to become the practitioner of record and represent the noncitizen for the entire proceeding, so that the practitioner could provide in-person representation for a discrete, limited part of a proceeding or draft forms or applications beyond what is already permitted by separate appearances as discussed above. *See, e.g.,* 84 FR at 11447 (referencing ''a comment seeking a broadening of the limited scope of representation permitted''). Commenters in support of allowing such limited appearances contended that doing so would enable practitioners to provide legal services to a greater number of noncitizens in immigration proceedings and thereby improve the efficiency of immigration proceedings. Specifically, the commenters indicated that the greatest benefit of a limited appearance mechanism would be to permit practitioners to provide pro se noncitizens with assistance in the preparation, drafting, and filing of documents, without obligating those practitioners to become the practitioners of record, as is required under the current regulations.

The Department agrees and acknowledges the importance of allowing practitioners to limit their appearance to document assistance to enhance the efficiency and fairness of immigration proceedings. After consideration, the Department has determined that permitting limited appearances to provide document assistance to pro se noncitizens would be beneficial because it would give practitioners greater flexibility to assist noncitizens appearing pro se before EOIR, provide increased access to competent legal services for noncitizens in immigration proceedings, and aid EOIR in adjudicating cases of pro se noncitizens who receive document assistance from practitioners. The new rule does not allow limited appearances for in-person representation, beyond what is already permitted under separate appearances as described above. *See* 80 FR at 59500–01; *see also Matter of Velasquez,* 19 I&N Dec. 377, 384 (BIA 1986).[2]

II. Summary of Changes

The final rule expands the circumstances in which practitioners may assist noncitizens in proceedings before an immigration court and the BIA by allowing practitioners to enter limited appearances—without further obligations or responsibilities to the immigration court, the BIA, or the noncitizen—when only providing assistance with documents filed in those proceedings. The rule clarifies when practitioners must file an appearance and the effect of the entry of a particular appearance. There is no change to the mechanism that causes a practitioner to become the ''practitioner of record,'' which authorizes and requires the practitioner to appear before EOIR on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings. A practitioner becomes a practitioner of record only by entering an appearance using a Form EOIR–27 or Form EOIR–28. Under this rule, practitioners may also choose to enter a limited appearance on a Form EOIR–60 or EOIR–61 when only providing document assistance to pro se noncitizens. Such a limited appearance does not restrict practitioners from later filing a Form EOIR–27 or EOIR–28 to enter an appearance as the practitioner of record.

''Document assistance'' is the drafting, completing, or filling in of blank spaces of a specific motion, brief, form, or other document or set of documents intended to be filed with the immigration court or BIA. If they are not otherwise the practitioner of record, practitioners who engage in document assistance must disclose such assistance by entering a limited appearance. To facilitate this process, EOIR has created two new entry of appearance forms: Form EOIR–60 (Notice of Entry of Limited Appearance for Document Assistance Before the Board of Immigration Appeals) and Form EOIR–61 (Notice of Entry of Limited Appearance for Document Assistance Before the Immigration Court). In addition, practitioners must identify themselves on the documents with which they assisted and complete the preparer section on forms with which they assisted.

Unlike an entry of appearance to become the practitioner of record through the filing of a Form EOIR–27 or EOIR–28, the entry of a limited appearance for document assistance pursuant to a Form EOIR–60 or EOIR–61 does not impose any continuing obligations to the noncitizen, the immigration court, or the BIA on the part of the practitioner. *See* 8 CFR 1003.17(b)(2), 1003.38(g)(2)(ii). Practitioners who enter a limited appearance do not become the practitioner of record and, as such, do not have the authorization, obligation, or responsibility to appear on behalf of the noncitizen, to otherwise represent the noncitizen before the immigration court or the BIA, or to move to substitute or withdraw from the proceeding. *See* 8 CFR 1003.17(b)(2), 1003.38(g)(2)(ii). A noncitizen who receives only document assistance from a practitioner remains pro se unless and until a practitioner files a Form EOIR–27 or EOIR–28 to become the practitioner of record. *See* 8 CFR 1003.17(b)(2), 1003.38(g)(2)(ii). Indeed, only when a practitioner enters an appearance via an EOIR–27 or EOIR–28 and becomes the practitioner of record will the practitioner receive notice of a noncitizen's upcoming hearings, be sent filings in the case and be permitted access to the case file and appear in person on the noncitizen's behalf.

As explained *infra,* the final rule amends the definitions of ''practice'' and ''preparation'' in order to provide greater clarity and specificity to those terms. Further, the final rule clarifies the duty to enter an appearance and any disciplinary consequences associated with failing to enter the proper appearance, whether through a Form

[2] This final rule supersedes the statement in *Matter of Velasquez* that ''there is no 'limited' appearance of counsel in immigration proceedings,'' 19 I&N Dec. at 384, because this rule amends the regulation that *Matter of Velasquez* relied upon.

EOIR–27, EOIR–28, EOIR–60, or EOIR–61, are not determined by whether the practitioner is engaging in ''practice'' or is engaging in ''preparation.'' Practitioners enter an appearance through Form EOIR–27 or Form EOIR–28 when they seek to become the practitioner of record and to take on the responsibilities and obligations attendant to that status. Practitioners enter a limited appearance through Form EOIR–60 or Form EOIR–61 when they only assist with documents intended to be filed with EOIR, regardless of whether the practitioners' work related to those documents constitutes ''practice'' or ''preparation.''

As noted below and as was already the case, all practitioner conduct—not just conduct that requires a practitioner to enter an appearance as the attorney of record—may be subject to EOIR's disciplinary rules. *See* 8 CFR 1003.101(b); 8 CFR 1003.102. Accordingly, practitioners who provide assistance that requires an appearance on Form EOIR–27, EOIR–28, EOIR–60, or EOIR–61 are subject to EOIR's Rules of Professional Conduct. The final rule amends the disciplinary rules to amend practitioners' obligations to enter an appearance on the appropriate Form EOIR–27, EOIR–28, EOIR–60, or EOIR–61 and obligations regarding the drafting and signing of documents. Such amendments are discussed further below.

Given that only ''practitioners'' may enter an appearance before EOIR, the changes made in this final rule regarding the circumstances in which a practitioner must enter an appearance do not apply to non-practitioners. Non-practitioners continue to be permitted to assist noncitizens with the ''preparation'' of documents, which consists solely of filling in blank spaces on printed forms with information provided by the applicant or petitioner that are to be filed with or submitted to EOIR, only where such acts do not include the exercise of professional judgment to provide legal advice or legal services.[3]

In summary, the final rule establishes or reaffirms that practitioners: (1) must enter an appearance on Form EOIR–27 or Form EOIR–28 to become the practitioner of record and thereby be authorized and required to appear for hearings or arguments on behalf of a noncitizen before the immigration courts or the BIA, to file documents on behalf of a noncitizen, and to accept service of process on behalf of a noncitizen of all documents filed in a proceeding; (2) must enter a limited appearance on Form EOIR–60 or Form EOIR–61 when they provide document assistance to a pro se noncitizen, regardless of whether the assistance involves ''practice'' (*i.e.,* factual or legal analysis in drafting or completion of a document) or simply ''preparation'' (*i.e.,* filling in the blank spaces of a pre-printed form with information provided by the noncitizen); and (3) are not required to enter an appearance as described above when solely providing legal advice or engaging in a legal consultation pertaining to a noncitizen but not assisting with documents or appearing before EOIR on behalf of the noncitizen, even though such conduct constitutes ''practice.'' The final rule also reaffirms that non-practitioners cannot file an appearance or engage in ''practice'' under any circumstances and are limited to engaging in ''preparation.''

III. Comments and Responses

The comment period for the NPRM closed on October 30, 2020. The Department received 41 comments. Non-governmental organizations, legal advocacy groups, non-profit organizations, and religious organizations submitted the majority of these comments, and individual commenters submitted the remainder. The Department provided an additional 60-day notice and comment period for the proposed Notices of Entry of Limited Appearance for Document Assistance, Forms EOIR–60 and EOIR–61. *See* Agency Information Collection Activities; Proposed Collection; Comments Requested; Notice of Entry of Limited Appearance for Document Assistance Before the Board of Immigration Appeals; and Notice of Entry of Limited Appearance for Document Assistance Before the Immigration Court, 86 FR 48443 (Aug. 30, 2021). No comments were received during that comment period. Both in response to the results of the public solicitations for comments and as the result of further consideration, the Department has revised the proposed rule as discussed below.

Below, the Department has summarized the comments and explained the changes the Department has made in response. The comments are addressed by topic rather than by reference to a specific commenter to prevent confusion due to overlapping comments and multiple subjects raised in some of the submissions.

Some commenters asserted that the rule did not adequately explain the goals and reasons for the proposed changes, why the Department was departing from existing practice of prohibiting limited appearances, that the revised definitions of ''practice'' and ''preparation'' were arbitrary and capricious, as well as vague, and that the Department did not consider the effect of the rule on various service-provider programs. They stated that these concerns rise to a violation of the Administrative Procedure Act (APA) and the U.S. Constitution. The Department believes that the reasoning for the proposed changes was sufficiently set forth in both the ANPRM and NPRM, and that the NPRM adequately addressed these issues as well as the rule's expected impact on the public. Nevertheless, the Department provides further explanation and clarification to address these concerns herein.

A. Entering an Appearance

The Department received many comments expressing confusion or demonstrating a lack of clarity in the proposed rule as to when the proposed rule would require filing an entry of appearance. The comments reflected confusion about the scope of the definitions of ''practice,'' ''preparation,'' and ''representation''; the effect of filling out a form's ''preparer section'' on the obligation to enter an appearance; and the obligations, if any, of practitioners after the practitioner finishes providing document assistance.

Additionally, the Department received many comments that the proposed definitions of ''practice,'' ''preparation,'' and ''representation'' as defined in the NPRM could be interpreted by practitioners to create additional barriers to representation and have the overall effect of providing fewer noncitizens with legal assistance in immigration proceedings.[4]

[3] Some commenters raised the concern that this rulemaking will not achieve the Department's goals of preventing fraud by individuals not authorized to practice immigration law if EOIR's appearance and disciplinary rules only apply to practitioners. While the disciplinary rules have always only applied to practitioners, complaints of non-practitioner fraud will continue to be investigated by EOIR's Fraud and Abuse Prevention Program. *See* EOIR, Fraud and Abuse Prevention Program, *available at https://www.justice.gov/eoir/fraud-and-abuse-prevention-program* (last updated Mar. 4, 2020). Additionally, permitting limited appearances for document assistance will likely increase the capacity of practitioners that will be able to assist noncitizens and as such, noncitizens will likely be less inclined to seek out the services of non-practitioners who may be acting unscrupulously and should be solely limited to ''preparation'' of documents.

[4] One commenter recommended that the Department pursue universal federally funded representation in immigration proceedings in lieu of this rule and to combat such potential chilling effect on representation. This recommendation is

Continued

Specifically, commenters stated that the NPRM drastically expands the ''practice'' definition to include nearly any interactions practitioners have with pro se noncitizens because typically all interactions between practitioners and pro se noncitizens include provision of legal advice or the exercise of legal judgment. The proposed rule defined ''representation'' as including any form of ''practice'' because it stated in its text that ''*representation* before EOIR includes practice.'' *See* Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances, 85 FR 61640, 61651 (Sept. 30, 2020) (emphasis in original). Commenters expressed concern that this expanded definition could discourage representation because any form of ''practice''—including the provision of legal advice that does not include document assistance—would require the entry of an appearance and thereby diminish the opportunity for pro se noncitizens to receive legal assistance or advice. Commenters alleged that nonprofit providers in particular, who already have limited resources, would limit the scope of their services so as not to engage in ''representation.''

Considering these comments and the concerns raised, the Department has amended the regulatory provisions related to entry of appearances before the immigration courts and the BIA, *see* 8 CFR 1003.17, 1003.38(g), as well as the definitions of ''practice'' and ''preparation,'' *see* 8 CFR 1001.1(i), (k). The final rule eliminates the reference to ''represented'' at 8 CFR 1003.17(a) and 1003.38(g) and does not otherwise rely on the definitions of ''representation'' or ''practice'' to determine when an entry of appearance pursuant to a Form EOIR–27 or Form EOIR–28 is required, as the proposed rule did. Given the changes the final rule makes to the entry of appearance regulations, the Department has determined that revisions to the existing definition of ''representation'' at 1001.1(m) are not needed. *See* 8 CFR 1001.1(m) (''The term representation . . . includes practice and preparation as defined in paragraphs (i) and (k) of this section''). The definition will remain unchanged because ''representation'' is a term used elsewhere in the EOIR regulations, namely, the rules of professional conduct and the rules governing who can provide representation. *See* 8 CFR 1003.102(o) (disciplinary sanctions may be imposed if a practitioner ''[f]ails to provide competent representation,'' which ''requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation''); 8 CFR 1292.1 (defining who is authorized to provide representation). The changes in this final rule are intended to clarify that practitioners may provide legal advice (*i.e.,* engage in certain forms of ''practice''), including, for example, engaging in consultations with unrepresented noncitizens at a self-help clinic or legal orientation program, without creating an obligation to enter a full appearance as practitioner of record or otherwise represent the noncitizen in proceedings before EOIR.

The final rule requires an entry of appearance in two circumstances: (1) when a practitioner wants to become the practitioner of record, which authorizes and requires the practitioner to appear before EOIR on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings,[5] 8 CFR 1003.17(a), 1003.38(g)(1); and, (2) when a practitioner provides document assistance only and does not want to become the practitioner of record, 8 CFR 1003.17(b), 1003.38(g)(2). Practitioners who want to become a practitioner of record must enter an appearance on either Form EOIR–27 or Form EOIR–28. *See* 1003.17(a), 1003.38(g). Practitioners who only provide document assistance and do not want to become the practitioner of record must enter a limited appearance for document assistance on Form EOIR–60 or Form EOIR–61. *See* 1003.17(b). Practitioners can provide document assistance to pro se noncitizens by drafting, completing, or filling in of blank spaces of a specific motion, brief, form, or other document or set of documents intended to be filed with EOIR. In order to avoid any confusion as to what kinds of document assistance require the filing of a limited appearance form, when practitioners engage in any document assistance for pro se noncitizens, they must complete a Form EOIR–60 or Form EOIR–61, regardless of whether the practitioners' conduct with respect to the documents constitutes ''practice'' or ''preparation.''

1. Entry of Appearance as Practitioner of Record

Under the current rules, it is unclear whether it is the practitioner or some other triggering event, such as engaging in ''practice'' or ''preparation,'' that determines when an entry of appearance is required. While the final rule makes no changes to the actions practitioners take to become the practitioner of record—namely, the requirement to enter an appearance on Form EOIR–27 or Form EOIR–28—it does remove any reference to ''represented'' in order to eliminate any perception that all acts constituting ''practice,'' ''preparation,'' or ''representation'' determine the entry of such appearance. The final rule revises 1003.17(a) and 1003.38(g) to make clear that practitioners become practitioners of record, regardless of whether they are engaging in ''practice'' or ''preparation'' or otherwise meeting the definition of ''representation,'' when they seek authorization to and wish to take on the responsibilities and obligations of that role, which includes appearing at hearings, filing documents on behalf of a noncitizen, and accepting service on behalf of a noncitizen. Practitioners are not authorized to engage in these activities or have these obligations unless they have entered an appearance on Form EOIR–27 or Form EOIR–28.

2. Entry of Limited Appearance for Document Assistance

When a practitioner's services to a pro se noncitizen are limited to document assistance, and they are not practitioner of record before the immigration court or the BIA, practitioners are required to enter a limited appearance on Form EOIR–60 or Form EOIR–61. *See generally* 8 CFR 1003.17(b), 1003.38(g)(2). ''Document assistance'' is described at 1003.17(b) (and in 1003.38(g)(2) with some minor variation) as ''assistance to a pro se respondent with the drafting, completion, or filling in of blank spaces of a specific motion, brief, form, or other document or set of documents intended to be filed'' with the immigration court or BIA. Regardless of whether the practitioners' document assistance constitutes ''practice'' or ''preparation,'' practitioners must complete the applicable entry of appearance form for a limited appearance when they provide any document assistance. *See id.* While discussing available forms of relief based on a particular noncitizen's circumstances and providing legal advice about how to complete an application for relief to be filed at an immigration court constitute ''practice,'' such actions would not necessarily constitute document assistance unless the practitioner also assisted with drafting, completion, or filling in the applications for relief. In addition to submitting the Form EOIR–60 or Form EOIR–61, practitioners who have

beyond the Department's scope of rulemaking authority under current law.

[5] In immigration court proceedings, a practitioner can enter an appearance and become the practitioner of record for ''custody or bond proceedings only, any other proceedings only, or for all proceedings.'' 8 CFR 1003.17(a).

engaged in document assistance are required to complete the ''preparer section'' of any form for which assistance was provided and to disclose that they drafted a document, such as a motion or brief, by placing their name and signature on the document. 8 CFR 1003.17(c), 1003.38(g)(3). A limited appearance form is only required when providing document assistance to a pro se noncitizen, and it is not required of the practitioner of record who has already submitted a Form EOIR–27 or EOIR–28.

3. Scope of Conduct: ''Practice'' and ''Preparation''

As described above, the Department received many comments expressing concern that the proposed rule's definitions of ''practice'' and ''preparation'' could dissuade practitioners from entering appearances to assist pro se noncitizens. The Department acknowledges that the NPRM's definitions of ''practice'' and ''preparation,'' when read in conjunction with the NPRM's requirements for entry of an appearance, had the unintended consequence of causing confusion about the type of conduct that requires an entry of appearance, for both limited appearances for document assistance and to become the practitioner of record, whether for removal proceedings, custody proceedings, or both. Therefore, the final rule does not rely on these definitions for determining when an entry of appearance is required for either a limited appearance or to become the practitioner of record. *See, e.g.,* 8 CFR 1003.17(a), (b). Nonetheless, the final rule clarifies and simplifies the definitions of ''practice'' and ''preparation'' because these definitions explain the kind of conduct in which only practitioners can engage (*i.e.,* practice), and the kind of conduct in which both practitioners and non-practitioners can engage (*i.e.,* preparation). Despite the difference between the terms, the Department makes clear in the final rule that practitioners who engage in any document assistance, whether ''practice'' or ''preparation,'' must complete a Form EOIR–60 or EOIR–61. *See* 1003.17(b), 1003.38(g)(2).

a. ''Practice''

Commenters voiced concern with the NPRM's definition of ''practice'' and the interaction of that definition with the proposed rule's entry of appearance requirements. They expressed concern that the terms ''exercise of legal judgment'' and ''legal advice'' in the NPRM's definition of ''practice'' indicated that nearly any action a practitioner takes on behalf of a noncitizen would require an entry of appearance. Specifically, they indicated that this broad definition of ''practice'' could cause any form of education, orientation, or discussion with a pro se noncitizen to be considered ''practice'' and to trigger the obligation to file an entry of appearance. They also asserted that some conduct that was described as ''practice'' should not require entry of an appearance.[6]

As described above, although some actions constituting ''practice'' may require the entry of an appearance, the final rule does not rely on the definition of ''practice'' in determining when an appearance must be filed. The final rule revises 1003.17(a) and 1003.38(g) to make clear that practitioners become the practitioners of record, pursuant to the filing of a Form EOIR–27 or Form EOIR–28, when they seek authorization to take on the responsibilities and obligations of that role, which includes appearing at hearings, filing documents on behalf of a noncitizen, and accepting service on behalf of a noncitizen. The final rule further clarifies that the entry of a limited appearance pursuant to the filing of a Form EOIR–60 or EOIR–61 is required only when a practitioner is engaged in document assistance—described in 1003.17(b) as ''assistance to a pro se respondent with the drafting, completion, or filling in of blank spaces of a specific motion, brief, form, or other document or set of documents intended to be filed''—with the immigration court or BIA. Thus, a limited appearance must accompany any document assistance provided by a practitioner that is at least ''preparation,'' regardless of whether it may also constitute ''practice.'' 8 CFR 1003.17(b), 1003.38(g)(2).

The final rule does not adopt the language from the NPRM for the definition of ''practice.'' *See* 85 FR at 61651. Instead, it defines ''practice'' as ''exercising professional judgment to provide legal advice or legal services related to any matter before EOIR,'' with a non-exhaustive description of conduct that constitutes practice in order to further clarify the meaning of this language. 8 CFR 1001.1(i). The description in the final rule includes a range of conduct: giving legal advice, drafting and filing documents on behalf of another person before EOIR, and appearing in person on behalf of another person before EOIR. *Id.* Based on that description of conduct, examples of ''practice'' include, but are not limited to, the following actions if taken by a practitioner: engaging in a consultation with an individual about forming an attorney-client relationship for assistance in immigration proceedings, or otherwise providing legal advice; discussing available forms of relief based on a particular noncitizen's circumstances; providing legal advice about how to complete an asylum application to be filed at an immigration court; drafting a motion to reopen on behalf of a noncitizen that is intended to be filed with the BIA; and appearing before an immigration judge in person on behalf of a noncitizen in removal proceedings.

The rule maintains a broad definition of ''practice'' for a specific reason: all practitioner conduct that constitutes ''practice''—not just conduct that requires entry of an appearance—may be subject to EOIR's Rules of Professional Conduct and state rules regulating attorney conduct. *See, e.g.,* 8 CFR 1003.101. For example, practitioners may be in violation of the EOIR Rules of Professional Conduct or state rules for providing a noncitizen with erroneous advice regarding the available forms of relief that the noncitizen relied on to their detriment. Therefore, practitioners should be mindful that even if entry of an appearance is not required, their actions might nonetheless be subject to other provisions of the regulations or other rules.

As discussed above, the terms ''practice'' and ''preparation'' do not determine when an appearance must be entered to become the practitioner of record; practitioners may engage in some conduct constituting ''practice'' or ''preparation'' without having to enter an appearance to become the practitioner of record. Moreover, even if engaging in ''practice'' or ''preparation,'' the practitioner may only be required to enter a limited appearance if such conduct constitutes document assistance as described in 1003.17(b) and 1003.38(g)(2). For example, if a practitioner is leading a legal orientation session to a group of pro se noncitizens, and in doing so, merely explains available forms of immigration relief to them, the practitioner is not required to enter an appearance of any kind. However, if a practitioner assists a pro

[6] For example, some commenters expressed apprehension that the proposed rule would end ''Friend of the Court'' programs, in which participants assist the immigration court in person without entering an appearance by providing information about particular noncitizens. Contrary to this claim, the final rule does not affect the ability of a person to appear as *amicus curiae* in immigration proceedings because *amicus curiae* appear as an aid to the court and not as a practitioner. *See* EOIR Director's Memorandum 22–06, Friend of the Court, May 5, 2022, *available at https://www.justice.gov/eoir/page/file/1503696/download.*

se noncitizen in drafting an asylum application after the presentation concludes, the practitioner must enter a limited appearance.

b. ''Preparation''

Commenters indicated that the proposed rule's definition of ''preparation'' could result in practitioners not providing assistance to pro se noncitizens. They suggested that the definition could discourage practitioners from taking any action that constitutes ''preparation'' that could also be considered ''practice'' (*i.e.,* the ''exercise of professional judgment'' or ''provision of legal advice'' in identifying and completing forms) and thus, require entry of an appearance under the NPRM's definitions. For example, commenters stated that they would be less willing to ask basic questions of noncitizens to assist them in completing forms or to solicit information in order to guide them in selecting applications for relief, if it would require an entry of appearance as practitioner of record and bind them to further obligations to the noncitizen or EOIR.

The final rule does not adopt the language of the proposed rule and retains part of the language of the existing regulatory definition of ''preparation,'' stating that ''preparation'' consists ''solely of filling in blank spaces on printed forms.'' [7] The rule makes clear that such action does not include the ''exercise of professional judgment to provide legal advice or legal services''; instead, the provision of legal advice or services is included under the definition of ''practice,'' to explicitly distinguish ''preparation'' from ''practice.'' *See* 8 CFR 1001.1(i), (k).

The Department believes that the commenters' concerns have been sufficiently addressed. As noted, *supra,* an entry of appearance to become the practitioner of record and to seek authorization to take on the associated responsibilities and obligations is not dictated by the terms ''practice'' or ''preparation.'' The entry of limited appearances for document assistance does not bind practitioners to provide further assistance, which should encourage rather than deter practitioners from providing assistance to noncitizens.[8] While a practitioner will always be required to enter a limited appearance when engaged in ''preparation'' (*i.e.,* the ministerial act of filling in the blanks of printed forms), doing so does not bind the practitioner to further obligations to the noncitizen or EOIR. Even if practitioners engage in ''practice'' when providing document assistance, they are only required to enter a limited appearance per a Form EOIR–60 or EOIR–61.

For example, practitioners, without further obligation, may permissibly assist a pro se noncitizen in completing a change of address form (Form EOIR–33) and engage in ''preparation,'' provided that the practitioner completes a limited appearance form.[9] Without further obligation to become the practitioner of record, practitioners may also assist pro se noncitizens in completing asylum applications and provide legal advice on how to present claims on the form, even though they are engaging in ''practice'' and ''preparation.'' Practitioners doing so are required to complete a Form EOIR–60 or EOIR–61 to be filed with the application and to complete the preparer section of the form. Conversely, if a practitioner is merely reading an administrative form to the applicant, in English or in the applicant's primary language, an entry of appearance would not be required.

4. Form EOIR–60 and Form EOIR–61

In contemplating changes to the manner of entry of appearance forms as suggested by the proposed rule, some commenters stated that completing an additional appearance form for actions that did not previously require an appearance form is too burdensome, especially when they must also complete the ''preparer section'' of a form. After careful deliberation, the Department determined that the informational needs of requiring such disclosure far outweigh the burden imposed on practitioners.

The goals of this rulemaking include providing greater flexibility to practitioners to be able to assist noncitizens appearing pro se before EOIR; providing increased access to legal assistance for such noncitizens, while adding protections to reduce the risk of individuals being victimized by ''ghostwriting'' and fraud; and ensuring practitioners are abiding by EOIR's Rules of Professional Conduct. The Department determined that identification of practitioners through the submission of an entry of limited appearance form, plus the additional requirements regarding the ''preparer section'' on forms and disclosure of assistance on other documents through name and signature, will reduce the risk to the public of unscrupulous individuals that currently prey on vulnerable noncitizens through ''ghostwriting.'' For example, the Department believes that, by increasing flexibility for practitioners who wish to provide varying types of assistance to noncitizens in proceedings before EOIR, the pool of individuals engaged in legitimate practices and available to assist noncitizens will expand, leaving less room for bad actors. Such requirements will also hold practitioners accountable for the document assistance they perform pursuant to the final rule.

Ghostwriting is a practice that occurs when an unidentified individual, whether a practitioner or non-practitioner, assists a noncitizen with or drafts pleadings, applications, petitions, motions, briefs, or other documents that are filed with EOIR. Ghostwritten documents can contain false or fraudulent information, sometimes unbeknownst to the noncitizen, and often present substandard, incomplete, inaccurate, or boilerplate work products. Ghostwriting is often a means for unscrupulous or unqualified individuals and other bad actors to deceive and mislead noncitizens and EOIR or, with the acquiescence of noncitizens, ghostwriting may be a means to perpetuate fraud and undermine proceedings.

As described in the NPRM, ghostwriting is harmful to parties and undermines the integrity of proceedings, candor to the tribunal, and

[7] Additionally, in response to commenters' request, the final rule removes references to the Department of Homeland Security (DHS) in the ''preparation'' definition, as DHS is a separate agency with its own definitions. *See* 8 CFR 1.2. The final rule retains existing pre-NPRM regulatory language regarding non-practitioner preparation and the requirement that any fees for such assistance be nominal and that the non-practitioner cannot hold themselves out as qualified in legal matters or immigration or naturalization procedures. *See* 8 CFR 1001.1(k).

[8] Some commenters indicated that it is unfair to require only practitioners engaging in ''preparation'' to complete an entry of limited appearance form if non-practitioners engaging in the exact same conduct are not obligated to do so. The Department disagrees. Practitioners have specific legal and ethical obligations due to their status as practitioners. Indeed, the final rule requires completion of a Form EOIR–60 or EOIR–61 in order to have the practitioner attest that they understand that EOIR's Rules of Professional Conduct govern their conduct. *See* Forms EOIR–60 and EOIR–61. Non-practitioners are limited to engaging in conduct that is exclusively ''preparation,'' which is a narrow segment of conduct because the preparation of most forms requires engaging in ''practice.'' Moreover, non-practitioners engaging in preparation of forms are still required to complete the preparer section of the forms, when applicable. EOIR's Fraud and Abuse Prevention Program will continue to be investigate reports of non-practitioners engaging in services beyond those authorized (*i.e.,* engaging in the unauthorized practice of law), including those kinds of conduct defined as ''practice'' in this rule. *See* EOIR, Fraud and Abuse Prevention Program, *available at https://www.justice.gov/eoir/fraud-and-abuse-prevention-program* (last updated Mar. 4, 2020).

[9] The Form EOIR–60 and Form EOIR–61 are estimated to take no more than 6 minutes to complete.

accountability. *See* 85 FR at 61647; *see also, e.g., Villagordoa Bernal* v. *Rodriguez,* No. 16–cv–152–CAS, 2016 WL 3360951, at *7 (C.D. Cal. June 10, 2016) (''[T]he parties are reminded that ghostwriting of pro se filings is, of course, inappropriate and potentially sanctionable conduct.'') (*citing Ricotta* v. *Calif.,* 4 F. Supp. 2d 961, 986 (S.D. Cal. 1998))); *Tift* v. *Ball,* No. 07–cv–276–RSM, 2008 WL 701979, at *1 (W.D. Wash. Mar. 12, 2008) (''It is therefore a violation for attorneys to assist pro se litigants by preparing their briefs, and thereby escape the obligations imposed on them under Rule 11.''); *Laremont-Lopez* v. *SE Tidewater Opportunity Ctr.,* 968 F. Supp. 1075, 1078–79 (E.D. Va. 1997) (explaining that ghostwriting causes confusion regarding representation, interferes with the administration of justice, constitutes a misrepresentation to the court under Rule 11, and while ''convenient for counsel,'' disrupts the proper conduct of proceedings).

Importantly, under the final rule, allowing practitioners to enter an appearance for document assistance without further obligation to act on behalf of a pro se noncitizen should expand noncitizens' access to practitioner assistance. Indeed, commenters indicated that they would be able to provide more services to noncitizens if limited appearances for document assistance were permitted. Unqualified or unethical individuals and other bad actors should have a reduced ability to operate in immigration proceedings through ''ghostwriting'' because practitioners who may have been dissuaded from providing assistance if they could not limit their role to document assistance will be more willing to engage in a limited appearance, thereby furthering the ability of noncitizens to find authorized and competent practitioners who are willing to identify themselves and provide assistance. Identification will also enable noncitizens, EOIR, and other authorities to hold practitioners accountable for the quality and substance of the limited documentary assistance work they perform.

These benefits far outweigh the burdens of having to complete the entry of a limited appearance form, which is estimated to take only 6 minutes to complete, and the other disclosure requirements of the final rule. *See infra* Section V.H. Paperwork Reduction Act of 1995 (further explaining the benefits of these regulatory changes). Indeed, as described below, the new limited appearance forms are less burdensome than the revisions to the appearance forms the Department proposed in the NPRM. In contrast to the originally proposed forms, the new Forms EOIR–60 and Form EOIR–61 do not include the proposed information collection that would have required signature by the noncitizen and disclosure of fees charged by a practitioner.

Given the benefits of identifying practitioners who provide only document assistance before EOIR, the Department agrees with the commenters that separate appearance forms for the entry of a limited appearance are more appropriate than attempting to modify the existing appearance forms to capture this unique type of appearance. Further, the Department recognizes that revising the Form EOIR–27 and Form EOIR–28 to encompass substantially different circumstances could cause confusion over the practitioner's representation status. Thus, the Department created the Form EOIR–60 and Form EOIR–61 for practitioners' entry of a limited appearance rather than revising Form EOIR–27 and Form EOIR–28. These new forms provide the most efficient means for EOIR to track the identity of practitioners who have entered a limited appearance for document assistance, as distinct from those who have entered an appearance as practitioner of record.

Some commenters indicated that the Department did not allow the public an opportunity to comment on the draft forms contemplated for limited appearances. Pursuant to the Paperwork Reduction Act of 1995, agency discussion of the information collection and the provision of instructions for providing public comments in the associated rulemaking is sufficient to provide the required public notice. *See* 44 U.S.C. 3506(c)(2)(A) (listing considerations for which an agency must solicit public comment on proposed information collections). The NPRM contained such information and described the intended changes to the Forms EOIR–27 and EOIR–28. *See* 85 FR at 61647. However, after consideration of the public comments that recommended separate forms for entering a limited appearance in balance with the agency's needs, the Department decided to proceed in line with that recommendation. In order to provide the public with the opportunity to comment on that decision, the Department published a 60-day notice in the **Federal Register** on August 30, 2021, that the Department was inviting public comments ahead of its submission to the Office of Management and Budget for review and approval. *See* 86 FR 48443. The public comment period closed on October 29, 2021. No public comments were received.

5. Requirements of Form EOIR–60 and Form EOIR–61

When a Form EOIR–60 or Form EOIR–61 is completed, the final rule provides that it must not be filed as a standalone document. 8 CFR 1003.17(b)(1), 1003.38(g)(2)(i). Rather, a single Form EOIR–60 or Form EOIR–61 must be filed with the immigration court or the BIA, respectively, with the document on which a practitioner has provided assistance. If a practitioner prepares, drafts, or completes a set of documents that are filed together, a single Form EOIR–60 or Form EOIR–61 may be completed to accompany that set of documents. *Id.* As provided in this rule, the practitioner must also complete the preparer section of any forms, if applicable, and must identify the practitioner by name and signature on any motions or briefs being submitted. 8 CFR 1003.17(c), 1003.38(g)(3). Noncitizens may file the entry of a limited appearance and assisted documents themselves or may arrange for an individual, such as the practitioner who assisted, to file the documents in accordance with EOIR filing policies. *See, e.g.,* EOIR, *Immigration Court Practice Manual* Ch. 3.1(a), *available at https://www.justice.gov/eoir/eoir-policy-manual/part-ii-ocij-practice-manual* (last updated Dec. 16, 2021) (explaining how documents may be filed with EOIR, either through the U.S. Postal Service or by courier, or electronically where permitted and/or required, and that ''[h]and-delivered filings should be brought to the Immigration Court's public window during that court's filing hours''). After any such initial filing of a document or set of documents with a Form EOIR–60 or EOIR–61, a subsequent filing of a document or set of documents in which a practitioner provided document assistance must be accompanied by a separate Form EOIR–60 or Form EOIR–61. 8 CFR 1003.17(b)(1), 1003.38(g)(2)(i).

The Form EOIR–60 and Form EOIR–61 requires the practitioner to provide the following data: practitioner's name; contact information; bar number (''BAR#'') or EOIR identification number (''EOIR ID#''),[10] as applicable; and a

[10] In response to a commenter's question regarding registration to practice before EOIR, the regulations at 8 CFR 1292.1(f) already authorize the registration of ''attorneys and accredited representatives . . . as a condition of practice before immigration judges or the Board of Immigration Appeals.'' Under the registration procedures established pursuant to these regulations, practitioners who are attorneys or accredited representatives are already required to complete the electronic registration process prior to entering an appearance before EOIR, regardless of

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description of the underlying document(s) for which assistance was provided. The practitioner's signature attests that they explained the scope of their limited assistance to the pro se noncitizen,[11] that they are an authorized and qualified ''practitioner,'' and that they understand that they are bound by EOIR's Rules of Professional Conduct. The Department has taken steps to minimize any burden imposed on practitioners by deleting the ''certification by the pro se respondent'' and ''fees charged'' fields as proposed by the NPRM. *See* 85 FR at 61645. The Department agrees with commenters that the information regarding fees is unnecessary because such information is not captured on the Form EOIR–27 or Form EOIR–28 and because excessive or unethical legal fees are regulated through EOIR's Rules of Professional Conduct and similar state rules and standards. The Department estimates that the Forms EOIR–60 or EOIR–61 are expected to take no more than 6 minutes to complete.

6. Noncitizen Retains Pro Se Status

In cases where a practitioner enters a limited appearance for document assistance, the noncitizen remains pro se and unrepresented in the EOIR proceedings. *See* 8 CFR 1003.17(b)(2), 1003.38(g)(2)(ii). Through the submission of the Form EOIR–60 or Form EOIR–61, the practitioner is not transformed into the practitioner of record, and thus, is not required to appear in immigration court or before the BIA on the noncitizen's behalf, will not receive service of process of any case filings, and will not be provided with access to the record of proceedings.[12] *See* 8 CFR 1003.17(b)(2), 1003.38(g)(2)(ii).

B. Rules of Professional Conduct

Many commenters indicated that the NPRM's proposed revisions to the disciplinary rule, 8 CFR 1003.102(t), to delete the ''pattern or practice'' requirement, and instead include language that indicates that failure to file an appearance form even one time could result in disciplinary action, is problematic because a single mistake should not be sufficient to institute disciplinary action. Moreover, they raised concerns regarding the proposed revisions to 8 CFR 1003.102(u), which would penalize the *drafting* of documents that are later filed with EOIR. Commenters stated that, due to the proposed provision's ambiguity about the scope of ''drafting,'' disciplinary action could be based on templates or example briefs that organizations provide to pro se noncitizens but are completed later in time without the assistance of a practitioner. Practitioners are concerned that they could be disciplined for substandard quality of such filings when they did not actually assist in completing them.

The Department agrees that 8 CFR 1003.102(t) should include language to clarify that a single instance of failing to file an appropriate entry of appearance form does not lead to disciplinary action. Therefore, the final rule amends 8 CFR 1003.102(t) to allow discipline of any practitioner who ''repeatedly'' fails to sign and file the appropriate entry of appearance form. ''Repeatedly,'' rather than ''pattern or practice,'' is an easily understood standard that is used for other grounds for discipline. *See* 8 CFR 1003.102(l) (''[r]epeatedly fails to appear . . .''); 1003.102(u) (''[r]epeatedly files notices, motions, briefs, or claims that reflect little or no attention to the specific factual or legal issues . . .''). ''Repeatedly'' serves to clarify that only a practitioner who fails to file the proper appearance form on more than one occasion is subject to discipline. Additionally, based on the changes in this final rule—to both the definitions of ''practice'' and ''preparation'' and the provisions of 8 CFR 1003.17 and 1003.38—references to ''practice'' and ''preparation'' in the current 8 CFR 1003.102(t) have been removed as unnecessary to effectively describe the conduct subject to disciplinary action.[13]

The final rule also amends 8 CFR 1003.102(u) to subject practitioners to discipline if they repeatedly ''draft'' notices, motions, briefs or claims that are filed with DHS or EOIR that rely on boilerplate language and reflect little or no attention to the specific facts or legal issues applicable to a client's case. This ground of discipline currently focuses on practitioners who repeatedly ''file'' such documents. *See* 65 FR 39526, June 27, 2000, as amended at 73 FR 76923, Dec. 18, 2008, 81 FR 92362, Dec. 19, 2016 (8 CFR 1003.102(u)). Given that practitioners can permissibly draft documents for pro se noncitizens under the changes to the final rule that permit a limited appearance for document assistance, the Department determined that it is necessary to amend this ground to hold practitioners accountable for the quality of their assistance on such documents. 8 CFR 1003.102(u). The applicability of this provision should not depend on whether documents drafted by a practitioner under this rule are ''filed'' by the practitioner or are ''filed'' by the noncitizen after receiving the practitioner's documentary assistance.

Commenters' concern about being subject to discipline for documents completed and filed by pro se noncitizens without practitioner assistance is unfounded. The use of template documents or form pleadings, drafted by a practitioner but later completed and filed by pro se noncitizens who add case-specific information without any assistance by the practitioner, need not be accompanied by a Form EOIR–60 or Form EOIR–61 or the practitioner's name and signature. Because the practitioner who created the template or form pleading did not provide

whether that appearance is limited to providing document assistance.

[11] Relatedly, the Department is cognizant of potential difficulties raised by the public in completing document assistance with noncitizens who are detained. However, those difficulties exist independently of the final rule. In fact, if a practitioner is able to provide underlying document assistance to a detained noncitizen, then they will be able to explain the scope of their limited appearance—as required by the attestation on the Form EOIR–60 and EOIR–61—at the same time. Similar to the current entry of appearance forms EOIR–27 and EOIR–28, the noncitizen's signature is not required on the EOIR–60 and EOIR–61, further minimizing the burden of entering a limited appearance.

[12] Commenters urged that access to the record of proceedings should be allowed for practitioners entering limited appearances. However, the Department decided that existing access procedures properly balance access with security and confidentiality and should remain unchanged given the discrete scope of a limited appearance for document assistance. This is particularly so, given that practitioners engaging in limited appearances do not have the same obligations as those intending to be practitioner of record. Thus, the final rule makes no changes to existing record of proceedings access procedures. *See, e.g.,* EOIR, *Immigration Court Practice Manual,* Ch. 1.6(c) (last updated Feb. 14, 2022) (explaining access procedures). Alternatively, practitioners who are not the practitioner of record in a case may obtain the record of proceeding from the noncitizen—who may make an electronic request by email directly to the immigration court or BIA for a copy—or practitioners may submit a Freedom of Information Act (FOIA) request to EOIR that includes signed written consent from the noncitizen who is the subject of the record of proceeding. *See e.g., id.,* at Ch. 12.2 (describing the process for making a request directly with the immigration court or BIA or through the FOIA process).

[13] The terms ''practice'' and ''preparation'' as included in current 8 CFR 1003.102(t) were, in part, the subject of a Federal lawsuit, *Northwest Immigration Rights Project (NWIRP)* v. *Garland,* No. 2:17–cv–00716 (W.D. Wash.). To the extent commenters have raised concerns that the proposed rule violates a Settlement Agreement entered in that litigation, such concerns are unfounded as the final rule satisfies the aims of the Settlement Agreement. *See generally* Notice of Settlement and Filing of Settlement Agreement, *NWIRP* v. *Barr,* No. 2:17–cv–00716 (W.D. Wash. Apr. 17, 2019) (permitting Department to aim to promulgate regulations allowing practitioners to provide pro se noncitizens with document assistance without requiring practitioner to enter appearance as practitioner of record and to require identification of such practitioners to EOIR with the option of disciplinary procedures for failing to do so).

assistance with the drafting of the case-specific content of the document filed by the noncitizen, the practitioner would not be responsible for such document.[14]

Further, the final rule creates a separate ground for discipline at 8 CFR 1003.102(w), which requires practitioners to sign documents in conformity with EOIR rules and any form instructions. This provision builds on and provides further clarity to the prohibition on practitioners failing to sign pleadings, applications, motions, or other filings that was previously included at 8 CFR 1003.102(t)(2).

C. Miscellaneous Changes

Finally, the final rule makes changes to 8 CFR 1003.2 and 1003.3 to include references to when the new entry of appearance form, Form EOIR–60, must be utilized in filings regarding reopening before the BIA and when the form must be filed with a Notice of Appeal before the BIA, respectively. This clarification is necessary to inform practitioners that any document assistance with respect to filings regarding reopening before the BIA or a Notice of Appeal before the BIA falls under the scope of 8 CFR 1003.38 and thus requires an entry of appearance.

Additionally, the final rule moves (without change) the definition of the term ''practitioner'' from EOIR's Rules of Professional Conduct, *see* 8 CFR 1003.101(b), to the list of generally applicable definitions section. The Department is moving this term for clarity since the provisions at 8 CFR 1003.17 and 1003.38 regarding entry of appearances apply to all types of practitioners.

IV. Notice-and-Comment Requirements

The NPRM provided for a 30-day notice and comment period as required pursuant to 5 U.S.C. 553. The proposed rule provided sufficient detail and rationale to permit interested parties to comment meaningfully. Indeed, the Department received a number of substantive comments recommending changes to the rule that have, in fact, been adopted in certain respects. For example, pursuant to the public input received, the final rule eliminates the proposed requirements to disclose fees and obtain a signed written attestation from the noncitizen and creates separate forms for entering a limited appearance. Despite the discussion of the relevant issues in the NPRM, some commenters contended that the 30-day comment period for this rule was insufficient because there were significant equities at stake, this rule was not time-sensitive, and the COVID–19 pandemic made it difficult to respond properly to the proposed rule on a short timeframe.

While the APA does not require a minimum specific length of time for the comment period, the Department believes the 30-day comment period was clearly sufficient given the limited set of issues addressed in the NPRM and the volume and detail of comments received. *See* 5 U.S.C. 553(b), (c). Moreover, the Department provided an additional 60-day notice and comment period to comment on the proposed entry of limited appearance Forms EOIR–60 and EOIR–61, which reflected that the disclosure of fees and attestation from the noncitizen were not being required. No comments were received regarding those forms during that comment period.

The revisions to ''practice'' and ''preparation,'' at 8 CFR 1001.1(i) and (k), maintain the general framework of the definitions in the proposed rule, and also provide additional clarity about their scope. The changes to the regulatory text are within the scope of the notice provided by the NPRM, and the adopted changes are consistent with the public comments received. Therefore, the final rule is a logical outgrowth of the proposed agency action described in the NPRM *See, e.g., Environmental Defense Center* v. *U.S. E.P.A.,* 344 F.3d 832, 851–52 (9th Cir. 2003); *American Water Works Ass'n* v. *E.P.A.,* 40 F.3d 1266, 1274 (D.C. Cir. 1994). Thus, the purpose of the NPRM was adequately stated and the interested parties could reasonably have anticipated the final rulemaking from the NPRM and the comments received.

V. Regulatory Requirements

A. Administrative Procedure Act

This final rule is being published with a 60-day delayed effective date, greater than the minimum 30-day period required by the Administrative Procedure Act. 5 U.S.C. 553(d).

B. Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Though many practitioners may qualify as small entities under the Regulatory Flexibility Act, the burdens of this rule will typically be limited to the submission of forms identifying their personal participation, a requirement estimated to require 6 minutes of time in each instance.

Practitioners who wish to represent noncitizens in person as practitioner of record in immigration proceedings are already required to submit a Form EOIR–27 or EOIR–28, and all individuals who prepare an application form or other form for a noncitizen are already required to disclose such preparation if the form requires it. This rule will require practitioners who provide document assistance to noncitizens to submit a Form EOIR–60 or EOIR–61, if they elect not to become the practitioner of record to represent them in EOIR proceedings. However, most, if not all, such practitioners are well-versed in submitting a similar Form EOIR–27 or EOIR–28 for entry of appearance in cases in which they do represent a noncitizen in proceedings before EOIR. The new Forms EOIR–60 or EOIR–61 are similar in nature to the existing appearance forms, and therefore, should be simple to complete. They are not expected to take more than 6 minutes to complete and will only involve providing information that the practitioner providing assistance already knows well—*i.e.,* their own contact information and identification of the documents they assisted with.

The Department has also determined that the needs of requiring such disclosure far outweigh the burden imposed on practitioners. The goals of this rulemaking include providing greater flexibility to practitioners to be able to assist noncitizens appearing pro se before EOIR and increasing access to legal assistance for such noncitizens because practitioners who may have been dissuaded from providing assistance if they could not limit their role to document assistance will be more willing to engage in a limited appearance. The Department expects that this rulemaking will increase the number of competent practitioners willing to identify themselves to EOIR. These changes, in turn, will likely diminish the risk of individuals being exploited by unaccountable ''ghostwriting'' because unqualified and unethical individuals should have a reduced ability to operate in immigration proceedings. Finally, the enhanced identification provisions of the rulemaking will ensure that practitioners are abiding by EOIR's Rules of Professional Conduct by allowing EOIR to hold practitioners accountable for the quality and substance of their work.

In order to achieve these goals, EOIR must have a means of accurately

[14] However, the template itself or the provision of such a template may implicate other disciplinary rules depending on the facts and circumstances. For example, if the template is legally deficient in some manner, disciplinary rules may be at issue.

identifying practitioners providing document assistance under the terms of this rule. The Department recognizes that requiring practitioners to complete an entry of limited appearance form does impose a burden on practitioners, and the Department has taken steps to minimize that as much as possible, without sacrificing the requirements necessary to safeguard noncitizens from unscrupulous actors. Therefore, even though there will be an impact on practitioners, the Department believes that the needs far outweigh the burden.

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 (as 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.

D. Congressional Review Act

This rule is not a major rule as defined by section 804 of the Congressional Review Act. However, the Department will be submitting the required reports under the Congressional Review Act to the Government Accountability Office and to the House and Senate.

E. Executive Orders 12866 and 13563

The Office of Information and Regulatory Affairs (OIRA) has determined that this rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866 (Regulatory Planning and Review). Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review. This rule has been drafted and reviewed in accordance with Executive Order 12866's section 1(b), Principles of Regulation, and in accordance with section 1(b) of Executive Order 13563 (Improving Regulation and Regulatory Review), General Principles of Regulation.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of using the best available methods to quantify costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

As discussed above, practitioners who wish to act as practitioner of record for noncitizens in person in immigration proceedings are already required to submit Form EOIR–27 or EOIR–28 and all individuals who prepare an application form for a noncitizen are already required to disclose such preparation if the form requires it. Although this rule will require practitioners who provide document assistance to noncitizens but elect not to become the practitioner of record to represent them in court, to submit a Form EOIR–60 or EOIR–61, most, if not all, such practitioners are well-versed in submitting a similar Form EOIR–27 or EOIR–28 for cases in which they represent a noncitizen in proceedings before EOIR.

Moreover, the limited appearance form, which substantially mirrors existing forms, will not add any significant time burden. The new Forms EOIR–60 or EOIR–61 are similar in nature to the existing appearance forms and are not expected to take more than 6 minutes to complete. They only involve providing information that the practitioner providing assistance already knows well—*i.e.,* their own contact information and basic details about the limited appearance by identifying the documents for which they provided assistance. Any costs to practitioners will be solely in relation to completing the limited appearance form and explaining the scope of their assistance to the noncitizen. The practitioner may, but is not required to, separately serve the form on DHS or EOIR. Rather, the practitioner may provide the form to the pro se noncitizen for them to file and serve with the underlying document.

Thus, for the reasons explained above and in the NPRM, the expected costs of this rule are likely to be *de minimis.*

F. Executive Order 13132 (Federalism)

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

G. Executive Order 12988 (Civil Justice Reform)

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

H. Paperwork Reduction Act of 1995

The Department of Justice, through EOIR, has submitted an information collection request to OMB for review and clearance in accordance with review procedures 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. The Department, through EOIR, previously submitted this rulemaking, including a request for a new information collection (ICR Ref. No. 202111–1125–001), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 86 FR 48443 (Aug. 30, 2021), allowing for a 60-day comment period. OMB assigned OMB Control Number 1125–0021 to this collection. Further comments are encouraged and will be accepted for 30 days from the date of publication of this rulemaking. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The Department received comments related to the proposed information collections associated with this rulemaking. In the proposed rule, the Department stated that it would revise Form EOIR–26, Notice of Appeal from a Decision of an Immigration Judge; Form EOIR–27; and Form EOIR–28, to allow for limited appearances as contemplated in this rule. *See* 85 FR at 61650. However, after further deliberation, the Department has decided to pursue a new information collection request (ICR) containing two new standalone forms for limited appearances related to document assistance for pro se noncitizens. The Department appreciates commenters' recommendation that the Department create separate forms for the entry of a limited appearance before the immigration courts and the BIA. The commenters' concerns that amending the existing entry of appearance forms would cause confusion that could lead to the misuse of the collection were valid. Thus, EOIR has created the Forms

EOIR–60, Notice of Entry of Limited Appearance for Document Assistance Before the Board of Immigration Appeals, and EOIR–61, Notice of Entry of Limited Appearance for Document Assistance Before the Immigration Court. The forms will be made available on EOIR's website, in a fillable .pdf format. This rule implements new requirements for practitioners to enter a limited appearance when assisting a pro se noncitizen with documents intended to be filed with EOIR. This information collection is necessary to allow a practitioner to notify the BIA or the Immigration Court that the practitioner is entering a limited appearance to assist a pro se noncitizen with a legal filing or other document intended to be filed with EOIR. In completing the form, practitioners must confirm that they have explained the scope of their limited assistance to the noncitizen and the form must be filed with the associated documents. The form creates no continuing obligation on the part of the practitioner, and because of this, a new form must be filed with each document submission. EOIR currently uses appropriate information technology to reduce burdens and improve data quality, agency efficiency, and responsiveness to the public. Under this rule, EOIR will continue to do so to the maximum extent practicable and will explore implementing technology to facilitate information collections.

Under the current regulation, it is estimated that it takes a total of 6 minutes to complete an entry of appearance form. At this time, it is difficult for EOIR to estimate the total receipts it will receive for this new collection. Pursuant to the NPRM, EOIR estimated the total receipts would be at least as many receipts as received for the other two forms for the entry of appearance before the Immigration Court (Form EOIR–28) and the Board of Immigration Appeals (Form EOIR–27). These forms are used for practitioners who wish to appear on behalf of a noncitizen in pending proceedings and remain the practitioner of record to which all obligations and responsibilities attach. Forms EOIR–28 and EOIR–27 are not used for limited appearance purposes, but EOIR expects that at least some of those practitioners will enter limited appearances to assist noncitizens with document filings. Therefore, in order to not underestimate the burden, EOIR will assume that it will receive as many entries for limited appearances as it does for full appearances. Therefore, the total number of submissions of the Forms EOIR–60 and EOIR–61 are expected to be 841,029 (the total receipts for the EOIR–27 (53,816) and EOIR–28 (787,213) for FY2019 as provided in the NPRM). The total public burden of these revised collections is estimated to be 84,102.9 burden hours annually (for Form EOIR–27, 53,816 noncitizens (FY 2019) × 1 response per noncitizen × 6 minutes per response = 5,381.6 burden hours) + (for Form EOIR–28, 787,213 noncitizens (FY 2019) × 1 response per noncitizen × 6 minutes per response = 78,721.3 burden hours) = 84,102.9 burden hours).

Following the new ICR's review and approval by the Office of Information and Regulatory Affairs (OIRA), the Department will publish notice of the new forms in the **Federal Register**. Following that publication, use of the new standalone form will be mandatory as outlined in 8 CFR 1003.17(a)(2) and 1003.38(g)(1)(ii).

List of Subjects

8 CFR Part 1001

Administrative practice and procedure, Immigration.

8 CFR Part 1003

Administrative practice and procedure, [Noncitizens], Immigration, Legal services, Organization and functions (Government agencies).

Accordingly, for the reasons stated in the preamble, parts 1001 and 1003 of title 8 of the Code of Federal Regulations are amended as follows:

PART 1001—DEFINITIONS

■ 1. The authority citation for part 1001 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101, 1103; Pub. L. 107–296, 116 Stat. 2135; Title VII of Pub. L. 110–229.

■ 2. In § 1001.1, revise paragraphs (i) and (k) and add paragraph (ff) to read as follows:

§ 1001.1 Definitions.

* * * * *

(i) The term *practice* means exercising professional judgment to provide legal advice or legal services related to any matter before EOIR. Practice includes, but is not limited to, determining available forms of relief from removal or protection; providing advice regarding legal strategies; drafting or filing any document on behalf of another person appearing before EOIR based on an analysis of applicable facts and law; or appearing on behalf of another person in any matter before EOIR.

* * * * *

(k) The term *preparation* means the act or acts consisting solely of filling in blank spaces on printed forms with information provided by the applicant or petitioner that are to be filed with or submitted to EOIR, where such acts do not include the exercise of professional judgment to provide legal advice or legal services. When this act is performed by someone other than a practitioner, the fee for filling in blank spaces on printed forms, if any, must be nominal, and the individual may not hold himself or herself out as qualified in legal matters or in immigration and naturalization procedure.

* * * * *

(ff) The term *practitioner* means an attorney as defined in paragraph (f) of this section who does not represent the Federal Government, or a representative as defined in paragraph (j) of this section.

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 3. 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.

■ 4. In § 1003.2, revise paragraph (g)(1) to read as follows:

1003.2 Reopening or reconsideration before the Board of Immigration Appeals.

* * * * *

(g) * * *

(1) *English language, entry of appearance, and proof of service requirements.* A motion and any submission made in conjunction with a motion must be in English or accompanied by a certified English translation. If a party other than DHS is represented, any motion or related filing by that party must be accompanied by a Form EOIR–27, Notice of Entry of Appearance as Attorney or Representative Before the Board, pursuant to 8 CFR 1003.38(g)(1). If a party other than DHS is pro se and receives document assistance from a practitioner with a motion or related filing pursuant to 8 CFR 1003.38(g)(2), a Form EOIR–60 must be filed with the motion or related filing. In all cases, the motion must include proof of service on the opposing party of the motion and all attachments. If the moving party is not DHS, service of the motion must be made upon the DHS office in which the

case was completed before the immigration judge.

* * * * *

■ 5. In 1003.3, revise paragraph (a)(3) to read as follows:

1003.3 Notice of appeal.

(a) * * *

(3) *General requirements for all appeals.* The appeal must be accompanied by a check, money order, or fee waiver request in satisfaction of the fee requirements of § 1003.8. If the respondent or applicant is represented, pursuant to 8 CFR 1003.38(g)(1), a Form EOIR–27, Notice of Entry of Appearance as Attorney or Representative Before the Board, must be filed with the Notice of Appeal. If the respondent or applicant receives document assistance from a practitioner with the appeal, pursuant to 8 CFR 1003.38(g)(2), a Form EOIR–60 must be filed with the Notice of Appeal. The appeal and all attachments must be in English or accompanied by a certified English translation.

* * * * *

■ 6. Revise § 1003.17 to read as follows:

1003.17 Entry of appearance.

(a) *Entering an appearance using Form EOIR–28.* A practitioner must enter an appearance in proceedings before an immigration court using Form EOIR–28 to perform the functions of and become the practitioner of record. The practitioner of record is authorized and required to appear in immigration court on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings. The practitioner may enter an appearance to be the practitioner of record for all proceedings before the immigration court, or for custody and bond proceedings only, or for all proceedings other than custody and bond proceedings. A practitioner's entry of appearance in only a custody or bond proceeding shall be separate and apart from an entry of appearance in any proceeding other than custody or bond before the immigration court. The Form EOIR–28 must indicate whether the practitioner's entry of appearance is for all proceedings, for custody and bond proceedings only, or for all proceedings other than custody and bond proceedings.

(1) *Filing Form EOIR–28.* The practitioner must file a copy of the Form EOIR–28 with the immigration court and serve a copy on DHS as required by 8 CFR 1003.32. The practitioner must file and serve a Form EOIR–28 even if the practitioner has previously filed a separate Notice of Entry of Appearance with DHS for appearances before DHS or previously entered a limited appearance using Form EOIR–61 in connection with document assistance under paragraph (b) of this section.

(2) *Effect of Filing Form EOIR–28.* A practitioner who enters an appearance using Form EOIR–28 is the practitioner of record and must appear in immigration court on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings, consistent with 8 CFR 1292.5. Filing a Form EOIR–28 provides the practitioner with access to the record of proceedings during the course of proceedings. A respondent shall be considered represented for the proceedings in which an EOIR–28 has been filed.

(3) *Withdrawal or substitution.* A practitioner who enters an appearance on behalf of a respondent before the immigration court by filing a Form EOIR–28 remains the practitioner of record unless an immigration judge permits withdrawal or substitution during proceedings upon oral or written motion submitted without fee.

(b) *Entering a limited appearance for document assistance using Form EOIR–61.* A practitioner who provides assistance to a pro se respondent with the drafting, completion, or filling in of blank spaces of a specific motion, brief, form, or other document or set of documents intended to be filed with the immigration court, regardless of whether such assistance is considered ''practice'' or ''preparation'' as defined in 8 CFR 1001.1, must disclose such limited assistance to the immigration court using Form EOIR–61, unless pursuant to paragraph (a) the practitioner has filed a Form EOIR–28 to become the practitioner of record.

(1) *Filing Form EOIR–61.* A Form EOIR–61 must not be filed as a standalone document. The single Form EOIR–61 must be filed with the immigration court at the same time as the document or set of documents with which the practitioner assisted. Any subsequent filing of a document or set of documents with which a practitioner assisted must be accompanied by a new Form EOIR–61.

(2) *Effect of Filing Form EOIR–61.* A practitioner who enters a limited appearance using Form EOIR–61 is not the practitioner of record, is not required to appear on behalf of respondent before the immigration court, and is not required to submit a motion to withdraw or substitute. The submission of a Form EOIR–61 does not create additional ongoing obligations between the practitioner, the respondent, and EOIR. An appearance through Form EOIR–61 does not provide the practitioner with access to the record of proceedings. A respondent who received assistance pursuant to this paragraph is not represented, remains pro se, and is subject to service of process of all documents filed in the proceedings, consistent with 8 CFR 1292.5.

(c) *Completing an appearance form, proof of qualification, disclosure requirements, and identification.* The practitioner must properly complete and sign any Form EOIR–28 or Form EOIR–61, as required by the form instructions. A practitioner's personal appearance or signature on the Form EOIR–28 or Form EOIR–61 constitutes an attestation that the person is authorized and qualified to appear as a practitioner in accordance with § 1292.1. Further proof that the practitioner meets the qualifications of a practitioner as defined in § 1292.1 may be required. The completion of a Form EOIR–28 or Form EOIR–61 in connection with an application or form that requires disclosure of the preparer does not relieve a practitioner from complying with the particular disclosure requirements of the application or form. Notwithstanding the completion of a Form EOIR–28 or Form EOIR–61, the practitioner must identify themselves by name, accompanied by their signature, on any document filed or intended to be filed with the immigration court pursuant to an appearance under paragraph (a) or (b).

■ 7. In § 1003.38, revise paragraph (g) to read as follows:

§ 1003.38 Appeals

* * * * *

(g) In proceedings before the Board on behalf of a respondent, a practitioner must enter an appearance using Form EOIR–27 or Form EOIR–60.

(1) *Entering an appearance using Form EOIR–27.* In proceedings before the Board, in order to become the practitioner of record, which authorizes and requires the practitioner to appear before the Board on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings, a practitioner must enter an appearance using Form EOIR–27.

(i) *Filing Form EOIR–27.* The practitioner must file a copy of the Form EOIR–27 with the Board and serve a copy on DHS as required by 8 CFR 1003.32. The practitioner must file and serve a Form EOIR–27 even if the practitioner has previously filed a separate Notice of Entry of Appearance with DHS for appearances before DHS

or a Form EOIR–28 with the immigration court, or has previously entered a limited appearance using a Form EOIR–60 in connection with document assistance under paragraph (g)(2) of this section.

(ii) *Effect of filing Form EOIR–27.* A practitioner who enters an appearance using Form EOIR–27 is the practitioner of record and must appear before the Board on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings, consistent with 8 CFR 1292.5. Filing a Form EOIR–27 provides the practitioner with access to the record of proceedings during the course of proceedings. A respondent shall be considered represented for the proceedings in which a Form EOIR–27 has been filed.

(iii) *Withdrawal or substitution.* A practitioner who enters an appearance on behalf of a respondent before the Board by filing a Form EOIR–27 remains the practitioner of record unless the Board permits withdrawal or substitution during proceedings only upon written motion submitted without fee.

(2) *Entering a limited appearance for document assistance using Form EOIR–60.* A practitioner who provides assistance to a pro se respondent with the drafting, completion, or filling in of blank spaces of a motion, brief, form, or other specific document or set of documents intended to be filed with the Board, regardless of whether such assistance is considered ''practice'' or ''preparation'' as defined in § 1001.1, must disclose such limited assistance to the Board using Form EOIR–60, unless pursuant to paragraph (g)(1) the practitioner has filed a Form EOIR–27 to become the practitioner of record.

(i) *Filing Form EOIR–60.* A Form EOIR–60 must not be filed as a standalone document. The single Form EOIR–60 must be filed with the Board at the same time as the document or set of documents with which the practitioner assisted. Any subsequent filing of a document or set of documents with which a practitioner assisted must be accompanied by a new Form EOIR–60.

(ii) *Effect of Filing Form EOIR–60.* A practitioner who enters a limited appearance using Form EOIR–60 is not the practitioner of record, is not required to appear before the Board, and is not required to submit a motion to withdraw or substitute. The submission of a Form EOIR–60 does not create additional ongoing obligations between the practitioner, the respondent, and EOIR. An appearance through Form EOIR–60 does not provide the practitioner with access to the record of proceedings. A respondent who received assistance pursuant to this paragraph is not represented, remains pro se, and is subject to service of process of all documents filed in the proceedings, consistent with 8 CFR 1292.5.

(3) *Completing an appearance form, proof of qualification, disclosure requirements, and identification.* The practitioner must properly complete and sign any Form EOIR–27 or Form EOIR–60, as required by the form instructions. A practitioner's personal appearance or signature on the Form EOIR–27 or Form EOIR–60 constitutes a representation that the person is authorized and qualified to appear as a practitioner in accordance with 8 CFR 1292.1. Further proof that the practitioner meets the qualifications of a practitioner as defined in 8 CFR 1292.1 may be required. The completion of a Form EOIR–27 or Form EOIR–60 in connection with an application or form that requires disclosure of the preparer does not relieve a practitioner from complying with the particular disclosure requirements of the application or form.

Notwithstanding the filing of a Form EOIR–27 or Form EOIR–60, the practitioner must identify themselves by name, accompanied by their signature, on any document filed or intended to be filed with the Board pursuant to an appearance under paragraph (g)(1) or (2) of this section.

■ 8. In § 1003.101, revise paragraph (b) to read as follows:

§ 1003.101 General provisions.

* * * * *

(b) *Persons subject to sanctions.* Persons subject to sanctions include any practitioner. Attorneys employed by the Department of Justice shall be subject to discipline pursuant to § 1003.109. Nothing in this regulation shall be construed as authorizing persons who do not meet the definition of practitioner to represent individuals before the Board and the immigration courts or the DHS.

* * * * *

■ 9. Amend § 1003.102 by:

■ a. Removing the words ''Immigration Court'' in paragraphs (d) and (j) and adding in their place the words ''immigration court'';

■ b. Removing the words ''Immigration Courts'' in paragraph (f)(2)(i) and adding in their place the words ''immigration courts'';

■ c. Revising paragraphs (t) and (u); and

■ d. Adding paragraph (w).

The revisions and addition read as follows:

§ 1003.102 Grounds.

* * * * *

(t) Repeatedly fails to submit a signed and completed entry of appearance using the appropriate form in compliance with applicable rules and regulations, including 8 CFR 292.4(a), 1003.17, and 1003.38;

(u) Repeatedly drafts notices, motions, briefs, or claims that are filed with DHS or EOIR that reflect little or no attention to the specific factual or legal issues applicable to a client's case, but rather rely on boilerplate language indicative of a substantial failure to competently and diligently represent the client;

* * * * *

(w) Repeatedly fails to sign any pleading, application, motion, petition, brief, or other document prepared, drafted, or filed with DHS or EOIR. The practitioner's signature must be in the practitioner's individual name and must be handwritten or electronically in conformity with the rules and instructions of the applicable system.

Dated: September 9, 2022.

Merrick B. Garland,

Attorney General.

[FR Doc. 2022–19882 Filed 9–13–22; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0398; Project Identifier MCAI–2020–00881–T; Amendment 39–22085; AD 2022–12–13]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A and 601–3R Variants) airplanes. This AD was prompted by reports that during certain operating modes, the flight guidance/autopilot does not account for engine failure while capturing an altitude. This AD requires revising the existing airplane flight manual (AFM) to provide the flightcrew with a new limitation and procedure for operation during certain