§ 774.21 [Reserved]

§ 774.22 Loan closing.

(a) *Conditions.* The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to closing.

(b) *Loan instruments and legal documents.* The applicant will execute all loan instruments and legal documents required by the Agency to evidence the debt, perfect the required security interest in the bankruptcy claim, and protect the Government's interest, in accordance with applicable State and Federal laws. In the case of an entity applicant, all officers or partners and any board members also will be required to execute the promissory notes as individuals.

(c) *Fees.* The applicant will pay all loan closing fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by Agency employees.

§ 774.23 Loan servicing.

Loans will be serviced in accordance with subpart J of part 1951 of this title, or its successor regulation. If the loan is not repaid as agreed and default occurs, servicing will proceed in accordance with section 1951.468 of that part.

§ 774.24 Exception.

The Agency may grant an exception to any of the requirements of this section, if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing statute or other applicable law.

Signed at Washington, D.C., on November 29, 2000.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 00–30977 Filed 12–5–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 208

[INS Order No. 1865–97; AG Order No. 2340–2000]

RIN 1115–AE93

Asylum Procedures

AGENCY: Immigration and Naturalization Service, Justice; and Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Justice regulations implementing the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), governing asylum claims. Additionally, this rule amends portions of the regulations governing cases in which an applicant has established past persecution or in which an applicant may be able to avoid persecution in a particular country by relocating to another area of that country. Finally, the rule identifies factors that may be considered in the exercise of discretion in asylum cases in which the alien has established past persecution but may not have a well-founded fear of future persecution. This final rule will ensure that asylum applications are processed in accordance with the Immigration and Nationality Act (Act), as amended by IIRIRA, as well as with international instruments.

DATES: This rule is effective January 5, 2001.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Immigration and Naturalization Service*—Joanna Ruppel, International Affairs, Department of Justice, Immigration and Naturalization Service, 425 I Street NW., ULLICO third floor, Washington, DC 20536, telephone (202) 305–2663. *For matters relating to the Executive Office for Immigration Review*—Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

I. Background

Regulations To Implement the Illegal Immigration Reform and Immigrant Responsibility Act of 1996

On March 6, 1997, the Service and EOIR jointly published in the **Federal Register**, at 62 FR 10312, an interim rule to implement Public Law 104–208 (110 Stat. 3546) (IIRIRA). That legislation significantly amended several parts of the Immigration and Nationality Act (''Act'' or ''INA''), including part 208. The interim regulations implementing IIRIRA were preceded by a notice of proposed rulemaking, published in the **Federal Register** on January 3, 1997, at 62 FR 444, and providing a 30-day comment period. The interim rule provided a 120-day comment period. The Department of Justice (Department) received 39 comments on the interim rule in addition to the 124 comments already received as a result of the proposed rule. This final rule reflects further changes resulting from comments received in response to both the original proposed rule and the interim rule.

Proposed Rule Regarding Past Persecution, Internal Relocation, and Discretion (Past Persecution Rule)

On June 11, 1998, at 63 FR 31945, the Service and EOIR jointly published in the **Federal Register** a proposed rule to change portions of 8 CFR 208.13 and 208.16 in order to provide further guidance on adjudicating asylum cases and withholding of removal cases when an applicant has established past persecution and when the applicant may be able to avoid persecution in his or her home country by relocating to another area of that country. The rule proposed to establish new guidelines concerning the Attorney General's exercise of discretion in cases in which past persecution is established, and the types of evidence that may be considered in determining whether an applicant has a well-founded fear of future persecution. Additionally, the rule proposed to identify new factors that could be considered in the determination whether to grant asylum when an applicant has established past persecution but no longer has a well-founded fear of future persecution. The Department received 35 comments on the proposed past persecution rule.

The Department has elected to split part 208 from the rest of the IIRIRA interim regulations and to incorporate amendments to part 208 into this final rule based both on comments to the IIRIRA interim rule and on comments to the June 1998 proposed rule regarding past persecution. In the future, the Department will publish a proposed rule concerning the definition of ''persecution'' and the definition of ''particular social group.'' Those new proposals are based in part on certain of the provisions being made final in this rule.

II. Comments

Most of the commenters on both the interim IIRIRA rule and proposed past persecution rule represented either attorney organizations or voluntary organizations predominantly involved with refugees and asylum claimants. The Department also received comments from individual attorneys and the regional representative of United Nations High Commissioner for Refugees (UNHCR). Since many of the comments were duplicative or endorsed the submissions of other commenters, the Department will address the comments by section and topic, rather than reference each comment and commenter. The following discussion

also identifies amendments made by the Department to clarify and streamline the regulations as part of the Administration's reinvention and regulation streamlining initiative.

§ 208.2—Jurisdiction

To clarify jurisdiction over asylum applications, the Department has reorganized and revised this section as follows:

(1) Language has been added to § 208.2(a) to establish that the Office of International Affairs has initial jurisdiction over credible fear determinations under § 208.30 and reasonable fear determinations under § 208.31.

(2) Language in § 208.2(a) relating to the filing of a complete application has been removed as redundant with the provisions of § 208.3.

(3) Section 208.2(b)(3) has been redesignated as § 208.2(b) to provide a general description of Immigration Court jurisdiction, relevant to the majority of asylum applications adjudicated in Immigration Court, prior to discussion of the more limited jurisdiction applicable in circumstances described in new § 208.2(c).

(4) The first sentence in new § 208.2(b) (formerly § 208.2(b)(3)), which refers to an immigration judge's jurisdiction over asylum applications ''after a copy of the charging document has been filed with the Immigration Court,'' has been amended. The Department has removed the words ''a copy of'' from that sentence because, in general, only the charging document with the original signature of the Service officer who issued the charging document may be filed with the Immigration Court. The Department also amended the last sentence in § 208.2(b) to establish that immigration judges have exclusive jurisdiction over credible fear determinations that have been referred to the Immigration Court pursuant to § 208.30, as well as reasonable fear determinations that have been referred to the Immigration Court pursuant to § 208.31. In addition, the reference to ''Executive Office for Immigration Review'' has been replaced with ''Immigration Court'' because only immigration judges have jurisdiction over credible fear and reasonable fear review proceedings.

(5) Section 208.2(b)(1) has been redesignated as § 208.2(c), governing asylum and withholding proceedings for those aliens not entitled to removal proceedings under section 240 of the Act. Section 208.2(c)(1) relates to aliens who are not entitled to proceedings under section 240 of the Act and are eligible to apply only for asylum and withholding of removal. Section 208.2(c)(2) relates to jurisdiction over proceedings that are limited to requests for withholding of removal pursuant to § 208.31, after an alien subject to reinstatement of a prior order under section 241(a)(5) of the Act or administrative removal under section 238(b) of the Act has been found to have a reasonable fear.

(6) The Department has rewritten the language of § 208.2(c)(1)(v) (formerly § 208.2(b)(1)(v)), to clarify the existing rules relating to cases falling under section 235(c) of the Act. Section 235(c) provides an expedited removal process for certain aliens who are suspected of being inadmissible on national security grounds; the Service has the authority to order such an alien removed without further inquiry or hearing by an immigration judge, as provided in § 235.8 of this chapter.

The current regulatory scheme provides adequate safeguards to ensure that the expedited nature of removal under section 235(c) is balanced against the right to apply for asylum in appropriate cases. An immigration officer or immigration judge must initiate certain procedures described in 8 CFR 235.8 when an arriving alien is suspected of being inadmissible on security or related grounds. Only after those procedures have been completed and a permanent order of inadmissibility is issued would the question arise regarding eligibility for asylum or withholding of removal. Although some categories of persons found inadmissible on those grounds are ineligible for asylum, other persons, such as those found inadmissible based on membership in a terrorist organization, remain eligible for asylum.

The Regional Director is authorized to pretermit an asylum application for aliens who have been issued a permanent order of inadmissibility. However, in some cases, and in the exercise of prosecutorial discretion, the Regional Director may choose to place persons found subject to removal under section 235(c) of the Act, but who are not subject to the bars to asylum, in asylum-only proceedings under § 208.2(c)(1) by issuing a Form I–863, Notice of Referral to Immigration Judge. In those cases in which the Service has affirmatively decided to place an alien in asylum-only proceedings and has issued a Form I–863, the immigration judge would then have jurisdiction to hear the alien's asylum application. Of course, unless the Service has issued a Form I–863 to an alien who is found to be removable under section 235(c) of the Act, the immigration judges have no jurisdiction with respect to those cases.

The Department further notes that § 235.8 of this chapter, as amended by the regulations implementing the Convention Against Torture, expressly limits the applicability of § 208.2. Section 235.8(b)(4) specifically states that persons seeking withholding under section 241(b)(3) of the Act or the Convention Against Torture are not subject to the ''provisions of part 208 of this chapter relating to consideration or review by an immigration judge, the Board of Immigration Appeals or an asylum officer.'' Instead, it is the Service's responsibility to ensure that no removals are conducted under section 235(c) that violate our international obligations; the process for making such a determination remains within the Service's control.

(7) Section 208.2(c)(1)(vi) [formerly section 208.2(b)(1)(vi)] has been amended to clarify that the exclusive jurisdiction of the immigration judge comes into effect only when the district director refers an alien described in this provision for a hearing that is limited to asylum and withholding of removals.

(8) In § 208.2(c)(3)(i) (formerly § 208.2(b)(2)(i)), which describes rules of procedures, the reference to ''8 CFR part 240'' in the first sentence has been amended to read ''8 CFR part 240, subpart A,'' to clarify that hearings limited to eligibility for asylum and/or withholding of removal shall be conducted under the same procedures that apply in removal proceedings.

(9) Section § 208.2(b)(2)(ii) has been redesignated as § 208.2(c)(3)(ii), but otherwise is unchanged.

(10) Section 208.2(b)(2)(iii) has been redesignated as § 208.2(c)(3)(iii). Additionally, it has been amended by removing reference to sections 208, 212(h), 212(i) of the Act and by adding an exception based on a showing of exceptional circumstances, in order to reflect the statutory language in section 240(b)(7) of the Act.

§ 208.3—Form of Application

The name of the Form I–589, Application for Asylum and Withholding of Removal, as it appeared in § 208.3(a) has been corrected to ''Form I–589, Application for Asylum and for Withholding of Removal.'' Section 208.3(c)(4) has been corrected to reflect that section 274C of the Act provides for criminal as well as civil penalties for knowingly placing false information on an Application.

§ 208.4—Filing the Application

A considerable number of comments were received regarding the 1-year filing deadline contained in section 208(a)(2)(B) of the Act and the

provisions for exemption contained in section 208(a)(2)(D) of the Act relating to changed conditions.

Some commenters took issue with the deadline itself. While the Department understands the concerns of those commenters, the 1-year filing deadline is a statutory requirement and therefore cannot be removed by rulemaking.

Some commenters suggested that an asylum officer or immigration judge should question an applicant before an application can be rejected as untimely filed. This suggestion has been adopted for two reasons. First, the decision on a tardy filing issue can best be made only after an asylum officer, in an interview, or immigration judge, in a hearing, has given an applicant the opportunity to present any relevant and useful information bearing on any prohibitions on filing. Second, for applicants who are placed in removal proceedings, the immigration judge must still determine whether the applicant is eligible for withholding of removal, even if it is found that the alien is ineligible to apply for asylum.

Language in § 208.4(a)(2)(ii) was added for consistency with § 1.1(h), which defines the term ''day'' for computing the period of time for taking action provided in 8 CFR. When calculating the one-year period when the last day of the period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. One commenter suggested that the Department consider the filing of an asylum application to be the date the application is mailed or otherwise sent to the Service or Immigration Court. This suggestion has been adopted in part. For an application filed with the Service, an application is considered to have been filed on the date it is received by the Service. In a case in which the 1-year filing deadline has not been met, however, if the applicant provides clear and convincing documentary evidence of mailing the application within the 1-year period, the mailing date shall be considered the filing date. For a case before the Immigration Court or the Board of Immigration Appeals (Board), an asylum application is considered to have been filed on the date it is received by the Court or the Board.

In addition, other references to filing an application in paragraph (a) relating to ''submission of,'' ''submitted,'' or ''applied for'' have also been changed to ''filed'' in order to make language in the section consistent. Language was also added to reflect that the provisions of this section apply to asylum applications decided by an asylum officer, an immigration judge, or the Board.

Many commenters recommended a change in the language of § 208.4(a)(4) and § 208.4(a)(5) that would indicate the list of circumstances is not all-inclusive. That suggestion has been adopted.

The Department agreed with several of the recommended amendments to § 208.4(a)(4), relating to changed circumstances. First, the Department eliminated the requirement that the changed circumstances be ''objective.'' The modifier ''objective'' was removed to avoid confusion in cases where, for example, the changed circumstance relates to a subjective choice an applicant has made, such as a religious conversion or adoption of political views. Additionally, the Department eliminated the requirement that the changed circumstances occur within the United States, because there may be situations in which the changed circumstances, such as religious conversion, took place outside the United States, but not in the applicant's home country. The Department also specified that cessation of the requisite relationship between a principal applicant and a dependent after the dependent has been included in the principal applicant's application as a derivative applicant may constitute a changed circumstance. Finally, the Department clarified that an adjudicator must take into account an applicant's delayed awareness of a changed circumstance, such as events in the home country, when determining whether a period of delay is reasonable.

Section 208.4(a)(5), relating to extraordinary circumstances, has been revised to reflect the numerous comments regarding the current list of circumstances that may constitute extraordinary circumstances. The Department has added additional circumstances to the non-exhaustive list, as discussed below. Additionally, the Department has changed the word ''shall'' in the second sentence of paragraph (a)(5) to ''may'' to better reflect the statutory language in section 208(a)(2)(D) and to reinforce the necessity of analyzing each case on an individual basis. The Department has also added language to the burden of proof requirement to specify clearly that the applicant bears the burden to demonstrate that the delay was reasonable under the circumstances.

With respect to § 208.4(a)(5), some commenters suggested that extraordinary circumstances not be limited to factors beyond the alien's control. That suggestion has been partially adopted. While it is hard to imagine a situation that both would be entirely within the alien's control and would also prevent him or her from filing the application, it is not difficult to imagine qualifying situations in which the alien might be forced to choose between the lesser of two evils, or the alien might be able to exercise a limited amount of control. The regulation has been amended to provide that the alien must not have intentionally created the circumstance.

Additionally, the phrase ''but for those circumstances he or she would have been able to file the application within the 1-year period'' has been modified to ensure consistency with the statutory language to read ''those circumstances were directly related to the alien's failure to file the application within the 1-year period.''

In § 208.4(a)(5)(i), the phrase ''of significant duration,'' in reference to an experience of serious illness or disability, was removed to allow for a situation in which the timing of an applicant's serious illness or disability prohibited him or her from filing the asylum application within one year of the individual's arrival in the United States, even though the illness or disability was of short duration.

Several commenters recommended that the list of extraordinary circumstances be expanded to include maintaining valid immigrant or nonimmigrant status, in addition to maintaining Temporary Protected Status. The Department has accepted the recommendation because there are sound policy reasons to permit persons who were in a valid immigrant or nonimmigrant status, or were given parole, to apply for asylum within a reasonable time after termination of parole or immigration status. The Department does not wish to force a premature application for asylum in cases in which an individual believes circumstances in his country may improve, thus permitting him to return to his country. For example, an individual admitted as a student who expects that the political situation in her country may soon change for the better as a result of recent elections may wish to refrain from applying for asylum until absolutely necessary. The Department would expect a person in that situation to apply for asylum, should conditions not improve, within a very short period of time after the expiration of her status. Failure to apply within a reasonable time after expiration of the status would foreclose the person from meeting the statutory filing requirements. Generally, the Department expects an asylum-seeker to apply as soon as possible after expiration of his or her valid status, and failure to do so will result in rejection

of the asylum application. Clearly, waiting six months or longer after expiration or termination of status would not be considered reasonable. Shorter periods of time would be considered on a case-by-case basis, with the decision-maker taking into account the totality of the circumstances.

Others recommended including situations involving the death or serious illness or incapacity of the applicant's legal representative or of a member of the applicant's immediate family. The Department agrees that there may be situations in which the serious illness of an applicant's representative or family member could relate to an applicant's delay in applying for asylum. Therefore, that suggestion has been adopted. As with all exceptions to the 1-year filing requirement based on extraordinary circumstances, the applicant would have to demonstrate that the illness of the representative or family related to the delay in filing and that the applicant applied for asylum within a reasonable amount of time after the illness.

Some commenters suggested broadening the two illustrative lists. The lists have been expanded to include some, but not all, of the suggestions. The Department's decision to include only some of the circumstances suggested in the comments does not mean that the Department has determined that those that were not included could never excuse tardiness. The fact that an applicant's circumstances are described in the list of possible changed or extraordinary circumstances does not in itself mandate that a tardy filing be excused; nor does the lack of such a description mean that the circumstances cannot be raised during an interview or hearing and result in excuse of the untimely filing. The lists merely provide examples of circumstances that might result in a tardiness being excused. In order for a tardy filing to be excused, an applicant must first credibly show the existence or occurrence of the circumstances (regardless of whether those circumstances are specifically listed in the regulations), and then show (1) for changed circumstances, that those changes materially affect the alien's eligibility for asylum, or (2) for extraordinary circumstances, that those circumstances directly relate to the alien's failure to file the application within the 1-year deadline. Without the direct connection, the alien is statutorily ineligible to apply for asylum.

The Department notes that the existing provision in this section relating to ''ineffective assistance of counsel'' raises questions that have arisen under the Act more generally concerning whether, and if so when, errors by counsel may furnish a ground for an alien to obtain relief, such as setting aside a final order or excusing a failure to comply with a statutory deadline. For example, in a case that is currently pending before the Board of Immigration Appeals, the Service is arguing that because there is no constitutional right to government-furnished counsel in immigration proceedings, there is, under *Coleman v. Thompson,* 501 U.S. 722 (1991), no constitutional basis for relief based on a claim of ineffective assistance of counsel. Similar issues concerning errors of counsel have been raised in court in other contexts under the Act. The Department accordingly is re-examining the ineffective-assistance-of-counsel provision in the asylum regulations as part of a broader assessment of the role that counsel error may play in requests for relief in immigration proceedings. However, because those issues have not yet been raised in the context of the current rulemaking proceedings, this provision is being carried forward unchanged at the present time. The Department will address those issues separately in the future.

Certain commenters appeared to be confused about the amount of additional time an applicant should receive in order to file an application when it has been determined that a changed or extraordinary circumstance is present in a particular case. While most understood that the finding of changed or extraordinary circumstances justifies the tardiness being excused to the extent necessary to allow the alien a reasonable amount of time to submit the application, some believed that the alien would automatically receive one year from the date of the circumstance involved to file a timely application. Although there may be some rare cases in which a delay of one year or more may be justified because of particular circumstances, in most cases such a delay would not be justified. Allowing an automatic one year extension from the date a changed or extraordinary circumstance occurred would clearly exceed the statutory intent that the delay be related to the circumstance. Accordingly, that approach has not been adopted.

Section 208.4(b)(2) has been clarified to reflect that the director of the local asylum office, in addition to the director of the asylum program, can authorize the filing of an application directly with a local asylum office instead of with a Service Center. A provision was also added to this section that allows an application to be filed directly with an asylum office in a case in which an individual who was previously included in a principal applicant's asylum application as a dependent has lost derivative status and wants to file as a principal applicant.

The title of § 208.4(b)(3) has been changed from ''With the immigration judge'' to ''With the Immigration Court,'' and in § 208.4(b)(3)(i), the phrase ''jurisdiction over the port, district office, or sector after service and filing of the appropriate charging document'' has been changed to ''jurisdiction over the underlying proceeding.'' The form number of the Notice of Referral to Immigration Judge (I–863) has also been added to § 208.4(b)(3)(iii).

Finally, the second sentence of § 208.4(b)(5) has been amended to reflect that submission of an asylum application to the district director does not automatically trigger the issuance of a Form I–863, Notice of Referral to an Immigration Judge.

§ 208.5—Special Duties Towards Aliens in Custody of the Service

Language was added to reflect that paragraph (a), which relates to aliens in the custody of the Service who request asylum or withholding of removal, or who express a fear of persecution or harm, does not pertain to an alien in custody pending a reasonable fear determination pursuant to § 208.31, just as it does not pertain to an alien pending a credible fear determination. However, a sentence was added to reflect that, even though the Service is not required to provide application forms to aliens pending a credible fear or reasonable fear determination, the Service may provide the forms upon request. The word ''persecution'' was deleted after the terms ''credible fear'' and ''reasonable fear'' to reflect that a credible fear or reasonable fear determination involves an evaluation of both fear of persecution and fear of torture. Finally, § 208.5(b)(1)(ii) has been amended to allow a district director to extend the 10-day filing period for crewmen when good cause exists.

§ 208.6—Disclosure to Third Parties

One commenter suggested the restoration of the second sentence in § 208.6(a), which had been removed as superfluous, relating to the deletion of identifying details from copies of asylum cases in public reading rooms. The Department believes § 208.6 protects the confidentiality of asylum applicants in public reading rooms and, therefore, has decided not to restore the removed language to this section. The Department has added language to

§ 208.6 regarding the disclosure to third parties of information and records relating to credible fear interviews and determinations, as well as reasonable fear interviews and determinations, to protect claimants' confidentiality in those proceedings.

The Department is considering further amendments to the confidentiality provisions and will publish a proposed rule if it decides further change is necessary.

§ 208.7—Employment Authorization

One commenter suggested a clarification that an asylum office referral of an asylum application to an immigration judge does not stop the 150-day employment authorization clock. This suggestion has not been adopted because it is not entirely accurate. Although the 150-day clock continues to run even if an asylum application is referred to the Immigration Court, an applicant may cause a delay that could stop the clock, including failing to appear at a hearing before the Immigration Court, or failing to follow fingerprinting requirements. Accordingly, this section has not been changed.

§ 208.9—Procedure for Interview Before an Asylum Officer

This section has not been substantively changed, although several comments were received. The reference to § 208.14(b) in paragraph (d) of this section was amended to refer to § 208.14(c) for consistency with revisions to § 208.14.

One commenter suggested that the regulations should contain protections to ensure the non-adversarial nature of the asylum interview and further commented that, because § 208.9(b) states that interviews will be conducted separate and apart from the public except at the request of the applicant, the asylum applicant, not the asylum officer, has the right to determine the number of individuals who may be present during an asylum interview. The Department believes that the regulations contain sufficient guidelines regarding the nonadversarial nature of the interview and has not amended them. The asylum officer needs to retain control over the flow and parameters of the interview, and the Department believes it is appropriate for asylum officers, taking into account the applicant's right to bring a representative and to present witnesses, and his or her need for an interpreter, to determine the number of individuals who may be present at the interview. Individual problems that may arise are more appropriately addressed by raising them with local asylum office directors than through regulatory changes.

The same commenter suggested that the asylum interview should be taped for accurate preservation of the record. While the Department has carefully considered that comment, and the Service does not rule out adopting a policy to tape record interviews in the future, at the present time the Department will not adopt that suggestion. In order to benefit the process, the taping would have to be transcribed for inclusion in the record. That would increase the cost, time, and personnel resources required to adjudicate an asylum application in a system that was designed to have an initial nonadversarial hearing with an asylum officer, followed, if the case is referred, by a *de novo*, more formal adversarial hearing, which is recorded, before an immigration judge. The Service believes that, in light of current circumstances, the administrative cost and burden of tape recording asylum interviews outweigh any expected benefit from the recording of interviews. As previously stated, however, the Service does not rule the option out for the future.

The same commenter also suggested that the Department should secure interpreters for asylum applicants who are interviewed at an asylum office. If the Department is unwilling to do so, the commenter continued, the Department should not penalize an applicant with an unexcused absence for failing to bring a qualified interpreter. The interim regulation provided an applicant a greater opportunity to find a qualified interpreter by permitting an applicant to provide an interpreter who is fluent in English and the applicant's native language, or any other language in which the applicant is fluent. The Service recognizes that Service-appointed interpreters could benefit applicants and the program. At this time, all federal agencies, including the Service, are reviewing issues relating to language interpreters in light of the recent Presidential Executive Order 13116, which directs federal agencies to establish written policies by December 11, 2000, on the language-accessibility of their programs and the programs of those who receive federal funds. The issue of interpreters raised by the commenter will therefore be addressed in compliance with Executive Order 13116.

The commenter's final suggestion was to incorporate into this part of the regulations guidelines for paroling detained asylum-seekers. The parole of aliens into the United States is within the purview of a district director and covered under § 212.5. The Department believes that § 212.5 contains sufficient guidelines to the Service for determining which aliens may be paroled, and has not included any guidelines for paroling aliens into this part.

Another commenter suggested that an applicant should be able to authorize counsel or a representative to pick-up a decision, without interruption of the 150-day clock. Section 239(a)(1) of the Act, however, specifically states that a Notice to Appear shall be given in person to the alien. The Act does not allow for a counsel or representative to accept service of a Notice to Appear unless the decision is mailed.

The same commenter suggested that § 208.9(d) should allow an attorney the opportunity to respond orally to any questions or evidence presented at the interview rather than allowing an asylum officer to require a representative to submit comments in writing. The current provisions in this section do allow for an attorney or representative to make an oral statement, and they also allow an asylum officer the discretion to have a representative submit comments in writing rather than orally, depending upon the particular facts in the case. Consistent with the current regulations, it is the general practice of asylum officers to allow an attorney the opportunity for oral responses and to ask questions at the end of the interview, subject to appropriate limitations. Therefore, the Department does not believe it necessary to make the suggested changes.

§ 208.10—Failure To Appear at an Interview

The Department received comments from one commenter on this section. The comments included a request for guidance on how an applicant can prove that the Service did not mail notice of interview to his or her address, and what constitutes ''exceptional circumstances.'' With regard to the latter, the commenter recommended that the term ''exceptional circumstances,'' which the commenter viewed as too harsh, be replaced with ''good cause.''

The Department declines to provide guidance on how to prove a notice of interview was not properly provided, and to further define ''exceptional circumstances'' beyond the definition provided in section 240(e)(1) of the Act. Determining whether a notice was properly provided and what constitutes ''exceptional circumstances'' must be reviewed on a case-by-case basis. That

approach allows an asylum office director the discretion to determine the type of evidence necessary to show that notice of interview was not properly given in a particular individual's case, and the types of circumstances that may be considered ''exceptional.'' In accordance with section 208(d)(5)(A)(v) of the Act, the Service must excuse the applicant's failure to appear for an interview for exceptional circumstances, but may excuse an applicant's failure to appear for good cause where appropriate. As a practical matter, the Service generally will exercise discretion to excuse a first-time failure to appear if (1) good cause has been shown, (2) proceedings before the Immigration Court have not been initiated, and (3) the excuse is received within a reasonable amount of time after the interview date. In the near future, the Service intends to issue a proposed rule clarifying the consequences of failure to appear, which will give the public further opportunity to comment on those issues.

§ 208.12—Reliance on Information Compiled by Other Sources

In response to one comment, paragraph (b) of this section was revised to clarify that a prohibition on discovery of information does not include requests for information made under the Freedom of Information Act (FOIA).

§ 208.13—Establishing Asylum Eligibility

Some commenters suggested that the former §§ 208.13(b)(2)(ii) and 208.16(b)(4) (giving due consideration to evidence that the government persecutes its nationals for unauthorized departure or seeking asylum) be reinstated in the regulations. This matter was thoroughly reviewed in the preamble to the interim rule at 62 FR 10312 in response to the earlier comments to the proposed rule at 62 FR 444. The comments to the interim rule raised no significant issues that were not previously addressed, and no changes have been made in that regard.

A new § 208.13(c)(2)(F) was added for consistency with the provisions of the Anti-terrorist and Effective Death Penalty Act of 1996 (AEDPA). For applications for asylum filed prior to April 1, 1997, an applicant who falls within subclauses (I), (II), or (III) of section 212(a)(3)(B)(i) of the Act (relating to terrorist activity) is ineligible for a grant of asylum unless it is determined that there are no reasonable grounds to believe that the individual is a danger to the security of the United States.

Some commenters argued that language about discretionary denials of asylum in § 208.13(d) was inconsistent with section 208(a)(2)(A) of the Act, which provides for rejection of an asylum application when an alien may be removed pursuant to a bilateral or multilateral agreement to a safe third country. In drafting the interim rule, the Department had based its decision to include this regulatory provision on section 208(d)(5)(B) of the Act (which gives the Attorney General the authority to ''provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this Act'') and section 208(b)(2)(C) of the Act (which gives the Attorney General authority to establish limitations and conditions under which an alien may be found ineligible for asylum), not on section 208(a)(2)(A) of the Act. While the Department still finds that the regulatory provision would be fully in keeping with the Act, it has decided to remove it from the regulations to avoid confusion.

The Department notes that it has not issued a notice in the **Federal Register** announcing that the United States has entered into a bilateral or multilateral agreement permitting removal to a safe third country pursuant to section 208(a)(2)(A) of the Act. The Department indicated in the final rule at 59 FR 62284 its intent to notify the public in advance through a **Federal Register** publication should the United States enter into any such agreements.

Past Persecution Rule

This final rule also incorporates changes to this section and § 208.16 (withholding of removal) that were the subject of a proposed rule that was published in the **Federal Register** on June 11, 1998, at 63 FR 31945. In that rule, changes were proposed for adjudicating cases in which an applicant has established past persecution or in which an applicant may be able to avoid persecution in his or her home country by relocating to another area of that country.

There were 35 comments submitted in response to the publication of the June 11, 1998, proposed rule. Twenty-six of the commenters argued that the proposal should be withdrawn and the effort to amend the regulation abandoned because the proposed changes violate the Act under which the Attorney General is given authority over the adjudication of applications for asylum and withholding of removal, and are inconsistent with precedent court decisions and international law. The other commenters were also opposed to virtually all the changes included in the proposed rule, but did not specifically request that the proposed rule be abandoned outright.

First, the Department does not agree with the argument that those regulatory changes are *ultra vires,* or beyond the authority granted to the Attorney General under the Act. Under section 208 of the Act, when an individual has established that he or she is a ''refugee,'' as defined in section 101(a)(42)(A) of the Act, the Attorney General is granted the discretion to determine which ''refugees'' will be granted asylum in the United States. Prior to enactment of IIRIRA, this broad delegation of power to the Attorney General over the adjudication of asylum applications withstood challenges to the Attorney General's authority to implement rules that denied asylum to persons who otherwise met the ''refugee'' definition for reasons other than those listed in the Act. *Komarenko* v. *INS,* 35 F.3d 432, 435–36 (9th Cir. 1994) (rejected challenge to the Attorney General's authority to issue a regulatory provision that denied asylum to refugees who were convicted of particularly serious crimes); *Yang v. INS,* 79 F.3d 932 (9th Cir.), *cert. denied,* 519 U.S. 824 (1996) (rejected challenge to the Attorney General's authority to deny asylum to refugees who were found to have been firmly resettled). Although the commenters correctly point out that section 208 of the Act was amended by IIRIRA to make several categories of individuals ineligible for asylum who had previously been barred only by regulation, section 208(b)(2)(C) of the Act specifically continues to give the Attorney General authority ''by regulation (to) establish additional limitations and conditions * * * under which an alien shall be ineligible for asylum.''

The Department has concluded that revisions to the regulatory language providing guidelines on the exercise of discretion in determining an applicant's eligibility for asylum, once he or she has been found to meet the definition of refugee based on past persecution, are justified and in line with the administrative and judicial precedents outlined in the Supplementary Information section to the proposed rule at 63 FR 31945. That includes, inter alia, consideration of the ability of an applicant who has been subjected to past persecution to relocate safely in his or her home country, a factor that has been recognized as appropriate for the Attorney General to consider in the exercise of her discretion to grant or deny asylum. *Harpinder Singh v. Ilchert,* 63 F.3d 1501, 1511 (9th Cir.

1995); *Surinder Singh v. Ilchert,* 69 F.3d 375, 379 (9th Cir. 1995). In addition, the Department has concluded that requiring consideration of the applicant's ability to relocate safely in his or her home country in determining whether the applicant has a well-founded fear of persecution is in line with the previous administrative and judicial decisions, such as *Matter of Acosta,* 19 I. & N. Dec. 211, 235 (BIA 1985), *modified on other grounds, Matter of Mogharrabi,* 19 I & N Dec. 439 (BIA 1987); *Etugh* v. *INS,* 921 F.2d 36, 39 (3rd Cir. 1990); *Quintanilla-Ticas* v. *INS,* 783 F.2d 955, 957 (9th Cir. 1986), outlined in the Supplementary Information section to the proposed rule.

The Department does agree, however, that some changes to the proposed language are appropriate in order to ensure that those provisions are applied in a manner that complies with our international obligations under the 1951 Convention relating to the Status of Refugees (''1951 Convention''), as modified by the 1967 Protocol relating to the Status of Refugees. In determining how to revise these provisions, the Department referred to the relevant provisions of the United Nations High Commissioner for Refugee's Handbook on Procedures and Criteria for Determining Refugee Status (''UNHCR Handbook''). Although the Department is not bound by the UNHCR Handbook, the handbook can serve as a ''useful interpretative aid,'' *INS* v. *Aguirre-Aguirre,* 526 U.S. 415, 427 (1999), and ''provides significant guidance in construing the Protocol, to which Congress sought to conform'' with the passage of the Refugee Act of 1980. *INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 439 n.22 (1987). In §§ 208.13(b)(1)(i)(A) and 208.16(b)(1)(i)(A), the regulatory language for overcoming the presumption of a well-founded fear of persecution and a threat to the applicant's life or freedom because of past persecution is changed to state that the Service must show a ''fundamental change in circumstances'' in order to overcome the presumption. That phrase is consistent with Article 1 C(5) of the 1951 Convention, reflects the relevant language regarding the fundamental nature of the change at paragraph 135 of the UNHCR Handbook, and is also the exact language provided in section 208(c)(2)(A) of the Act concerning the termination of a refugee's grant of asylum in the United States. By adopting that language rather than that requiring a showing of changed country conditions to overcome the presumption, other changes in the circumstances surrounding the asylum claim, including a fundamental change in personal circumstances, may be considered, so long as those changes are fundamental in nature and go to the basis of the fear of persecution.

The amended language in §§ 208.13(b)(1) and 208.16(b)(1)(i) is not intended to alter the holding in the Board decision *Matter of N–M–A,* Int. Dec. 3368 (BIA 1998), that the presumption raised by a finding of past persecution applies only to a fear of future persecution based on the original persecution, and not to a fear of persecution from a new source unrelated to the past persecution. In *Matter of N–M–A,* the Board explained, ''once an applicant has demonstrated that he has suffered past persecution on account of a statutorily-protected ground, and the record reflects that country conditions have changed to such an extent that the applicant no longer has a well-founded fear of persecution from his original persecutors, the applicant bears the burden of demonstrating that he has a well-founded fear of persecution from any new source.'' While the amendments to §§ 208.13(b)(1) and 208.16(b)(1)(i) change the regulations to the extent that the presumption may be overcome by events other than a change in country conditions, the regulations retain and specify the requirement that the presumption relates only to fear of harm based on facts that give rise to the original persecution.

In the sections of the regulations dealing with the issue of internal relocation, §§ 208.13(b)(1)(i)(B) and (b)(2)(ii), and 208.16(b)(1)(i)(B) and (b)(2), the provisions have been revised to require a showing by the Service that ''under all the circumstances, it would be reasonable to expect the applicant to (relocate).'' That language is nearly identical to the language used in the relevant section of the UNHCR Handbook, paragraph 91. The reasonableness standard with regards to relocation is consistent with the general standard for adjudicating well-founded fear claims.

With regard to other sections of the proposed rule at 63 FR 31945, some commenters recommended that the language regarding the burden of proof to overcome the presumption that arises after a finding of past persecution should be revised to indicate clearly that the Service bears the burden to overcome those presumptions, by a preponderance of the evidence, even in the context of asylum adjudications by an asylum officer. The Department agrees, and changes have been made accordingly.

The Department declines to adopt the recommendation of many commenters to allow adjudicators to consider additional humanitarian factors, unrelated to the severity of the past persecution or other serious harm, in exercising their discretion to grant asylum to a refugee who no longer has a well-founded fear of persecution. In allowing an applicant to be granted asylum based on past persecution alone when it is determined that the applicant has established either (1) compelling reasons because of the severity of the past harm, or (2) a reasonable possibility that he or she may suffer serious harm upon removal to his or her home country, the Department is already providing avenues for relief that are consistent with the protection function of the 1951 Convention, and that go beyond the provisions of the UNHCR Handbook. *See* paragraph 136 of the UNHCR Handbook. As explained in the Supplementary Information to the proposed rule published in the **Federal Register** on June 11, 1998, at 63 FR 31945, 31947, by ''other serious harm,'' the Department means harm that is not inflicted on account of race, religion, nationality, membership in a particular social group, or political opinion, but is so serious that it equals the severity of persecution. Mere economic disadvantage or the inability to practice one's chosen profession would not qualify as ''other serious harm.''

In summary, the changes in the regulation are consistent with the Act, relevant case law, international instruments, and guidance in the UNHCR Handbook. The regulations leave intact the important principle that an applicant who has established past persecution on account of one of the five grounds is a refugee. It also continues to provide that a person who has established past persecution on account of race, religion, nationality, membership in a particular social group, or political opinion shall be presumed to have a well-founded fear of future persecution on account of those same grounds, and shall also be presumed to have established a threat to his or her life or freedom under the standard for eligibility for withholding of removal. The regulations also make it clear that the Service has the burden of overcoming such presumptions by a preponderance of the evidence.

Finally, the Department has renamed paragraph (b) of § 208.13, currently ''persecution,'' to ''eligibility,'' to reflect the incorporation of the new paragraph (b)(3), regarding reasonableness of internal relocation, as well as the other eligibility requirements contained in paragraphs (b)(1) and (b)(2).

§ 208.14—Approval, Denial, Referral, or Dismissal of Application

This section has been substantially revised and reorganized to clarify the circumstances under which an asylum officer may grant, deny, or refer an asylum application. Because an asylum officer's authority to grant asylum to an applicant within the Asylum Office's jurisdiction is unrelated to an applicant's status, discussion of authority to grant asylum has been consolidated in § 208.14(b). The statutory requirement that identity checks be completed before asylum can be granted by an asylum officer has been added to paragraph (b).

Discussion of an asylum officer's authority to deny, dismiss, or refer an application has been placed in a new § 208.14(c), with a breakdown of how an application will be processed based on the applicant's status. In § 208.14(c)(1), language was added to clarify that applicants who are inadmissible or deportable will either be referred to the Immigration Court, or have their asylum applications dismissed. Section 208.14(c)(2) now clarifies that the classes of aliens to whom an asylum officer may grant or deny asylum status include aliens in valid Temporary Protected Status and immigrant status. New §§ 208.14(c)(3) and 208.14(c)(4) were added, and detail how the Service processes asylum applications of aliens who were paroled into the United States, depending upon the decision an asylum officer makes on the application and the validity of the parole.

§ 208.15—Definition of ''firm resettlement''

All of the references to ''he'' have been changed to ''he or she,'' and the references to ''nation'' have been changed to ''country.''

§ 208.16—Withholding of Removal Under Section 241(b)(3)(B) of the Act and Withholding of Removal Under the Convention Against Torture

This section was substantially revised with the publication of February 19, 1999, interim regulations on Article 3 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture) in the **Federal Register**, at 64 FR 8478, with a request for comments. Any comments regarding that interim rule will be addressed in the final rule implementing the Convention Against Torture. Some of the comments on the March 6, 1997, interim rule addressed concerns about how the Department would implement Article 3 of the Convention Against Torture. Because many of the commenters' concerns were addressed with the February 19, 1999, interim rule, they will not be addressed in this supplementary information.

Language in paragraph (b) relating to eligibility for withholding of removal is being amended to reflect similar amendments to § 208.13 on adjudicating claims where past persecution has been established. See the discussion in this preamble regarding changes in § 208.13.

§ 208.19—Decisions

With the publication of the interim rule at 64 FR 8478 to implement Article 3 of the Convention Against Torture, § 208.17 was revised, §§ 208.18 through 208.22 were redesignated as §§ 208.19 through 208.23, and a new § 208.18 was added. However, due to Department error, § 208.17 was not redesignated and was, therefore, dropped from 8 CFR part 208. This final rule reinstates the former § 208.17 relating to decisions on applications for asylum and for withholding of removal as the new § 208.19, and redesignates §§ 208.19 through 208.23 as §§ 208.20 through 208.24.

Language in § 208.17 that appeared before it was dropped from 8 CFR part 208 has been slightly amended. In response to one comment, language has been added to indicate that a letter communicating denial or referral of the application shall state the basis for the denial or referral.

§ 208.20—Determining if an Asylum Application is Frivolous

Section 208.19 has been redesignated as § 208.20, with no substantive changes. One commenter stated that the regulatory definition of ''frivolous'' does not contain appropriate safeguards, and that the Service should advise every asylum applicant of the consequences of filing frivolous claims. The current regulation provides appropriate safeguards by stipulating that an immigration judge or the Board must be satisfied that an applicant had sufficient opportunity to account for any discrepancies before finding that an applicant filed a frivolous application, and by permitting an applicant to seek withholding or removal even if he or she is found to have filed a frivolous application. The regulation itself also advises an applicant that he or she is subject to the provisions of section 208(d)(6) of the Act if a final order specifically finds that the alien knowingly filed a frivolous application. Finally, both the instructions to the Form I–589 and the application itself warn the applicant about the consequences of filing a frivolous claim, as required by section 208(d)(4) of the Act.

The Department believes that the current regulation provides for appropriate safeguards for filing a frivolous asylum application, and that, for the reasons set forth in the supplemental information to the January 3, 1997 proposed rule, the definition of frivolous is sufficient. The Department, therefore, has not changed any language in this section.

A commenter also suggested that an applicant should not be punished for voluntarily withdrawing an asylum application, and that the Department should advise adjudicators that, before finding that an individual filed a frivolous application, they should consider the fact that an applicant may not have been able to afford to retain counsel for advice on the legal strength of an asylum claim. The current regulation does not contain any provisions that punish an applicant for withdrawing an asylum application. Any applicant may choose to withdraw an application at any time prior to a final decision; however, a withdrawal does not preclude the Service from seeking removal of the alien if he or she is deportable or removable. The fact that an applicant may not have hired legal counsel may be one factor, among others, that an immigration judge or the Board may consider when determining whether an applicant had sufficient opportunity to account for any discrepancies or implausible aspects of the claim.

§ 208.21—Admission of Asylee's Spouse and Children

Section 208.20 has been redesignated as § 208.21 and restructured to provide greater clarity. Additionally, this section has been amended to correct an error in the interim rule published in the **Federal Register** at 62 FR 10312, effective April 1, 1997, which omitted the bar to asylum eligibility based on the commission of a serious non-political crime outside the United States, for applicants who applied on or after April 1, 1997. The omission was inadvertent, since such ground had been specifically included under IIRIRA for asylees. That error has been corrected and the provision redrafted to specify the applicable bar for derivative applications filed prior to April 1, 1997, and those filed on or after April 1, 1997. The Service finds that good cause exists for adopting the provision in this final rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553(b) because the provision merely codifies in the Service's regulation the statutory mandates of

section 604 of IIRIRA. In addition, after reviewing the Department's implementation of the statutory mandate, it is clear that the omission was an inadvertent error. Therefore, the notice and comment period normally required under 5 U.S.C. 553(b) is impracticable and unnecessary prior to adopting this provision.

§ 208.22—Effect on Exclusion, Deportation, or Removal Proceedings

Section 208.21 has been redesignated as § 208.22, and paragraph (b), which addresses the initiation of removal proceedings upon termination of an asylum grant, has been moved to § 208.24.

§ 208.24—Termination of Asylum and Withholding of Removal

Section 208.23 has been redesignated as § 208.24. Some comments on § 208.24 suggested that the provision be removed or narrowed, and that more procedural protections be provided before termination. The Department finds that the existing procedural protections, which provide for prior notice of grounds for termination and an opportunity to respond, are sufficient. No changes have been made in the regulations governing termination procedures.

However, § 208.24(b)(1) was revised for consistency with the revisions in this final rule to § 208.16 and for consistency with the provisions for termination of asylum. The provision that ''[t]he alien is no longer entitled to withholding of deportation or removal due to a change of conditions in the country to which removal was withheld'' has been replaced with, ''The alien is no longer entitled to withholding of deportation or removal because, owing to a fundamental change in circumstances relating to the original claim, the alien's life or freedom no longer would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion in the country from which deportation or removal was withheld.''

In addition, the former § 208.21(b), concerning the initiation of removal proceedings, is now paragraph (e) of this section. The Department deleted the phrase ''under section 235 or 240 of the Act'' from the former § 280.21(b) because an alien may be subject to removal under other sections of the Act, such as section 238, which concerns administrative removal of aggravated felons, or section 241(a)(5), which requires reinstatement of prior orders under certain circumstances.

§ 208.30—Credible Fear Determinations

The format of this section has been revised for the purpose of clarity. Also, a new paragraph (b) has been added at § 208.30; that paragraph provides that an accompanying dependent (spouse or child) may be included in the application of the principal alien, if the spouse or child so chooses.

Some commenters objected to the use of telephonic interpreters in credible fear interviews. Telephonic interpretation has given asylum officers flexibility in scheduling and conducting credible fear interviews, and has proven to be a reliable source of interpretation services. First, because the number of languages available through telephonic interpretation is quite large, applicants can be interviewed in the language or dialect with which they are most comfortable. Relying on physically present interpreters would limit the number of languages that are available and, although an alien may be able to speak a particular language or dialect, it may not be the language or dialect with which the alien is most comfortable speaking and understanding. Second, if an applicant requests an interpreter of a gender other than that of the individual initially assigned to perform telephonic interpretation services, a replacement interpreter can be easily identified and enlisted when using a telephonic interpreter, so the interview does not need rescheduling. The use of physically present interpreters usually limits the ability to secure such quick personnel replacements. Finally, an asylum officer can always locate an interpreter for a particular language on short notice regardless of whether the interview is conducted at a detention facility or at a remote location, such as a border port-of-entry. In many instances, live interpreters cannot appear for an interview on short notice or are not willing to travel to a remote location for an interview. The current provision for using telephonic interpreters, which has been in place for approximately 3 years, has worked well. However, as mentioned earlier, practices relating to language accessibility in federal programs are under review as part of the Department's compliance with Presidential Executive Order 13116. Therefore, the use of telephonic interpretation will be addressed in compliance with that Executive Order.

Some commenters suggested that the regulations allow counsel to be present during the credible fear interview. The regulations already allow any person with whom the alien chooses to consult to be present. For purposes of this section, the term ''persons'' is interpreted to include legal counsel. Accordingly, the regulation has not been changed in that regard.

There were also some suggestions that the asylum officer's credible fear interview should also serve as an Asylum Pre-Screening Officer (APSO) interview for purposes of determining whether the alien should be released from detention. While a positive credible fear determination may be considered by a district director when making a parole decision, it is not determinative, and other factors must be taken into account, such as whether the applicant is likely to appear for a hearing or may pose a threat to the community.

Some commenters suggested that the rules specify that credible fear is a low screening standard. The Department finds that language in section 235(b)(1)(B)(v) of the Act is more precise than the rather vague term ''low.'' While the Department does not disagree that it is a threshold or low standard, defining it as such would only foster debate about what ''low'' means. Accordingly, the regulation has not been amended in that regard.

There were also some suggestions that, when a case raises a novel issue of law, the individual should be referred for a full hearing before an immigration judge. The regulation has been clarified to provide that, in making a credible fear determination, the asylum officer or immigration judge shall take into consideration whether the case presents novel or unique issues.

Likewise, there were also suggestions that such a referral should be made regardless of any apparent statutory ineligibility under section 208(a)(2) or 208(b)(2)(A) of the Act. The Department has adopted that suggestion and has so amended the regulation.

Several commenters suggested that the Service should presume a request for appeal by any alien who expressed fear to a pre-screening officer and tried without success to persuade an asylum officer that the alien has a credible fear of persecution. It would be contrary to the intent of the statute to mandate a review in every case, including those where the alien clearly and knowingly decides not to pursue a review. However, the regulations have been modified to provide that an alien's failure or refusal to indicate whether he or she desires a review shall be deemed to be a request for such review.

The Department has also amended paragraph (b) regarding the interview procedure by adopting language from § 208.9 on eliciting testimony and who may act as an interpreter.

Finally, in § 208.30(g)(2)(iv)(A), the Department added language that would permit the Service to reconsider a negative credible fear determination, even after such determination has been affirmed by an immigration judge, as long as the Service provides the immigration judge with notice of its reconsideration.

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 impact on a substantial number of small entities. This rule will ensure that asylum applications are processed in accordance with the Act, as amended by IIRIRA, as well as with international instruments. Moreover, it will have no effect on small entities, as that term is defined in 5 U.S.C. 601(6).

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 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

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

Executive Order 12988

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

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

List of Subjects in 8 CFR Part 208

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

Accordingly, part 208 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

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

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

2. Section 208.2 is revised to read as follows:

§ 208.2 Jurisdiction

(a) *Office of International Affairs.* Except as provided in paragraph (b) or (c) of this section, the Office of International Affairs shall have initial jurisdiction over an asylum application filed by an alien physically present in the United States or seeking admission at a port-of-entry. The Office of International Affairs shall also have initial jurisdiction over credible fear determinations under § 208.30 and reasonable fear determinations under § 208.31.

(b) *Jurisdiction of Immigration Court in general.* Immigration judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served a Form I–221, Order to Show Cause; Form I–122, Notice to Applicant for Admission Detained for a Hearing before an Immigration Judge; or Form I–862, Notice to Appear, after the charging document has been filed with the Immigration Court. Immigration judges shall also have jurisdiction over any asylum applications filed prior to April 1, 1997, by alien crewmembers who have remained in the United States longer than authorized, by applicants for admission under the Visa Waiver Pilot Program, and by aliens who have been admitted to the United States under the Visa Waiver Pilot Program. Immigration judges shall also have the authority to review reasonable fear determinations referred to the Immigration Court under § 208.31, and credible fear determinations referred to the Immigration Court under § 208.30.

(c) *Certain aliens not entitled to proceedings under section 240 of the Act.*

(1) *Asylum applications and withholding of removal applications only.* After Form I–863, Notice of Referral to Immigration Judge, has been filed with the Immigration Court, an immigration judge shall have exclusive jurisdiction over any asylum application filed on or after April 1, 1997, by:

(i) An alien crewmember who:

(A) Is an applicant for a landing permit;

(B) Has been refused permission to land under section 252 of the Act; or

(C) On or after April 1, 1997, was granted permission to land under section 252 of the Act, regardless of whether the alien has remained in the United States longer than authorized;

(ii) An alien stowaway who has been found to have a credible fear of persecution or torture pursuant to the procedures set forth in subpart B of this part;

(iii) An alien who is an applicant for admission pursuant to the Visa Waiver Pilot Program under section 217 of the Act;

(iv) An alien who was admitted to the United States pursuant to the Visa Waiver Pilot Program under section 217 of the Act and has remained longer than authorized or has otherwise violated his or her immigration status;

(v) An alien who has been ordered removed under § 235(c) of the Act, as described in § 235.8(a) of this chapter (applicable only in the event that the alien is referred for proceedings under this paragraph by the Regional Director pursuant to section 235.8(b)(2)(ii) of this chapter); or

(vi) An alien who is an applicant for admission, or has been admitted, as an alien classified under section 101(a)(15)(S) of the Act (applicable only in the event that the alien is referred for proceedings under this paragraph by the district director).

(2) *Withholding of removal applications only.* After Form I–863, Notice of Referral to Immigration Judge, has been filed with the Immigration Court, an immigration judge shall have exclusive jurisdiction over any application for withholding of removal filed by:

(i) An alien who is the subject of a reinstated removal order pursuant to section 241(a)(5) of the Act; or

(ii) An alien who has been issued an administrative removal order pursuant to section 238 of the Act as an alien convicted of committing an aggravated felony.

(3) *Rules of procedure.*

(i) *General.* Except as provided in this section, proceedings falling under the jurisdiction of the immigration judge pursuant to paragraph (c)(1) or (c)(2) of this section shall be conducted in accordance with the same rules of procedure as proceedings conducted under 8 CFR part 240, subpart A. The scope of review in proceedings conducted pursuant to paragraph (c)(1) of this section shall be limited to a determination of whether the alien is eligible for asylum or withholding or deferral of removal, and whether asylum shall be granted in the exercise of discretion. The scope of review in proceedings conducted pursuant to paragraph (c)(2) of this section shall be limited to a determination of whether the alien is eligible for withholding or deferral of removal. During such proceedings, all parties are prohibited from raising or considering any other issues, including but not limited to issues of admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief.

(ii) *Notice of hearing procedures and in-absentia decisions.* The alien will be provided with notice of the time and place of the proceeding. The request for asylum and withholding of removal submitted by an alien who fails to appear for the hearing shall be denied. The denial of asylum and withholding of removal for failure to appear may be reopened only upon a motion filed with the immigration judge with jurisdiction over the case. Only one motion to reopen may be filed, and it must be filed within 90 days, unless the alien establishes that he or she did not receive notice of the hearing date or was in Federal or State custody on the date directed to appear. The motion must include documentary evidence, which demonstrates that:

(A) The alien did not receive the notice;

(B) The alien was in Federal or State custody and the failure to appear was through no fault of the alien; or

(C) ''Exceptional circumstances,'' as defined in section 240(e)(1) of the Act, caused the failure to appear.

(iii) *Relief.* The filing of a motion to reopen shall not stay removal of the alien unless the immigration judge issues an order granting a stay pending disposition of the motion. An alien who fails to appear for a proceeding under this section shall not be eligible for relief under section 240A, 240B, 245, 248, or 249 of the Act for a period of 10 years after the date of the denial, unless the applicant can show exceptional circumstances resulted in his or her failure to appear.

3. Section 208.3 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (c)(4); and

c. Revising paragraph (c)(5), to read as follows:

§ 208.3 Form of application.

(a) An asylum applicant must file Form I–589, Application for Asylum and for Withholding of Removal, together with any additional supporting evidence in accordance with the instructions on the form. The applicant's spouse and children shall be listed on the application and may be included in the request for asylum if they are in the United States. One additional copy of the principal applicant's Form I–589 must be submitted for each dependent included in the principal's application.

* * * * *

(c) * * *

(4) Knowing placement of false information on the application may subject the person placing that information on the application to criminal penalties under title 18 of the United States Code and to civil or criminal penalties under section 274C of the Act; and

(5) Knowingly filing a frivolous application on or after April 1, 1997, so long as the applicant has received the notice required by section 208(d)(4) of the Act, shall render the applicant permanently ineligible for any benefits under the Act pursuant to § 208.20.

4. Section 208.4 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b)(2);

c. Revising paragraph (b)(3); and

d. Revising paragraph (b)(5), to read as follows:

§ 208.4 Filing the application.

* * * * *

(a) *Prohibitions on filing.* Section 208(a)(2) of the Act prohibits certain aliens from filing for asylum on or after April 1, 1997, unless the alien can demonstrate to the satisfaction of the Attorney General that one of the exceptions in section 208(a)(2)(D) of the Act applies. Such prohibition applies only to asylum applications under section 208 of the Act and not to applications for withholding of removal under § 208.16. If an applicant files an asylum application and it appears that one or more of the prohibitions contained in section 208(a)(2) of the Act apply, an asylum officer, in an interview, or an immigration judge, in a hearing, shall review the application and give the applicant the opportunity to present any relevant and useful information bearing on any prohibitions on filing to determine if the application should be rejected. For the purpose of making determinations under section 208(a)(2) of the Act, the following rules shall apply:

(1) *Authority.* Only an asylum officer, an immigration judge, or the Board of Immigration Appeals is authorized to make determinations regarding the prohibitions contained in section 208(a)(2)(B) or (C) of the Act.

(2) *One-year filing deadline.*

(i) For purposes of section 208(a)(2)(B) of the Act, an applicant has the burden of proving:

(A) By clear and convincing evidence that the application has been filed within 1 year of the date of the alien's arrival in the United States, or

(B) To the satisfaction of the asylum officer, the immigration judge, or the Board that he or she qualifies for an exception to the 1-year deadline.

(ii) The 1-year period shall be calculated from the date of the alien's last arrival in the United States or April 1, 1997, whichever is later. When the last day of the period so computed falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. For the purpose of making determinations under section 208(a)(2)(B) of the Act only, an application is considered to have been filed on the date it is received by the Service, pursuant to § 103.2(a)(7) of this chapter. In a case in which the application has not been received by the Service within 1 year from the applicant's date of entry into the United States, but the applicant provides clear and convincing documentary evidence of mailing the application within the 1-year period, the mailing date shall be considered the filing date. For cases before the Immigration Court in accordance with § 3.13 of this chapter, the application is considered to have been filed on the date it is received by the Immigration Court. For cases before the Board of Immigration Appeals, the application is considered to have been

filed on the date it is received by the Board. In the case of an application that appears to have been filed more than a year after the applicant arrived in the United States, the asylum officer, the immigration judge, or the Board will determine whether the applicant qualifies for an exception to the deadline.

(3) *Prior denial of application.* For purposes of section 208(a)(2)(C) of the Act, an asylum application has not been denied unless denied by an immigration judge or the Board of Immigration Appeals.

(4) *Changed circumstances.*

(i) The term ''changed circumstances'' in section 208(a)(2)(D) of the Act shall refer to circumstances materially affecting the applicant's eligibility for asylum. They may include, but are not limited to:

(A) Changes in conditions in the applicant's country of nationality or, if the applicant is stateless, country of last habitual residence;

(B) Changes in the applicant's circumstances that materially affect the applicant's eligibility for asylum, including changes in applicable U.S. law and activities the applicant becomes involved in outside the country of feared persecution that place the applicant at risk; or

(C) In the case of an alien who had previously been included as a dependent in another alien's pending asylum application, the loss of the spousal or parent-child relationship to the principal applicant through marriage, divorce, death, or attainment of age 21.

(ii) The applicant shall file an asylum application within a reasonable period given those ''changed circumstances.'' If the applicant can establish that he or she did not become aware of the changed circumstances until after they occurred, such delayed awareness shall be taken into account in determining what constitutes a ''reasonable period.''

(5) The term ''extraordinary circumstances'' in section 208(a)(2)(D) of the Act shall refer to events or factors directly related to the failure to meet the 1-year deadline. Such circumstances may excuse the failure to file within the 1-year period as long as the alien filed the application within a reasonable period given those circumstances. The burden of proof is on the applicant to establish to the satisfaction of the asylum officer, the immigration judge, or the Board of Immigration Appeals that the circumstances were not intentionally created by the alien through his or her own action or inaction, that those circumstances were directly related to the alien's failure to file the application within the 1-year period, and that the delay was reasonable under the circumstances. Those circumstances may include but are not limited to:

(i) Serious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past, during the 1-year period after arrival;

(ii) Legal disability (*e.g.,* the applicant was an unaccompanied minor or suffered from a mental impairment) during the 1-year period after arrival;

(iii) Ineffective assistance of counsel, provided that:

(A) The alien files an affidavit setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard;

(B) The counsel whose integrity or competence is being impugned has been informed of the allegations leveled against him or her and given an opportunity to respond; and

(C) The alien indicates whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not;

(iv) The applicant maintained Temporary Protected Status, lawful immigrant or nonimmigrant status, or was given parole, until a reasonable period before the filing of the asylum application;

(v) The applicant filed an asylum application prior to the expiration of the 1-year deadline, but that application was rejected by the Service as not properly filed, was returned to the applicant for corrections, and was refiled within a reasonable period thereafter; and

(vi) The death or serious illness or incapacity of the applicant's legal representative or a member of the applicant's immediate family.

(b) * * *

(2) *With the asylum office.* An asylum application shall be filed directly with the asylum office having jurisdiction over the matter in the case of an alien who:

(i) Has received the express consent of the asylum office director or the Director of Asylum to do so, or

(ii) Previously was included in a spouse's or parent's pending application but is no longer eligible to be included as a derivative. In such cases, the derivative should include a cover letter referencing the previous application and explaining that he or she is now independently filing for asylum.

(3) *With the Immigration Court.* Asylum applications shall be filed directly with the Immigration Court having jurisdiction over the case in the following circumstances:

(i) During exclusion, deportation, or removal proceedings, with the Immigration Court having jurisdiction over the underlying proceeding.

(ii) After completion of exclusion, deportation, or removal proceedings, and in conjunction with a motion to reopen pursuant to 8 CFR part 3 where applicable, with the Immigration Court having jurisdiction over the prior proceeding. Any such motion must reasonably explain the failure to request asylum prior to the completion of the proceedings.

(iii) In asylum proceedings pursuant to § 208.2(c)(1) and after the Form I–863, Notice of Referral to Immigration Judge, has been served on the alien and filed with the Immigration Court having jurisdiction over the case.

(4) * * *

(5) *With the district director.* In the case of any alien described in § 208.2(c)(1) and prior to the service on the alien of Form I–863, any asylum application shall be submitted to the district director having jurisdiction pursuant to 8 CFR part 103. If the district director elects to issue the Form I–863, the district director shall forward such asylum application to the appropriate Immigration Court with the Form I–863 being filed with that Immigration Court.

* * * * *

5. Section 208.5 is amended by:

a. Revising the first sentence in paragraph (a);

b. Adding a new second sentence in paragraph (a); and

c. Revising paragraph (b)(1)(ii), to read as follows:

§ 208.5 Special duties toward aliens in custody of the Service.

(a) *General.* When an alien in the custody of the Service requests asylum or withholding of removal, or expresses a fear of persecution or harm upon return to his or her country of origin or to agents thereof, the Service shall make available the appropriate application forms and shall provide the applicant with the information required by section 208(d)(4) of the Act, except in the case of an alien who is in custody pending a credible fear determination under § 208.30 or a reasonable fear determination pursuant to § 208.31. Although the Service does not have a duty in the case of an alien who is in custody pending a credible fear or reasonable fear determination under either § 208.30 or § 208.31, the Service

may provide the appropriate forms, upon request. * * *

(b) * * *

(1) * * *

(ii) An alien crewmember shall be provided the appropriate application forms and information required by section 208(d)(4) of the Act and may then have 10 days within which to submit an asylum application to the district director having jurisdiction over the port-of-entry. The district director may extend the 10-day filing period for good cause. Once the application has been filed, the district director, pursuant to § 208.4(b), shall serve Form I–863 on the alien and immediately forward any such application to the appropriate Immigration Court with a copy of the Form I–863 being filed with that court.

* * * * *

6. Section 208.6 is revised to read as follows:

§ 208.6 Disclosure to third parties.

(a) Information contained in or pertaining to any asylum application, records pertaining to any credible fear determination conducted pursuant to § 208.30, and records pertaining to any reasonable fear determination conducted pursuant to § 208.31, shall not be disclosed without the written consent of the applicant, except as permitted by this section or at the discretion of the Attorney General.

(b) The confidentiality of other records kept by the Service and the Executive Office for Immigration Review that indicate that a specific alien has applied for asylum, received a credible fear or reasonable fear interview, or received a credible fear or reasonable fear review shall also be protected from disclosure. The Service will coordinate with the Department of State to ensure that the confidentiality of those records is maintained if they are transmitted to Department of State offices in other countries.

(c) This section shall not apply to any disclosure to:

(1) Any United States Government official or contractor having a need to examine information in connection with:

(i) The adjudication of asylum applications;

(ii) The consideration of a request for a credible fear or reasonable fear interview, or a credible fear or reasonable fear review;

(iii) The defense of any legal action arising from the adjudication of, or failure to adjudicate, the asylum application, or from a credible fear determination or reasonable fear determination under § 208.30 or § 208.31;

(iv) The defense of any legal action of which the asylum application, credible fear determination, or reasonable fear determination is a part; or

(v) Any United States Government investigation concerning any criminal or civil matter; or

(2) Any Federal, State, or local court in the United States considering any legal action:

(i) Arising from the adjudication of, or failure to adjudicate, the asylum application, or from a credible fear or reasonable fear determination under § 208.30 or § 208.31; or

(ii) Arising from the proceedings of which the asylum application, credible fear determination, or reasonable fear determination is a part.

§ 208.9 [Amended]

7. In § 208.9, paragraph (d) is amended by revising the reference to ''§ 208.14(b)'' to read ''§ 208.14(c).''

8. Section 208.12 is amended by revising paragraph (b) to read as follows:

§ 208.12 Reliance on information compiled by other sources.

* * * * *

(b) Nothing in this part shall be construed to entitle the applicant to conduct discovery directed toward the records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State. Persons may continue to seek documents available through a Freedom of Information Act (FOIA) request pursuant to 8 CFR part 103.

9. Section 208.13 is amended by:

a. Revising the heading of paragraph (b);

b. Revising paragraph (b)(1);

c. Revising paragraph (b)(2);

d. Adding new paragraph (b)(3);

e. Adding a new paragraph (c)(2)(i)(F); and

f. Removing paragraph (d), to read as follows:

§ 208.13 Establishing asylum eligibility.

* * * * *

(b) *Eligibility.* * * *

(1) *Past persecution.* An applicant shall be found to be a refugee on the basis of past persecution if the applicant can establish that he or she has suffered persecution in the past in the applicant's country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion, and is unable or unwilling to return to, or avail himself or herself of the protection of, that country owing to such persecution. An applicant who has been found to have established such past persecution shall also be presumed to have a well-founded fear of persecution on the basis of the original claim. That presumption may be rebutted if an asylum officer or immigration judge makes one of the findings described in paragraph (b)(1)(i) of this section. If the applicant's fear of future persecution is unrelated to the past persecution, the applicant bears the burden of establishing that the fear is well-founded.

(i) *Discretionary referral or denial.* Except as provided in paragraph (b)(1)(iii) of this section, an asylum officer shall, in the exercise of his or her discretion, refer or deny, or an immigration judge, in the exercise of his or her discretion, shall deny the asylum application of an alien found to be a refugee on the basis of past persecution if any of the following is found by a preponderance of the evidence:

(A) There has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality or, if stateless, in the applicant's country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; or

(B) The applicant could avoid future persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, and under all the circumstances, it would be reasonable to expect the applicant to do so.

(ii) *Burden of proof.* In cases in which an applicant has demonstrated past persecution under paragraph (b)(1) of this section, the Service shall bear the burden of establishing by a preponderance of the evidence the requirements of paragraphs (b)(1)(i)(A) or (B) of this section.

(iii) *Grant in the absence of well-founded fear of persecution.* An applicant described in paragraph (b)(1)(i) of this section who is not barred from a grant of asylum under paragraph (c) of this section, may be granted asylum, in the exercise of the decision-maker's discretion, if:

(A) The applicant has demonstrated compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution; or

(B) The applicant has established that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country.

(2) *Well-founded fear of persecution.* (i) An applicant has a well-founded fear of persecution if:

(A) The applicant has a fear of persecution in his or her country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion;

(B) There is a reasonable possibility of suffering such persecution if he or she were to return to that country; and

(C) He or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear.

(ii) An applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, if under all the circumstances it would be reasonable to expect the applicant to do so.

(iii) In evaluating whether the applicant has sustained the burden of proving that he or she has a well-founded fear of persecution, the asylum officer or immigration judge shall not require the applicant to provide evidence that there is a reasonable possibility he or she would be singled out individually for persecution if:

(A) The applicant establishes that there is a pattern or practice in his or her country of nationality or, if stateless, in his or her country of last habitual residence, of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(B) The applicant establishes his or her own inclusion in, and identification with, such group of persons such that his or her fear of persecution upon return is reasonable.

(3) *Reasonableness of internal relocation.* For purposes of determinations under paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2) of this section, adjudicators should consider, but are not limited to considering, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. Those factors may, or may not, be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.

(i) In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecution is by a government or is government-sponsored.

(ii) In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(F) Is described within section 212(a)(3)(B)(i)(I),(II), and (III) of the Act as it existed prior to April 1, 1997, and as amended by the Anti-terrorist and Effective Death Penalty Act of 1996 (AEDPA), unless it is determined that there are no reasonable grounds to believe that the individual is a danger to the security of the United States.

* * * * *

10. Section 208.14 is amended by:

a. Revising paragraph (b);

b. Redesignating paragraphs (c)–(f) as paragraphs (d)–(g);

c. Adding a new paragraph (c);

d. Revising newly redesignated paragraph (e); and

e. Adding a heading to new redesignated paragraph (g), to read as follows:

§ 208.14 Approval, denial, referral, or dismissal of application.

* * * * *

(b) *Approval by an asylum officer.* In any case within the jurisdiction of the Office of International Affairs, unless otherwise prohibited in § 208.13(c), an asylum officer may grant, in the exercise of his or her discretion, asylum to an applicant who qualifies as a refugee under section 101(a)(42) of the Act, and whose identity has been checked pursuant to section 208(d)(5)(A)(i) of the Act.

(c) *Denial, referral, or dismissal by an asylum officer.* If the asylum officer does not grant asylum to an applicant after an interview conducted in accordance with § 208.9, or if, as provided in § 208.10, the applicant is deemed to have waived his or her right to an interview or an adjudication by an asylum officer, the asylum officer shall deny, refer, or dismiss the application, as follows:

(1) *Inadmissible or deportable aliens.* Except as provided in paragraph (c)(4) of this section, in the case of an applicant who appears to be inadmissible or deportable under section 212(a) or 237(a) of the Act, the asylum officer shall refer the application to an immigration judge, together with the appropriate charging document, for adjudication in removal proceedings (or, where charging documents may not be issued, shall dismiss the application).

(2) *Alien in valid status.* In the case of an applicant who is maintaining valid immigrant, nonimmigrant, or Temporary Protected Status at the time the application is decided, the asylum officer shall deny the application for asylum.

(3) *Alien with valid parole.* If an applicant has been paroled into the United States and the parole has not expired or been terminated by the Service, the asylum officer shall deny the application for asylum.

(4) *Alien paroled into the United States whose parole has expired or is terminated.*

(i) *Alien paroled prior to April 1, 1997, or with advance authorization for parole.* In the case of an applicant who was paroled into the United States prior to April 1, 1997, or who, prior to departure from the United States, had received an advance authorization for parole, the asylum officer shall refer the application, together with the appropriate charging documents, to an immigration judge for adjudication in removal proceedings if the parole has expired, the Service has terminated parole, or the Service is terminating parole through issuance of the charging documents, pursuant to § 212.5(d)(2)(i) of this chapter.

(ii) *Alien paroled on or after April 1, 1997, without advance authorization for parole.* In the case of an applicant who is an arriving alien or is otherwise subject to removal under § 235.3(b) of this chapter, and was paroled into the United States on or after April 1, 1997, without advance authorization for parole prior to departure from the United States, the asylum officer will take the following actions, if the parole has expired or been terminated:

(A) *Inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act.* If the applicant appears inadmissible to the United States under section 212(a)(6)(C) or 212(a)(7) of the Act and the asylum officer does not intend to lodge any additional charges of inadmissibility, the asylum officer shall proceed in accordance with § 235.3(b) of this chapter. If such applicant is found to have a credible fear of persecution or torture based on information elicited from the asylum interview, an asylum officer may refer the applicant directly to an immigration judge in removal proceedings under section 240 of the Act, without conducting a separate

credible fear interview pursuant to § 208.30. If such applicant is not found to have a credible fear based on information elicited at the asylum interview, an asylum officer will conduct a credible fear interview and the applicant will be subject to the credible fear process specified at § 208.30(b).

(B) *Inadmissible on other grounds.* In the case of an applicant who was paroled into the United States on or after April 1, 1997, and will be charged as inadmissible to the United States under provisions of the Act other than, or in addition to, sections 212(a)(6)(C) or 212(a)(7), the asylum officer shall refer the application to an immigration judge for adjudication in removal proceedings.

* * * * *

(e) *Duration.* If the applicant is granted asylum, the grant will be effective for an indefinite period, subject to termination as provided in § 208.24.

* * * * *

(g) *Applicants granted lawful permanent residence status.* * * *

11. Section 208.15 is revised to read as follows:

§ 208.15 Definition of ''firm resettlement.''

An alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

(a) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or

(b) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live; the type of housing, whether permanent or temporary, made available to the refugee; the types and extent of employment available to the refugee; and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

12. Section 208.16 is amended by

a. Revising paragraph (b)(1);

b. Revising paragraph (b)(2);

c. Revising paragraph (b)(3);

The revisions read as follows:

§ 208.16 Withholding of removal under section 241(b)(3) of the Act and withholding of removal under the Convention Against Torture.

* * * * *

(b) * * *

(1) *Past threat to life or freedom.* (i) If the applicant is determined to have suffered past persecution in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that the applicant's life or freedom would be threatened in the future in the country of removal on the basis of the original claim. This presumption may be rebutted if an asylum officer or immigration judge finds by a preponderance of the evidence:

(A) There has been a fundamental change in circumstances such that the applicant's life or freedom would not be threatened on account of any of the five grounds mentioned in this paragraph upon the applicant's removal to that country; or

(B) The applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so.

(ii) In cases in which the applicant has established past persecution, the Service shall bear the burden of establishing by a preponderance of the evidence the requirements of paragraphs (b)(1)(i)(A) or (b)(1)(i)(B) of this section.

(iii) If the applicant's fear of future threat to life or freedom is unrelated to the past persecution, the applicant bears the burden of establishing that it is more likely than not that he or she would suffer such harm.

(2) *Future threat to life or freedom.* An applicant who has not suffered past persecution may demonstrate that his or her life or freedom would be threatened in the future in a country if he or she can establish that it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to that country. Such an applicant cannot demonstrate that his or her life or freedom would be threatened if the asylum officer or immigration judge finds that the applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so. In evaluating whether it is more likely than not that the applicant's life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the asylum officer or immigration judge shall not require the applicant to provide evidence that he or she would be singled out individually for such persecution if:

(i) The applicant establishes that in that country there is a pattern or practice of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) The applicant establishes his or her own inclusion in and identification with such group of persons such that it is more likely than not that his or her life or freedom would be threatened upon return to that country.

(3) *Reasonableness of internal relocation.* For purposes of determinations under paragraphs (b)(1) and (b)(2) of this section, adjudicators should consider, among other things, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. These factors may or may not be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.

(i) In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecutor is a government or is government-sponsored.

(ii) In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a preponderance of the evidence that under all the circumstances it would be reasonable for the applicant to relocate.

* * * * *

§§ 208.19 through 208.23 [Redesignated as §§ 208.20 through 208.24, respectively].

13. Sections 208.19 through 208.23 are redesignated as §§ 208.20 through 208.24, respectively.

14. Section 208.19 is added to read as follows:

§ 208.19 Decisions.

The decision of an asylum officer to grant or to deny asylum or to refer an asylum application, in accordance with § 208.14(b) or (c), shall be communicated in writing to the applicant. Pursuant to § 208.9(d), an applicant must appear in person to receive and to acknowledge receipt of the decision to grant or deny asylum, or to refer an asylum application unless, in the discretion of the asylum office director, service by mail is appropriate. A letter communicating denial of asylum or referral of the application shall state the basis for denial or referral and include an assessment of the applicant's credibility.

15. Newly redesignated § 208.21 is amended by revising paragraph (a) to read as follows:

§ 208.21 Admission of the asylee's spouse and children.

(a) *Eligibility.* In accordance with section 208(b)(3) of the Act, a spouse, as defined in section 101(a)(35) of the Act, 8 U.S.C. 1101(a)(35), or child, as defined in section 101(b)(1) of the Act, also may be granted asylum if accompanying, or following to join, the principal alien who was granted asylum, unless it is determined that the spouse or child is ineligible for asylum under section 208(b)(2)(A)(i), (ii), (iii), (iv) or (v) of the Act for applications filed on or after April 1, 1997, or under § 208.13(c)(2)(i)(A), (C), (D), (E), or (F) for applications filed before April 1, 1997.

* * * * *

16. Newly redesignated § 208.22 is revised to read as follows:

§ 208.22 Effect on exclusion, deportation, and removal proceedings.

An alien who has been granted asylum may not be deported or removed unless his or her asylum status is terminated pursuant to § 208.24. An alien in exclusion, deportation, or removal proceedings who is granted withholding of removal or deportation, or deferral of removal, may not be deported or removed to the country to which his or her deportation or removal is ordered withheld or deferred unless the withholding order is terminated pursuant to § 208.24 or deferral is terminated pursuant to § 208.17(d) or (e).

17. Newly redesignated § 208.24 is amended by:

a. Revising paragraph (b)(1);

b. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively;

c. Adding a new paragraph (e); and

d. Revising newly redesignated paragraphs (f) and (g), to read as follows:

§ 208.24 Termination of asylum or withholding of removal or deportation.

* * * * *

(b) * * *

(1) The alien is no longer entitled to withholding of deportation or removal because, owing to a fundamental change in circumstances relating to the original claim, the alien's life or freedom no longer would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion in the country from which deportation or removal was withheld.

* * * * *

(e) *Removal proceedings.* When an alien's asylum status or withholding of removal or deportation is terminated under this section, the Service shall initiate removal proceedings, as appropriate, if the alien is not already in exclusion, deportation, or removal proceedings. Removal proceedings may take place in conjunction with a termination hearing scheduled under § 208.24(f).

(f) *Termination of asylum, or withholding of deportation or removal, by an immigration judge or the Board of Immigration Appeals.* An immigration judge or the Board of Immigration Appeals may reopen a case pursuant to § 3.2 or § 3.23 of this chapter for the purpose of terminating a grant of asylum, or a withholding of deportation or removal. In such a reopened proceeding, the Service must establish, by a preponderance of evidence, one or more of the grounds set forth in paragraphs (a) or (b) of this section. In addition, an immigration judge may terminate a grant of asylum, or a withholding of deportation or removal, made under the jurisdiction of the Service at any time after the alien has been provided a notice of intent to terminate by the Service. Any termination under this paragraph may occur in conjunction with an exclusion, deportation, or removal proceeding.

(g) *Termination of asylum for arriving aliens.* If the Service determines that an applicant for admission who had previously been granted asylum in the United States falls within conditions set forth in § 208.24 and is inadmissible, the Service shall issue a notice of intent to terminate asylum and initiate removal proceedings under section 240 of the Act. The alien shall present his or her response to the intent to terminate during proceedings before the immigration judge.

18. Section 208.30 is revised to read as follows:

§ 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

(a) *Jurisdiction.* The provisions of this subpart apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B) of the Act, the Service has exclusive jurisdiction to make credible fear determinations, and the Executive Office for Immigration Review has exclusive jurisdiction to review such determinations. Except as otherwise provided in this subpart, paragraphs (b) through (g) of this section are the exclusive procedures applicable to credible fear interviews, determinations, and reviews under section 235(b)(1)(B) of the Act.

(b) *Treatment of dependents.* A spouse or child of an alien may be included in that alien's credible fear evaluation and determination, if such spouse or child:

(1) Arrived in the United States concurrently with the principal alien; and

(2) Desires to be included in the principal alien's determination. However, any alien may have his or her credible fear evaluation and determination made separately, if he or she expresses such a desire.

(c) *Authority.* Asylum officers conducting credible fear interviews shall have the authorities described in § 208.9(c).

(d) *Interview.* The asylum officer, as defined in section 235(b)(1)(E) of the Act, will conduct the interview in a nonadversarial manner, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture, and shall conduct the interview as follows:

(1) If the officer conducting the credible fear interview determines that the alien is unable to participate effectively in the interview because of illness, fatigue, or other impediments, the officer may reschedule the interview.

(2) At the time of the interview, the asylum officer shall verify that the alien has received Form M–444, Information about Credible Fear Interview in Expedited Removal Cases. The officer shall also determine that the alien has

an understanding of the credible fear determination process.

(3) The alien may be required to register his or her identity electronically or through any other means designated by the Attorney General.

(4) The alien may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, and may present other evidence, if available. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process. Any person or persons with whom the alien chooses to consult may be present at the interview and may be permitted, in the discretion of the asylum officer, to present a statement at the end of the interview. The asylum officer, in his or her discretion, may place reasonable limits on the number of persons who may be present at the interview and on the length of the statement.

(5) If the alien is unable to proceed effectively in English, and if the asylum officer is unable to proceed competently in a language chosen by the alien, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview. The interpreter must be at least 18 years of age and may not be the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, a representative or employee of the applicant's country of nationality, or, if the applicant is stateless, the applicant's country of last habitual residence.

(6) The asylum officer shall create a summary of the material facts as stated by the applicant. At the conclusion of the interview, the officer shall review the summary with the alien and provide the alien with an opportunity to correct any errors therein.

(e) *Determination.* (1) The asylum officer shall create a written record of his or her determination, including a summary of the material facts as stated by the applicant, any additional facts relied on by the officer, and the officer's determination of whether, in light of such facts, the alien has established a credible fear of persecution or torture.

(2) In determining whether the alien has a credible fear of persecution, as defined in section 235(b)(1)(B)(v) of the Act, or a credible fear of torture, the asylum officer or immigration judge shall consider whether the alien's case presents novel or unique issues that merit consideration in a full hearing before an immigration judge.

(3) If an alien is able to establish a credible fear of persecution or torture but appears to be subject to one or more of the mandatory bars to applying for, or being granted, asylum contained in section 208(a)(2) and 208(b)(2) of the Act, or to withholding of removal contained in section 241(b)(3)(B) of the Act, the Service shall nonetheless place the alien in proceedings under section 240 of the Act for full consideration of the alien's claim, if the alien is not a stowaway. If the alien is a stowaway, the Service shall place the alien in proceedings for consideration of the alien's claim pursuant to § 208.2(c)(3).

(4) An asylum officer's determination shall not become final until reviewed by a supervisory asylum officer.

(f) *Procedures for a positive credible fear finding.* If an alien, other than an alien stowaway, is found to have a credible fear of persecution or torture, the asylum officer will so inform the alien and issue a Form I–862, Notice to Appear, for full consideration of the asylum and withholding of removal claim in proceedings under section 240 of the Act. If an alien stowaway is found to have a credible fear of persecution or torture, the asylum officer will so inform the alien and issue a Form I–863, Notice of Referral to Immigration Judge, for full consideration of the asylum claim, or the withholding of removal claim, in proceedings under § 208.2(c). Parole of the alien may be considered only in accordance with section 212(d)(5) of the Act and § 212.5 of this chapter.

(g) *Procedures for a negative credible fear finding.* (1) If an alien is found not to have a credible fear of persecution or torture, the asylum officer shall provide the alien with a written notice of decision and inquire whether the alien wishes to have an immigration judge review the negative decision, using Form I–869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge. The alien shall indicate whether he or she desires such review on Form I–869. A refusal by the alien to make such indication shall be considered a request for review.

(i) If the alien requests such review, or refuses to either request or decline such review, the asylum officer shall arrange for detention of the alien and serve him or her with a Form I–863, Notice of Referral to Immigration Judge, for review of the credible fear determination in accordance with paragraph (f)(2) of this section.

(ii) If the alien is not a stowaway and does not request a review by an immigration judge, the officer shall order the alien removed and issue a Form I–860, Notice and Order of Expedited Removal, after review by a supervisory asylum officer.

(iii) If the alien is a stowaway and the alien does not request a review by an immigration judge, the asylum officer shall refer the alien to the district director for completion of removal proceedings in accordance with section 235(a)(2) of the Act.

(2) Review by immigration judge of a negative credible fear finding.

(i) The asylum officer's negative decision regarding credible fear shall be subject to review by an immigration judge upon the applicant's request, or upon the applicant's refusal either to request or to decline the review after being given such opportunity, in accordance with section 235(b)(1)(B)(iii)(III) of the Act.

(ii) The record of the negative credible fear determination, including copies of the Form I–863, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based shall be provided to the immigration judge with the negative determination.

(iii) A credible fear hearing shall be closed to the public unless the alien states for the record or submits a written statement that the alien is waiving that requirement; in that event the hearing shall be open to the public, subject to the immigration judge's discretion as provided in § 3.27.

(iv) Upon review of the asylum officer's negative credible fear determination:

(A) If the immigration judge concurs with the determination of the asylum officer that the alien does not have a credible fear of persecution or torture, the case shall be returned to the Service for removal of the alien. The immigration judge's decision is final and may not be appealed. The Service, however, may reconsider a negative credible fear finding that has been concurred upon by an immigration judge after providing notice of its reconsideration to the immigration judge.

(B) If the immigration judge finds that the alien, other than an alien stowaway, possesses a credible fear of persecution or torture, the immigration judge shall vacate the order of the asylum officer issued on Form I–860 and the Service may commence removal proceedings under section 240 of the Act, during which time the alien may file an application for asylum and withholding of removal in accordance with § 208.4(b)(3)(i).

(C) If the immigration judge finds that an alien stowaway possesses a credible fear of persecution or torture, the alien shall be allowed to file an application for asylum and withholding of removal before the immigration judge in accordance with § 208.4(b)(3)(iii). The immigration judge shall decide the

application as provided in that section. Such decision may be appealed by either the stowaway or the Service to the Board of Immigration Appeals. If a denial of the application for asylum and for withholding of removal becomes final, the alien shall be removed from the United States in accordance with section 235(a)(2) of the Act. If an approval of the application for asylum or for withholding of removal becomes final, the Service shall terminate removal proceedings under section 235(a)(2) of the Act.

Dated: November 27, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–30601 Filed 12–5–00; 8:45 am]

BILLING CODE 4410–10–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 109 and 110

[Notice 2000—21]

General Public Political Communications Coordinated With Candidates and Party Committees; Independent Expenditures

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is adopting new rules to address expenditures for coordinated communications that include clearly identified candidates, and that are paid for by persons other than candidates, candidates' authorized committees, and party committees. The rules address expenditures for communications made at the request or suggestion of a candidate, authorized committee or party committee; as well as those where any such person has exercised control or decision-making authority over the communication, or has engaged in substantial discussion or negotiation with those involved in creating, producing, distributing or paying for the communication. The Commission is also revising the definition of ''independent expenditure,'' to conform with this new definition. Further changes to the rules on coordination between political party committees and their candidates are awaiting the outcome of a pending Supreme Court case. Additional information is provided in the supplementary information that follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530 (toll free).

SUPPLEMENTARY INFORMATION: The Commission is issuing final rules at 11 CFR 100.23 that address coordinated communications that include clearly identified candidates, that are paid for by persons other than candidates, candidates' authorized committees, and party committees. The rules address communications made at the request or suggestion of a candidate, authorized committee or party committee; as well as those where a candidate, authorized committee, or party committee has exercised control or decision-making authority over the communication, or has engaged in substantial discussion or negotiation with those involved in creating, producing, distributing or paying for the communication. Other than the requirement that covered communications include a clearly identified candidate, the new rules contain no content standard. The Commission is also revising its rules at 11 CFR 100.16 and 109.1, which define ''independent expenditure,'' to conform with this new definition; and making conforming amendments to 11 CFR 110.14, the section of the Commission's rules that deals with contributions to and expenditures by delegates and delegate committees.

Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. Because these rules were approved by the Commission on November 30, 2000, which is less than 30 legislative days before the adjournment of the 106th Congress, the Commission plans to transmit them to Congress on the first day of the 107th Congress, which will occur in January 2001. A Notice announcing the effective date of these rules will be published in the **Federal Register**.

Explanation and Justification

The Federal Election Campaign Act, 2 U.S.C. 431 *et seq.* (''FECA'' or the ''Act'') prohibits corporations and labor organizations from using general treasury funds to make contributions to a candidate for federal office. 2 U.S.C. 441b(a). It also imposes limits on the amount of money or in-kind contributions that other persons may contribute to federal campaigns. 2 U.S.C. 441a(a). Individuals and persons other than corporations, labor organizations, government contractors and foreign nationals can make independent expenditures in connection with federal campaigns. 11 CFR 110.4(a) and 115.2. Independent expenditures must be made without cooperation or consultation with any candidate, or any authorized committee or agent of a candidate; and they shall not be made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of a candidate. 2 U.S.C. 431(17).

Expenditures that are coordinated with a candidate or campaign are considered in-kind contributions. *Buckley* v. *Valeo,* 424 U.S. 1, 46–47 (1976) (footnote omitted) (''*Buckley*''); *Federal Election Commission v. The Christian Coalition,* 52 F.Supp.2d 45, 85 (D.D.C. 1999) (''*Christian Coalition*''). As such, they are subject to the limits and prohibitions set out in the Act. The Act defines ''contribution'' at 2 U.S.C. 431(8) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office.

The Commission is promulgating new rules at 11 CFR 100.23 that define the term *coordinated general public political communication.* They generally follow the standard articulated by the United States District Court for the District of Columbia in the *Christian Coalition* decision, *supra.* This decision sets out at length the standards to be used to determine whether expenditures for communications by unauthorized committees, advocacy groups and individuals are coordinated with candidates or qualify as independent expenditures.

A. History of the Rulemaking

This rulemaking was originally initiated to implement the Supreme Court's plurality opinion in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission,* 518 U.S. 604 (1996) (*Colorado I*) concerning the application of section 441a(d) of the FECA. In that decision, the Court concluded that political parties are capable of making independent expenditures on behalf of their candidates for federal office, and that it would violate the First Amendment to subject such