(9) A temporary worker or trainee (H–1, H–2A, H–2B, or H–3), pursuant to § 214.2(h) of this chapter, or a nonimmigrant specialty occupation worker pursuant to section 101(a)(15)(H)(i)(b1) of the Act. * * * * * * * * * *

(20) A nonimmigrant alien within the class of aliens described in paragraphs (b)(2), (b)(5), (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), (b)(13), (b)(14), (b)(16), (b)(19), (b)(23) and (b)(25) of this section whose status has expired but who is the beneficiary of a timely application for an extension of such stay pursuant to §§ 214.2 or 214.6 of this chapter. * * * * * * * * * *

(25) A nonimmigrant treaty alien in a specialty occupation (E–3) pursuant to section 101(a)(15)(E)(iii) of the Act. * * * * * * *

Jeh Charles Johnson,

Secretary of Homeland Security.

[FR Doc. 2014–10733 Filed 5–9–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214 and 274a

[CIS No. 2501–10; DHS Docket No. USCIS–2010–0017]

RIN 1615–AB92

Employment Authorization for Certain H–4 Dependent Spouses

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security proposes to extend the availability of employment authorization to certain H–4 dependent spouses of principal H–1B nonimmigrants. The extension would be limited to H–4 dependent spouses of principal H–1B nonimmigrants who are in the process of seeking lawful permanent resident status through employment. This population will include those H–4 dependent spouses of H–1B nonimmigrants if the H–1B nonimmigrants are either the beneficiaries of an approved Immigrant Petition for Alien Worker (Form I–140) or who have been granted an extension of their authorized period of admission in the United States under the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), as amended by the 21st Century Department of Justice Appropriations Authorization Act. This regulatory change would lessen any potential economic burden to the H–1B principal and H–4 dependent spouse during the transition from nonimmigrant to lawful permanent resident status, furthering the goals of attracting and retaining high-skilled foreign workers.

DATES: Written comments must be received on or before July 11, 2014.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2010–0017, by any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email:* You may submit comments directly to U.S. Citizenship and Immigration Services by email at *uscisfrcomment@dhs.gov*. Include DHS docket number USCIS–2010–0017 in the subject line of the message.
- *Mail:* Laura Dawkins, Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS–2010–0017 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Laura Dawkins, Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529; Telephone (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Jennifer Oppenheim, Adjudications Officer, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Suite 1100, Washington, DC 20529–2140; Telephone (202) 272–1470.

SUPPLEMENTARY INFORMATION:

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I. Public Participation

All interested parties are invited to participate in this rulemaking by submitting written data, views, comments and/or arguments on all aspects of this proposed rule. U.S. Citizenship and Immigration Services (USCIS) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions must include the agency name and DHS Docket No. USCIS–2010–0017 for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

II. Executive Summary

A. Purpose of the Regulatory Action

1. Need for the Regulatory Action

Under current regulations, DHS does not list H–4 dependents (spouses and unmarried children under 21) of H–1B nonimmigrant workers among the classes of aliens eligible to work in the United States. *See* 8 CFR 274a.12. The lack of employment authorization for H–4 dependent spouses often gives rise to personal and economic hardship for the families of H–1B nonimmigrants the longer they remain in the United States. In many cases, for those H–1B nonimmigrants and their families who wish to remain permanently in the United States, the timeframe required for an H–1B nonimmigrant to acquire

lawful permanent residence through his or her employment may be many years. As a result, retention of highly educated and highly skilled nonimmigrant workers in the United States can become problematic for employers. Retaining highly skilled persons who intend to acquire lawful permanent residence is important to the United States given the contributions of these individuals to the U.S. economy, including advances in entrepreneurial and research and development endeavors, which correlate highly with overall economic growth and job creation.

In this rule, DHS is proposing to extend employment authorization to certain H–4 dependent spouses of H–1B nonimmigrants. DHS believes that this proposal would further encourage H–1B skilled workers to remain in the United States, continue contributing to the U.S. economy, and not abandon their efforts to become lawful permanent residents, to the detriment of their U.S. employer, because their H–4 nonimmigrant spouses are unable to obtain work authorization. This proposal would also remove the disincentive for many H–1B families to start the immigrant process due to the lengthy waiting periods associated with acquiring status as a lawful permanent resident of the United States.

2. Proposed Process To Extend Employment Authorization to Certain H–4 Dependent Spouses

With this rule, DHS is proposing to extend eligibility for employment authorization to certain H–4 dependent spouses of principal H–1B nonimmigrants who are in the process of seeking lawful permanent resident status through employment. This population will include H–4 dependent spouses of H–1B nonimmigrants if the H–1B nonimmigrants are either the beneficiaries of an approved Immigrant Petition for Alien Worker (Form I–140) or have been granted an extension of their authorized period of admission in the United States under the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), amended by the 21st Century Department of Justice Appropriations Authorization Act (herein collectively referred to as ''AC21'') [1]. This regulatory change would lessen any potential economic burden to the H–1B principal and H–4 dependent spouse during the transition from nonimmigrant to lawful permanent resident status, thereby fostering the goals of attracting and retaining high-skilled foreign workers and minimizing disruption to U.S. businesses employing H–1B workers that would result if such workers were to leave the United States.

3. Legal Authority

The Secretary of Homeland Security's authority for this proposed regulatory amendment can be found in section 102 of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 112, and section 103 of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1103, which give the Secretary the authority to administer and enforce the immigration and nationality laws, as well as section 274A(h)(3) of the INA, 8 U.S.C. 1324a(h)(3), which refers to the Secretary's authority to authorize employment of noncitizens in the United States.

B. Summary of the Major Provisions of This Proposed Rule

DHS proposes to amend its regulations at 8 CFR 214.2(h)(9)(iv) and 274a.12(c) to extend eligibility for employment authorization to H–4 dependent spouses of H–1B nonimmigrants if the H–1B nonimmigrants have either been granted status pursuant to sections 106(a) and (b) of AC21 or are the beneficiaries of an approved Immigrant Petition for Alien Worker (Form I–140).

Under sections 106(a) and (b) of AC21, an H–1B nonimmigrant who is the beneficiary of a labor certification application or an employment-based immigrant petition that has been pending for at least 365 days prior to reaching the end of the sixth year of H–1B nonimmigrant status may obtain H–1B nonimmigrant status past the sixth year, in one year increments. An H–4 dependent may also be admitted or granted extensions of stay for the same period that the H–1B nonimmigrant is authorized to remain in such status. This proposed rule would allow work authorization for an H–4 spouse whose H–1B spouse is maintaining his or her H–1B nonimmigrant status under sections 106(a) and (b) of AC21.

Although an H–1B nonimmigrant may have already received an approval of his or her Form I–140 employment-based immigrant petition, she or he and his or her H–4 dependents may not be authorized to apply to adjust their status to that of a lawful permanent resident or otherwise seek lawful permanent resident status at a consular office abroad immediately. Instead, they may need to wait until an immigrant visa number is available, which may take years. While the H–1B nonimmigrant may continue working so long as he or she maintains H–1B nonimmigrant status under section 104(c) of AC21, the H–4 dependent spouse generally is not eligible for employment authorization under current regulations until he or she is eligible to apply for adjustment of status or has changed to another nonimmigrant status authorizing him or her to work. This proposed rule would also extend employment authorization eligibility to this group of H–4 nonimmigrant spouses.

DHS also proposes to amend 8 CFR 274a.12(c) by adding paragraph (26), which would list the H–4 nonimmigrant spouses described in revised 8 CFR 214.2(h)(9)(iv) as a new class of aliens eligible to request employment authorization from USCIS. Therefore, as is the case with all classes of aliens listed in 8 CFR 274a.12(c), aliens seeking employment authorization who fall within the new class of aliens proposed in this rule would only be employment authorized following approval of their Application for Employment Authorization (Form I–765) by USCIS and receipt of an Employment Authorization Document (Form I–766). The determination whether to approve an application for employment authorization filed by an H–4 nonimmigrant lies within the sole discretion of USCIS. *See* 8 CFR 274a.13(a)(1).

C. Costs and Benefits

The proposed amendment would permit certain H–4 spouses to request employment authorization. DHS estimates the current population of H–4 dependent spouses who would be initially eligible for employment authorization under this proposed rule could be as many as 100,600 after taking into account the backlog of those with approved or likely to be approved employment-based immigrant petitions but who are unable to file for adjustment of status to that of a lawful permanent resident. DHS has assumed that those H–4 dependent spouses in the

[1] Sections 106(a) and (b) of AC21 were amended by section 11030A of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, 116 Stat. 1758 (2002). This act clarified who is eligible for an H–1B extension of stay beyond the limitation set forth in INA 214(g), 8 U.S.C. 1184(g), by eliminating the requirement that an employment-based immigrant petition or an application for adjustment of status must be filed on behalf of the individual in order for the individual to qualify for the extension. As such, an extension of stay now may be permitted for those individuals on whose behalf only a labor certification was filed, if he or she otherwise is eligible. The act also clarified that H–1B status could not be extended under section 106 of AC21 if the labor certification or employment-based immigrant petition has been denied, as well as upon a decision ''to grant or deny the alien's application for an immigrant visa or for adjustment of status.''

backlog population would file for employment authorization in the first year of implementation for ease of analysis, so the first year estimates include both the backlog estimate and the annual flow estimate of initial filers. DHS estimates the flow of H–4 dependent spouses that could apply for initial employment authorization in subsequent years to be as many as 35,900 annually. This is a high-end estimate of the affected population since only H–4 dependent spouses who decide to apply for employment authorization while residing in the United States would face the costs associated with obtaining employment authorization. Additionally, in future years there could be additional filings from H–4 spouses who apply to renew their employment authorization while continuing to wait for visas to become available. Although DHS was unable to predict the volume of H–4 spouses that would need to renew their employment authorization, the individual cost faced by these filers would be identical to first-time filers for employment authorization. The costs of the rule would stem from filing fees, the opportunity costs of time associated with filing an Application for Employment Authorization, and the estimated cost of procuring two passport-style photos which must be submitted with the application.

These amendments would increase incentives of H–1B nonimmigrant workers who have begun the immigration process to remain in and contribute to the U.S. economy as they complete the process to adjust status to or otherwise acquire lawful permanent resident status, and thereby minimize disruptions to the petitioning U.S. employer. Providing the opportunity for certain H–4 dependent spouses to work while the H–1B nonimmigrant is waiting for a visa number to become available would encourage the H–1B principal to remain employed in the United States and continue to pursue his or her efforts to immigrate notwithstanding oftentimes lengthy waiting periods for immigrant visa availability. Attracting and retaining highly skilled persons who intend to acquire lawful permanent resident status is important when considering the contributions of these individuals to the U.S. economy, including advances in entrepreneurial and research and development endeavors, which are highly correlated with overall economic growth and job creation. In addition, the proposed amendments would bring U.S. immigration laws more in line with other countries that are also competing to attract and retain similar high-skilled foreign workers.

TABLE 1—TOTAL COSTS OF INITIAL EMPLOYMENT AUTHORIZATION FOR CERTAIN H–4 DEPENDENT SPOUSES 10-YR. PRESENT VALUE ESTIMATES AT 3% AND 7%

[$Millions]

	Year 1 estimate (100,600 filers)	Sum of years 2–10 (35,900 filers annually)	Total over 10-year period of analysis [2]
3% Discount Rate:			
Total Costs Incurred by Filers @3%	$42.6	$118.2	$160.8
7% Discount Rate:			
Total Costs Incurred by Filers @7%	41.0	95.2	136.2
Qualitative Benefits	This rule is intended to remove the disincentive to pursue the immigration process due to the potentially long wait for available employment-based immigrant visas for many H–1B nonimmigrant families. Also, this rule will encourage H–1B skilled workers who have already taken steps to become lawful permanent residents (LPRs) to not abandon their efforts to acquire lawful permanent residence because their H–4 spouse is unable to work. By encouraging the H–1B workers to continue in their pursuit of becoming LPRs, this rule would result in minimizing disruptions to petitioning U.S. employers. Eligible H–4 spouses who participate in the labor market will benefit financially. We also anticipate that the socio-economic benefits will assist the family in more easily integrating into American society.		

III. Background

A. The H–1B Petition Process, Status Benefits and Validity Period

Under the H–1B nonimmigrant classification, a U.S. employer or agent may file a petition to employ a temporary foreign worker in the United States to perform services in a specialty occupation, services related to a Department of Defense (DOD) cooperative research and development project or coproduction project, or services of distinguished merit and ability in the field of fashion modeling. Immigration and Nationality Act (INA) section 101(a)(15)(H), 8 U.S.C. 1101(a)(15)(H); 8 CFR 214.2(h)(4). To employ a temporary nonimmigrant worker to perform such services (except for DOD-related services), a U.S. petitioner must first obtain a certification from the U.S. Department of Labor (DOL) confirming that the petitioner has filed a Labor Condition Application (LCA) in the occupational specialty in which the nonimmigrant will be employed. *See* 8 CFR 214.2(h)(4)(i)(B)(*1*) and 8 CFR 214.2(h)(1)(ii)(B)(*3*). Upon certification of the LCA, the petitioner may file with USCIS a Petition for a Nonimmigrant Worker (Form I–129 with H supplements or successor form(s)) (hereinafter ''H–1B petition'').

If USCIS approves the H–1B petition, the approved H–1B status is valid for an initial period of up to three years, after which USCIS may grant extensions for up to an additional three years such that the total period of the H–1B worker's admission in the United States does not exceed six years. *See* INA section 214(g)(4), 8 U.S.C. 1184(g)(4); 8 CFR 214.2(h)(9)(iii)(A)(*1*), (3), (h)(15)(ii)(B)(*1*). At the end of the 6-year period, the nonimmigrant generally must depart from the United States unless he or she falls within one of the exceptions to the 6-year ceiling,[3] he or she has changed to another nonimmigrant status, or he or she has applied to adjust status to that of a

[2] Totals may not sum due to rounding.

[3] Under sections 104(c) and 106(a)–(b) of AC21, certain nonimmigrants are exempt from the 6-year maximum period of admission.

lawful permanent resident. *See* INA sections 245(a) and 248(a), 8 U.S.C. 1255(a) and 1258(a); 8 CFR 245.1 and 8 CFR 248.1. Unless he or she falls under one of the exceptions, the nonimmigrant must depart from the United States and remain outside the United States for at least one year to be eligible for a new 6-year period of admission in H–1B nonimmigrant status. *See* 8 CFR 214.2(h)(13)(iii)(A).

For H–1B nonimmigrants performing DOD-related services, the approved H–1B status is valid for an initial period of up to five years, after which they may obtain up to an additional five years for a total period of admission not to exceed 10 years. 8 CFR 214.2(h)(9)(iii)(A)(*2*), (h)(15)(ii)(B)(*2*).[4]

The spouse and unmarried children under 21 (dependents) of the H–1B temporary worker are entitled to H–4 nonimmigrant classification and are subject to the same period of admission and limitations as the H–1B nonimmigrant. *See* 8 CFR 214.2(h)(9)(iv). Currently, DHS does not authorize H–4 nonimmigrants for employment based on their H–4 nonimmigrant status. If, however, an H–4 nonimmigrant is eligible to apply to adjust his or her status to that of a lawful permanent resident and has filed such an application, he or she may obtain employment authorization based on the pending adjustment of status application. *See* 8 CFR 274a.12(c)(9).

B. Acquiring Lawful Permanent Resident Status

For those H–1B nonimmigrants seeking to adjust their status to or otherwise acquire lawful permanent resident status, an employer or U.S. citizen or lawful permanent resident family member generally must first petition for them, unless they are qualified to self-petition, before they are eligible to file an adjustment of status application or otherwise seek to acquire status as a lawful permanent resident. *See* INA section 204(a), 8 U.S.C. 1154(a). Many H–1B nonimmigrants seeking lawful permanent resident status in the United States apply on the basis of employment. There are several employment-based (EB) immigrant classifications for which someone holding H–1B status may qualify for:

- EB–1—Aliens with extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers
- EB–2—Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability
- EB–3—Skilled workers, professionals, and other workers
- EB–4—Special immigrants (*See* INA section 101(a)(27), 8 U.S.C. 1101(a)(27))
- EB–5—Employment creation immigrants

See INA section 203(b), 8 U.S.C. 1153(b).

For certain EB–2 and EB–3 classifications, prior to filing an immigrant petition on behalf of the individual with USCIS, employers must first obtain a labor certification from the DOL or provide evidence that the individual qualifies for Schedule A designation or for the DOL's Labor Market Information Pilot Program regarding a shortage of U.S. workers in the individual's occupation. *See* 8 CFR 204.5(a)(2). In order to apply for lawful permanent residence, an immigrant visa must be immediately available. *See* INA sections 201(a), 203(b), and 245(a); 8 U.S.C. 1151(a), 1153(b), 1255(a). An immigrant visa is ''immediately available'' if the priority date for the preference category is current according to the U.S. Department of State Visa Bulletin issued for the month in which the application for an immigrant visa is filed. The Visa Bulletin dates indicate whether an applicant, based on his or her priority date and country of birth, can file an adjustment of status application with USCIS or an application for an immigrant visa with the U.S. consular office abroad, or whether there is a backlog in order to apply to acquire lawful permanent residence. *See id.; see also* 8 CFR 245.1(g)(1) and 245.2(a)(2)(i)(B). If a labor certification is required, the priority date is the date the labor certification was accepted for processing by DOL. *See* 8 CFR 204.5(d). If no labor certification is required, the priority date is the date the Form I–140 petition was accepted by USCIS for processing. *See* INA section 203(e)(1), 8 USC 1153(e)(1); 22 CFR 42.53(a).

C. Obtaining H–1B Nonimmigrant Status Past the 6-Year Limit Under AC21

There are certain exceptions to the 6-year limit on a nonimmigrant's period of stay in H–1B status. These exceptions allow the individual to obtain H–1B nonimmigrant status beyond the six-year limit. One of these exceptions is found in sections 106(a) and (b) of AC21.[5]

Under sections 106(a) and (b) of AC21, an H–1B temporary worker who is the beneficiary of a labor certification application or an employment-based immigrant petition that has been pending for at least 365 days prior to reaching the end of the sixth year of H–1B nonimmigrant status may obtain H–1B nonimmigrant status past the sixth year, in one year increments. *See* Public Law 106–313, section 106(a)–(b).[6] An H–4 dependent also may be admitted or granted extensions of stay for the same period that the H–1B temporary worker is authorized to remain in such status. *See* 8 CFR 214.2(h)(9)(iv). Under current USCIS policy, USCIS may grant extensions of stay in 1-year increments until a final decision is made to either: (1) Deny the application for labor certification; (2) if the labor certification is approved, to revoke the approved labor certification; (3) Deny (or, if approved, revoke) the EB immigrant petition; or (4) Grant or deny the individual's application for an immigrant visa or for adjustment of status.[7]

Sections 106(a) and (b) of AC21 permit H–1B nonimmigrants to work and remain in the United States to apply

[4] This rule could authorize eligibility for employment authorization of H–4 dependents of H–1B nonimmigrants performing DOD-related services if the H–1B nonimmigrant is the beneficiary of an approved I–140 petition. These H–1B nonimmigrants cannot benefit from AC21 sections 106(a) or (b), because those sections solely relate to the generally applicable 6-year limitation on H–1B status under INA section 214(g)(4), whereas the 10 year limitation on H–1B status for DOD-related services is pursuant to section 222 of the Immigration Act of 1990, Public Law 101–649, 104 Stat. 4978 (Nov. 29, 1990); *see* 8 U.S.C. 1101 note.

[5] An H–1B nonimmigrant may also extend his or stay beyond the six-year period of stay under section 104(c) of AC21 if he or she is the beneficiary of an approved I–140 petition and an immigrant visa is not immediately available. While this rule does not address H–4 spouses of H–1B nonimmigrants who have extended their stay under section 104(c) of AC21, these H–4 spouses would be eligible for work authorization under this rule, as their H–1B nonimmigrant spouses are beneficiaries of an approved I–140 petition.

[6] Sections 106(a) and (b) of AC21 were amended by section 11030A of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, 116 Stat. 1758 (2002). This act clarified who is eligible for an H–1B extension of stay beyond the limitation set forth in INA 214(g), 8 U.S.C. 1184(g), by eliminating the requirement that an employment-based immigrant petition or an application for adjustment of status must be filed on behalf of the individual in order for the individual to qualify for the extension. As such, an extension of stay now may be permitted for those individuals on whose behalf only a labor certification was filed, if he or she otherwise is eligible. The act also clarified that H–1B status could not be extended under section 106 of AC21 if the labor certification or employment-based immigrant petition has been denied, as well as upon a decision ''to grant or deny the alien's application for an immigrant visa or for adjustment of status.''

[7] *See* Mem. from Donald Neufeld, Acting Assoc. Dir., Domestic Operations, USCIS, Supplemental Guidance Relating to Processing Forms I–140 Employment-based Immigrant Petitions and I–129 H–1B Petitions, and Form I–485 Adjustment Applications Affected by AC21 (May 30, 2008) available at *http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2008/ac21_30may08.pdf.*

for lawful permanent resident status while they await required decisions by DOL and/or USCIS on required filings to obtain status as a lawful permanent resident. Prior to AC21, such individuals often would have been required to leave the United States to await decisions from DOL and USCIS pending past their 6-year maximum period of authorized stay and apply for lawful permanent resident status outside the United States.

D. Employment Authorization for H–4 Dependents

The INA does not require DHS to extend employment authorization to H–4 dependents of H–1B nonimmigrants.[8] AC21 also does not require DHS to extend employment authorization to H–4 dependent spouses who remain in H–4 status beyond the six-year limitation and are otherwise unable to obtain work authorization during the process for obtaining lawful permanent resident status. *See* Public Law 106–313, section 106(a),-(b).

DHS regulations provide that H–4 dependents may reside in the United States, subject to the same period of admission and limitation as the H principal beneficiary. *8 CFR 214.2(h)(9)(iv).* Current regulations prohibit H–4 dependents from working in the United States in H–4 status. *Id.* However, these individuals may obtain employment authorization either by obtaining a different status that would provide employment authorization or by pursuing lawful permanent residence through an application for adjustment of status. *See* INA section 248, 8 U.S.C. 1258 (change of status); INA section 245(a), 8 U.S.C. 1255(a) (adjustment of status); 8 CFR 274a.12(c)(9).

Although H–4 dependents may obtain employment authorization by changing status to a different work authorized nonimmigrant classification, such as the H–1B or O–1 (individuals with extraordinary ability or achievement) classifications, not all H–4 dependents meet the statutory and regulatory requirements for changing status to an employment-authorized nonimmigrant classification. Furthermore, an H–4 dependent who wants to become a lawful permanent resident while remaining in the United States can only change status to a classification that would allow for dual intent, such that the nonimmigrant could simultaneously pursue lawful permanent residence while maintaining nonimmigrant status.[9] INA sections 101(a)(15) (defining the term ''immigrant''); 214(b) (discussing presumption of immigrant intent) and 214(h) (discussing effect of seeking lawful permanent residence on an alien's ability to maintain or obtain a change of status to H–1B status), 8 U.S.C. 1101(a)(15) and 1184(b), (h).

As an alternative, the H–4 nonimmigrant can wait to apply for work authorization during the adjustment of status application process following approval of an employment-based immigrant petition of which he or she is a derivative beneficiary. Under this scenario, however, H–4 nonimmigrants may be subject to lengthy immigrant visa availability delays before they may file adjustment of status applications, and related applications for work and travel authorization. *See* 8 CFR 274a.12(c)(9) (authorizing employment authorization for adjustment-of-status applicants).

It often takes years before an immigrant visa number becomes available. The INA limits the supply of available employment-based immigrant visas for each fiscal year, and the demand for visas typically exceeds the supply. The INA sets forth five employment-based preference classifications for employment-based immigrants and allocates the number of available world-wide visas among those categories. INA sections 201(d) and 203(b), 8 U.S.C. 1151(d) and 1153(b). The INA further limits the number of available visas for particular categories of foreign nationals based upon an annual per-country numerical limit. INA section 202(a)(2), 8 U.S.C. 1152(a)(2). This statutory formula has historically led to oversubscription in the employment-based second (EB–2) and third categories (EB–3), which are the categories through which H–1B nonimmigrants and their H–4 dependents typically seek permanent resident status. For instance, the approximate backlog for an EB–3 immigrant visa for individuals, other than nationals of India or the Philippines, presently is a little over 18 months. For nationals of India applying in the same EB–3 category, the approximate backlog is more than 10 years.[10]

To ease the negative impact of the immigrant visa processing delays, Congress intended that the AC21 provisions allowing for extension of H–1B status past the sixth year for workers who are the beneficiaries of certain pending or approved employment-based immigrant visa petitions or labor certification applications would minimize disruption to U.S. businesses employing H–1B workers that would result if such workers were required to leave the United States. *See* S. Rep. No. 106–260, at 15 (2000) (''These immigrants would otherwise be forced to return home at the conclusion of their allotted time in H–1B status, disrupting projects and American workers. The provision enables these individuals to remain in H–1B status until they are able to receive an immigrant visa number and acquire lawful permanent residence through either adjustment of status in the U.S. or through consular processing abroad, thus limiting the disruption to American businesses.'').

DHS recognizes that the limitation on the period of stay is not the only event that could cause an H–1B worker to leave his or her employment and cause disruption to the petitioning employer's business, including the loss of significant time and money invested in the immigration process. Prohibiting H–4 dependent spouse employment authorization beyond the six-year period of stay, when the H–1B worker is authorized status beyond six years under AC21, or the point where the H–1B nonimmigrant and his or her family are firmly on the path to lawful

[8] There is a limited exception in cases of battered spouses. Section 814(b) of Violence Against Women Act and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162, amended the INA by adding new section 204(a)(1)(K), which provides for employment authorization incident to the approval of a VAWA self-petition. Section 814(c) of VAWA 2005 amended the INA by adding new section 106, which provides eligibility for employment authorization to battered spouses of aliens admitted in certain nonimmigrant statuses, including H–1B.

[9] Neither H–1B nor L classification may be denied solely because the alien seeking such classification is also pursuing permanent residence. *See* section 214(h) of the INA, 8 USC 1184(h); 8 CFR 214.2(h)(16)(i), 214.2(l)(16). Moreover, the H–4 spouse of an H–1B nonimmigrant is entitled to the same period of admission, and is subject to the same limitations on stay, as the H–1B nonimmigrant, if accompanying or following to join the H–1B nonimmigrant. *See* 8 CFR 214.2(h)(9)(iv). As such, the doctrine of dual intent has historically been applied to the H–4 spouse, who may therefore pursue permanent residence while maintaining H–4 status. This application of dual intent is supported at 8 CFR 214.2(l)(16)(iv), which prohibits the denial of an alien's application to change from L–2 to H–4 status solely because the alien is also pursuing permanent residence.

[10] According to the Department of State's Visa Bulletin for April 2014, the cut-off date for persons qualifying under the employment-based third preference category is October 1, 2012 for individuals not charged to India or the Philippines, September 15, 2003 if charged to India, and June 15, 2007 if charged to the Philippines. *See http://travel.state.gov/content/dam/visas/Bulletins/visabulletin_april2014.pdf.* Unless such nationals have a priority date before the respective cut-off date, they are unable to file an adjustment of status application or otherwise acquire lawful permanent residence at this time, and if they have a pending application previously filed when the cut-off date was current, their application cannot be approved unless their priority date is before the current cut-off date. *See generally* 8 CFR 245.1(a), (g), 8 CFR 245.2(a)(2).

permanent residence also creates significant financial obstacles for many H–1B workers and their families because of the inability of the H–4 spouse to work, which in turn threaten disruption to the business of U.S. employers.

In light of the foregoing, DHS is proposing to extend eligibility for employment authorization to H–4 dependent spouses of H–1B nonimmigrants remaining in the United States pursuant to extensions of stay based on sections 106(a) and (b) of AC21, and to H–4 nonimmigrants whose H–1B nonimmigrant spouses are beneficiaries of an approved Form I–140. *See generally* INA section 103(a), 8 U.S.C. 1103(a) (generally authorizing the Secretary to administer and enforce the immigration laws); INA section 274A(h)(3), 8 U.S.C. 1324a(h)(3) (generally authorizing the Secretary to provide for employment authorization for aliens in the United States); INA section 214(a)(1), 8 U.S.C. 1184(a)(1) (authorizing the Secretary to prescribe regulations setting terms and conditions of admission of nonimmigrants). DHS believes that amending its regulations in this manner will encourage, consistent with the congressional intent expressed in AC21, potential H–1B nonimmigrants seeking lawful permanent residence and their H–4 dependents to remain in the United States, thereby relieving U.S. employers of additional disruptions, and furthers the goals of attracting and retaining high-skilled foreign workers. This goal is inherent to AC21 and is further reflected in DHS's proposed amendments to the regulations.

DHS cannot alleviate the delays in visa processing due to the numerical limitations set by statute and the resultant unavailability of visa numbers, but can alleviate the disruption caused to H–1B nonimmigrants, their families, and U.S. employers by such delays if H–1B nonimmigrants and their families choose to leave the United States. In essence, this change furthers an important public policy goal of enabling U.S. employers to attract and retain highly skilled workers. In effectuating this policy, DHS is addressing obstacles that may cause these workers to leave the United States or never seek employment in the United States in the first instance and produce the circumstance Congress attempted to prevent through AC21, i.e., significant disruptions to U.S. employers.

DHS is proposing in this rule to extend eligibility for employment authorization only to H–4 dependent spouses of H–1B nonimmigrants for whom the process for attaining lawful permanent resident status is well underway.[11] DHS is proposing limitations on which H–4 dependent spouses of H–1B nonimmigrants may be eligible for employment authorization rather than extending eligibility to all H–4 dependent spouses of H–1B nonimmigrants because the goal of this proposed rule is to enhance the United States' ability to attract and more permanently retain high-skilled foreign workers. Due to the proposed rule's focus on high-skilled H–1B workers, H–4 spouses of H–2A/B and H–3 principals are not included in this rule.[12]

Similarly, DHS is not extending eligibility for employment authorization to H–4 dependent children as DHS believes that extending employment eligibility to H–4 dependent spouses would alleviate the significant portion of any potential economic burdens H–1B principals may face during the transition from nonimmigrant to lawful permanent resident status as a result of the lack of employment authorization for their dependents. Additionally, limiting the employment authorization to dependent spouses provides parity with other nonimmigrant employment categories, such as nonimmigrants in L (intracompany transferee), E–1(treaty trader), and E–2 (treaty investor) status.

Specifically, DHS is proposing to limit employment authorization to H–4 dependent spouses only during AC21 extension periods granted to the H–1B principal worker or after the H–1B principal has obtained an approved Immigrant Petition for Alien Worker. In doing so, DHS is limiting employment authorization to H–4 dependents of H–1B spouses who have taken steps in attaining lawful permanent resident status. DHS believes that this limitation is appropriate in furthering the goal of retaining high-skilled workers by providing greater incentive to H–1B principals and their spouses who have taken these steps to remain in the United States until such time as they are admitted as lawful permanent residents. In enacting AC21, Congress hoped to reduce the disruption to U.S. businesses and to the U.S. economy caused by the required departure of H–1B workers (for whom the businesses intended to file employment-based immigrant visa petitions) upon the expiration of workers' maximum six year period of authorized stay. *See* S. Rep. No. 106 260, at 15 (2000). Consequently, DHS is proposing to provide benefits to those H–1B nonimmigrants who have demonstrated an intent to permanently contribute to and participate in the U.S. economy and who have already made significant strides towards achieving the ability to do so upon being granted lawful permanent resident status; specifically, those H–1B nonimmigrants with an approved Form I–140 or who have been granted status under sections 106(a) and (b) of AC21. DHS believes tying the H–4 spouse employment authorization to such H–1B nonimmigrants would allow for more accurate identification of H–1B nonimmigrants who are on the path to becoming LPRs pursuant to their employment, and avoid the encouraging of ''frivolous'' filings. DHS may consider expanding H–4 employment authorization eligibility in the future.

DHS estimates that the number of H–4 dependent spouses who would be initially eligible to apply for employment authorization under this proposed rule would be as many as 100,600 in the first year and 35,900 initial applications annually in subsequent years.[13] DHS is unable to project an estimate of H–4 spouses that would need to renew in future years, because we are unable to determine which H–4 nonimmigrant would need to extend their work authorization. The need to extend work authorization is an individualistic determination, since it depends on where in the immigration process the individual is, which is determined in part by the individual's nationality and visa availability. *See* Section VI Regulatory Requirements below. DHS believes that the effect of this proposal to expand employment authorization to eligible H–4 dependent spouses would result in a negligible impact on the U.S. labor market given

[11] Extension of eligibility for employment authorization to H–4 dependent children is beyond the scope of this proposed rule, but in any event limiting eligibility to H–4 dependent spouses is consistent with statutory authorities relating to other nonimmigrant employment categories (E–1/E–2, L–1), that allow employment authorization for dependent spouses only. *See* INA section 214(c)(2)(E), (e)(6).

[12] *See Beach Commc'ns v. FCC,* 508 U.S. 307, 316 (1993) (observing that policymakers ''must be allowed leeway to approach a perceived problem incrementally'').

[13] This estimate only includes filers who may obtain work authorization for the first time under this proposed rule, and does not include H–4 spouses who will subsequently file an application for renewal of their employment authorization. The actual number of applicants under the proposed regulatory section has the potential to increase as the initial employment authorization documents expire, and the applicant pool includes first time filers as well as renewal filers. There is also no prohibition for H–4 nonimmigrants with pending adjustment of status applications to rely on proposed 8 CFR 274a.12(c)(26) instead of 8 CFR 274a.12(c)(9) as the designated category under which they apply for employment authorization, which may also increase the number of people filing under the proposed regulation, without actually increasing the number of individuals authorized to work in the United States.

the size of the U.S. civilian work force. Furthermore, this proposal is simply accelerating the time frame for when these H–4 dependent spouses would be eligible to enter the labor market, because they would become eligible for employment authorization when an immigrant visa number becomes available to the H–1B principal and the H–1B dependent spouse files an application for adjustment of status.

IV. Proposed Changes

This rule proposes to amend DHS's regulations at 8 CFR 214.2(h)(9)(iv) and 274a.12(c) to extend eligibility for employment authorization to H–4 dependent spouses of H–1B nonimmigrants if the H–1B nonimmigrants have an approved Form I–140 employment-based immigrant visa petition or have been granted status under sections 106(a) and (b) of AC21.

A. Amendments to 8 CFR 214.2(h)(9)(iv)

Currently, 8 CFR 214.2(h)(9)(iv) provides that neither spouses nor children of H nonimmigrants, ''may accept employment unless he or she is the beneficiary of an approved petition filed on his or her behalf and has been granted a nonimmigrant classification authorizing his or her employment.'' To extend eligibility for employment authorization to H–4 dependent spouses of H–1B nonimmigrants with an approved Form I–140 petition or H–4 dependent spouses of H–1B nonimmigrants granted extensions of stay under sections 106(a) and (b) of AC21, DHS is proposing to amend 8 CFR 214.2(h)(9)(iv) by adding an exception for these H–4 spouses. Under this rule, eligible H–4 spouses seeking employment authorization under the exception would be required to file an Application for Employment Authorization (Form I–765 or successor form) and the required fee, with USCIS.

To obtain H–4-based employment authorization, DHS is proposing in this rule that along with filing the Application for Employment Authorization, the H–4 dependent spouse also would be required to submit documentation establishing either that the H–1B principal has an approved Form I–140, or that the H–4 dependent spouse's current H–4 admission or extension of stay was approved pursuant to the principal H–1B nonimmigrant's admission or extension of stay based on section 106(a) and (b) of AC21. *Id.* DHS anticipates that such documentary evidence could include:

1. Evidence that the principal H–1B nonimmigrant is the beneficiary of an approved Form I–140; or

2. Evidence that the principal H–1B nonimmigrant's Labor Certification Application or I–140 petition has been pending for more than 365 days, or evidence that the H–1B principal is the beneficiary of an unexpired Labor Certification Application that was filed more than 365 days ago, along with copies of documentation showing that the principal H–1B nonimmigrant has been in H–1B nonimmigrant status beyond 6 years (e.g., passport, prior Forms I–94, current and prior Forms I–797, copies of pay stubs); and

3. Copy of the H–4 dependent spouse's current approval notice of stay or Form I–94 evidencing admission as an H–4 nonimmigrant pursuant to the H–1B nonimmigrant's approved extension of stay based on sections 106(a) and (b) of AC21.

4. Secondary evidence may be considered in lieu of the evidence listed above, such as, but not limited to: an attestation by the H–1B nonimmigrant regarding his or her AC21 sections 106(a) and (b)-based extension of stay or I–140 petition approval, petition receipt numbers, or copies of any relevant petitions or receipt notices.

Rather than naming specific documentary evidence in this rule, DHS has determined that it would be more appropriate to allow for flexibility in the types of evidence that may be submitted. As a result, DHS is proposing a general eligibility standard in the regulatory text under the proposed 8 CFR 214.2(h)(9)(iv), and plans to provide examples of acceptable documentary evidence, such as that listed above, in the form instructions for the Application for Employment Authorization, Form I–765 (or successor form).

In addition, DHS's proposed revisions to 8 CFR 214.2(h)(9)(iv) include clarifying amendments to the current text. DHS has determined that the language in this paragraph providing that spouses and children of H–1B nonimmigrants are not authorized to work unless they obtain such authorization under a different nonimmigrant classification is potentially confusing. DHS is proposing to remove the reference to employment authorization under a different nonimmigrant classification. H–4 dependents may obtain employment authorization on other bases than a different nonimmigrant classification. For example, H–4 dependents may qualify for employment authorization as adjustment of status applicants. This rule proposes to clarify the text by providing that H–4 spouses are ineligible for employment authorization on the basis of their H–4 nonimmigrant status unless one of the exceptions proposed by this rule applies.

B. Amendments to 8 CFR 274a.12(c)

To conform to the proposed amendments to 8 CFR 214.2(h)(9)(iv), DHS also is proposing an amendment to 8 CFR 274a.12(c), which lists classes of aliens eligible for employment authorization. This amendment would add a new class of employment authorization-eligible aliens: those H–4 dependent spouses described as eligible for employment authorization in proposed 8 CFR 214.2(h)(9)(iv). Specifically, the proposed amendment to 8 CFR 274a.12 would list a new class of nonimmigrants eligible to apply for employment authorization: H–4 nonimmigrant spouses who (1) have been admitted or granted extensions of stay and whose H–1B nonimmigrant principal spouse is the beneficiary of an approved Form I–140; or (2) are in an authorized period of stay pursuant to sections 106(a) and (b) of AC21. *See* proposed 8 CFR 274a.12(c)(26). Therefore, under this proposed rule, an H–4 spouse would not be authorized for employment until USCIS approves, as a matter of discretion, the Application for Employment Authorization and issues an Employment Authorization Document (EAD).

The EAD, currently issued on Form I–766, contains the individual's photograph and serves as evidence of employment authorization. The period of employment authorization, reflected on the card, would be determined at the discretion of USCIS. *See* proposed 8 CFR 274a.12(c)(26). Generally, USCIS issues EADs with a one-year validity period. DHS has determined that EADs valid for two years may be issued in cases where an individual has a pending adjustment application (i.e. filed an Application to Register Permanent Resident or Adjust Status, Form I–485), but are unable to adjust status because an immigrant visa number is not currently available.[14] USCIS is considering a validity period of up to two years for eligible H–4 dependents. This would be consistent with the validity period for employment authorization extended to E–1/E–2 and L–1 spouses. USCIS could not grant a period of employment authorization that exceeds the period of stay. Before employment authorization expires, the H–4 dependent would have to apply to renew employment authorization if he

[14] The announcement of USCIS' issuance of two-year EADs is available at *http://www.uscis.gov/archive/archive-news/uscis-issue-two-year-employment-authorization-documents.*

or she remains in an H–4 nonimmigrant status that is eligible for employment authorization, find another basis for employment authorization, or discontinue working.

To maintain continuous work authorization, an EAD card holder eligible for a renewal EAD may file a new Application for Employment Authorization up to 120 days prior to the expiration date of his or her current EAD. An EAD renewal may be filed concurrently with a request for extension of status.

V. Statutory and Regulatory Requirements

A. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. As a result, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

B. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. 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 companies to compete with foreign-based companies in domestic and export markets.

C. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

DHS proposes to amend its regulations to allow certain H–4 dependent spouses to apply for employment authorization. This rule proposes to extend the availability of employment authorization only to the H–4 spouses of H–1B nonimmigrant workers who have an approved Immigrant Petition for Alien Worker, Form I–140, and to H–4 spouses of H–1B nonimmigrant workers who have been admitted or granted extensions of their stay in the United States under sections 106(a) and (b) of AC21.

1. Summary

Currently, USCIS does not issue work authorization to H–4 dependent nonimmigrants. To obtain work authorization, the H–4 dependent generally must have a pending Application to Register Permanent Resident Status or Adjust Status or have changed status to another nonimmigrant classification that permits employment. AC21 provides for authorized stay and employment authorization beyond the typical six-year limit for H–1B nonimmigrants who are seeking permanent residence. The proposed rule would offer employment authorization for H–4 spouses of H–1B nonimmigrants if the H–4 nonimmigrant is granted an extension of stay pursuant to the authorized extension of stay of the H–1B nonimmigrant spouse under AC21, or is the spouse of an H–1B nonimmigrant who is the beneficiary of an approved Immigrant Petition for Alien Worker. DHS estimates the current population of H–4 spouses that would be eligible for employment authorization under the proposal would initially be 100,600 after taking into account the backlog of those with approved or likely to be approved immigrant worker petitions but who are unable to adjust. DHS has assumed that those H–4 spouses in the backlog population would file for employment authorization in the first year of implementation for ease of analysis. DHS estimates the flow of new H–4 spouses that would be eligible to apply for initial employment authorization in subsequent years to be 35,900 annually. DHS is unable to determine the filing volume of H–4 spouses that will need to renew their employment authorization documents under this proposal as they continue to wait for a visa to become available. Eligible H–4 spouses who wish to work in the United States must pay the $380 filing fee to USCIS, provide two passport-style photos, and incur the estimated 3 hour and 25 minute opportunity cost of time burden associated with filing an Application for Employment Authorization (Form I–765 or successor form). After monetizing the expected opportunity cost and combining it with the filing fee [15] and estimated cost to provide two passport-style photos, an eligible H–4 dependent spouse applying for employment authorization would face a total cost of $435.67.

The total maximum anticipated annual cost to H–4 spouses applying for initial employment authorization in Year 1 is estimated at $43,828,402 (non-discounted), and $15,640,553 (non-discounted) in subsequent years. The 10-year discounted cost of this rule to H–4 spouses applying for employment authorization is $136,196,483 at 7% and $160,783,933 at 3%. Table 2 shows the maximum anticipated estimated costs expected over a 10-year period of analysis for the estimate of 100,600 applicants for initial employment authorization, and the 35,900 applicants expected to file for initial employment authorization annually in subsequent years.

TABLE 2—TOTAL COSTS OF INITIAL EMPLOYMENT AUTHORIZATION FOR CERTAIN H–4 DEPENDENT SPOUSES 10-YR. PRESENT VALUE ESTIMATES AT 3% AND 7%

[$Millions]

	Year 1 estimate (100,600 applicants)	Sum of years 2–10 (35,900 applicants annually)	Total over 10-year period of analysis [16]
3% Discount Rate:			
Total Costs Incurred by Filers @3%	$42.6	$118.2	$160.8

[15] The filing fee is assumed to be a reasonable approximation for the Department's costs of processing the application.

TABLE 2—TOTAL COSTS OF INITIAL EMPLOYMENT AUTHORIZATION FOR CERTAIN H–4 DEPENDENT SPOUSES 10-YR. PRESENT VALUE ESTIMATES AT 3% AND 7%—Continued

[$Millions]

	Year 1 estimate (100,600 applicants)	Sum of years 2–10 (35,900 applicants annually)	Total over 10-year period of analysis [16]
7% Discount Rate: Total Costs Incurred by Filers @7%	41.0	95.2	136.2
Qualitative Benefits	This rule is intended to remove the disincentive to pursue the immigration process due to the potentially long wait for available employment-based immigrant visas for many H–1B nonimmigrant families. Also, this rule will encourage H–1B skilled workers who have already taken steps to become lawful permanent residents to not abandon their efforts to acquire lawful permanent residence because their H–4 spouse is unable to work. By encouraging the H–1B workers to continue in their pursuit of becoming LPRs, this rule would result in minimizing disruptions to petitioning U.S. employers. Eligible H–4 spouses who participate in the labor market will benefit financially. We also anticipate that the socio-economic benefits will assist the family in more easily integrating into American society.		

2. Purpose of the Proposed Rule

According to reports prepared by the DHS Office of Immigration Statistics, in Fiscal Year (FY) 2012 a total of 1,031,631 persons became lawful permanent residents (LPRs) in the United States.[17] The majority of new lawful permanent residents (53 percent) were already living in the United States and adjusted status to obtain lawful permanent residence. Employment-based immigrant visas accounted for 14 percent of the total lawful permanent resident flow, and 26 percent of total LPRs that adjusted status in FY 2012. In FY 2012, there were a total of 143,998 LPRs admitted under employment-based preference visa categories. Among those that became LPRs under employment-based preference categories in FY 2012, ''priority workers'' (first preference or EB–1) accounted for 27 percent; ''professionals with advanced degrees'' (second preference or EB–2) accounted for 35 percent; and ''skilled workers, professionals, and other workers'' (third preference or EB–3) accounted for 27 percent.[18] H–1B nonimmigrant workers seeking to adjust status to lawful permanent residence would most likely adjust under EB–2 or EB–3 preference categories, with a much smaller amount qualifying under EB–1. As of April 2014, all employment-based preference categories are current and have visas available *except* for Chinese and Indian nationals seeking admission under the second preference category and individuals seeking admission under the third preference category.[19] The employment-based categories under which H–1B workers typically qualify to pursue lawful permanent resident status are the very categories that are oversubscribed.[20] In many cases, the timeframe associated with seeking lawful permanent residence is lengthy, extending well beyond the 6-year period of stay allotted for by the H–1B nonimmigrant visa classification. As a result, retention of highly educated and highly skilled nonimmigrant workers can be problematic. Retaining highly skilled persons who intend to acquire lawful permanent resident status is important when considering the contributions of these individuals to the U.S. economy, including advances in entrepreneurial and research and development endeavors, which are highly correlated with overall economic growth and job creation. By some estimates, immigration was responsible for one third of the explosive growth in patenting in past decades, and these innovations contributed to increasing U.S. GDP by 2.4 percent.[21] In addition, over 25 percent of tech companies founded in the United States from 1995 to 2005, the chief executive or lead technologist was foreign-born.[22] Likewise, the Kauffman Foundation reported that immigrants are more than twice as likely to start a business in the United States as the native-born and a report by the Partnership for a New American Economy found that more than 40 percent of 2010 Fortune 500 companies were founded by immigrants or their children.[23] Additionally, in March 2013, the House Judiciary Subcommittee held a hearing on Enhancing American Competitiveness Through Skilled Immigration, providing

[16] Total column may not sum due to rounding.

[17] *See* DHS Office of Immigration Statistics, Annual Flow Report, U.S. Legal Permanent Residents: 2012 (March 2013), available at: *http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2012_2.pdf.*

[18] *Id.*

[19] *See* Department of State (DOS) Bureau of Consular Affairs, April 2014 Visa Bulletin (March 7, 2014), available at *http://travel.state.gov/content/visas/english/law-and-policy/bulletin/2014/visa-bulletin-for-april-2014.html.*

[20] *See* Wadhwa, Vivek, et al., *Intellectual Property, the Immigration Backlog, and a Reverse Brain-Drain—America's New Immigrant Entrepreneurs, Part III, Center for Globalization, Governance & Competitiveness* (Aug. 2007), available at *http://www.cggc.duke.edu/documents/IntellectualProperty_theImmigrationBacklog_andaReverseBrainDrain_003.pdf.* Note: The report examined the 2003 cohort of employment-based immigrants and showed that 36.8 percent of H–1B nonimmigrants that adjust status do so through the EB–3 category and another 28 percent do so through the EB–2 category, while only 4.62 percent adjust through the EB–1 category.

[21] *See* National Bureau of Economic Research, ''How Much Does Immigration Boost Innovation?'' September 2008, available at: *http://www.nber.org/papers/w14312.*

[22] *See* Wadhwa, Vivek, et al., *Intellectual Property, the Immigration Backlog, and a Reverse Brain-Drain—America's New Immigrant Entrepreneurs, Part III, Center for Globalization, Governance & Competitiveness* (Aug. 2007), available at *http://www.cggc.duke.edu/documents/IntellectualProperty_theImmigrationBacklog_andaReverseBrainDrain_003.pdf*; *see also* Wadhwa, Vivek, et al., ''America's New Immigrant Entrepreneurs.'' Report by the Duke School of Engineering and the UC Berkeley School of Information (January 4, 2007) available at: *http://people.ischool.berkeley.edu/~anno/Papers/Americas_new_immigrant_entrepreneurs_I.pdf*; Preston, Julia, ''Work Force Fueled by Highly Skilled Immigrants,'' *N.Y. Times,* Apr. 15, 2010, available at: *http://www.nytimes.com/2010/04/16/us/16skilled.html?_r=1*

[23] *See* Fairlie, Robert. ''Kauffman Index of Entrepreneurial Activity: 1996–2012.'' The Ewing Marion Kauffman Foundation. April, 2013, available at: *http://www.kauffman.org/what-we-do/research/2013/04/kauffman-index-of-entrepreneurial-activity-19962012.* Partnership for a New American Economy, 2011, The ''New American'' Fortune 500, available at: *http://www.nyc.gov/html/om/pdf/2011/partnership_for_a_new_american_economy_fortune_500.pdf http://www.renewoureconomy.org/2011_06_15_1.*

several members of the business community an opportunity to provide their perspectives on immigration. The witnesses represented various industries, but underscored a unified theme: skilled immigrants are contributing significantly to U.S. economic competitiveness and it is in our national interest to retain these talented individuals.[24]

This rule is intended to remove the disincentive to pursue the immigration process due to the potentially long wait for available immigrant visas for many H–1B nonimmigrant families. Also, this rule will encourage those H–1B nonimmigrant workers who have already started the process to not abandon their efforts to acquire lawful permanent residence because their H–4 dependent spouse is unable to work.

3. Volume Estimate

Due to current data limitations, we are unable to precisely track the population of H–4 dependent spouses tied to H–1B principals who have started the immigration process by having an approved Immigrant Petition for Alien Worker (Form I–140) petition or who have been admitted or granted an extension of their stay under the provisions of AC21. DHS databases are currently ''form-centric'' rather than ''person-centric.'' As USCIS transforms its systems to a more fully electronic process, there will be a shift from application and form-based databases to one that tracks information by the applicant or petitioner.

In an effort to provide a reasonable approximation of the number of H–4 dependent spouses who would be eligible for employment authorization, we have compared historical immigrant data on persons obtaining lawful permanent resident status against employment-based immigrant demand estimates. Based on current visa availability, we believe that dependent spouses of H–1B nonimmigrants who are seeking employment-based visas under the 2nd or 3rd preference categories would be the group most impacted by the provisions of this rule. However, our estimates of the backlog population indicate there may be some H–1B nonimmigrants with an approved Form I–140 that are still seeking employment-based visas under the first preference, so this analysis will examine this group as well. In addition, in line with the goals of this proposal and AC21 and based on immigration statistics, we assume that the majority of H–4 spouses who would be eligible for this provision are residing in the United States and would seek to acquire permanent resident status by applying to adjust status with USCIS rather than by departing for an indeterminate period to pursue consular processing of an immigrant visa application overseas. This assumption is supported by immigration statistics on those obtaining LPR status. In FY 2012, there were a total of 143,998 employment-based immigrant visa admissions, of which 126,016 (or 87.5 percent) obtained LPR status through adjustment of status.[25] As such, this analysis will limit the focus and presentation of impacts based on the population seeking to adjust status to that of an LPR under an employment-based preference category.

DHS is proposing to allow spouses of H–1B nonimmigrants who are the beneficiaries of an approved Immigrant Petition for Alien Worker (Form I–140) and spouses of H–1B nonimmigrants who are extending stay under provisions of AC21 to be eligible for work authorization. As mentioned in the previous paragraph, we assume the majority of H–4 spouses that would be impacted by the proposal would be those that are physically present in the United Status and intend to adjust status.

Since DHS is proposing to extend work authorization to H–4 dependent spouses tied to H–1B nonimmigrant workers with an approved Form I–140, regardless of how long they have been in H–1B status and waiting for an employment-based immigrant visa to become available, DHS assumes the volume of H–4 dependent spouses newly eligible for employment authorization would have two estimates: 1) an immediate, first year estimate due to the current backlog of LPR petitions; and 2) an annual estimate based on future demand to immigrate under employment-sponsored preference categories. The proposal to extend eligibility for work authorization to H–4 dependent spouses is ultimately tied to the actions taken by the H–1B nonimmigrant worker; therefore, the overall volume estimate is based on the population of H–1B nonimmigrants who have taken steps to acquire lawful permanent resident status under employment-based preference categories.

DHS has estimated the number of persons waiting for LPR status in the first through third employment-based preference categories as of September 2012. In this analysis, the estimated number of persons waiting for the availability of an immigrant visa is referred to as the ''backlog,'' and includes those with an approved Form I–140 and those with a pending Form I–140 that is likely to be approved as of September 2012.[26] Currently, the first preference employment-based (EB–1) visa category is not oversubscribed. Therefore, DHS believes that the majority of H–4 dependent spouses applying for employment authorization under this rule would be those whose H–1B principal will be seeking to adjust status under the second or third preference. However, since there are persons with approved or pending Immigrant Petitions for Alien Worker (Form I–140) in the first-preference category, and because the provisions of AC21 cover these individuals, DHS will include them as part of the ''backlog'' estimate.[27] Additionally, DHS has examined detailed characteristics about the LPR population for FY 2008–FY 2011 to further refine this estimate.[28]

[24] *See* Enhancing American Competitiveness through Skilled Immigration: Hearing before the H. Judiciary Subcomm. On Immigration, 113th Cong. 15 (2013), available at *http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg79724/pdf/CHRG-113hhrg79724.pdf.*

[25] *See* DHS Office of Immigration Statistics, 2012 Yearbook of Immigration Statistics, Table 6, available at *http://www.dhs.gov/yearbook-immigration-statistics-2012-legal-permanent-residents* (compare statistics listed under ''Adjustment of Status'' and ''New Arrivals''). *Note:* At the time of drafting, the full FY 12 Yearbook of Immigration Statistics was not published; however, DHS OIS had released certain sections of the report in advance of publication which can be found on the Web site cited.

[26] Source for backlog estimation: USCIS Office of Policy & Strategy analysis of data obtained by DHS Office of Immigration Statistics. Analysis based on CLAIMS3 data captured in approved Immigrant Petition for Alien Worker (Form I–140) and Application to Register Permanent Residence or Adjust Status (Form I–485) records.

[27] Despite the fact that a beneficiary is in a preference category where a visa is immediately available, and the beneficiary is able to apply to adjust status to an LPR immediately upon I–140 petition approval, our data suggests that it takes 12 to 18 months on average from the approval of the I–140 petition with current priority dates to obtain LPR status. DHS believes this is a natural lag time due to choices made by the applicant and is not a result of USCIS processing times. Source: *https://egov.uscis.gov/cris/processTimesDisplayInit.do.* Data reported as of January 31, 2014 indicate that the processing times for employment-based adjustment applications was between 4–6 months. As previously explained in the preamble, when an employment-based immigrant visa category is undersubscribed and a visa is immediately available, a nonimmigrant worker who is a beneficiary of an approved I–140 petition filed under that category and his or her dependents are eligible to file an application for adjustment of status (currently USCIS Form I–485). While that application is pending, the spouse is eligible for employment authorization.

[28] Source: USCIS Office of Policy & Strategy analysis of data obtained by DHS Office of Immigration Statistics. Analysis based on CLAIMS3 data captured in Application to Register Permanent Residence or Adjust Status (Form I–485) records approved in the FY 2008–11 periods. Note: DHS only considered detailed data characteristics

Continued

We have laid out each of our assumptions and methodological steps for both the backlog and annual estimates of H–4 dependent spouses who would be eligible to apply for employment authorization. Again, the estimates are based on the actions and characteristics (e.g. whether the H–1B reports being married) of the H–1B principal because the H–4 dependent spouse's employment eligibility would be tied to the steps taken on behalf of the H–1B principal to acquire LPR status under an employment-based preference category.

Backlog Estimate

The estimate of the number of principal individuals with either an approved Form I–140 or with a Form I–140 that is likely to be approved and waiting for an immigrant visa in the EB–1, EB–2, and EB–3 categories is shown in Table 3. Importantly, the number of principal workers shown in Table 3 is not only limited to those individuals that are currently in H–1B nonimmigrant status. The counts in Table 3 includes aliens who are currently in H–1B and other nonimmigrant statuses, as well as those seeking to immigrate under employment-based preferences who are currently abroad. This analysis will use recent LPR data as a proxy to refine the estimate of principal workers in the backlog that DHS expects to be H–1B nonimmigrants seeking to adjust status.

TABLE 3—DHS ESTIMATE OF BACKLOG (PRINCIPALS ONLY) AS OF SEPTEMBER 2012

Preference category	Principal workers
EB–1	10,600
EB–2	87,200
EB–3	120,100

DHS is unable to determine precisely the number of principal workers in the backlog who would be impacted by this proposed rule. Instead, DHS examined detailed statistics of those obtaining LPR status from FY 2008–2011, and used this information as a proxy to arrive at a reasonable approximation of the number of H–4 dependent spouses that would be impacted by this rule.[29] Table 4 presents the assumptions and steps taken to determine the upper-bound estimate of H–4 dependent spouses who are represented in the backlog and would likely be eligible for work authorization under this proposal.

TABLE 4—STEPS TAKEN TO ARRIVE AT THE UPPER-BOUND ESTIMATE OF H–4 SPOUSES OF H–1B NONIMMIGRANTS WHO ARE IN THE ''BACKLOG''

Assumption and/or step	EB–1	EB–2	EB–3	Total
(1) Principal Workers in the Backlog (as of September 2012)	10,600	87,200	120,100	217,900
(2) Historical Percentage of Principal Workers who Obtained LPR Status through Adjustment of Status (AOS), average of FY 08–FY11 data	95.9%	98.3%	91.5%	.....
(3) Estimated Proportion of the Backlog that DHS Assumes Would Adjust Status (rounded)	10,165	85,718	109,892	205,775
(4) Historical Percentage of those that Adjusted Status that were H–1B nonimmigrants, average of FY 08–FY11 data	34.4%	31.0%	56.8%	.....
(5) DHS Estimated Proportion of the Assumed H–1B Nonimmigrants Who Adjusted Status (rounded)	3,497	26,573	62,419	92,489
(6) Historical Percentage of H–1B Principal Workers that Adjusted Status that Reported being Married, average of FY 08–FY11 data	79.4%	72.1%	68.5%	.....
(7) DHS Estimated Proportion of the Assumed H–1B Nonimmigrants Who Adjusted Status that Report Being Married (rounded)	2,777	19,159	42,757	64,693
(8) Final Estimate of H–1B Nonimmigrants in the Backlog Who would be Impacted by the Proposed Rule (Rounded Up)	.....	.....	.....	64,700

As shown in Table 4, DHS estimates there are approximately 64,700 H–1B nonimmigrant workers currently in the backlog for an immigrant visa under the first through third employment-based preference categories. Accordingly, DHS assumes by proxy that there could be as many as 64,700 H–4 spouses of H–1B nonimmigrant workers currently in the backlog who could be initially eligible for an EAD under this proposal. DHS does not have a similar way to parse out the backlog data for those classified as ''dependents'' to capture only those that are spouses versus children. Likewise, DHS recognizes the limitation of the estimated proportion of the backlog that could be impacted by this proposed rule since there is no way to further refine this estimate by determining the immigration or citizenship status of the spouse of H–1B nonimmigrant workers that report being married. For instance, the spouse of the H–1B nonimmigrant worker could reside abroad, or could himself or herself be a U.S. citizen, LPR, or in another nonimmigrant status that confers employment eligibility. Due to the foregoing reasons, DHS believes that the estimate of 64,700 represents an upper-bound estimate of H–4 dependent spouses of H–1B nonimmigrant workers currently waiting for an immigrant visa in order to obtain employment-based LPR status.

Annual Demand Estimate

The annual demand flow of H–4 dependent spouses who would be eligible to apply for initial work authorization under this proposed rule is based on: (1) the number of approved Immigrant Petitions for Alien Worker (Forms I–140) where the principal beneficiary is currently in H–1B status; (2) the number of Immigrant Petitions for Alien Worker (Forms I–140) pending for more than 365 days where the principal beneficiary is currently in H–1B nonimmigrant status; and (3) the number of labor certification applications pending with DOL for more than 365 days where the principal beneficiary is currently in H–1B nonimmigrant status. Section 106 (a)

through the period FY 11 because at the time of drafting, detailed demographic data for LPRs adjusting in FY 12 data was not yet released by the DHS Office of Immigration Statistics.

[29] *Id.*

and (b) of AC21 allows for extensions of stay for an H–1B nonimmigrant who is the beneficiary of a labor certification application or of an employment-based immigrant visa petition (Form I–140) that has been pending for at least 365 days prior to reaching the end of the sixth year of his or her H–1B nonimmigrant status. Permanent labor certification applications are adjudicated by the Department of Labor; as of January 26, 2014, DOL's processing time for initial applications was on average approximately 2 months.[30] Similarly, average USCIS processing times for Form I–140 petitions as of November 30, 2013 was 4 months.[31] Nevertheless, petitions can be pending for a number of reasons with USCIS for longer than 365 days before a final decision is rendered.[32] The number of Form I–140 petitions where the beneficiary has a current nonimmigrant classification of H–1B pending with USCIS for more than 365 days is presented in Table 5. Unfortunately, DHS has no way of determining how many of the listed totals were pending for at least 365 days prior to reaching the end of the sixth year of H–1B nonimmigrant status, so the 5-year estimate used in annual projections represents an upper-bound estimate.

TABLE 5—FORMS I–140 FILED ON BEHALF OF H–1B NONIMMIGRANTS, NUMBER OF APPROVED AND NUMBER PENDING FOR GREATER THAN 365 DAYS [33]

Fiscal year	Approved	Pending >365 days	Total
2008	41,513	7,893	49,406
2009	26,860	1,035	27,895
2010	48,511	1,764	50,275
2011	54,363	2,033	56,396
2012	45,732	592	46,324
5-Year Average	43,396	2,663	46,059

The number of labor certifications where the beneficiary has a current nonimmigrant classification of H–1B pending with DOL for more than 365 days is presented in Table 6.

TABLE 6—LABOR CERTIFICATION APPLICATIONS FOR H–1B BENEFICIARIES, NUMBER PENDING FOR GREATER THAN 365 DAYS [34]

FY of adjudication	Certified	Denied	Withdrawn	Total
2008	292	139	101	532
2009	1,388	632	215	2,235
2010	3,697	1,719	480	5,896
2011	3,197	1,947	351	5,495
2012	130	137	30	297
5-Year Average	1,741	915	235	2,891

Over FY 2008–2012, DOL adjudicated an average of 2,891 labor certification applications that were pending for over 365 days where the beneficiary is currently in H–1B status. Again, neither DHS nor DOL has any way of determining how many of the listed totals were pending for at least 365 days prior to reaching the end of the sixth year of H–1B nonimmigrant status, so the calculated average of DOL applications in Table 6 represents an upper-bound estimate. Thus, the baseline average projection we will use for purposes of this analysis is 48,950.[35]

To refine the future annual projection estimates, DHS has chosen to estimate the proportion of Immigrant Petitions for Alien Worker (Forms I–140) and labor certification applications filed in the first through third employment-based preference categories. As previously discussed, first preference employment-based category and certain second preference employment-based categories (all those except for beneficiaries that are chargeable as nationals of China or India) are not currently oversubscribed. Although individuals in such categories are immediately eligible to file an application to adjust status, which provides eligibility to apply for employment authorization while the adjustment application is pending, because of the time lag between when an I–140 petition is approved and obtaining LPR status, we choose to include these preference categories in our annual flow estimates. Additionally, since DHS has already limited the historical counts in Table 5 to those Form I–140s filed where the beneficiary's current nonimmigrant category is H–1B, DHS has made the

[30] Source: DOL Employment & Training Administration's iCert Visa Portal System's ''PERM & PW Processing Times'' available at: *http://icert.doleta.gov/*. Data reported as of January 26, 2014, indicated that analyst were currently adjudicating labor certification applications with a priority date of November 2013. Note: This Web site's processing times are updated continuously.

[31] Source: ''USCIS Processing Time Information'' for the Texas Service Center and Nebraska Service Center for Form I–140 available at: *https://egov.uscis.gov/cris/processTimesDisplay.do*. Data reported as of January 31, 2014 indicated that the processing timeframes for I–140 petitions was between 4–5 months. Note: The Web site informing the public of the USCIS processing times is updated continuously.

[32] For example, petitions could be pending beyond one year because USCIS issued a request for evidence or the petition is undergoing additional investigations.

[33] Source for approval and pending counts: USCIS Office of Performance and Quality, Data and Analysis Reporting Branch (DARB). ''Approval'' and ''Pending'' petition counts reported by DARB after querying the CIS Consolidated Operational Repository System. Source for 5-year average: author's calculation.

[34] Source: USDOL Employment and Training Administration Office of Foreign Labor Certification. Source for 5-year average: author's calculation.

[35] Calculation: 46,059 (calculated annual average for DHS in Table 5) + 2,891 (calculated annual average for DOL in Table 6) = 48,950.

assumption that the petitions shown in Tables 5 and 6 represent H–1B nonimmigrant workers who are physically present in the United States and intend to adjust status. As shown in Table 4, the historical proportion of H–1B nonimmigrants obtaining LPR status under EB–1, EB–2, and EB–3 categories that reported being married was 79.4 percent, 72.1 percent, and 68.5 percent, respectively, resulting in an average of 73.3 percent. Applying this percentage to the baseline average calculated earlier of Form I–140 petitions filed that were approved or pending for more than 365 days and labor certification applications that were pending for more than 365 days, results in an annual flow estimate of 35,900 (rounded).[36] Again, for the same reasons discussed previously, this is an upper-bound estimate of H–4 dependent spouses who could be eligible to apply for employment authorization under the proposed rule.

Therefore, DHS estimates that this proposed rule, if finalized, would result in a maximum initial estimate of 100,600 [37] H–4 dependent spouses who would be newly eligible to apply for employment authorization in the first year of implementation, and an annual flow of as many as 35,900 that are newly eligible in subsequent years.

4. Costs

Filer Costs

The proposed amendment would permit certain H–4 dependent spouses to apply for employment authorization in order to work in the United States. Therefore, only H–4 dependent spouses who decide to seek employment while residing in the United States would face the costs associated with obtaining employment authorization. The costs of the rule would stem from filing fees and the opportunity costs of time associated with filing an Application for Employment Authorization (Form I–765 or successor form).

The current filing fee for the Application for Employment Authorization (Form I–765) is $380. The fee is set at a level to recover the processing costs to DHS. Applicants for employment authorization are required to submit two passport-style photos along with the application, which is estimated to cost $20.00 per application based on Department of State estimates.[38] USCIS estimates the time burden of completing this application to be 3 hours and 25 minutes. We recognize that H–4 dependent spouses do not currently participate in the U.S. labor market, and, as a result, are not represented in national average wage calculations. We chose to use the minimum wage to estimate the opportunity cost consistent with methodology employed in other USCIS rulemakings when estimating time burden costs for those who are not work authorized.

The Federal minimum wage is currently $7.25 per hour.[39] In order to anticipate the full opportunity cost to petitioners, we multiplied the average hourly U.S. wage rate by 1.44 to account for the full cost of employee benefits such as paid leave, insurance, and retirement for a total of $10.44 per hour.[40] H–4 dependent spouses who decide to file an Application for Employment Authorization (Form I–765 or successor form) would face an opportunity cost of time $35.67 per applicant.[41] Combining the opportunity costs with the fee—and estimated passport-style photo costs, the total cost per application would be $435.67. In the first year of implementation, we estimate the total maximum cost to H–4 spouses that could be eligible to file for an initial employment authorization would be a much as $43,828,402 (non-discounted) and $15,640,553, annually in subsequent years. The 10-year discounted cost of this rule to filers of initial employment authorizations is $136,196,483 at 7%, while the 10-year discounted cost to filers is $160,783,933 at 3%. Importantly, in future years the applicant pool of H–4 spouses filing for employment authorization will include both those initially eligible and those that will seek to renew their EAD as they continue to wait for a visa to become available. DHS could not project the number of renewals since the volume of H–4 spouses that would need to renew is dependent upon visa availability dates, which differ based on the preference category and the country of nationality. We welcome public comment on methods to estimate renewals given the lack of information needed to reasonably project the volume of H–4 spouses that would need to renew their employment authorization in future years. H–4 spouses needing to renew an EAD under the proposed provisions would face a per application cost of $435.67.

Government Costs

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including administrative costs and services provided without charge to certain applicants and petitioners. *See* INA section 286(m), 8 U.S.C. 1356(m). USCIS has established the fee for the adjudication of Applications for Employment Authorization (Form I–765 or successor form) in accordance with this requirement. As such, there are no additional costs to the Federal Government resulting from this proposed rule.

Impact on States

Currently, once a visa is available, H–1B nonimmigrants and their dependent family members are able to apply for adjustment of status to that of a lawful permanent resident. Upon filing an adjustment of status application, the H–4 dependent spouse is eligible to request employment authorization. This rule, if finalized, often would significantly accelerate the timeframe by which qualified H–4 dependent spouses are eligible to enter the U.S. labor market since they would be eligible to request employment authorization well before they are eligible to apply for adjustment of status. DHS believes this proposal may encourage families to stay committed to the immigrant visa process during the often lengthy wait for employment-based visas whereas, otherwise, they may leave the United States. As such, DHS is presenting the geographical labor impact of this DHS proposal without factoring in the fact that these individuals would have been employment eligible at some point in the future. As mentioned previously, DHS estimates this rule could add as many as 100,600 additional persons to the U.S. labor force in the first year of implementation, and then as many as 35,900 additional persons annually in subsequent years. As of 2013, there were an estimated 155,389,000 people in the

[36] Calculation: 48,950 × 73.3 percent = 35,880.35 or 35,900 rounded to the nearest hundred.

[37] Calculation: Backlog of 64,700 plus annual demand estimate for married H–1Bs of 35,900.

[38] DOS estimates an average cost of $10 per passport photo in the Paperwork Reduction Act (PRA) Supporting Statement found under OMB control number 1450–0004. A copy of the Supporting Statement is found on Reginfo.gov at: *http://www.reginfo.gov/public/do/PRAView Document?ref_nbr=201102-1405-001* (see question #13 of the Supporting Statement); accessed January 28, 2014.

[39] U.S. Dep't of Labor, Wage and Hour Division. The minimum wage in effect as of July 24, 2009, available at: *http://www.dol.gov/dol/topic/wages/minimumwage.htm.*

[40] The calculation to burden the wage rate: $7.25 × 1.44 = $10.44 per hour. *See* Economic News Release, U.S. Dep't of Labor, Bureau of Labor Statistics, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (December 2012), available at *http://www.bls.gov/news.release/archives/ecec_03122013.htm* (viewed April 16, 2013).

[41] Calculation for opportunity cost of time: $10.44 per hour × 3.4167 hours (net form completion time) = $35.67.

U.S. civilian labor force.[42] Consequently, 100,600 additional available workers in the first year represents a fraction of a percent, 0.065%, of the overall U.S. civilian labor force (100,600/155,389,000 × 100 = 0.0647%).

The top five States where persons granted lawful permanent resident status choose to reside have been: California (20 percent), New York (14 percent), Florida (11 percent), Texas (9 percent), and New Jersey (5 percent).[43] While allowing certain H–4 dependent spouses the opportunity to work would result in a negligible increase to the overall domestic labor force, California, New York, Florida, Texas, and New Jersey may have a slightly larger share of additional workers compared with the rest of the United States. Based on weighted average proportions calculated from FY 2008–2012, and assuming the estimate for first year impacts of 100,600 additional workers were distributed following the same patterns, we would anticipate the following results: California would receive approximately 20,120 additional workers in the first year of implementation; New York would receive approximately 14,084 additional workers; Florida would receive approximately 11,066 additional workers; Texas would receive approximately 9,054 additional workers; and New Jersey would receive approximately 5,030 additional workers. To provide context, California had 18,597,000 persons in the civilian labor force in 2013.[44] The additional 20,120 workers who could be added to the Californian labor force as a result of this rule in the first year would represent one-tenth of a percent of that state's labor force (20,120/18,597,000 × 100 = 0.1082%).

5. Benefits

As previously mentioned, assuming this rule is finalized, these amendments would increase incentives of certain H–1B nonimmigrant workers who have begun the process of becoming lawful permanent residents to remain in and contribute to the U.S. economy as they complete this process. Providing the opportunity for certain H–4 dependent spouses to obtain employment authorization during this process would further incentivize principal H–1B nonimmigrants to not abandon their intention to remain in the United States while pursuing lawful permanent resident status. Retaining highly skilled persons who intend to become lawful permanent residents is important when considering the contributions of these individuals to the U.S. economy, including advances in entrepreneurial and research and development endeavors. As previously discussed, much research has been done to show the positive impacts on economic growth and job creation from high-skilled immigrants. In addition, the proposed amendments would bring U.S. immigration laws more in line with other countries that seek to attract skilled foreign workers. For instance, in Canada spouses of temporary workers may obtain an ''open'' work permit allowing them to accept employment if the temporary worker meets certain criteria.[45] As another example, in Australia, certain temporary work visas allow spousal employment.[46]

The proposal would result in direct, tangible benefits for the spouses that would be eligible to enter the labor market earlier than they would have otherwise been able to due to lack of visa availability. While there would be obvious financial benefits to the H–4 spouse and the H–1B nonimmigrant's family, there is also evidence that participating in the U.S. workforce and making gains in socio-economic attainment has a high correlation with smoothing an immigrant's integration into American culture and communities.[47]

Ultimately, the provisions in the proposed rule represent an interim convenience for certain H–4 dependent spouses who would otherwise not be allowed to work for up to many years until an immigrant visa became available, at which point they would be able to apply for employment authorization based on their application for adjustment of status. DHS welcomes public comment on whether this rule, by increasing the likelihood that an H–1B worker does not abandon the LPR process, provides an incentive to employers to begin the employment sponsorship process of an H–1B worker. In addition, DHS requests comments on other benefits of the rule to H–4 spouses, H–1B nonimmigrant familes seeking lawful permanent residence, and U.S. employers that have not been discussed.

6. Alternatives Considered

In addition to increasing the potential of retaining highly trained and skilled contributors to the U.S. economy, a concurrent goal of the proposed rule is to bolster U.S. competitiveness with regard to other countries that are principal users of skilled foreign workers. Benchmarking against other top immigrant receiving countries shows that many allow more liberal work authorization for spouses of principal nonimmigrant skilled workers.

One alternative considered by DHS was to permit employer authorization for all H–4 dependent spouses. As explained previously in Section III (C), DHS rejected that alternative. In enacting AC21, Congress was especially concerned with avoiding the disruption to U.S. businesses caused by the required departure of H–1B nonimmigrant workers (for whom the businesses intended to file employment-based immigrant visa petitions) upon the expiration of workers' maximum six-year period of authorized stay. *See* S. Rep. No. 106–260, at 15 (2000). DHS rejected this alternative as overbroad, since such an alternative would offer eligibility for employment authorization to those spouses of nonimmigrant workers who have not taken steps to demonstrate a desire to continue to remain in and contribute to the U.S. economy by seeking lawful permanent residence.

Another alternative considered was to limit employment eligibility to just those H–4 spouses of H–1B principal

[42] *See* News Release, United States Dep't of Labor, Bureau of Labor Statistics, Local Area Unemployment Statistics, Regional and State Unemployment—2013 Annual Averages, Table 1 ''Employment status of the civilian noninstitutional population 16 years of age and over by region, division, and state, 2012–13 annual averages'' (February 28, 2014), available at *http://www.bls.gov/news.release/archives/srgune_02282014.pdf.*

[43] DHS Office of Immigration Statistics, Annual Flow Reports, ''U.S. Legal Permanent Residents'' for 2008–2012, available at: *http://www.dhs.gov/publications-0#0.* Author calculated percentage distributions by State weighted over FY 2008–2012 (rounded).

[44] *See* News Release, U.S. Dep't of Labor, Bureau of Labor Statistics, Local Area Unemployment Statistics, Regional and State Unemployment–2013 Annual Averages, Table 1, Employment status of the civilian noninstitutional population 16 years of age and over by region, division, and state, 2012–13 annual averages (Feb. 28, 2014), available at: *http://www.bls.gov/news.release/archives/srgune_02282014.pdf.*

[45] *See* Canadian Government, Citizenship and Immigration Canada, Help Centre under Topic ''Work Permit—Can my spouse or common-law partner work in Canada?'', available at *http://www.cic.gc.ca/english/helpcentre/index-featured-can.asp#tab1* (last visited May 28, 2013).

[46] Australian Government, Dep't of Immigration and Citizenship, Employer Sponsored Workers, available at *http://www.immi.gov.au/skilled/specialist-entry/visa-options.htm.*

[47] *See* Jimenéz, Tomás. 2011. *Immigrants in the United States: How Well Are They Integrating into Society?* Washington, DC: Migration Policy Institute, available at: *http://www.migrationpolicy.org/research/immigrants-united-states-how-well-are-they-integrating-society; see also* Terrazas, Aaron. 2011. *The Economic Integration of Immigrants in the United States: Long- and Short-Term Perspectives.* Washington, DC: Migration Policy Institute, available at: *http://www.migrationpolicy.org/research/economic-integration-immigrants-united-states.*

nonimmigrants who extended their stay under the provisions of AC21. DHS estimates of this population are even less precise because DHS databases do not electronically track who is extending their stay under the provisions of AC21. DHS estimates the annual flow of those H–1B nonimmigrants who have a Form I–140 pending beyond 365 days with USCIS would be as many as 2,700. Based on the figures obtained from DOL, we estimate there could be an annual average of as many as 2,900 labor certification applications pending with DOL beyond 365 days. In addition, DHS estimates there could be approximately 7,000 persons annually that would be eligible under section 104 of AC21. This alternative would also result in some fraction of the backlog population being eligible for employment authorization in the first year after implementation, but DHS is unsure of what portion of the backlog population is extending under AC21. However, DHS believes that this alternative is too limiting and fails to recognize that other H–4 spouses also experience long waiting periods while on the path to lawful permanent residence.

D. Regulatory Flexibility Act

USCIS examined the impact of this rule on small entities under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(6). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business under the Small Business Act, 15 U.S.C. 632), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than fifty thousand people). DHS has considered the impact of this rule on small entities as defined by the RFA and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The individual H–4 dependent spouses to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). Accordingly, DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

E. 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 responsibilities 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 federalism summary impact statement.

F. Executive Order 12988

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

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. This rule proposes a revision to the Application for Employment Authorization (Form I–765), OMB Control Number 1615–0040.

USCIS is requesting comments on this information collection until July 11, 2014. When submitting comments on this information collection, your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization; Form I–765 Work Sheet.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–765; Form I–765WS. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form was developed for individual aliens to request employment authorization and evidence of that employment authorization. The form is being amended to add a new class of aliens eligible to apply for employment authorization: H–4 dependent spouses of H–1B nonimmigrants if the H–1B nonimmigrants are either the beneficiaries of an approved Immigrant Petition for Alien Worker or have been granted an extension of their authorized period of admission in the United States under sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), as amended by the 21st Century Department of Justice Appropriations Authorization Act. Supporting documentation demonstrating eligibility must be filed with the application. The form lists examples of relevant documentation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

- 1,891,823 responses related to Form I–765 at 3.42 hours per response;
- 594,602 responses related to Form I–765WS at .50 hours per response;
- 594,602 responses related to Biometrics services at 1.17 hours; and
- 1,891,823 responses related to Passport-Style Photographs at .50 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,408,932 total annual burden hours. This figure was derived by:

- Multiplying the number of Form I–765 respondents (1,891,823) × frequency of response (1) × 3.42 hours per response; plus
- Multiplying the number of Form I–765WS respondents (594,602) × frequency of response (1) × .50 hours; plus
- Multiplying the number of respondents from whom USCIS collects biometrics (594,602) × frequency of response (1) × 1.17 hours; plus
- Multiplying the number of respondents that provide Passport-Style Photographs (1,891,823) at .50 hours.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment,

Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, DHS is proposing to amend chapter I of title 8 of the Code of Federal Regulations as follows:

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a,1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

■ 2. Section 214.2 is amended by revising paragraph (h)(9)(iv) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(9) * * *

(iv) *H–4 dependents.* The spouse and children of an H nonimmigrant, if they are accompanying or following to join such H nonimmigrant in the United States, may be admitted, if otherwise admissible, as H–4 nonimmigrants for the same period of admission or extension as the principal spouse or parent. H–4 nonimmigrant status does not confer eligibility for employment authorization incident to status. An H–4 nonimmigrant spouse of an H–1B nonimmigrant may be eligible for employment authorization only if the H–1B nonimmigrant is the beneficiary of an approved Immigrant Petition for Alien Worker, or successor form, or the H–1B nonimmigrant's period of stay in H–1B status in the United States is authorized under sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act 2000 (AC21), Pub. L. 106–313, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273. To request employment authorization, an eligible H–4 nonimmigrant spouse must file an Application for Employment Authorization, or a successor form, in accordance with 8 CFR 274a.13 and the form instructions. Such Application for Employment Authorization must be accompanied by documentary evidence establishing eligibility, including evidence that the principal H–1B is the beneficiary of an approved Immigrant Petition for Alien Worker or has been provided H–1B status under sections 106(a) and (b) of AC21, as amended by the 21st Century Department of Justice Appropriations Authorization Act, the H–1B beneficiary is currently maintaining H–1B status, and the H–4 nonimmigrant spouse has been admitted to the United States as an H–4 nonimmigrant or granted an extension of H–4 status on that basis.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; Title VII of Public Law 110–229; 48 U.S.C. 1806; 8 CFR part 2.

■ 4. Section 274a.12 is amended by adding a new paragraph (c)(26), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(26) An H–4 nonimmigrant spouse of an H–1B nonimmigrant described as eligible for employment authorization in 8 CFR 214.2(h)(9)(iv).

* * * * *

Jeh Charles Johnson,

Secretary.

[FR Doc. 2014–10734 Filed 5–9–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0766; Directorate Identifier 2013–NE–26–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for all Pratt & Whitney Canada Corp. (P&WC) PT6A–114 and PT6A–114A turboprop engines. The NPRM proposed to require initial and repetitive borescope inspections (BSIs) of compressor turbine (CT) blades, and the removal from service of blades that fail inspection. The NPRM was prompted by several incidents of CT blade failure, causing power loss and in-flight shutdown of the engine resulting in four fatalities. This action revises the NPRM by adding a mandatory terminating action. We are proposing this supplemental NPRM (SNPRM) to prevent failure of CT blades, which could lead to damage to the engine and damage to the airplane. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on this proposed change.

DATES: We must receive comments on this SNPRM by June 26, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; phone: 800–268–8000; fax: 450–647–2888; Internet: www.pwc.ca. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0766; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the Transport Canada Civil Aviation (TCCA) AD, the regulatory evaluation, any comments received, and other