

OIL's Currently Effective Regulations Handout

Unless otherwise specified, the current version of a regulation can be found at <http://www.ecfr.gov>. For the sections in the chart below, the current version of the section is not effective for some or all of the section. Where a prior version is effective, the chart below gives the version year and links to the language that was in effect on January 1 of that version year as provided on <http://www.ecfr.gov>. Where a sub-section is ineffective but effective amendments have been made to another sub-section of the section since the ineffective language was added, the chart explains which versions are effective for each part of the section. And in such cases the multiple entries for that section are highlighted in the same color for ease of viewing.

Provision	Effective Version
§ 1003.1 (except (d), (e), and (k)) (amended by ECAS Rule [^])	Current Version
§ 1003.1(d), (e), and (k)	2020 Version
§ 1003.2 (except (g))	2020 Version
§ 1003.2(g) (amended by ECAS Rule [^] and Appearances Rule ^a)	Current Version
§ 1003.3 (except (c)(1)) (amended by ECAS Rule [^] and Appearances Rule ^a)	Current Version
§ 1003.3(c)(1)	2020 Version
§ 1003.5	2020 Version
§ 1003.7	2020 Version
§ 1003.8 (except (a)(1)) (amended by ECAS Rule [^])	Current Version
§ 1003.8(a)(1)	2020 Version
§ 1003.10	2020 Version
§ 1003.23 (except (b)(1)(ii))	2020 Version
§ 1003.23(b)(1)(ii) (amended by ECAS Rule [^])	Current Version
§ 1003.24 (except (c)(1)) (amended by ECAS Rule [^])	Current Version
§ 1003.24(c)(1)	2020 Version
§ 1003.29	2020 Version
§ 1003.42 (except (d)(2) and (d)(3)) (amended by CF/AP IFR*)	Current Version
§ 1003.42(d)(2)-(3)	Did not exist before
§ 1103.7	2020 Version
§ 1208.1	2020 Version

Provision	Effective Version
§ 1208.3 (except (c)(3)) (amended by CF/AP IFR*)	Current Version
§ 1208.3(c)(3) [†]	See below [†]
§ 1208.4 (except (d)) (amended by CF/AP IFR*)	Current Version
§ 1208.4(d)	2020 Version
§ 1208.6	2020 Version
§ 1208.7	2020 Version
§ 1208.9	2020 Version
§ 1208.12	2020 Version
§ 1208.13	2018 Version
§ 1208.15	2020 Version
§ 1208.16 (except (a))	2020 Version
§ 1208.16(a) (amended by CF/AP IFR*)	Current Version
§ 1208.18 (except (b)(1))	2020 Version
§ 1208.18(b)(1) (amended by CF/AP IFR *)	Current Version
§ 1208.20	2020 Version
§ 1208.30 (except (b) and (g)(1)) (amended by CF/AP IFR*)	Current Version
§ 1208.30(b), and (g)(1)	2018 Version
§ 1208.31	2020 Version
§ 1235.6	2020 Version
§ 1240.6	2020 Version
§ 1240.26	2020 Version
§ 1244.4	2020 Version

[^] “ECAS Rule” refers to *Executive Office for Immigration Review Electronic Case Access and Filing*, 86 Fed. Reg. 70,708 (Dec. 13, 2021), which became effective on February 11, 2022. For provisions amended by the ECAS Rule, cite to the February 11, 2022, version of that specific paragraph.

^a “Appearances Rule” refers to the rule Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances, 87 Fed. Reg. 56,247 (Sept. 14, 2022), which became effective on November 14, 2022.

^{*} “CF/AP IFR” refers to *Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers*, 87 Fed. Reg. 18,078 (Mar. 29, 2022) (“Credible Fear and Asylum Processing IFR”), previously known as the “Asylum Officer Rule” or “AO Rule,” which became effective on May 31, 2022, and is currently in effect.

[†] 8 CFR § 1208.3(c)(3) was amended by *Procedures for Asylum and Withholding of Removal*, 85 Fed. Reg. 81,698 (Dec. 16, 2020) (“EOIR-Only Asylum Procedures Rule”), which was preliminarily enjoined and had its effective date stayed. *See Nat’l Immigrant Justice Ctr. v. Exec. Office for Immigration Review*, No. 21-56 (RBW) (D.D.C. Jan. 14, 2021). The Credible Fear and Asylum Processing IFR added some text to § 1208.3(c)(3) but did not replace the ineffective language. Thus, the currently effective language, including the additional effective language added by the Credible Fear and Asylum Processing IFR in yellow, would be:

An asylum application **under paragraph (a)(1) of this section** that does not include a response to each of the questions contained in the Form I-589, is unsigned, or is unaccompanied by the required materials specified in paragraph (a) of this section is incomplete. The filing of an incomplete application shall not commence the 150-day period after which the applicant may file an application for employment authorization in accordance with § 1208.7. An application that is incomplete shall be returned by mail to the applicant within 30 days of the receipt of the application by the Service. If the Service has not mailed the incomplete application back to the applicant within 30 days, it shall be deemed complete. An application returned to the applicant as incomplete shall be resubmitted by the applicant with the additional information if he or she wishes to have the application considered.

Explanation of Enjoined Provisions

The chart below includes the provisions of EOIR’s regulations that are not currently effective. This chart is not comprehensive. If you would like to see what a certain rule amended in a provision, go to <http://www.ecfr.gov> and navigate to the specific provision. On the left-hand side, click “Compare Dates” and then enter the dates one day before and one day after the specific rule’s effective date.

Rule & Court Decision(s) Preventing Application	Provision	Description of Enjoined Amendment & Link to Currently Effective Provision
Rule: <i>Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure</i> , 85 Fed. Reg.	Administrative Closure § 1003.1(d)(1)(ii) § 1003.10(b)	Rule amended these provisions to include language that prevents the Board and IJs from administratively closing cases unless authorized by regulation or a judicially authorized settlement.

81,588 (Dec. 16, 2020) (“Appellate Procedure Rule” or “Admin Closure Rule”) <i>Effective Date:</i> Jan. 15, 2021 Court Orders: <i>Centro Legal de la Raza v. Exec. Office for Immigration Review</i>, 524 F. Supp. 3d 919 (N.D. Cal. 2021) (preliminary injunction and stay of effective date under 5 U.S.C. 705) <i>Catholic Legal Immigration Network, Inc. v. Exec. Office for Immigration Review</i>, No. 21-94, 2021 WL 3609986 (D.D.C. Apr. 4, 2021) (staying effective date under 5 U.S.C. § 705)		The 2020 version is currently effective for § 1003.10 and is available here. Section 1003.1 has since been amended by the ECAS Rule, which is currently in effect. For paragraphs (d), (e), and (k) of § 1003.1, cite to the 2020 version of the rule here. For all other portions of § 1003.1, cite to the currently available version here.
	Board fact-finding § 1003.1(d)(3)(iv)	Rule amended this provision to allow the Board to find facts in more circumstances and restrain the Board’s ability to remand <i>sua sponte</i> for additional fact-finding in many circumstances. Section 1003.1 has since been amended by the ECAS Rule, which is currently in effect. For paragraphs (d), (e), and (k) of § 1003.1, cite to the 2020 version of the rule here. For all other portions of § 1003.1, cite to the currently available version here.
	Board affirmance on other grounds § 1003.1(d)(3)(v)	Rule added provision allowing Board to affirm on any basis supported by the record, such as by undisputed facts. Section 1003.1 has since been amended by the ECAS Rule, which is currently in effect. For paragraphs (d), (e), and (k) of § 1003.1, cite to the 2020 version of the rule here. For all other portions of § 1003.1, cite to the currently available version here.
	Remand for Background Checks § 1003.1(d)(6)	Rule amended provision to no longer require remands for background checks. Section 1003.1 has since been amended by the ECAS Rule, which is currently in effect. For paragraphs (d), (e), and (k) of § 1003.1, cite to the 2020 version of the rule here. For all other portions of § 1003.1, cite to the currently available version here.
	Remands for new evidence and finality of decision § 1003.1(d)(7)	Rule narrowed the scope of the Board’s ability to remand, including by disallowing remand on the basis of new evidence—instead a motion to reopen must be filed other than for evidence obtained through background checks. Section 1003.1 has since been amended by the ECAS Rule, which is currently in effect. For paragraphs (d), (e), and (k) of § 1003.1, cite to the 2020 version of the rule here. For all other portions of § 1003.1, cite to the currently available version here.
	Board adjudication timelines & automatic referral to Director for adjudication § 1003.1(e) § 1003.3(c)(1)	Rule changed the timelines applicable before the Board, including internal case management timelines and briefing deadlines. Also allowed for automatic referral of cases to the Director for adjudication in certain circumstances. The 2020 version of § 1003.5 is currently effective and is available here (1003.5). Sections 1003.1 and 1003.3 have since been heavily amended

§ 1003.5	by the ECAS Rule, which is currently in effect. For paragraph (c)(1) of § 1003.3, cite to the 2020 version of the rule available here . For paragraphs (d), (e), and (k) of § 1003.1, cite to the 2020 version of the rule here . For all other portions of these provisions cite to the current versions here (1003.1) and here (1003.3).
Quality Assurance Certification § 1003.1(k)	Rule added provision allowing IJs to refer Board decisions to the Director for quality assurance. Section 1003.1 has since been amended by the ECAS Rule, which is currently in effect. For paragraphs (d), (e), and (k) of § 1003.1, cite to the 2020 version of the rule here . For all other portions of § 1003.1, cite to the currently available version here .
Sua sponte reopening § 1003.2(a) § 1003.23(b)(1)	Rule amended provision regarding sua sponte reopening to allow for it only to correct a ministerial mistake or typographical error or to reissue a decision to correct a defect in service. The 2020 versions re currently effective and are available here (1003.2) and here (1003.23). Note: The ECAS Rule amended §§ 1003.2(g) and 1003.23(b)(1)(ii) and is currently in effect. The current version of those provisions are available here (1003.2(g)) and here (1003.23(b)(1)(ii)). For all other parts of §§ 1003.2 and 1003.23, cite the 2020 versions linked above.
Motions to reopen or reconsider filed with Board while appeal pending § 1003.2(b), (c)(4)	Rule amended provision to remove language that stated that motions to reopen or reconsider filed while the case is pending before the Board will be construed as a motion to remand. The 2020 version is currently effective and is available here . Note: The ECAS Rule amended § 1003.2(g) and is currently in effect. The current version of that provision is available here (1003.2(g)). For all other parts of § 1003.2, cite the 2020 version linked above.
Exception to motion to reopen deadlines § 1003.2(c)(3)(v)-(vii) § 1003.23(b)(4)(v)-(vii)	Rule added exceptions to the time and number bars where: (1) a change in law or material fact after the removal order was final vitiates all grounds of removability and the noncitizen was diligent in moving to reopen; (2) where there is a claim to U.S. nationality; or (3) where the motion is filed by DHS. The 2020 versions of § 1003.2 and § 1003.23 are currently effective and are available here (§ 1003.2) and here (§ 1003.23). Note: The ECAS Rule amended §§ 1003.2(g) and 1003.23(b)(1)(ii) and is currently in effect. The current version of those provisions are available here (1003.2(g)) and here (1003.23(b)(1)(ii)). For all other parts of §§ 1003.2 and 1003.23, cite the 2020 versions linked above.

	Notice of certification § 1003.7	Rule replaced “the Service” with “DHS.” The 2020 version is currently effective and is available here .
	Board authority to grant voluntary departure in first instance § 1240.26(k)	Rule added provision allowing Board to grant voluntary departure in the first instance and providing process for doing so. The 2020 version of § 1240.26 is currently effective and does not include a paragraph (k).
Rule: <i>Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review</i> , 85 Fed. Reg. 80,274 (Dec. 11, 2020) (“Global Asylum Rule”)	Definitions for asylum and withholding of removal § 1208.1(c)-(g)	Rule added definitions and other clarifications for the concepts of “particular social group,” “political opinion,” “nexus,” “persecution,” and “stereotype” evidence. The 2020 version of § 1208.1 is currently effective and does not include paragraphs (c) through (g).
	Disclosure to third parties § 208.6 § 1208.6	Rule added additional exceptions to DHS’s and EOIR’s provisions regarding the confidentiality of asylum applications. The 2020 versions are currently effective and are available here (DHS) and here (EOIR).
	Internal relocation § 1208.13(b)(3) § 1208.16(b)(3)	Rule changed the considerations relevant to determining whether internal relocation is reasonable and changed the burden shifting where past persecution. The rule added the following: “Regardless of whether an applicant has established persecution in the past, in cases in which the persecutor is not the government or a government-sponsored actor, or otherwise is a private actor, there shall be a presumption that internal relocation would be reasonable unless the applicant establishes, by a preponderance of the evidence, that it would be unreasonable to relocate.” The 2018 version of § 1208.13 is currently effective and is available here . The 2020 version of § 1208.16 is currently effective and is available here . Note: § 1208.16(a) was amended by the Credible Fear and Asylum Processing IFR, which is in effect. The currently effective version for that paragraph only is available here . For any other provision of 1208.16, please cite the 2020 version as instructed above.
	Asylum discretion § 1208.13(d)	Rule added paragraph setting out specific factors for adjudicators to consider when determining whether to grant asylum in an exercise of discretion. This paragraph is not currently effective. The 2018 version of § 1208.13 is currently effective and is available here .
	Pretermission	Rule added a paragraph allowing IJ to pretermit asylum applications.

§ 1208.13(e)	This paragraph is not currently effective. The 2018 version of § 1208.13 is currently effective and is available here .
Firm resettlement § 1208.15	Rule made significant changes to firm resettlement. The 2020 version is currently effective and is available here .
CAT state action requirement (under color of law) § 1208.18(a)(1)	Rule incorporated the “under color of law” standard set forth in <i>Matter of O-F-A-S-</i> , 28 I. & N. Dec. 35 (A.G. 2020). Although the provision is enjoined, <i>Matter of O-F-A-S-</i> remains good law and stands for the same proposition. The 2020 version is currently effective and is available here . Note: § 1208.18(b)(1) was amended by the Credible Fear and Asylum Processing IFR, which is in effect. The currently effective version for that paragraph only is available here . For any other provision of 1208.18, please cite the 2020 version as instructed above.
CAT state action requirement (willful blindness) § 1208.18(a)(7)	Rule amended provision to clarify that actual knowledge and willful blindness can meet the acquiescence standard and defining willful blindness. The 2020 version is currently effective and is available here . Note: § 1208.18(b)(1) was amended by the Credible Fear and Asylum Processing IFR, which is in effect. The currently effective version for that paragraph only is available here . For any other provision of 1208.18, please cite the 2020 version as instructed above.
Frivolous findings § 1208.20	Rule expanded grounds for finding an application frivolous and added ability to withdraw application and accept voluntary departure in exchange for the IJ not entering such a finding. The 2020 version is currently effective and is available here .
Credible Fear Provisions § 1208.30(b) § 1208.30(g)(1)	Rule made various changes to the credible fear provisions, many of which were subsequently amended by the Credible Fear and Asylum Processing IFR, the amendments of which are currently in effect. The provisions listed to the left are those that have not been replaced and remain enjoined. For § 1208.30, generally cite to the currently effective version here . However, for paragraphs (b) and (g)(1), the proper version to cite is the version from 2018, which is available here .
Reasonable Fear Provisions § 1208.31	Rule amended paragraphs (f) and (g) to make stylistic changes and to add a provision that if the noncitizen “refuses” to indicate whether they want review of a negative fear finding, that refusal will be interpreted as declining review. The 2020 version is currently effective and available here .

	Referral to the IJ § 1235.6	Rule made changes to this provision regarding LPRs and asylees. The 2020 version is currently effective and available here .
	TPS Ineligibility § 1244.4	Rule updated a very out-of-date reference from INA 243(h)(2)—an old firm resettlement provision that applied to withholding of deportation—to INA 208(b)(2)(A)—the currently firm resettlement statutory provision. The change merely updated the regulation to match the language in the TPS statute, which renders ineligible for TPS any noncitizen “described in section 208(b)(2)(A)” of the INA. The 2020 version is currently effective and available here , but if citing this provision, recommend citing the current statute instead of the outdated regulatory text.
Rule: <i>Procedures for Asylum and Bars to Asylum Eligibility</i> , 85 Fed. Reg. 67,202 (Oct. 21, 2020) (“Criminal Asylum Bars Rule”)	Additional criminal-activity-based bars to asylum § 1208.13(c)(6)-(9)	Rule added various bars to a grant of asylum based on criminal activity as well as definitions and other related provisions relating to the application of those new bars. The 2018 version is currently effective and does not include (c)(6)-(9). That version of this provision is available here .
	Reconsideration of discretionary asylum denial § 1208.16(e) removed	Rule removed a provision that requires reconsideration of a discretionary denial of asylum where the applicant is found eligible for withholding of removal. The 2020 version is currently effective. It includes paragraph (e) and is available here . Note: § 1208.16(a) was amended by the Credible Fear and Asylum Processing IFR, which is in effect. The currently effective version for that paragraph only is available here . For any other provision of 1208.16, please cite the 2020 version as instructed above.
Rule: <i>Procedures for Asylum and Withholding of Removal</i> , 85 Fed. Reg. 81,698 (Dec. 16, 2020) (“EOIR-Only Asylum Procedures Rule”)	180-Day Provisions § 1003.10(b) (general) § 1003.29 (continuances) § 1240.6 (adjournments)	Rule amended these provisions to provide that in taking the actions the provisions allow (such as continuances and adjournments), nothing authorizes an IJ to take an action that would cause the adjudication of an application for asylum to exceed 180 days absent exceptional circumstances. The 2020 versions are currently effective and are available here (1003.10), here (1003.29), and here (1240.6).
<i>Effective Date:</i> Jan. 15, 2021		

Court Order: <i>Nat'l Immigrant Justice Ctr. v. Exec. Office for Immigration Review</i> , No. 21-56 (RBW) (D.D.C. Jan. 14, 2021) (order granting preliminary injunction and staying rule's effective date under 5 U.S.C. § 705)	Asylum application filing requirements § 1208.3(c)(3) § 1208.4(d)	Rule amended multiple provisions dealing with the requirements for a complete asylum application and fee receipt filing requirements. The Rule further instituted a 15-day application filing requirement for applicants in asylum-and-withholding-only proceedings. Both §§ 1208.3 and 1208.4 have been amended since the Rule's amendments by other rules that are currently in effect. You should cite to the current version of these provisions except when citing the specific paragraphs listed here. For § 1208.4(d), cite to the 2020 version of the regulation, which is available here . For § 1208.3(c)(3), see the discussion regarding that paragraph under the chart in section one of this handout.
	Reliance upon governmental sources § 1208.12(a)	Rule amended § 1208.12(a) to allow IJs to rely on certain governmental sources and to submit relevant evidence into the record. The 2020 version is currently effective and is available here .
	Fees § 1003.8(a)(1) § 1003.24(c)(1)	Rule inserted cross-references to implement new rules providing for filing fees for asylum applications. The ECAS Rule amended other provisions of §§ 1003.8 and 1003.24 and is currently in effect. Cite to the current provisions here (1003.8) and here (1003.24), unless you are citing the paragraphs listed to the left, in which case you should cite to the 2020 versions here (1003.8(a)(1)) and here (1003.24(c)(1)).
	DHS Provisions § 1208.7 § 1208.9	Rule removed and reserved two provisions that related to DHS functions, specifically EADs and interviews before asylum officers. The 2020 versions are currently effective and are available here (1208.7) and here (1208.9).
Rule: <i>Asylum Eligibility and Procedural Modifications</i> , 85 Fed. Reg. 82,260 (Dec. 17, 2020) ("Third Country Transit Bar Rule") <i>Effective Date:</i> Jan. 19, 2021, but also previously effective on July 16, 2019, through an Interim Final Rule	Third-Country-Transit Bar to Asylum § 1208.13(c)(4)	Initially enacted through an interim final rule, <i>Asylum Eligibility and Procedural Modifications</i> , 84 Fed. Reg. 33,829 (July 16, 2019), this rule barred from asylum any noncitizen who enters or arrives in the United States after July 16, 2019, after transiting through a third country unless certain circumstances were established, such as the applicant applied for asylum in that third country and was denied. The rule also applied this bar during credible fear screenings and made some other changes to the credible fear process. The 2018 version of § 1208.13 is currently effective and does not include (c)(4). That version of this provision is available here .

Court Orders: <i>E. Bay Sanctuary Covenant v. Barr</i>, 519 F. Supp. 3d 663 (N.D. Cal. Feb. 16, 2021) (preliminarily enjoining the Third Country Transit Bar Rule)	Consideration in Credible Fear Review § 1003.42(d) § 1208.30(g)(1)	Rule provided that IJs must apply the transit bar when reviewing USCIS negative credible fear findings and review USCIS’s findings about the applicability of such bars de novo. The Rule also re-arranged the provision as it had previously been amended by the Proclamation Bar IFR below. 1003.42(d) – The Credible Fear and Asylum Processing IFR amended 1003.42(d)(1), but 1003.42(d)(2) and (d)(3) were not amended. When looking at the 2022 version of this provision (here), only 1003.42(d)(1) is currently in effect. Paragraphs (d)(2) and (3) are not. Given that (d)(2) and (3) were added by the Third Country Transit Bar Rule, there is no prior version to cite. 1208.30(g)(1) – Section 1208.30(g)(1) was later amended by the Global Asylum Rule, which is also enjoined. It was not amended by the Credible Fear and Asylum Processing IFR and so the version that existed before this rule and the Proclamation Bar IFR, the 2018 version, is in effect and available here. This is only the case for (g)(1) (and as discussed above, (b)), other parts of 1208.30 have been amended by the Credible Fear and Asylum Processing IFR, which is currently in effect. For other provisions of 1208.30, use the current version available here.
Rule: <i>Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims</i>, 83 Fed. Reg. 55,934 (Nov. 9, 2018) (“Proclamation Bar IFR”) <i>Effective Date:</i> Nov. 9, 2018 Court Order: <i>O.A. v. Trump</i>, 404 F. Supp. 3d 109 (D.D.C. 2019) (vacating Proclamation Bar Rule)	Proclamation Bar Rule § 1208.13(c)(3) Consideration in Credible Fear Review § 1003.42(d) § 1208.30(g)(1)	Added a bar to asylum for individuals who enter the United States in violation of a proclamation issued by the President under INA 212(f) or 215(a)(1) after November 9, 2018. The Rule also applied the bar during the credible fear process. The 2018 version of § 1208.13 is currently effective and does not include (c)(3). That version of this provision is available here. Rule provided that IJs must apply the proclamation bar when reviewing USCIS negative credible fear findings and review USCIS’s findings about the applicability of the bar de novo. See discussion regarding these provisions in the Third Country Transit Bar section just above.