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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 204 and 214

[CIS No. 2858-26; DHS Docket No. USCIS-2026-0364]

RIN 1615-AD22

Eliminating the Discretionary 60-day Grace Period

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) proposes to remove regulations at 8 CFR 214.1(l)(2) to restore its previous and long-standing policy of not providing aliens in certain nonimmigrant classifications (and their dependents) with an up to 60-day grace period upon cessation of employment prior to the expiration of the alien's authorized period of stay. This proposal restores a direct relationship between an alien's nonimmigrant status and the specific employment or activity that formed the basis of his or her admission or grant of status in the United States and reduces administrative burden.

DATES: Written comments on the notice of proposed rulemaking (NPRM) must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The electronic Federal Docket Management System will accept comments before midnight eastern time at the end of that day.

ADDRESSES: You may submit comments on the entirety of this proposed rulemaking package, identified by DHS Docket No. USCIS-2026-0364 through the Federal eRulemaking Portal: https://www.regulations.gov. In accordance with 5 U.S.C.

553(b)(4), the summary of this rule found above may also be found at https://www.regulations.gov. Follow the website instructions for submitting comments.

Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS in implementing these changes 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. Comments submitted in a manner other than the one listed above, including e-mails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS. Please note that DHS and USCIS cannot accept any comments that are hand-delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using http://www.regulations.gov, please contact the Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721-3000 for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone (240) 721–3000 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

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Table of Abbreviations

AC21 – American Competitiveness in the Twenty-First Century Act of 2000
BLS – Bureau of Labor Statistics
CDAO – Chief Data and Analytics Office
CFR – Code of Federal Regulations
CPI-U – Consumer Price Index for All Urban Consumers
DHS – U.S. Department of Homeland Security
DOJ – U.S. Department of Justice
DOL – U.S. Department of Labor
DOW – U.S. Department of War
EAD – Employment Authorization Document
EB – Employment-Based
E.O. – Executive Order
EOIR – Executive Office for Immigration Review
FAM – Foreign Affairs Manual
FR – *Federal Register*
FY – Fiscal Year
HSA – Homeland Security Act of 2002
ICE – U.S. Immigration and Customs Enforcement
INA – Immigration and Nationality Act
IRFA – Initial Regulatory Flexibility Analysis
LPR – Lawful Permanent Resident
NAICS – North American Industry Classification System
NEPA – National Environmental Policy Act
NPRM – Notice of Proposed Rulemaking
OMB – Office of Management and Budget

PRA – Paperwork Reduction Act of 1995
Pub. L. – Public Law
RFA – Regulatory Flexibility Act of 1980
RIA – regulatory impact analysis
SBA – U.S. Small Business Administration
Secretary – Secretary of Homeland Security
UMRA – Unfunded Mandates Reform Act 1995
U.S.C. – United States Code
USCIS – U.S. Citizenship and Immigration Services

I. Public Participation

DHS invites all interested parties to participate in this rulemaking by submitting written data, views, comments and arguments on all aspects of this proposed rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS in implementing these changes 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. Comments submitted in a manner other than the one listed above, including e-mails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS.

Instructions: If you submit a comment, you must include the agency name (U.S. Citizenship and Immigration Services) and the DHS Docket No. USCIS-2026-0364 for this rulemaking. Please note, all submissions will be posted, without change, to the Federal eRulemaking Portal at http://www.regulations.gov, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and

Security Notice available at http://www.regulations.gov.

Docket: For access to the docket and to read background documents or comments received, go to http://www.regulations.gov, referencing DHS Docket No. USCIS-2026-0364. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

II. Executive Summary

A. Purpose and Summary of the Regulatory Action

The purpose of this proposed rule is to remove the availability of the up to 60-day discretionary grace period from the regulations at 8 CFR 214.1(l)(2). The up to 60-day discretionary grace period disconnects the alien's lawful status from the very basis of eligibility under these employment-based nonimmigrant classifications. By statute, an alien's lawful status in E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, or TN nonimmigrant classification is directly connected to and contingent upon the alien conducting certain employment activities or otherwise providing services in the United States that is generally tied to a petitioning employer. In order for an alien in any one of these classifications to maintain his or her status, the alien generally must maintain the employment or continue to perform the activity that was the basis of the alien's eligibility for the classification and associated admission or grant of status. However, under current regulations, these aliens, and their dependents, are not considered to have failed to maintain nonimmigrant status for a grace period of up to 60 days following cessation of the employment or activity that was the basis of their nonimmigrant status, unless that grace period is shortened or eliminated as a matter of DHS discretion. Typically, the decision whether or not to shorten or eliminate the grace period is made by DHS when a petitioner submits a petition on behalf of an alien, or the alien submits an application on behalf of him or herself, which seeks to extend the stay or change or adjust the status of the alien following the cessation of employment or activity that was the basis of his or her initial classification or grant of status.

The proposed rule, by removing the up to 60-day discretionary grace period, would better align the regulations with the statutory provisions governing the relevant classifications by requiring an alien to depart from the United States immediately upon his or her failure to maintain the employment or activity that was the basis for the nonimmigrant classification or status (unless otherwise authorized to lawfully remain in the United States). It would also reduce the administrative burden on USCIS associated with the grace period.

DHS originally extended this grace period to aliens in the listed classifications, and their dependents, to encourage aliens who ceased employment prior to the end of the petition validity period to remain in the United States to pursue other immigration options to maintain a lawful immigration status and, depending on the classification sought, continue or regain employment authorization; and to help U.S. employers to more easily facilitate changes in employment for existing and newly recruited nonimmigrant workers.[1] However, the relevant rulemaking did not sufficiently consider the negative impacts of the grace period provision. Upon reconsideration, and consistent with the Secretary of Homeland Security's (Secretary) broad authority to set the time and conditions of admission of nonimmigrants and to require that they depart the United States upon failure to maintain the employment or activity that was the basis for the classification or status, DHS believes that removing the up to 60-day discretionary grace period through this proposed rule is necessary to better align the regulations with the

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[1] *See* Retention of EB-1, EB-2, EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 FR 82398 (Nov. 18, 2016) ("This grace period allows high-skilled workers in these classifications, including those whose employment ceases prior to the end of the petition validity period, to more readily pursue new employment should they be eligible for other employer-sponsored nonimmigrant classifications or employment in the same classification with a new employer. The grace period also allows U.S. employers to more easily facilitate changes in employment for existing or newly recruited nonimmigrant workers").

statutory basis for nonimmigrant status and to reduce administrative burden associated with administering the grace period.

B. Legal Authority

The Secretary's authority for regulatory amendments is found in various provisions of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1101, et seq., and the Homeland Security Act (HSA) of 2002, Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 101, et seq. General authority for issuing this rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws, and to establish such regulations as the Secretary deems necessary for carrying out such authority, as well as section 102 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations.[2] Additional authority for this rule is found in:

- Section 101(a)(15) of the INA, 8 U.S.C. 1101(a)(15), which establishes classifications for aliens who are coming temporarily to the United States as nonimmigrants, including the E-1, E-2, E-3, H-1B, H-1B1, L-1 and O-1 classifications, *see* INA sec. 101(a)(15)(E)(i), (ii) and (iii), (H)(i)(b) and (b1), (L) and (O), 8 U.S.C. 1101(a)(15)(E)(i), (ii) and (iii), (H)(i)(b) and (b1), (L) and (O);
- Section 214(a) of the INA, 8 U.S.C. 1184(a), which authorizes the Secretary to prescribe by regulation the time and conditions of the admission of nonimmigrants.
- Section 214(e) of the INA, 8 U.S.C. 1184(e), which authorizes the admission of aliens under the TN classification pursuant to the provisions of Section D of

[2] Although several provisions of the INA discussed in this proposed rule refer exclusively to the "Attorney General," such provisions are now to be read as referring to the Secretary of Homeland Security by operation of the HSA. *See, e.g.*, INA secs. 103(a)(1) and 214(a), 8 U.S.C. 1103(a)(1) and 1184(a); *Nielsen v. Preap*, 139 S. Ct. 954, 959 n.2 (2019).

Annex 16–A of the USMCA (United States-Mexico-Canada Agreement) (as defined in 19 U.S.C. 4502); and

- Section 451(a)(3) and (b) of the HSA, 6 U.S.C. 271(a)(3) and (b), transferring to USCIS the authority to adjudicate petitions for nonimmigrant status, establish policies for performing that function, and set national immigration services policies and priorities.

C. Costs and Benefits

The purpose of this NPRM is to propose removing 8 CFR 214.1(1)(2) from DHS regulations and no longer providing an up to 60-day discretionary grace period for aliens admitted or otherwise provided status in the E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN classifications, and their dependents, following cessation of the employment or activity that was the basis for the alien's admission or grant of status. As discussed fully in Section V.A.3 Costs and Benefits of the Proposed Rule of this preamble, DHS conducted a qualitative assessment of the impact of the proposed rulemaking on primary E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN nonimmigrants and their dependents who are authorized to work. DHS recognizes that as a consequence of this change, a subset of these aliens may incur lost income if they require additional days to conduct their job search and return to the United States because they would need to leave the country instead of being able to stay and begin new employment without departing. DHS estimates that under this proposed rule, some aliens may be issued Notices to Appear (NTA),[3] thereby incurring costs of attending immigration hearings with the Department of Justice Executive Office for Immigration Review (EOIR) as part of removal proceedings. However, the proposed rule would enable DHS to conduct the administration and adjudication of immigration benefit requests for E-1, E-2, E-3, H-1B,

[3] A Notice to Appear (NTA), Form I-862, is issued by DHS to initiate removal proceedings under section 240 of the Act, 8 U.S.C. 1229a. For more information on NTAs, see Department of Justice, Executive Office for Immigration Review, The Notice to Appear, https://www.justice.gov/eoir/notice-appear (last updated Dec. 14, 2025).

H-1B1, L-1, O-1, and TN classifications with increased fidelity and is conducive to program integrity. DHS acknowledges that the proposed rulemaking would marginally increase the volume of USCIS referrals to EOIR annually and lead to a minor increase in workload demands on both DOJ and U.S. Immigration and Customs Enforcement (ICE).

III. Background

Many aliens come to the United States under a nonimmigrant visa classification. Certain nonimmigrant visa classifications, including E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN, permit aliens to be employed or otherwise provide services in the United States for temporary periods. Each classification for purposes of employment or otherwise performing services in the United States has its own eligibility requirements, and terms and conditions related to the period of admission of status and maintenance of status, the ability to renew the status, and the ability to change jobs or employers.

A. E-1, E-2, and E-3 Nonimmigrant Visa Classifications

The E-1 nonimmigrant classification allows aliens of certain treaty countries to be admitted to the United States solely to engage in international trade on their own behalf. To qualify for E-1 classification, the treaty trader must be (1) a national of a country with which the United States maintains a qualifying treaty, and (2) carry on substantial trade, principally between the United States and the treaty country that qualifies the treaty trader for E-1 classifications. *See* INA sec. 101(a)(15)(E)(i), 8 U.S.C. 1101(a)(15)(E)(i); 8 CFR 214.2(e)(1). Additionally, certain employees of a treaty trader, the treaty organization's parent company or one of its subsidiaries may also be eligible for the classification. *See* 8 CFR 214.2(e)(3) and (8). An E-1 nonimmigrant's employment is restricted, and he or she may only engage in trade activity and work in the employment for which he or she was admitted or otherwise granted E-1 status. *See* 8 CFR 214.2(e)(8) and 274a.12(b)(5).

The E-2 nonimmigrant classification concerns nationals of treaty countries who invest a substantial amount of capital in a U.S. enterprise. To qualify for E-2 classification, the treaty investor must (1) be a national of a country with which the United States maintains a qualifying treaty, (2) have invested or be actively in the process of investing a substantial amount of capital in a bona fide enterprise in the United States and (3) be seeking to enter the United States solely to develop and direct the enterprise. *See* INA sec. 101(a)(15)(E)(ii), 8 U.S.C. 1101(a)(15)(E)(ii); 8 CFR 214.2(e)(2). Certain employees of treaty investors or the treaty investor's qualifying organization may also be eligible for the classification, but the employee's work is limited to the investment activity. *See* 8 CFR 214.2(e)(3) and (8) and 274a.12(b)(5). A treaty investor or employee in E-2 nonimmigrant status may only engage in the investment activity or work in the employment for which he or she was approved at the time the classification was granted. *See* 8 CFR 214.2(e)(8)(i). E-2 nonimmigrant employees, however, may also work for the treaty organization's parent company or one of its subsidiaries in certain circumstances. *See* 8 CFR 214.2(e)(8)(ii).

E-1 and E-2 nonimmigrants generally may be admitted or otherwise granted nonimmigrant status for an initial period of up to 2 years and such status may be renewed indefinitely, in increments of up to 2 years, so long as the alien continues to meet the relevant qualifications.[4] *See* 8 CFR 214.2(e)(19) and (20). Additionally, E-1 and E-2 nonimmigrants must intend to depart the United States upon expiration or termination of their status. *See* 8 CFR 214.2(e)(1) and (2).

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[4] Aliens assigned to the Taipei Economic and Cultural Representative Office (TECRO) or Taipei Economic and Cultural Office (TECO) in the United States, and their dependents, are issued E-1 visas and admitted in E-1 nonimmigrant status for duration of status. 9 FAM 402.3-5(I)(2). Additionally, the CNMI-Only Investor (E-2) visa classification allows certain foreign, long-term investors to remain lawfully present in the CNMI through December 31, 2029, while they resolve their immigration status. *See* 8 CFR 214.2(e)(23). This classification is intended to help as the CNMI transitions from the CNMI permit system to U.S. immigration laws. E-2 CNMI investors, and their dependents, may extend their E-2 status in two-year increments ending on December 31, 2029.

The E-3 nonimmigrant visa classification concerns specialty occupation workers who are nationals of the Commonwealth of Australia. *See* INA sec. 101(a)(15)(E)(iii), 8 U.S.C. 1101(a)(15)(E)(iii). The definition of the term "specialty occupation" is the same as for the H-1B classification. *See* INA sec. 214(i)(1), 8 U.S.C. 1184(i)(1). To qualify for the E-3 classification, the employer must file a Labor Condition Application (LCA) in accordance with section 212(t)(1) of the INA, 8 U.S.C. 1182(t)(1), and may then apply directly to the Department of State if the alien is outside of the United States or the employer may file a petition requesting E-3 status with USCIS if the alien is present in the United States in another classification. *See* 9 Foreign Affairs Manual (FAM) 402.9-8(C). E-3 nonimmigrant workers may be admitted or otherwise granted status for an initial period not to exceed the validity period of the accompanying LCA (granted for 2 years) and may be granted indefinite extensions of stay in increments of up to 2 years. *See* 20 CFR 655.750(a)(2). An E-3 nonimmigrant's employment is restricted, and he or she may only engage in the specialty occupation employment for which he or she was admitted or otherwise granted E-3 status. *See* 8 CFR 274a.12(b)(5). As with other nonimmigrant visa classifications, the E-3 classification requires the alien intend to depart the United States upon expiration or termination of his or her status.

B. H-1B and H-1B1 Nonimmigrant Visa Classifications

The H-1B nonimmigrant visa program allows U.S. employers to temporarily employ foreign workers in specialty occupations, defined by statute as occupations that require the theoretical and practical application of a body of highly specialized knowledge and a bachelor's or higher degree in the specific specialty, or its equivalent (referred to as a "specialty occupation").[5] *See* INA sec.101(a)(15)(H)(i)(b) and 214(i), 8

[5] An H-1B petition can be filed for a foreign national to perform services in a specialty occupation, services relating to a Department of War (DOW) cooperative research and development project or coproduction project, or services of distinguished merit and ability in the field of fashion modeling. *See* 8 CFR 214.2(h)(4)(i)(A).

U.S.C. 1101(a)(15)(H)(i)(b) and 1184(i); *see also* 8 CFR 214.2(h)(1)(ii)(B). Congress set the current annual cap for the H-1B visa category at 65,000, which limits the number of beneficiaries who may be issued an initial H-1B visa or otherwise provided initial H-1B status each fiscal year.[6]

An employer who seeks to temporarily employ an alien as an H-1B in a specialty occupation must file an LCA in accordance with section 212(n)(1) of the INA, 8 U.S.C. 1182(n)(1), and a petition to obtain H-1B nonimmigrant classification on behalf of the alien. *See* INA sec. 214(c)(1), 8 U.S.C 1184(c)(1). Employers and certain agents that satisfy DHS regulatory requirements are eligible to file H-1B petitions. *See* 8 CFR 214.2(h)(2)(i)(A) and (F). H-1B specialty occupation workers generally may be admitted or otherwise granted nonimmigrant status for an initial period of up to 3 years. *See* 8 CFR 214.2(h)(9)(iii)(A)(*1*). The maximum period of authorized admission of an alien in the H-1B classification is generally 6 years. *See* INA sec. 214(g)(4), 8 U.S.C. 1184(g)(4). Typically, an H-1B petition may not be approved for an alien who has stayed for the maximum allowable amount of time in the United States in either H-1B or L-1[7] nonimmigrant worker status unless the alien has resided and been physically present outside the United States for the immediate prior year. *See* 8 CFR 214.2(h)(13)(iii)(A). An H-1B nonimmigrant's employment is restricted, and he or she may only engage in the employment for which he or she was admitted or otherwise granted H-1B status, or as otherwise authorized under H-1B portability. *See* 8 CFR 274a.12(b)(9).[8]

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[6] The 65,000 annual H-1B numerical limitation was increased for FYs 1999-2003. *See* INA section 214(g)(1)(A), 8 U.S.C. 1184(g)(1)(A), as amended by section 411 of the ACWIA, Public Law 105-277, div. C, tit. IV, 112 Stat. 2681, and the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), Public Law 106-313, 114 Stat. 1251, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107-273, 116 Stat. 1758 (2002). Congress also created several exemptions from the 65,000 numerical limitation. *See* INA sec. 214(g)(5), 8 U.S.C. 1184(g)(5).
[7] The L-1 nonimmigrant worker classification is described in Section III.C. of this preamble.
[8] Under H-1B portability, H-1B nonimmigrants may be authorized to work in new employment upon the filing of an H-1B petition for new employment rather than having to wait for the petition to be approved. *See* INA sec. 214(n), 8 U.S.C. 1184(n).

The H-1B1 program allows U.S. employers to temporarily employ nationals of Singapore and Chile in specialty occupations. *See* INA sec.101(a)(15)(H)(i)(b1) and 214(i), 8 U.S.C 1101(a)(15)(H)(i)(b1). An employer who seeks to temporarily employ an alien in H-1B1 status must file an LCA in accordance with section 212(t)(1) of the INA, 8 U.S.C. 1182(t)(1), and may then apply directly to the Department of State if the alien is outside of the United States or may file a petition requesting H-1B1 status with USCIS if the alien is present in the United States in another classification. *See* 9 FAM 402.10-5(C)-(D). Aliens may be granted status in 1-year increments, with no maximum on the number of extensions. *See* INA sec. 214(g)(8)(C), 8 U.S.C. 1184(g)(8)(C). Up to 6,800 visas are set aside from the 65,000 H-1B cap each fiscal year for the H-1B1 visa program under terms of the legislation implementing the U.S.-Chile and U.S.-Singapore free trade agreements. *See* INA secs. 101(a)(15)(H)(i)(b1), 214(g)(8), 8 U.S.C. 1101(a)(15)(H)(i)(b1), 1184(g)(8). An H-1B1 nonimmigrant's employment is restricted, and he or she may only engage in the employment for which he or she was admitted or otherwise granted H-1B1 status. *See* 8 CFR 274a.12(b)(9).

C. <u>L-1 Nonimmigrant Visa Classification</u>

The L-1 nonimmigrant classification allows for the temporary transfer of aliens with the requisite management, executive, or specialized knowledge skills to the United States to continue employment with an office of the same employer, its parent, branch, subsidiary, or affiliate. *See* INA sec. 101(a)(15)(L), 8 U.S. C. 1101(a)(15)(L); 8 CFR 214.2(l).[9] In order to obtain L-1 status for an employee, a qualifying organization must file a petition with USCIS that must be approved before the alien can obtain a visa to the United States or change status. *See* INA sec. 214(c)(1), 8 U.S.C. 1184(c)(1); 8 CFR

[9] In 1970 Congress amended the INA and established the L visa category for intracompany transferees. *See* INA sec. 101(a)(15)(L), 8 U.S.C. 1101(a)(15)(L). Section 214(c)(2) of the Act, 8 U.S.C. 1184(c)(2), contains the current provisions for the L nonimmigrant visa classification.

214.2(l)(2). Executive and managerial employees qualify for L-1A status and are admitted for a maximum initial stay of 3 years with extensions of stay granted in increments up to 2 years, until the employee has reached the maximum limit of 7 years. *See* INA sec. 214(c)(1)(D)(i), 8 U.S.C. 1184(c)(1)(D)(i); 8 CFR 214.2(l)(12)(i) and (15)(ii). Specialized knowledge employees qualify for L-1B status and are admitted for a maximum initial stay of 3 years with extensions of stay granted in increments up to 2 years, until the employee has reached the maximum limit of 5 years. *See* INA sec. 214(c)(1)(D)(ii), 8 U.S.C. 1184(c)(1)(D)(ii); 8 CFR 214.2(l)(12)(i) and (15)(ii). An L-1 nonimmigrant's employment is restricted, and he or she may only engage in the employment for which he or she was admitted or otherwise granted L-1 status. *See* 8 CFR 274a.12(b)(12).

D. O-1 Nonimmigrant Visa Classification

The O-1 nonimmigrant visa classification includes individuals who either (1) have extraordinarily ability in the science, arts, education, business or athletics as demonstrated by sustained national or international acclaim; or (2) who have a demonstrated record of extraordinary achievements in the motion picture or television industry, as recognized in the field through extensive documentation. *See* INA sec. 101(a)(15)(O), 8 U.S.C. 1101(a)(15)(O); 8 CFR 214.2(o)(1)(ii)(A). O-1 nonimmigrants must be coming temporarily to the United States to continue work in the relevant area of extraordinary ability or achievement and may only be admitted after being petitioned for by an importing employer. *See* INA sec. 101(a)(15)(O), 8 U.S.C. 1101(a)(15)(O) and INA sec. 214(c), 8 U.S.C. 1184(c); 8 CFR 214.2(o)(1)(ii)(A). An O-1 nonimmigrant may be admitted for up to 3 years, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. *See* 8 CFR 214.2(o)(6)(iii)(A) and (o)(10). Extension of status may be authorized in increments of up to 1 year, and such status may be renewed indefinitely to continue to complete the same event or activity.

See 8 CFR 214.2(o)(12)(ii). An O-1 nonimmigrant's employment is restricted, and he or she may only engage in the work that formed the basis of his or her status, with a limited exception for traded professional athletes. *See* 8 CFR 274a.12(b)(13).

E. TN Nonimmigrant Visa Classification

The TN nonimmigrant classification, established in the North American Free Trade Agreement,[10] permits qualified Canadian and Mexican citizens to seek temporary entry into the United States to engage in business activities at a professional level. *See* INA sec. 214(e), 8 U.S.C. 1184(e); 8 CFR 214.6(b). The TN nonimmigrant worker must not intend to establish a business or be self-employed in the United States, and he or she must be arriving pursuant to a prearranged agreement with a U.S. employer. *See* INA sec. 214(e), 8 U.S.C. 1184(e); 8 CFR 214.6(b). An eligible alien seeking TN classification may be granted TN status for an initial period not to exceed 3 years. *See* 8 CFR 214.6(e). Extensions of stay may be granted for periods not to exceed 3 years at a time. *See* 8 CFR 214.6(h)(1)(iii). TN is a temporary nonimmigrant classification, although there is no specific limit to the total period of time an alien may remain in the United States in TN status as long as he or she continues to be engaged in TN business activities for a U.S. employer or entity at a professional level, and otherwise continues to properly maintain TN status. *See* 8 CFR 214.6(h)(1)(iv). While there is no specific limit on the total period of time an alien may remain in the United States in TN status, the alien's period of stay is expected to have a "reasonable, finite end" and he or she must demonstrate this temporary intent to the satisfaction of the inspecting immigration officer. *See* 8 CFR 214.6(b).

[10] *See* 58 FR 69205 (Dec. 1993); 58 FR 68526 (Dec. 28, 1993). NAFTA was substituted by the United States-Mexico-Canada Agreement (USMCA) which entered into force on July 1, 2020. For the full text of the USMCA, see, Office of the United States Trade Representative, Agreement between the United States of America, the United Mexican States and Canada 07/01/20, https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between (last visited June 29, 2026).

F. <u>Creation of the up to 60-Day Discretionary Grace Period</u>

DHS regulations provide for a discretionary grace period to aliens in certain nonimmigrant status at various times during their admission period. During a grace period, these aliens are not considered to have failed to maintain status solely by not engaging in the qualifying employment or activity for which they were admitted to the United States. *See, e.g.,* 8 CFR 214.1(l); 8 CFR 214.2(f)(5)(iv); 8 CFR 214.2(j)(1)(ii); 8 CFR 214.2(o)(12)(ii).

Before 2017, there was no grace period for nonimmigrant workers in E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, or TN classification whose employment or activity ended during their period of lawful status. At that time, an alien who was admitted or otherwise provided status in the impacted nonimmigrant classifications was generally considered to have failed to maintain his or her status beginning on the day after the end of his or her employment or activity with the sponsoring employer and was expected to depart the United States immediately, unless otherwise authorized to lawfully remain in the United States. If an alien nonimmigrant fails to maintain status in the United States, he or she also becomes removable from the United States. *See* INA sec. 237(a)(1)(C), 8 U.S.C. 1227(a)(1)(C). Additionally, such an alien generally was not permitted to seek an extension of his or her stay in the United States in accordance with 8 CFR 214.1(c),[11] or an application for change of status under section 248 of the Act, 8 U.S.C. 1258, and 8 CFR part 248.[12] Failure to maintain status may also carry other immigration consequences for the alien in the future.[13]

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[11] *See* 8 CFR 214.1(c)(4)(i) (an extension or amendment of stay may not be approved for an alien who failed to maintain the previously accorded status or where such status expired before the application or petition was filed, except in certain circumstances).
[12] *See* 8 CFR 248.1(a) (any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain his or her nonimmigrant status may apply to have his or her nonimmigrant classification changed to any nonimmigrant classification other than the categories specified in that part).
[13] For example, depending on when the alien departs, the alien may risk accruing unlawful presence which could lead to the alien being inadmissible under INA 212(a)(9)(B) for either 3 or 10 years. Additionally, if

In 2016, DHS promulgated a final rule establishing an up to 60-day discretionary grace period following cessation of employment for aliens present in E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN status (and their dependents). *See* Retention of EB-1, EB-2, EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 FR 82398 (Nov. 18, 2016) (AC21 final rule).[14] The rule was effective on January 17, 2017. *Id*. The purpose of the up to 60-day discretionary grace period was to enhance job portability, stability, and flexibility for these high-skilled nonimmigrant workers upon cessation of employment. *See* 80 FR 81900, 81923 (Dec. 31, 2015); *see also* 81 FR 82398, 82439 (Nov. 18, 2016). The up to 60-day discretionary grace period was codified at 8 CFR 214.1(l)(2) and allowed an alien present in the United States in one of those statuses, and their dependents, to remain in the United States for up to 60 days or until the end of the authorized validity period, whichever is shorter, without being considered to have failed to maintain his or her status on the basis of cessation of employment or activity of the principal alien, unless such grace period was shortened or

either USCIS (as part of adjudicating a future request for an immigration benefit) or an Immigration Judge (as part of removal proceedings) determines that the nonimmigrant violated his or her status, accrual of unlawful presence begins on the date of determination if such date is earlier than the expiration date of the I-94. *See* USCIS Memorandum from Donald Neufeld/Lori Scialabba/Pearl Chang, "Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act" (May 6, 2009) (describing when aliens accrue unlawful presence). Failure to maintain status and the failure to depart after the alien fails to maintain status may also carry consequences for purposes of obtaining discretionary immigration benefits in the future, as it may be deemed a negative factor in the alien's immigration history. Failure to maintain status may also subject the alien to certain bars to adjusting status to that of a lawful permanent resident. *See, e.g.*, INA sec. 245(c)(2), 8 U.S.C. 1255(c)(2).

[14] *See also* Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvement Affecting High-Skilled Nonimmigrant Workers, 80 FR 81900 (Dec. 31, 2015) (AC21 proposed rule). The rule is referred to as the "AC21" rule because it implemented the provisions of the American Competitiveness in the 21st Century Act, Pub. L. 106-313, 114 Stat. 1251 (Oct. 17, 2000).

eliminated by DHS.[15] *See* 8 CFR 214.1(l)(2).[16] In the AC21 final rule, DHS stated that it may consider such an alien to have not violated his or her nonimmigrant status and allow that alien to extend his or her stay with a new petitioner, or change status, if otherwise eligible. *See* 81 FR 82398, 82436 (Nov. 18, 2016).

DHS also noted in a comment response that the decision whether to shorten or eliminate the up to 60-day grace period is discretionary, stating that "such adjudications require individualized assessments that consider the totality of the circumstances surrounding the cessation of employment and the beneficiary's activities after such cessation" and provided a list of non-exclusive circumstances that could impact DHS's discretionary determination. *See* 81 FR 82398, 82436 (Nov. 18, 2016). USCIS assesses whether the alien warrants the grace period and exercises discretion to eliminate or shorten this up to 60-day period when adjudicating any subsequent request for extension of stay or change of status or other applicable benefit request.[17] During the up to 60 days

[15] The up to 60-day grace period extends to dependent alien spouses or children (under the age of 21 and unmarried) who accompany or follow to join the principal alien. *See* 8 CFR 214.1(l)(2). During the up to 60-day discretionary grace period during which USCIS considers the principal nonimmigrant worker to have maintained nonimmigrant status following cessation of employment, his or her dependents may also be considered to have maintained nonimmigrant status. *See* 81 FR 82398, 82466 (Nov. 18, 2016). Depending on their classification, some of these dependents are authorized (but are not required) to be employed in the United States, including E nonimmigrant spouses pursuant to section 214(e)(2) of the Act, 8 U.S.C. 1184(e)(2). The focus of the grace period under 8 CFR 214.1(l)(2), however, is on the work performed by the principal and whether the principal nonimmigrant is maintaining nonimmigrant status. *See* 80 FR 81900, 81924 (Dec. 31, 2015). The cessation of a dependent's employment, if authorized to work as a nonimmigrant in a dependent status, does not impact the nonimmigrant status of the dependent or the principal.

[16] The AC21 final rule also codified an up-to 10-day grace period at 8 CFR 214.1(l)(1), extending availability of the grace period available to H-1B nonimmigrants to aliens in the E-1, E-2, E-3, L-1 and TN classifications, and including reference to H-1B in 8 CFR 214.1(l)(1) to align the regulations (a 10-day grace period for O-1 nonimmigrants was codified elsewhere). *See* 81 FR 82398, 82435 – 82438 (Nov. 18, 2016); *see also* 8 CFR 214.2(h)(13) (2015), and 8 CFR 214.2(o)(12). Because 8 CFR 214.1(l)(1) specifies that this 10-day grace period applies "after the validity period ends," it would not apply to a worker who ceases employment during the approved validity period.

[17] Certain nonimmigrants present in the United States who are admitted for a specific period of time, or their petitioning employers, may request an extension of the nonimmigrant's admission period in order to continue to engage in those activities permitted under the nonimmigrant classification in which they were admitted. *See, generally*, 8 CFR 214.1(c). Additionally, certain nonimmigrants who are present in the United States, or their petitioners, may seek to change the nonimmigrant's status to another nonimmigrant classification in accordance with section 248 of the Act, 8 U.S.C. 1258 and 8 CFR part 248. A change of status or extension of stay may be filed on Form I-129, Petition for Nonimmigrant Worker, or Form I-539, Application to Extend/Change Nonimmigrant Status, depending on the nonimmigrant's circumstances. An extension of stay or change of status is ordinarily only granted if the alien is still in, and has maintained, his or her nonimmigrant status at the time the request is filed. *See, generally*, 8 CFR 214.1(c) and 8 CFR part

following the cessation of their authorized employment, aliens may potentially obtain new job offers from employers that seek to file new nonimmigrant petitions[18] that are coupled with a request for a change of status or an extension of stay, on the alien's behalf. *See* 8 CFR 214.1(c)(4) and (l)(3), 8 CFR 248.1. Alternatively, the alien may, without the assistance of a petitioner, seek to change his or her status to a nonimmigrant status that is not related to working in the United States, such as change of status to student (F) nonimmigrant visa classification to pursue studies in the United States, or seek to adjust his or her status.

Finally, DHS explained in the AC21 final rule that while a nonimmigrant worker may only receive one grace period in an authorized validity period, he or she would be eligible for a new up to 60-day discretionary grace period in connection with any subsequently authorized validity period. *See* 8 CFR 214.1(l)(2); 81 FR 82398, 82438 (Nov. 18, 2016).

IV. Discussion of Proposed Rule

DHS is firmly committed to better aligning the regulations with the statutory purpose for which the alien was admitted or otherwise provided nonimmigrant status and to reducing administrative burdens. Removal of the up to 60-day discretionary grace period furthers these essential goals.

DHS believes that restoring the expectation that aliens depart the United States upon cessation of the employment or activity upon which the alien's status was based, would better promote program integrity and be more consistent with statutory purpose. DHS also believes that removal of the up to 60-day discretionary grace period would reduce administrative burden, as the process of determining when the up to 60-day grace

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248; Form I-129, Petition for Nonimmigrant Workers, https://www.uscis.gov/i-129 (last updated June 15, 2026), and Form I-539, Application to Extend/Change Nonimmigrant Status, https://www.uscis.gov/i-539 (last updated June 1, 2026).

[18] These petitions are generally filed on Form I-129, Petition for Nonimmigrant Workers, https://www.uscis.gov/i-129 (last updated June 15, 2026).

period may apply, reviewing the information submitted, and determining whether to shorten or eliminate the grace period may be time consuming and complex for the agency and confusing or unpredictable for the petitioner, alien and the alien's dependents.

As such, DHS proposes to remove the discretionary up to 60-day grace period provided in 8 CFR 214.1(l)(2).[19]

A. Need for the Proposed Rule

As noted, the up to 60-day discretionary grace period was added in the AC21 final rule. In that rule, DHS's reasoning for the addition of the grace period heavily emphasized the benefit to certain high-skilled immigrants and their U.S. employers. 81 FR 82398, 82436 (Nov. 18, 2016). DHS now believes, based on its experience administering the up to 60-day discretionary grace period over the last 10 years, that the existence of the grace period is inconsistent with the purpose for which Congress created the relevant nonimmigrant classifications. DHS also believes the grace period increases administrative burden on USCIS by adding complexity to the documentation and adjudication process. While many of the factors that USCIS considers in adjudicating a subsequent immigration benefit request where a grace period is applicable are also relevant to a discretionary decision whether to shorten or eliminate the grace period, the need for adjudicators to consider the grace period can add steps to the process. For example, officers adjudicating subsequent benefit requests (such as an extension petition which generally requires the beneficiary to have maintained status) must also determine whether the grace period would impact the benefit request, as this is not always clear from the request itself. The officer must also determine whether to eliminate the grace period as a matter of discretion and, if an officer decides not to eliminate the grace period, the officer then must determine and verify the end date of the alien's prior

[19] DHS also proposes a technical revision to remove a cross-reference to 8 CFR 214.1(l)(2) from 8 CFR 204.5(p)(1)(i).

employment to determine the start and end date of the grace period.

In the AC21 proposed rule, DHS claimed a need for the addition of a grace period because, under the policies in effect at the time, aliens such as H-1B nonimmigrant workers whose employment ended (voluntarily or upon being terminated by the employer) were generally considered to be present in violation of their status, and thus, were required to depart the United States immediately. *See* 80 FR 81900, 81923-24 (Dec. 31, 2015). DHS explained that the proposal to afford these workers, who are facing sudden changes to their employment, up to 60 days to seek new employment and thereby extend their status without having to immediately depart the country, would remedy that situation. *See* 80 FR 81900, 81923-24 (Dec. 31, 2015). Furthermore, DHS also explained the up to 60-day discretionary grace period would allow these high-skilled workers to more readily pursue new employment should they be eligible for other employer-sponsored nonimmigrant classifications or for the same classification with a new employer, and would allow U.S. employers to more easily facilitate changes in employment for existing or newly recruited nonimmigrant workers. *See* 80 FR 81900, 81902 (Dec. 31, 2015). Similarly, in the AC21 final rule, DHS explained that the up to 60-day discretionary grace period allows such nonimmigrants to remain in the United States without violating their status and potentially obtain new job offers from employers that seek to file new nonimmigrant petitions, and requests for an extension of stay, on their behalf. *See* 81 FR 82398, 82436 (Nov.18, 2016). DHS explained that in such cases, even though prior employment may have terminated several weeks prior to the filing of the new petition, DHS may consider such an alien to have not violated his or her nonimmigrant status and allow that alien to extend his or her stay with a new petitioner, if otherwise eligible. *See* 81 FR 82398, 82436 (Nov. 18, 2016).

DHS repeatedly made it clear that the purpose of the up to 60-day discretionary grace period was to increase mobility for certain high-skilled aliens and to improve the ability of U.S. employers to more easily facilitate changes in employment for existing and newly recruited nonimmigrant workers. DHS now believes that the justification did not sufficiently consider the fact that the introduction of the up to 60-day discretionary grace period created a misalignment with statutory provisions governing the impacted classifications. DHS also now believes the rule did not adequately consider how the up to 60-day discretionary grace period would add administrative burden for USCIS.

Given its broad discretionary authority to regulate the time and conditions of nonimmigrants under section 214(a) of the Act, 8 U.S.C. 1184(a), DHS is now reconsidering[20] the up to 60-day discretionary grace period and believes that it should be removed. DHS acknowledges that it is changing position, and notes that based on its experience administering the rule and its reevaluation of the results of the rule in relation to the statute governing nonimmigrant classifications, DHS believes that removal of the up to 60-day discretionary grace period is the better course.[21] DHS has also carefully considered reliance interests that may have been engendered by the current policy,[22] and believes that any such reliance interests are outweighed by the goals described in this preamble.

B. Requiring Nonimmigrants to Depart Upon Cessation of Employment or Activity

DHS has determined that removal of the up to 60-day discretionary grace period best aligns the regulatory provisions with the statute and restores the expectation that aliens depart the United States upon cessation of the employment or activity on which the

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[20] *See Motor Vehicle Mfrs., Ass'n v. State Farm Mu. Auto. Ins. Co*., 463 U.S. 29, 57 (1983) (finding that an agency's view of what is in the public interest may change, either with or without a change in circumstances, but the agency changing its course must supply a reasoned analysis).

[21] *See F.C.C. v. Fox Television Stations, Inc*., 556 U.S. 502, 515 (2009) (an agency "need not demonstrate to a court's satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates." (emphasis in original)).

[22] *See* section IV.D below.

visa classification was based.

By statute, an alien's lawful status in E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, or TN classification is directly connected to and contingent upon the alien conducting certain employment activities or otherwise performing services in the United States that are generally tied to the petitioning employer. In pertinent part, section 101(a)(15)(E)(i) of the INA, 8 U.S.C. 1101(a)(15)(E)(i) describes an E-1 alien as entering the United States "solely to carry on substantial trade, including trade in services or trade in technology." Section 101(a)(15)(E)(ii) of the INA, 8 U.S.C. 1101(a)(15)(E)(ii) describes an E-2 alien as entering the United States "solely to develop and direct the operations of an enterprise in which the alien has invested, or of an enterprise in which the alien is actively in the process of investing, a substantial amount of capital." Section 101(a)(15)(E)(iii) of the INA, 8 U.S.C. 1101(a)(15)(E)(iii) describes an E-3 alien as entering "solely to perform services in a specialty occupation in the United States …[on behalf of] the intending employer." Section 101(a)(15)(H)(i)(b) of the INA, 8 U.S.C. 1101(a)(15)(H)(i)(b) describes an H-1B alien as "coming temporarily to the United States to perform services… in a specialty occupation …[on behalf of] the intending employer." Section 101(a)(15)(H)(i)(b1) of the INA, 8 U.S.C. 1101(a)(15)(H)(i)(b1) describes an H-1B1 alien as one who is "engaged in a specialty occupation." Section 101(a)(15)(L) of the INA, 8 U.S.C. 1101(a)(15)(L) describes an L-1 alien as entering the United States "temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge." Section 101(a)(15)(O) of the INA, 8 U.S.C. 1101(a)(15)(O) describes an O-1 alien as entering the United States to continue work in the area of extraordinary ability in the sciences, arts, education, business or athletics or extraordinary achievement with regard to motion picture and television productions. Section 214(e) of the INA, 8 U.S.C. 1184(e) describes a TN alien as entering the United States to engage in certain business activities at a professional level.

In each of these cases, the statute ties eligibility for the classification and associated admission or grant of status in each of these classifications directly to the qualifying work that is the basis of the alien's admission or grant of status. Although each classification has different requirements for maintenance of status based on the eligibility requirements of the classification, maintenance of status in employment-based nonimmigrant classifications generally requires continued compliance with the terms and conditions of the petition approval or admission. If an alien does not comply with the terms and conditions of his or her status throughout the admission period, the alien will not be maintaining his or her nonimmigrant status.[23] In order to maintain status, an alien must also only engage in the specified employment or activity that is the basis for his or her admission or grant of status.[24] An alien who fails to maintain his or her nonimmigrant status is deportable. *See* INA sec. 237(a)(1)(C)(i), 8 U.S.C. 1227(a)(1)(C)(i).

The up to 60-day discretionary grace period is not mandated by statute and disconnects the alien's lawful status from the basis of eligibility under these employment-based classifications. After further consideration, DHS now believes that removing the up to 60-day discretionary grace period currently codified at 8 CFR 214.1(l)(2) would better align with the statute because it requires that nonimmigrants depart the United States immediately upon cessation of the employment or activity on which their nonimmigrant status is based (unless otherwise authorized to lawfully remain in the United States).

As noted previously, each one of the listed classifications requires the alien to perform specific work or services that are generally tied to the intending or petitioning employer. The continued performance of the employment or activity on which their

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[23] *See, e.g., ITServe Alliance, Inc.* v. *U.S. Dep't of Homeland Sec.,* 71 F.4th 1028, 1037 (D.C. Cir. 2023) ("an admitted H-1B worker who fails to maintain qualifying employment will lose non-immigrant status and become removable.").

[24] *See, e.g.,* 8 CFR 214.1(e) ("A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized.").

status is based is required in order for the alien to maintain status.[25] DHS now believes that once the alien is no longer fulfilling the very specific conditions under which he or she was admitted or otherwise provided status, such status, as well as the authorization to remain in the United States, should definitively cease and the impacted alien should immediately depart the United States (unless otherwise authorized to lawfully remain in the United States). This is generally consistent with the requirements for aliens admitted or otherwise provided status in other nonimmigrant categories when the alien fails to fulfill the very specific conditions under which he or she was admitted or otherwise provided status.[26] Similar to aliens admitted or otherwise provided status in other nonimmigrant categories, aliens subject to this rule would, however, be able to apply for readmission into the United States in a nonimmigrant employment-based status after finding new qualifying employment and obtaining the prerequisite approvals to apply for admission in the applicable classification.

C. Reducing Administrative Burden

DHS further believes that elimination of the up to 60-day discretionary grace period would reduce the administrative burden on USCIS. DHS has found that exercising this discretion when adjudicating benefit requests following a cessation of an alien's

[25] *See, e.g., ITServe Alliance, Inc.* v. *U.S. Dep't of Homeland Sec.,* 71 F.4th 1028, 1037 (D.C. Cir. 2023) ("an admitted H-1B worker who fails to maintain qualifying employment will lose non-immigrant status and become removable.").

[26] For example, an F-1 nonimmigrant student who drops below a full course of study without designated school official authorization is failing to maintain status even if the reason for the reduction in course load is not within the control of the student. *See generally*, 8 CFR 214.2(f). In the AC21 proposed rule, the agency also reasoned that providing flexibilities such as the up-to 60 day discretionary grace period provided to E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, or TN nonimmigrants was not unprecedented, as, for example, other nonimmigrant categories are provided similar flexibilities such as F and J nonimmigrants, citing to 8 CFR 214.2(f)(5)(iv) and (j)(1)(ii) respectively. *See* 80 FR 81900, 8923 (Dec. 31, 2025). 8 CFR 214.2(f)(5)(iv) provides F-1 students who have completed their course of study and any subsequently authorized practical training an additional 60-day period to prepare for departure or transfer to another school. 8 CFR 214.2(j)(1)(ii) provides J-1 nonimmigrant exchange visitors a 30-day grace period available to them during the validity period of their J-1 duration of status, which includes the duration of their J-1 exchange program and a 30-day departure preparation period. *See* 8 CFR 214.2(j)(1)(ii). However, these grace periods also do not apply when the F-1 or J-1 nonimmigrant prematurely ceases the activity voluntarily or involuntarily for which he or she was admitted, because such premature ceasing of the activity for which he or she is admitted will likely result immediately in the alien's failure to maintain status. *See also* INA sec. 237(a)(1)(C)(i), 8 U.S.C. 1227(a)(1)(C)(i) (providing that a nonimmigrant who fails to maintain their nonimmigrant status is deportable).

employment is burdensome. The process of assessing whether a grace period is warranted; and then of adjudicating the request and determining start and end dates of a grace period may be time consuming and complex for the agency and confusing or unpredictable for petitioners, the alien, and the alien's dependents. Adjudicating officers must verify the evidence provided by the petitioner or the alien, as applicable, to ascertain whether the up to 60-day discretionary period applies and whether the alien warrants a favorable exercise of discretion. For USCIS to assess the applicability of the up to 60-day discretionary grace period, the benefit requestor[27] (for example, a new employer filing a Form I-129, Petition for Nonimmigrant Worker (Form I-129) petition on behalf of the alien following the cessation of the alien's previous employment; or the alien, if he or she is seeking a change of status to a visa classification that is unrelated to employment) must provide evidence to establish the date the alien's previous employment ended. The USCIS adjudicator would designate the end of the previous employment as the start date of the discretionary grace period if the adjudicator does not make the discretionary determination to eliminate it. As noted in the AC21 final rule, the discretionary decision of whether to eliminate or shorten a grace period requires individualized assessments that consider the totality of the circumstances surrounding the cessation of employment and the beneficiary's activities after such cessation. *See* 81 FR 82398, 82439 (Nov. 18, 2016). While many cases might result in grants of the up to 60-day discretionary grace periods, some cases may present factors that do not support the favorable exercise of this discretion. Circumstances that may lead DHS to make a discretionary determination to shorten or entirely eliminate the up to 60-day discretionary grace period include violations of status, unauthorized employment during the grace period, fraud or national security concerns, or criminal convictions, among other reasons. *See* 81 FR 82398, 82439

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[27] A requestor is a person who files an application, petition, motion, appeal or another request relating to an immigration or naturalization benefit. *See* 8 CFR 1.2 (Benefit request).

(Nov. 18, 2016).

Additionally, the availability of clear documentation of employment cessation date may differ from case to case. Evidence that documents the employment cessation date is non-standard and requires officers to familiarize themselves with the documentation type, review the contents, and assess its veracity and credibility. Officers must often review numerous different document types per filing and the level of review is more extensive than that conducted when the grace period is not applicable. In some instances, the only evidence of the termination that a petitioner or an applicant can provide is a generalized payroll document from an alien that reflects payments made on the last month of employment. In many instances, these payroll documents do not definitively state the last day of employment. Rather, the officer must infer the employment end date based on prorating the payment across the pay period. Further, petitioners or applicants may or may not proactively flag that they are requesting consideration of the up to 60-day discretionary grace period. USCIS officers therefore must review each benefit request for aliens potentially covered by 8 CFR 214.1(l)(2) to determine whether the up to 60-day discretionary grace period applies and, if it does, must determine whether the up to 60-day discretionary grace period should be shortened or eliminated as a matter of discretion. If the petitioner or the applicant is unable to provide credible evidence establishing the date of employment cessation, the officer may not be able to determine whether the grace period applies, either in part or in full. Collectively this lack of clarity increases the complexity of the adjudication and prolongs the adjudication of individual cases imposing an additional burden.

In order to determine the additional workload USCIS faces when administering the grace period, DHS calculated the number of petitions and applications that required USCIS to assess whether the up to 60-day discretionary grace period could have potentially applied. That number comprises the following petitions and applications: 1) the number of Form I-129 petitions filed for an alien in one of the listed classifications that requested an extension of stay for purposes of new employment; 2) the number of Form I-129 petitions filed for an alien in one of the listed classifications that requested a change of status to another nonimmigrant category for purposes of new employment; 3) the number of Forms I-539, Application to Extend/Change Nonimmigrant Status filed by an alien in one of the listed classifications requesting a change of status to a non-employment based nonimmigrant status; 4) the number of Forms I-485, Application to Register Permanent Residence or Adjust Status, filed in an employment-based category by an alien in one of the listed classifications seeking to become a lawful permanent resident (LPR);[28] and 5) the number of Forms I-765, Application for Employment Authorization requesting compelling circumstances employment authorization, filed by an alien in one of the listed classifications.

DHS believes that this set of petitions and applications reasonably represents the potential number of cases for which USCIS must assess whether the up to 60-day discretionary grace period applies, and if so, perform the additional grace period analysis that was previously discussed for a subset of these petitions (see Costs and Benefits of the Proposed Rule).[29] From the beginning of fiscal year 2018 (October 1, 2017) through May 20, 2026, this population totaled over 1.9 million petitions or applications on which USCIS potentially had to perform this additional initial assessment thus representing a great adjudicative burden.[30] USCIS has reconsidered the grace period in light of this

[28] Adjustment of status is the process for eligible aliens physically present in the United States to apply for lawful permanent residence (LPR) without returning to their home country, by filing Form I-485.
[29] DHS acknowledges that the review and analysis of the applicability of the grace period will vary depending on the benefit request that was filed. For example, the grace period analysis for a petition requesting a change of employer with an extension of stay request would be different than the analysis for an employment-based application to adjust status, due to the specific regulations governing the different requests. Because each analysis is case specific, where some cases will require a more in-depth analysis due to the facts presented, DHS cannot estimate the time this analysis adds to each adjudication.
[30] *See* DHS, USCIS, CDAO, CLAIMS3 & ELIS, queried 02/2026, 03/2026, and 05/2026 PAER0020503, PAER0020655, and PAER0021448. DHS calculated the burden based on the number of petitions or applications received from FY 2018 forward because FY 2018 was the first fiscal year in which the AC21 rule was effective for the entire fiscal year. Note that this estimate is different from the numbers DHS used

experience and now believes it should not be expending its limited resources to adjudicate a burdensome, discretionary benefit that not only is not required by statute, but in fact is inconsistent with the purpose of the nonimmigrant classifications. Eliminating the up to 60-day discretionary grace period would therefore reduce the administrative burden on USCIS.

D. Reliance Interests and Potential Impact of this Rule

DHS is cognizant that it is changing a longstanding policy that may impact aliens, employers, family members and potentially communities as a whole.[31] For example, U.S. employers who seek to employ recently terminated aliens in the relevant classifications may have made business arrangements based on an assumption that the aliens would be able to begin new employment, without the potentially lengthier process of seeking admission from outside the United States, following the cessation of their previous employment. Similarly, aliens in the relevant classifications, and their dependents, may have made career and/or personal plans in the United States based on the assumption that they may remain in legal status in the United States for up to 60 days during the grace period during which time they may be able to apply for a new status. DHS also acknowledges that aliens and their dependents may participate in activities in the local community. They may have, for example, purchased houses, paid taxes, and

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in its cost-benefit analysis. *See* section V.A.3. of this preamble. DHS believes that the adjudicative burden to USCIS to administer the grace period is greater than what is reflected in the cost-benefit analysis because the burden discussed here includes the time and resources spent reviewing applicable petitions or applications where the grace period could potentially apply, whereas the cost-benefit analysis is based on the estimated number of benefit requests that hindsight now allows DHS to see could have actually used the grace period because they met certain parameters; chiefly, the benefit requests followed a prior revocation of petition approval. USCIS does not know which benefit requests these are upon receiving an application or petition; rather USCIS can only determine this after spending time adjudicating the case. The impact of the rule discussed in section V.A.3. of this preamble examines the potential impact of the rule using information that is not available to adjudicators when they first receive a case and need to determine if a grace period may apply. The administrative burden discussed here represents the time and effort to identify the possible population and perform additional review, whereas the impact of the rule focuses on a subset of that population that was identified and reviewed throughout the adjudication process.

[31] *See, e.g., FCC v. Fox Television Stations, Inc*., 556 U.S. 502, 513–16 (2009) ("the agency may change policy if it acknowledges the change, offers a rational explanation, and considers any serious reliance interests); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983) ("the agency must examine relevant data and articulate a satisfactory explanation showing a rational connection between the facts found and the choice made") (internal quotations omitted).

may have otherwise invested in the local community in reliance on the alien's continued stay in the United States.[32] Further, aliens may have, under the expectation that the up to 60-day discretionary grace period will apply, remained in the United States after the cessation of their employment while searching for new employment or waiting for the adjudication of the petition or application to change status or extend stay; yet during this time, they would have been considered to be failing to maintain status if USCIS later shortened or eliminated the up to 60-day grace period.

By removing the up to 60-day discretionary grace period, as this rule proposes, aliens in these nonimmigrant classifications would know with certainty that they are required to depart the United States, unless otherwise authorized to lawfully remain in the United States, upon cessation of employment or activity, because they, and their dependents, would be considered to be immediately failing to maintain their nonimmigrant status the day after the principal alien's employment or activity ceases.[33]

DHS has considered these potential reliance interests and impacts and believes the negative impacts of the up to 60-day discretionary grace period on the legal immigration system, discussed in this preamble, outweigh any potential benefits to employers, aliens, and the community at large of retaining the grace period. DHS notes that any reliance on the existing up to 60-day discretionary grace period would be misplaced because the decision to shorten or eliminate the up to 60-day discretionary grace period and consider the alien to have not maintained nonimmigrant status following cessation of employment is within the discretion of USCIS and only determined when adjudicating a subsequent

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[32] Under the proposed rule, an alien (and his or her dependents) would have to immediately depart the United States on the day of the cessation of the employment or activity to avoid the consequences of failing to maintain status in the United States. Consequently, aliens whose employment or other activity ceased would also have to immediately cease any activity related to the local community. DHS notes that this type of loss, is common to the departure of aliens who have completed their stay in the United States and is not specific to this rulemaking; however, removing the up to 60-day discretionary grace period would accelerate a potential impact.

[33] Failure to maintain status carries other consequences, including, among other things, being subject to removability as a deportable alien under section 237(a)(1)(C) of the Act, 8 U.S.C. 1227.

immigration benefit request.[34] Additionally, DHS acknowledges that removal of the up to 60-day discretionary grace period may result in increased departures following cessation of employment. However, DHS concludes that such outcomes would be consistent with statutory design, would likely not alter numerical visa limits (as applicable), and would generally not preclude the alien from applying for admission in the future based on approval of a new nonimmigrant or immigrant benefit request. For the reasons articulated in the preamble, DHS believes that any potential negative impacts of the proposed rule, if finalized, on the regulated public would be outweighed by the government's competing interests articulated in this rule.

DHS invites comments on any potential impact of this rulemaking, including comments on any potential reliance interests that are implicated by the provisions of this NPRM.

E. Alternatives Considered

DHS considered alternatives to eliminating the up to 60-day discretionary grace period for all of the classifications listed in current 8 CFR 214.1(l)(2). First, DHS considered only eliminating the up to 60-day discretionary grace period for some of the listed classifications. However, as discussed in section IV. B. of this preamble, DHS is removing the up to 60-day grace period because it does not align with the statute. Allowing some classifications to remain in the United States and be considered to be maintaining status, while not adhering to the conditions of admission or grant of status, does not support the goal of requiring aliens, and their dependents, to depart the United States upon cessation of the employment or activity on which their nonimmigrant status is based, unless otherwise authorized to lawfully remain in the United States, and would therefore remain inconsistent with the statute with respect to those classifications. In

[34] *See, e.g., Wages & White Lion Invs*., L.L.C., 604 U.S. 542, 585 (2025) (stating that a belief about how an agency is likely to exercise its enforcement discretion is not a "serious reliance interes[t]".) citing *Fox Television,* 556 U.S., at 515.

addition, this alternative would not reduce the administrative burden described above for the classifications for which the up to 60-day discretionary grace period was not eliminated.

DHS also considered shortening, rather than eliminating the up to 60-day discretionary grace period. However, shortening the grace period would not address the burden borne by USCIS to administer this grace period. A shorter grace period would not reduce the number of applications and petitions that USCIS must review for grace period applicability and would not reduce the additional adjudication that must be undertaken to determine whether to reduce or eliminate the up to 60-day discretionary grace period, or to determine the start and end dates of the period. Shortening the up to 60-day discretionary grace period would also not meet the goal of requiring aliens, and their dependents, to depart the United States upon cessation of the employment or activity on which their nonimmigrant status is based, unless otherwise authorized to lawfully remain in the United States because aliens would still be allowed to remain in the United States and be considered to be maintaining status beyond the time in which the alien is adhering to the specific employment or activity that formed the basis of his or her admission or grant of status.

DHS also considered an alternative that would reduce the administrative burden on USCIS, specifically by imposing precise and stringent evidentiary requirements in order for USCIS to even consider whether a grace period applies. Under this approach, USCIS adjudicators would not have the burden of determining whether the grace period would impact the benefit request, as the evidence submitted with the filing would make it clear that the petition was relying on a grace period. However, DHS decided against this alternative. While it may ostensibly reduce administrative burden on USCIS, adjudicators would still have the added burden of scrutinizing the documentation and verifying the end date of the alien's prior employment to determine whether the alien is actually eligible to benefit from the grace period. Additionally, even acknowledging a potential reduction in administrative burden from this alternative, as with the above alternatives this approach would not address DHS's goal of aligning the regulatory provisions with the statute and restoring the expectation that aliens depart the United States upon cessation of the employment or activity on which their visa classification was based.

Considering the need to reduce administrative burden and better protect the integrity of the legal immigration system by requiring that aliens, and their dependents, depart the United States upon failing to meet the conditions that were the basis of their nonimmigrant status, unless otherwise authorized to lawfully remain in the United States, DHS believes that the harm of the up to 60-day discretionary grace period outweighs the potential benefit it provides to the impacted aliens and employers, the alien's dependents, and the community at large. Therefore, DHS believes that eliminating the up to 60-day discretionary grace period for all relevant classifications is the most effective way to achieve the goals of this rulemaking.

V. Statutory and Regulatory Requirements

A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14192 (Unleashing Prosperity Through Deregulation)

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) 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. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14192 (Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that "any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations."

The Office of Management and Budget (OMB) has designated this rule a "significant regulatory action" under section 3(f) of E.O. 12866, although not economically significant under section 3(f)(1). Accordingly, the rule has been reviewed by OMB.

This rule is not an Executive Order 14192 regulatory action because it is being issued with respect to an immigration-related function of the United States. The primary purpose of this rule is to implement or interpret the immigration laws of the United States (as described in INA sec. 101(a)(17), 8 U.S.C. 1101(a)(17)) or any other function performed by the U.S. Federal Government with respect to aliens. *See* OMB Memorandum M-25-20, "Guidance Implementing Section 3 of Executive Order 14192, titled 'Unleashing Prosperity Through Deregulation'" (Mar. 26, 2025).

1. Summary

The purpose of this NPRM is to remove the E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN classifications from 8 CFR 214.1(l)(2), which currently provides for a discretionary grace period of up to 60 days for an alien admitted or otherwise provided status in E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN classifications, and his or her dependents, following cessation of their qualifying employment prior to the expiration of the alien's authorized validity period. DHS estimates that under this proposed rule, some aliens may be issued Notices to Appear (NTA),[35] thereby incurring costs of attending immigration hearings with the Department of Justice Executive Office for Immigration Review (EOIR) as part of removal proceedings. In addition, some aliens would leave the

[35] A Notice to Appear (NTA), Form I-862, is issued by DHS to initiate removal proceedings under section 240 of the Act, 8 U.S.C. 1229a. For more information on NTAs, see Department of Justice, Executive Office for Immigration Review, The Notice to Appear, https://www.justice.gov/eoir/notice-appear (last updated Dec. 14, 2025).

country and then apply for readmission under a nonimmigrant employment-based status after finding a new job. The proposed rule would enable DHS to conduct the administration and adjudication of E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN immigration benefit requests with decreased complexity and is conducive to program integrity, as described in Section IV Discussion of Proposed Rule of the preamble.

Table 1 provides a detailed summary of estimated quantifiable and unquantifiable impacts of the proposed rule.

Table 1. Summary of Provisions and Impacts of the NPRM			
Proposed Rule Provisions	**Description of the Proposed Change to Provisions**	**Estimated Costs of Provisions**	**Estimated Benefits of Provisions**
8 CFR 214.1(l)(2) - Removal of Discretionary Grace Period	To remove the up to 60-day discretionary grace period at 8 CFR 214.1(l)(2) and restore a direct relationship between maintenance of nonimmigrant status with the basis for which E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN classifications, and their dependents, were admitted or otherwise provided nonimmigrant status.	Quantitative: Beneficiaries - • Beneficiaries of nonimmigrant visa classifications who must respond to a Notice to Appear (NTA) by attending an immigration hearing would incur opportunity costs of time and travel costs ranging from $204.43 to $300.53 per person. • A subset of 3,795 nonimmigrant visa beneficiaries may incur lost income if additional time is required to conduct the job search after departing the United States. Petitioners – • None DHS/USCIS - • Devote resources to issue NTAs and initiate removal proceedings against aliens. Qualitative: Beneficiaries- • None Petitioners - • H-1B and O-1 petitioners would be liable for the	Quantitative: Petitioners - • None DHS/USCIS - • None Qualitative: Beneficiaries – • None Petitioners – • None DHS/USCIS –- • Improve program integrity and consistency between nonimmigrant status and the basis of the activity for their admittance. • Reduce the administrative burden associated with the up to 60-day discretionary grace period.

		reasonable costs of return transportation abroad if an H-1B or O-1 beneficiary is dismissed from employment by the petitioner before the end of period of authorized admission and the beneficiary decides to depart the country.[36] DHS/USCIS – - None	

In addition to the impacts summarized in Table 1, and as required by OMB Circular A-4, Table 2 presents the prepared accounting statement showing the costs, benefits, and transfers associated with this rule.[37]

Table 2. OMB A-4 Accounting Statement ($ millions, FY 2025) Time Period: FY 2027 through FY 2036				
Category	**Primary Estimate**	**Minimum Estimate**	**Maximum Estimate**	**Source Citation**
BENEFITS				
Annualized Monetized Benefits	Not Estimated			Regulatory impact analysis (RIA)
Annualized quantified, but unmonetized, benefits	N/A	N/A	N/A	RIA
Qualitative (unquantified) Benefits	This proposed rule would improve program integrity by introducing administrative simplicity in certain classifications and increasing consistency between maintenance of nonimmigrant status with the basis for which aliens and their dependents were admitted or otherwise provided nonimmigrant status.			RIA
COSTS				
				RIA
Annualized monetized costs at 3%	Not Estimated			
Annualized monetized costs at 7%	Not Estimated			
Annualized quantified, but unmonetized, costs	This proposed rule would result in USCIS devoting resources to issue NTAs and initiate removal proceedings against aliens who failed to maintain their nonimmigrant			RIA

[36] *See* INA sec. 214(c)(5), 8 U.S.C. 1184(c)(5); 8 CFR 214.2(h)(4)(iii)(E) and (o)(16).

[37] OMB, "Circular A-4" (Sept. 17, 2003), trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf (last visited Aug. 1, 2025).

	status, and to maintain program integrity. This rule may result in some nonimmigrant workers whose prior employment has ended to depart the United States. For those who depart, this proposed rule would cause a temporary loss of productivity to their prospective employers. Some employers who decide to terminate the employment of nonimmigrant workers have to provide return transportation or other relocation costs when the H-1B or O-1 beneficiary decides to depart whereas some of these costs could have been avoided without this rule.	
Qualitative (unquantified) costs	N/A	RIA
TRANSFERS		
Annualized monetized transfers: "on budget"	N/A	RIA
From whom to whom?	N/A	RIA
Annualized monetized transfers: "off-budget"	N/A	RIA
From whom to whom?	N/A	RIA
Miscellaneous Analyses/Category	Effects	Source Citation (RIA, preamble, etc.)
Effects on State, local, or tribal governments	N/A	RIA
Effects on small businesses	For some small entities offering employment to E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN nonimmigrant workers whose prior employment has ended, they may adjust their behavior but would continue to seek workers to fill job openings. DHS assumes that almost all these entities would offer the same jobs to equally qualified U.S. workers, go through the I-129 petition process to sponsor nonimmigrant workers, or reassign the work to other current employees. DHS acknowledges that some of these petitioners may incur a temporary loss of productivity due to labor turnover.	Regulatory Flexibility Act (RFA) analysis
Effects on wages	N/A	RIA
Effects on growth	N/A	RIA

2. Background and Population

The H-1B nonimmigrant visa program allows U.S. employers to temporarily hire foreign workers to perform services in a specialty occupation, services related to a DOW cooperative research and development project or coproduction project, or services of distinguished merit and ability in the field of fashion modeling.[38] A specialty occupation is defined as an occupation that requires the (1) theoretical and practical application of a body of highly specialized knowledge and (2) attainment of a bachelor's or higher degree

[38] *See* INA sec. 101(a)(15)(H)(i)(b), 8 U.S.C. 1101(a)(15)(H)(i)(b); Immigration Act of 1990, Pub. L. 101-649, sec. 222(a)(2), 104 Stat. 4978 (Nov. 29, 1990); 8 CFR 214.2(h).

in the specific specialty (or its equivalent) as a minimum qualification for entry into the occupation in the United States. *See* INA sec. 214(i)(l), 8 U.S.C. 1184(i)(l).

The number of aliens who may be issued initial H-1B visas or otherwise provided initial H-1B nonimmigrant status during any fiscal year has been capped at various levels by Congress over time, with the current numerical limit being 65,000 per fiscal year. *See* INA sec. 214(g)(1)(A), 8 U.S.C. 1184(g)(1)(A). Congress has also provided for various exemptions from this annual numerical limit, including an exemption for 20,000 aliens who have earned a master's or higher degree from a U.S. institution of higher education. *See* INA sec. 214(g)(5) and (7), 8 U.S.C. 1184(g)(5) and (7). In general, prior to filing an H-1B petition, the employer is required to obtain a certified LCA from the DOL. *See* 8 CFR 214.2(h)(4)(i)(B)(*1*). The LCA collects information about the employer and the occupation for the H-1B worker(s). The LCA requires certain attestations from the employer, including, among others, that the employer will pay the H-1B worker(s) at least the required wage. *See* 20 CFR 655.731 through 655.735. H-1B specialty occupation workers generally may be admitted or otherwise granted nonimmigrant status for an initial period of up to 3 years, *see* 8 CFR 214.2(h)(9)(iii)(A)(*1*), with a maximum period of authorized admission generally limited to 6 years, *see* INA sec. 214(g)(4), 8 U.S.C. 1184(g)(4).

The spouses and unmarried children under the age of 21 of H-1B nonimmigrants are eligible for H-4 nonimmigrant status. *See* 8 CFR 214.2(h)(9)(iv). Certain H-4 dependent spouses of H-1B nonimmigrants can seek employment authorization by filing Form I-765, Application for Employment Authorization, if the H-1B nonimmigrant: (1) is the principal beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker; or (2) has been granted H-1B status under sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000 as amended by the 21st Century Department of Justice Appropriations Authorization Act

(AC21). *Id*.

The H-1B1 nonimmigrant visa program, specifically applicable to nationals of Chile and Singapore, allows for the temporary employment of such nonimmigrant aliens in specialty occupations. *See* INA sec. 101(a)(15)(H)(i)(b1), 8 U.S.C 1101(a)(15)(H)(i)(b1). Of the current H-1B annual numerical limit of 65,000 initial visas or grants of status per fiscal year, 6,800 are reserved for use by H-1B1 nonimmigrants: 1,400 for nonimmigrants from Chile and 5,400 for nonimmigrants from Singapore. *See* INA sec. 214(g)(8)(B), 8 U.S.C. 1184(g)(8)(B). An employer who seeks to temporarily employ an alien in H-1B1 status may apply directly to the Department of State if the alien is outside of the United States or may file a petition requesting H-1B1 status with USCIS if the alien in in the United States in another classification. Aliens may be granted H-1B1 nonimmigrant status in one-year increments, with no maximum on the number of extensions. *See* INA sec. 214(g)(8)(C), 8 U.S.C. 1184(g)(8)(C). The spouses and unmarried children under the age of 21 of H-1B1 nonimmigrants are eligible for H-4 nonimmigrant status but are not employment authorized or eligible to apply for employment authorization. *See* 8 CFR 214.2(h)(9)(iv).

An L-1 nonimmigrant visa is for multinational companies to transfer executives, managers (L-1A), or employees with specialized knowledge (L-1B) from an overseas office to a U.S. office, requiring the employee to have worked abroad for a related entity for at least one year out of the preceding three years in a similar role. *See* INA sec. 101(a)(15)(L), 8 U.S.C. 1101(a)(15)(L). The L-1A and L-1B visa classifications also enable a foreign company that does not yet have an affiliated U.S. office to send an executive or manager or a professional employee with specialized knowledge to the United States with the purpose of establishing one. *See* 8 CFR 214.2(l)(3)(v) and (vi). Qualified employees under L-1A or L-1B visa classifications entering the United States to establish a new office are allowed a maximum initial stay of one year. *See* 8 CFR

214.2(l)(7)(i)(A)(*3*). All other qualified employees under L-1A or L-1B visa classifications are allowed a maximum initial stay of three years. *See* 8 CFR 214.2(l)(7)(i)(A)(*2*). For all employees under L-1A and L-1B visa classifications, requests for extension of stay may be granted in increments of up to an additional two years, until the employee has reached the maximum limit of 7 years under L-1A and 5 years under L-1B. *See* 8 CFR 214.2(l)(15)(ii).

The alien employee may be accompanied by his or her spouse and unmarried children who are under 21 years of age. *See* 8 CFR 214.2(l)(7)(ii). Spouses and children may seek admission under the L-2 nonimmigrant classification and, if approved, they will generally be granted the same period of stay as the L-1 nonimmigrant worker. *Id*. Spouses of L-1 workers in valid L-2 nonimmigrant status are considered employment authorized incident to status. *See* INA sec. 214(c)(2)(E), 8 U.S.C. 1184(c)(2)(E). L spouses are not required to request employment authorization by filing Form I-765, but may still file the form, with fee, in order to obtain an Employment Authorization Document (EAD). They can be granted evidence of work authorization by way of an L-2S designation on their Arrival-Departure Record (Form I-94).[39]

The E-1 nonimmigrant classification allows a national of a treaty country (a country with which the United States maintains a treaty of commerce and navigation, or which the United States maintains a qualifying international agreement, or which has been deemed a qualifying country by legislation) to be admitted to the United States solely to engage in international trade on his or her own behalf. *See* INA sec. 101(a)(15)(E)(i), 8 U.S.C. 1101(a)(15)(E)(i); 8 CFR 214.2(e)(1). Certain employees of such a person or of a qualifying organization may also be eligible for this classification.

[39] *See* USCIS, L-1A Intracompany Transferee Executive or Manager, https://www.uscis.gov/working-in-the-united-states/temporary-workers/l-1a-intracompany-transferee-executive-or-manager (last updated July 29, 2024) and USCIS, L-1B Intracompany Transferee Specialized Knowledge, https://www.uscis.gov/working-in-the-united-states/temporary-workers/l-1b-intracompany-transferee-specialized-knowledge (last updated July 30, 2024).

See 8 CFR 214.2(e)(3). Qualified treaty traders and employees are allowed a maximum initial stay of two years. *See* 8 CFR 214.2(e)(19)(i). Requests for extension of stay in E-1 classification may be granted in increments of up to two years each. *See* 8 CFR 214.2(e)(20). There is no limit to the number of extensions an E-1 nonimmigrant may be granted. *See* 8 CFR 214.2(e)(20)(iii). All E-1 nonimmigrants, however, must maintain an intention to depart the United States when their status expires or is terminated.[40]

The E-2 nonimmigrant classification allows a national of a treaty country (a country with which the United States maintains a treaty of commerce and navigation, or with which the United States maintains a qualifying international agreement, or which has been deemed a qualifying country by legislation) to be admitted to the United States when investing a substantial amount of capital in a U.S. business.[41] *See* INA sec. 101(a)(15)(E)(ii), 8 U.S.C. 1101(a)(15)(E)(ii); 8 CFR 214.2(e)(2). Certain employees of such a person or of a qualifying organization may also be eligible for this classification. *See* 8 CFR 214.2(e)(3). Qualified treaty investors and employees are allowed a maximum initial stay of two years. *See* 8 CFR 214.2(e)(19)(i). Requests for extension of stay in E-2 classification may be granted in increments of up to two years each. *See* 8 CFR 214.2(e)(20). There is no limit to the number of extensions an E-2 nonimmigrant may be granted. *See* 8 CFR 214.2(e)(20)(iii). All E-2 nonimmigrants, however, must maintain an intention to depart the United States when their status expires or is terminated.[42]

The E-3 nonimmigrant classification concerns specialty occupation workers who

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[40] *See* USCIS, E-1 Treaty Traders, https://www.uscis.gov/working-in-the-united-states/temporary-workers/e-1-treaty-traders (last updated Apr. 8, 2025).
[41] The CNMI-Only Investor (E-2C) visa classification allows foreign, long-term investors to remain lawfully present in the CNMI through December 31, 2029, while they resolve their immigration status. This classification is intended to help as the CNMI transitions from the CNMI permit system to U.S. immigration laws. *See* USCIS, E-2 Visa: CNMI-Only Investor, https://www.uscis.gov/working-in-the-united-states/temporary-workers/e-2-visa-cnmi-only-investor (last updated July 3, 2019).
[42] *See* USCIS, E-2 Treaty Investors, https://www.uscis.gov/working-in-the-united-states/temporary-workers/e-2-treaty-investors (last updated Apr. 8, 2025).

are nationals of the Commonwealth of Australia. *See* INA sec. 101(a)(15)(E)(iii), 8 U.S.C. 1101(a)(15)(E)(iii). E-3 nonimmigrants must be coming to the United States solely to perform services in a specialty occupation. The definition of the term "specialty occupation" is the same as for the H-1B classification. *See* INA sec. 214(i)(1), 8 U.S.C. 1184(i)(1) (defined as requiring theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States). E-3 nonimmigrants may be granted a maximum initial stay of two years. Requests for extension of stay in E-3 nonimmigrant status may be granted in increments of up to two years each. There is no limit to the number of extensions an E-3 nonimmigrant may be granted.[43]

E-1, E-2 and E-3 principal nonimmigrants may be accompanied by their spouse and unmarried children who are under 21 years of age. Spouses and children may seek admission under the E-1, E-2 or E-3 nonimmigrant classification, as applicable, and if approved, they will generally be granted the same period of stay as the E-1, E-2, or E-3 principal nonimmigrant. *See* 8 CFR 214.2(e)(4). Spouses of E nonimmigrant workers in valid E nonimmigrant status are generally considered employment authorized incident to status.[44] *See* INA sec. 214(e)(2), 8 U.S.C. 1184(e)(2). E nonimmigrant spouses generally are not required to request employment authorization by filing Form I-765, but may still file the form, with fee, in order to obtain an Employment Authorization Document (EAD). They can be granted evidence of work authorization by way of an E-1S, E-2S or E-3S designation on their Arrival-Departure Record (Form I-94).[45]

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[43] *See* USCIS, E-3 Specialty Occupation Workers from Australia, https://www.uscis.gov/working-in-the-united-states/temporary-workers/e-3-specialty-occupation-workers-from-australia (last updated July 29, 2024).

[44] Some E spouses are not considered employment authorized incident to status and must apply for employment authorization. *See* 8 CFR 274a.12(c)(2) and (12).

[45] *See* USCIS Policy Manual Vol. 10, Part B, Chapter 2 - Employment Authorization for Certain H-4, E, and L Nonimmigrant Dependent Spouses. https://www.uscis.gov/policy-manual/volume-10-part-b-chapter-

The O-1 nonimmigrant classification is for aliens with extraordinary ability in the sciences, arts, education, business, or athletics, or who have a demonstrated record of extraordinary achievement in the motion picture or television industry and have been recognized nationally or internationally for those achievements. The O-1 nonimmigrant classification is commonly referred to as:

- O-1A: Individuals with an extraordinary ability in the sciences, education, business, or athletics (not including the arts, motion pictures or television industry);
- O-1B: Individuals with an extraordinary ability in the arts or extraordinary achievement in motion picture or television industry;

An O-1 nonimmigrant may be granted a maximum initial stay of 3 years with further extension in increments of up to one year to complete the activity or event for which the alien was admitted or otherwise granted O-1 nonimmigrant status. *See* 8 CFR 214.2(o)(6)(iii)(A) and (12)(ii). The spouses and unmarried children under the age of 21 of O-1 nonimmigrants are eligible for O-3 nonimmigrant status but are not employment authorized or eligible to apply for employment authorization. *See* 8 CFR 214.2(o)(6)(iv).

The TN nonimmigrant classification permits qualified Canadian and Mexican citizens to seek temporary entry into the United States to engage in business activities at a professional level. *See* INA sec. 214(e)(1), 8 U.S.C. 1184(e)(1); 8 CFR 214.6(a). Aliens may be granted TN nonimmigrant status in increments of up to 3 years. See 8 CFR 214.6(e). There is no limit on the number of times an alien may be granted TN nonimmigrant status, so long as he or she intends to remain temporarily in the United States as a nonimmigrant. *See* 8 CFR 214.6(h)(1)(iv). Dependent spouses of a TN nonimmigrant may be admitted or otherwise provided TD nonimmigrant status, but are

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2#:~:text=As%20of%20November%2012%2C%202021,C%20of%20Form%20I%2D9. (last updated Feb. 03, 2026) not authorized to work or otherwise eligible to apply for employment authorization as a TD nonimmigrant. *See* 8 CFR 214.6(j).

DHS regulations currently allow alien workers in certain approved nonimmigrant visa classifications, and their dependents, to have grace periods of up to 60 days when their employment ends, whether the employment terminated voluntarily or involuntarily, unless such grace period is shortened or eliminated by DHS. *See* 8 CFR 214.1(l)(2). During the up to 60-day discretionary grace period, the nonimmigrant worker is not considered to be failing to maintain status solely for not engaging in employment or the activity that forms the basis of the alien's status. *Id*. Nonimmigrants are not authorized to work during the grace period, unless otherwise authorized. *Id*. Aside from departing the United States, such nonimmigrant workers can:

- File an application for a change of nonimmigrant status (I-539, Application to Extend/Change Nonimmigrant Status);
- File an application for adjustment of status (I-485, Application to Register Permanent Residence or Adjust Status);
- File an application for a "compelling circumstances" employment authorization document (Form I-765); or
- Be the beneficiary of a nonfrivolous petition to change employer (Form I-129).

If one of these actions described above occurs within the up to 60-day discretionary grace period, nonimmigrants may be permitted to remain in the United States beyond the 60-day grace period, even if they lose their previous nonimmigrant status. If an alien takes none of the above actions following cessation of the employment on which their status is based, they and their dependents would need to depart the United States unless otherwise authorized to lawfully remain in the United States. This provision, codified at 8 CFR 214.1(l)(2), was intended to enhance job portability for high-skilled nonimmigrants and provide limited flexibility in cases of job loss.[46]

In Section IV.C: Reducing Administrative Burden, DHS presented statistics on additional workload USCIS faces when administering the grace period, and are discussed as qualitative benefits to DHS in this analysis. DHS calculated 1.9 million petitions and applications received from fiscal year 2018 through May 20, 2026 for which USCIS assessed whether the up to 60-day discretionary grace period could have potentially applied.[47] In the cost benefit analysis described in the following pages, DHS analyzes the impact of the proposed rulemaking on nonimmigrant worker visa beneficiaries who likely utilized the up to 60-day discretionary grace period and petitioners who petition for such beneficiaries. Table 3 presents data on E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN population of beneficiaries of a revoked Form I-129 petition based on a petitioner's withdrawal of the petition after approval. This group includes beneficiaries who experienced cessation of employment with the petitioner, either involuntarily or voluntarily.[48] Due to data limitations DHS uses the population of beneficiaries of a revoked Form I-129 petition as a reasonable proxy for beneficiaries who could have utilized the grace period to pursue one of the options described above for FY 2021 through FY 2025.[49] Based on a 5-year annual average, DHS estimates the number of

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[46] *See* 80 FR 81923 ("To enhance job portability for these high-skilled nonimmigrants, DHS proposes to generally establish a one-time grace period during an authorized nonimmigrant validity period of up to 60 days or until the existing validity period ends, whichever is shorter, whenever employment ends for these individuals."); USCIS, Options for Nonimmigrant Workers Following Termination of Employment, https://www.uscis.gov/archive/options-for-nonimmigrant-workers-following-termination-of-employment-0 (last updated Jan 24, 2025).

[47] *See* DHS, USCIS, CDAO, CLAIMS3 & ELIS, queried 02/2026, 03/2026, and 05/2026 PAER0020503, PAER0020655 and PAER0021448. DHS calculated the burden based on the number of petitions or applications received from FY 2018 forward because FY2018 was the first fiscal year in which the AC21 rule was effective for the entire fiscal year.

[48] *See e.g.,* 8 CFR 214.2(h)(11)(i)(A) (an H-1B employer is required to immediately notify USCIS such as by submitting a letter of withdrawal, when the employer no longer employs the beneficiary, whether through termination or resignation).

[49] As stated above, due to data limitations DHS uses this population as a reasonable proxy to estimate the population that could have used the grace period, as data on aliens using the grace period is not captured on a form or otherwise reported to USCIS. DHS acknowledges that using I-129 withdrawal data likely would not enable estimation of all possible impacts, as it will not capture all beneficiaries that could have used the grace period. For instance, DHS notes that currently some employers do not notify USCIS or file a withdrawal when an H-1B worker ceases to work for the company but uses the up to 60-day discretionary

primary beneficiaries who experienced either cessation of employment or voluntarily changed employer is 65,752, with a high of 80,034 in FY 2023 and a low of 40,959 in FY 2021. From FY 2021 through FY 2025, 5.77 percent of 328,758 primary beneficiaries that either lost their job or changed employers had a new petition for nonimmigrant worker (Form I-129) submitted on their behalf by a new employer (petitioner) within 60 days after the withdrawal of their approved I-129 petition by their old employer; 0.59 percent submitted Form I-485 requesting Adjustment of Status; another 1.70 percent submitted Form I-539 to request an Extension/Change of Status; and less than 0.1 percent submitted Form I-765 requesting a Compelling Circumstances EAD (CCEAD).[50] Ninety-nine percent of 328,758 E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN primary beneficiaries that either lost their job or changed employers from FY 2021 through FY 2025 belong to the H-1B classification. For brevity, the combined population of primary beneficiaries is presented in Table 3.

Table 3. Beneficiaries of Form I-129, E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN classification for FY 2021 through FY 2025		
Fiscal Year		**Action Pursued within the Up to 60-day Discretionary Grace Period**

grace period. Some classifications, like the E-1, E-2, E-3, H-1B1, L-1and TNs, do not have a requirement to notify USCIS of employment cessation or submit a withdrawal. Due to data limitations and availability, DHS is unable to estimate the number of companies who have not notified or filed a withdrawal letter with USCIS or who failed to do so immediately upon cessation of the alien's employment. Further, DHS is unable to estimate the number of aliens who changed employment prior to having their petition withdrawn and would not have utilized the grace period.

[50] Calculations: -

18,975 5-Year Total of Beneficiaries with Change of Employer I-129 petitions submitted within the Up to 60-day Discretionary Grace Period/ 328,758 5-Year Total of Beneficiaries who witnessed either job loss or voluntary job change = 5.77%

1,924 5-Year Total of Beneficiaries who submitted Adjustment of Status I-485 application within the Up to 60-day Discretionary Grace Period / 328,758 5-Year Total of Beneficiaries who witnessed either job loss or voluntary job change = 0.59%

5,596 5-Year Total of Beneficiaries who submitted Extend/Change of Status I-539 application within the Up to 60-day Discretionary Grace Period / 328,758 5-Year Total of Beneficiaries who witnessed either job loss or voluntary job change = 1.70%

49 5-Year Total of Beneficiaries who submitted CCEAD application within the Up to 60-day Discretionary Grace Period / 328,758 5-Year Total of Beneficiaries who witnessed either job loss or voluntary job change = 0.02%

	Primary Beneficiaries Who Experienced Cessation of Employment or Changed Employers	Petition for a Nonimmigrant Worker (Form I-129)	Register Permanent Residence or Adjustment of Status application (Form I-485)	Extension / Change of Status application (Form I-539)	Compelling Circumstances EAD (CCEAD) application (Form I-765)
2021	40,959	2,138	346	258	1
2022	69,268	2,821	415	129	1
2023	80,034	3,955	298	645	6
2024	68,997	4,883	427	1,831	28
2025	69,500	5,178	438	2,733	13
5-Year Total	328,758	18,975	1,924	5,596	49
5-Year Average	65,752	3,795	385	1,119	10
% Share of Total		5.77%	0.59%	1.70%	<0.1%
Source: USCIS CDAO, queried 1/2026 and 2/2026, PAER0020131 and PAER0020348. Fiscal Year refers to the year the nonimmigrant visa beneficiary's approved Form I-129 was revoked due to request received by USCIS from the petitioner to withdraw an approved Form I-129 petition.					

Nonimmigrant status of dependents of primary E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN beneficiaries is tied to the primary beneficiary's status and therefore they lose or change status if the primary beneficiary loses or changes status. In Table 4, DHS presents data on number of dependents of primary E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN beneficiaries by fiscal year of approval. Based on a 5-year annual average, DHS estimates the number of dependents of primary E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN beneficiaries is 208,187, with a high of 239,649 in FY 2022 and a low of 175,454 in FY 2024. DHS data is not salient enough to provide a reliable and accurate estimate of dependents of primary E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN beneficiaries who would have utilized the discretionary grace period under current regulations after the primary beneficiary either experienced cessation of employment or changed employer and received a new employment offer, filed an I-485 application, applied for change of status or extension of status, or requested a compelling circumstances EAD.

Table 4: Dependents of Primary E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN Beneficiaries

Fiscal Year*	E-1 Dependents	E-2 Dependents	E-3 Dependents	H-1B or H-1B1 Dependents	L-1 Dependents	O-1 or TN Dependents	FY Total
2021	450	6154	2038	179616	32427	4,191	224,876
2022	468	8196	2512	189913	33616	4,944	239,649

2023	279	7361	1330	154506	19499	5,925	188,900
2024	172	5555	1162	146706	17610	4,249	175,454
2025	114	4561	675	172470	27689	6,547	212,056
5-Year Total	1,483	31,827	7,717	843,211	130,841	25,856	1,040,935
5-Year Average	297	6,365	1,543	168,642	26,168	5,171	208,187
Source: USCIS CDAO, CLAIMS3 database, queried 6/2026, PAER0021633. *Fiscal Year refers to approval fiscal year.							

3. Costs and Benefits of the Proposed Rule

The cost-benefit analysis is prepared based on the observed behavior of beneficiaries and petitioners under the current regulation and the expected behavior change in beneficiaries and petitioners due to the proposed regulation. Hence the analysis is primarily qualitative as there are multiple interplaying factors determining the outcome. The cost-benefit analysis is separated into four sections, which reflect the potential impacts as a result of the proposed change to eliminate the 60-day grace period. The first section discusses the costs incurred by E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN beneficiaries with intentions to pursue new job opportunities or apply for another immigration status. The second section focuses on the total cost of attending immigration hearings for E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN beneficiaries who experienced a period of unemployment in between jobs. The third section discusses the estimated impacts of the proposed rule to the Federal Government. Finally, DHS concludes with a discussion of the benefits of the proposed rule to both the Federal Government and the public.

a. *Costs of Eliminating the up to 60-day Discretionary Grace Period*

The proposed change to eliminate the up to 60-day discretionary grace period could directly impact those aliens in E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN nonimmigrant status with intentions to pursue new job opportunities or apply for another immigration status, including change of status, extension of stay or adjustment of status. If such beneficiaries decide to leave the United States upon cessation of their employment because they would be considered to be failing to maintain status the day after cessation of employment pursuant to this rule, they could incur costs related to their departure which could include a termination fee of rental lease agreements, expenditure on flight tickets or other transportation costs in certain circumstances, and opportunity costs of time to get their legal and personal affairs in order. However, to the extent that aliens in E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN nonimmigrant status would have sought to use the up to 60-day discretionary grace period, but were unable to secure new employment or change to another lawful status, these costs would be indirect since this rule would only accelerate the time in which such beneficiaries would incur these costs. DHS notes that an employer is currently liable for the reasonable costs of return transportation of an H-1B or an O-1 beneficiary to his or her home country if the beneficiary is dismissed from employment by the employer before the end of the period of authorized admission pursuant to section 214(c)(5) of the INA, 8 U.S.C. 1184(c)(5); if the beneficiary voluntarily terminates his or her employment prior to the expiration of the validity of the petition, the beneficiary is not considered to be "dismissed" and would personally incur the cost of return transportation. *See* 8 CFR 214.2(h)(4)(iii)(E) and (o)(16).

Due to data limitations, USCIS data cannot differentiate among beneficiaries if a request to withdraw an approved Form I-129 petition is due to voluntary (the employee quits) or involuntary (the employee is terminated from employment) cessation of employment. Therefore, DHS estimates that 3,795 E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN nonimmigrants annually would have a new nonimmigrant worker petition (Form I-129) submitted on their behalf by a new petitioner within the up to 60-day discretionary grace period (see Table 3). While not all impacted classifications are obligated to request withdrawal, we consider this estimate as an upper-bound estimate of the population that could incur costs depending on their subsequent course of action motivated by their decision to remain in valid nonimmigrant status in United States or depart the country. About 3,765, out of a total of 3,795 or 99.2 percent of E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN nonimmigrants belong to the H-1B classification.[51]

Moreover, after examining wage data[52] provided on Form I-129 petitions submitted by petitioners in the grace period, DHS determined the median annual wages to be $131,000 in FY 2025 for aliens in H-1B nonimmigrant status who had a Form I-129 petition revoked in FY 2025, but then had a new Form I-129 petition submitted on their behalf by a new petitioner within the up to 60-day discretionary grace period.[53] Because 99.2 percent of these nonimmigrants belong to the H-1B classification, DHS believes it is reasonable to use $131,000 to be the median annual wages as a basis to estimate any foregone wages. A subset of these beneficiaries who may have begun new employment with a new employer during the 60 day grace period may incur lost income if they require additional days to conduct their job search and return to the United States because they departed as a result of the proposed rulemaking.[54] Estimates of lost income from possible

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[51] Source: USCIS CDAO, queried 1/2026 and 2/2026, PAER0020131 and PAER0020348. Calculation: 99.2 percent × 3,795 = 3,765.

[52] Wage information is provided by H-1B petitioner to Question 9 of Part 5: Basic Information About the Proposed Employment and Employer and does not include non-cash compensation and benefits. The wage amount refers to what the employer agreed to pay the beneficiary at the time the I-129 petition was filed but is not always verified after hiring.

[53] Source: USCIS CDAO, CLAIMS3 and ELIS, queried 1/2026, PAER0020265.
For purposes of this analysis, DHS decided to rely on median annual wages instead of mean annual wages. In Fiscal Year 2024 Annual Report to Congress, USCIS described characteristics of H-1B specialty workers and reported that median annual compensation for approved initial H-1B beneficiaries in FY 2024 was $97,000 and for approved continuing employment H-1B beneficiaries in FY 2024 was $132,000. See USCIS, Characteristics of H-1B specialty Occupation Workers. Fiscal Year 2024 Annual Report to Congress October 1, 2023 – September 30, 2024 (Apr. 29, 2025), available at https://www.uscis.gov/sites/default/files/document/legal-docs/ola_signed_fy2024_h1b_petitions.pdf (last visited Jan. 26, 2026). In the Annual Report, USCIS used the word compensation to refer to wages.

[54] While the proposed rule does not restrict aliens from seeking subsequent employment in the United States, DHS considered a subset who may have used grace period to find subsequent employment, but could lose days of compensation due to the requirements of the rule (e.g. traveling, searching for jobs from outside the country). As an upper bound estimate, DHS considered an alien who would have been able to work 60 additional days because the alien was not required to leave the country under the current regulation, but would require as much as two months to perform their job search and return to the United States because the alien would have to leave the United States under the proposed rule: $131,000 Median Annual Compensation x (2 months/12 months) = $21,877

increased unemployment periods experienced by E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN beneficiaries varies within a classification and across classifications. The American Competitiveness in the 21st Century Act allows eligible H-1B workers to begin new employment immediately upon filing of a new, non-frivolous Form I-129 petition, without waiting for approval.[55] As for E-1, E-2, E-3, H-1B1, L-1, O-1 and TN beneficiaries, they can switch employers only after their new and non-frivolous Form I-129 petition is approved.[56]

While DHS assumes those employers who previously hired one or more of the 3,795 aliens in E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, or TN nonimmigrant status within the grace period would find equally qualified U.S. workers or would continue to go through the applicable petition process to obtain authorization to employ the same or another foreign worker, some employers may face a temporary loss of productivity. Alternatively, within an entity, work may be reassigned to other employees. Employers who dismiss an H-1B or O-1 nonimmigrant worker from employment are currently liable for the alien's return transportation costs. Under the current regulation, employers of H-1B or O-1 nonimmigrants who choose to remain in the United States after being terminated from employment, because of the up to 60-day grace period, would not incur the cost of the alien's return transportation home. If the rule is finalized as proposed, these employers would likely incur the alien's return transportation costs because the H-1B or O-1 would be required to depart the country immediately when their employment is terminated by the employer, unless the alien is otherwise authorized to lawfully remain in the United States. Under current regulations, employers do not completely lose the opportunity to hire nonimmigrant workers who had a Form I-129 petition revoked and

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[55] *See* FAQs for Individuals in H-1B Nonimmigrant Status. https://www.uscis.gov/archive/faqs-for-individuals-in-h-1b-nonimmigrant-status (last updated Dec. 23, 2025).

[56] *See* USCIS Policy Manual, Vol. 7, Part E, Chapter 5 - Job Portability after Adjustment Filing and Other AC21 Provisions, https://www.uscis.gov/policy-manual/volume-7-part-e-chapter-5 (last updated Feb. 3, 2026).

have departed the country as they have the option to submit a new petition, if otherwise eligible, to bring those aliens back to the United States after the new employment petition is approved and if the alien is admissible. The proposed rulemaking is not changing this current practice.

DHS acknowledges that dependents of primary E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN beneficiaries who are authorized to work and working in the United States would also be impacted if the up to 60-day discretionary grace period at 8 CFR 214.1(l)(2) is removed as proposed and the principal nonimmigrant on which their dependent status is based experiences a cessation of employment. Subsequently, it would also impact employers of E-1, E-2, E-3, H-4 and L-2 dependent spouses who are authorized to work. The impacts described for primary E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN beneficiaries and their employers above would be similar for E-1, E-2, E-3, H-4 and L-2 dependent spouses who are authorized to work and their employers. An impact on dependent spouses of the proposed change could be immediate departure and lost compensation. As explained previously, DHS data is not salient enough to provide a reliable and accurate estimate of dependents of primary E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN beneficiaries who would have utilized the grace period granted at USCIS' discretion under current regulations.

DHS cannot estimate the number of E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN nonimmigrant workers who would depart from United States in response to this rule if finalized as proposed, as some nonimmigrant workers may have sufficient notice before cessation of employment to find new employment or file a change of status request. Some nonimmigrant workers could also have pending benefit requests (for example, an adjustment of status application) that may allow them to remain in the United States in a period of authorized stay following the cessation of their employment. There could also be several factors influencing whether some of these workers would decide to depart the

United States permanently or seek to re-enter the United States at a later time and if so, under what immigration status.

b. Costs of Attending Immigration Hearings

In this proposed rule, E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN nonimmigrant workers would no longer receive an up to 60-day discretionary grace period upon cessation of employment and would be required to depart immediately unless otherwise authorized to lawfully remain in the United States. These workers would be considered to have failed to maintain status starting the day after their employment ends, and could generally be amenable for an NTA as an alien who failed to maintain nonimmigrant status. *See* INA sec. 237(a)(1)(C)(i), 8 U.S.C. 1227(a)(1)(C)(i). Once USCIS becomes aware of this fact, USCIS would follow established guidance for issuing NTAs as appropriate.[57] If an NTA is issued by USCIS (or another relevant agency) and properly served to such aliens, they would need to appear in front of an Immigration Judge in the Department of Justice Executive Office for Immigration Review (EOIR) Immigration Court at the location and time specified on the NTA.[58] The affected population as a result of this rule would likely be very small and would be limited to those whose employment ended, who did not voluntarily depart the United States upon cessation of their employment, who would have extended or changed status during the grace period but are no longer able to because a grace period no longer exists, and whose failure to maintain status would have been known to USCIS before the end of the alien's period of admission as indicated on his or her I-94. To illustrate, in FY 2025, there were 37 NTAs issued for H-1B beneficiaries based on failure to maintain nonimmigrant status

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[57] For example, it could be possible that under such guidance USCIS would issue an NTA upon receiving notice from the employer (e.g., withdrawal of the approved I-129) that the alien was no longer employed and the alien is no longer maintaining nonimmigrant status.

[58] DHS expects the majority of immigration hearings and proceedings to take place in Immigration Courts. We are using the cost and travel time estimates for attending immigration hearings at a court or other designated location as an approximate estimate for all populations attending immigration hearings in response to a Notice to Appear (NTA) issued by USCIS.

beyond the up to 60-day discretionary grace period.[59] DHS expects that due to the proposed rulemaking, the number of issued NTAs would increase marginally. To estimate the opportunity cost of time for E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN having to appear in front of an Immigration Judge, this analysis uses $48.05 per hour in compensation, including costs for wages and salaries and benefits from the Department of Labor, U.S. Bureau of Labor Statistics (BLS) report on Employer Costs for Employee Compensation detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries.[60] DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier using the most recent BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.46, which incorporates employee wages and salaries and the full cost of benefits, such as paid leave, insurance, and retirement.[61] DHS does not rule out the possibility that some portion of this population might earn higher wages than the average level for all occupations. E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN nonimmigrants whose employment ended are not supposed to work during the up to 60-day discretionary grace period, unless otherwise authorized. Therefore, DHS's reliance on the average employer costs for employee compensation for all civilian workers in major occupational groups and industries is justifiable for such beneficiaries described in Table 3.

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[59] DHS, USCIS, CDAO, CLAIMS3 & ELIS, queried 1/2026, PAER0020172. This data depicts the number of aliens who exceeded the 60-day grace period and were issued an NTA for failure to maintain status.
[60] *See* BLS, Economic News Release, "Employer Cost for Employee Compensation – June 2025, " Table 1. Employer costs for employee compensation by ownership, (Sept. 12, 2025), Employer Costs for Employee Compensation News Release - 2025 Q02 Results, https://www.bls.gov/news.release/archives/ecec_09122025.htm.
[61] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour)=$48.05/$33.02=1.455=1.46 (rounded). *See* BLS, Economic News Release, "Employer Cost for Employee Compensation - June 2025," 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, (Sept. 12, 2025), https://www.bls.gov/news.release/archives/ecec_09122025.pdf.

There are 1,174 designated locations where NTA hearings take place, which include Immigration Courts.[62] Using similar methodology as in past rulemakings for estimating distance and time for attending an appointment with USCIS, DHS estimates that the average round-trip distance to an Immigration Court or other designated hearing location is 50 miles, and that the average travel time for the trip is 2.5 hours.[63] DHS's estimate of travel distance to an Immigration Court or designated NTA hearing location is based on current standards through which the Immigration Courts assign venue for NTA hearings.[64] The cost of travel also includes a mileage charge based on the estimated 50-mile round trip at the 2026 GSA rate of $0.725 per mile for use of a privately owned automobile.[65] DHS estimates an alien would spend 1 to 3 hours to attend an immigration hearing (depending on the complexity of an individual case). DHS estimates the total time to travel to and attend an immigration hearing would range from 3.5 to 5.5 hours. The opportunity cost of time to attend an immigration hearing would range from $168.18 to $264.28 per person.[66] The travel cost based on mileage is estimated to be $36.25.[67]

In sum, DHS estimates the opportunity cost of time and travel costs to attend an immigration hearing in response to a NTA would range from $204.43 to $300.53 per person.[68]

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[62] USCIS CDAO, queried 1/2026, PAER0020251. *See also* https://www.justice.gov/eoir/immigration-court-operational-status. Last accessed on Aug. 13, 2026.

[63] *See* Collection and Use of Biometrics by U.S. Citizenship and Immigration Services, 90 FR 49062 (3 Nov. 2025); and Alien Registration Form and Evidence of Registration, 91 FR 39248 (29 Jun. 2026). USCIS notes that this estimate of travel distance and travel time is an overestimate as the number of NTA hearing locations exceed the number of USCIS Application Support Centers.

[64] Gomez, Valeria, "Geography as Due Process in Immigration Court," 23 Wisconsin Law Review 1 (2023), https://wlr.law.wisc.edu/wp-content/uploads/sites/1263/2023/04/A_15-Gomez-Camera-Ready-1-44-PDF-.pdf.

[65] GSA, "Privately owned vehicle (POV) mileage reimbursement rates," https://www.gsa.gov/travel/plan-a-trip/transportation-airfare-rates-pov-rates-etc/privately-owned-vehicle-pov-mileage-reimbursement (last visited Jan. 22, 2026).

[66] Calculations: 3.5 (lower range of total time in hours to attend hearing)×$48.05 (average wage for 1 hour of work) = $168.175 = $168.18 (rounded)
5.5 (higher range of total time in hours to attend hearing)×$48.05 (average wage for 1 hour of work) = $264.275= $264.28 (rounded)

[67] Calculation: 50-mile round trip×$0.725 per mile = $36.25.

[68] Calculations: $36.25 (cost of travel)+$168.18 (time-related costs)=$204.43.
$36.25 (cost of travel)+$264.28 (time-related costs)=$300.53.

c. Costs to the Federal Government

In the regulatory impact analysis (RIA), USCIS evaluates the potential impacts of the rule against a no action baseline describing what the world would be like if the rule is not finalized. This proposed rule would result in USCIS devoting resources to issue an increased number of NTAs and to initiate removal proceedings against such aliens. The costs incurred by USCIS would be recovered by fees established at an amount necessary to recover all expected costs.[69] DHS acknowledges that while the proposed rulemaking would lead to reduction in administrative burden, it would marginally increase the volume of USCIS referrals to EOIR annually and lead to a minor increase in workload demands on both DOJ and U.S. Immigration and Customs Enforcement (ICE) (see Table 3). DHS asserts that these impacts may lead to minor increases in operational demands on both agencies.

d. Benefits to the Federal Government, Petitioners, and Beneficiaries of Nonimmigrant Employment visas

The proposed rule would better align the regulation with the statute.[70] As the grace period is not mandated by statute, its existence disassociates the relationship between an alien's employment and his or her authorization to stay in the country. The proposed rule would encourage affected nonimmigrants to depart the United States upon failure to maintain status. It would also reduce administrative burden as the adjudication process to determine when a beneficiary ended employment and the up to 60-day discretionary grace period started which can be complicated and lead to uncertainty in

[69] USCIS is mainly funded by immigration and naturalization benefit request fees charged to applicants and petitioners. Fees collected from individuals and entities filing immigration benefit requests are deposited into the IEFA. In accordance with the requirements and principles of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901-03 and OMB Circular A-25, USCIS conducts biennial reviews of the non-statutory fees deposited into the IEFA. The fee schedule is adjusted periodically to ensure that fees are adequate to recover costs for providing adjudication and naturalization services. The fee schedule was last adjusted on April 1, 2024. See 89 FR 6194 (Jan. 1, 2024).
[70] *See* Section IV.B. of the preamble.

case outcomes as described in the preamble. Reduction in administrative burden would enable USCIS to prioritize the allocation of scarce resources towards timely adjudication of meritorious cases. Therefore, DHS believes that elimination of the up to 60-day discretionary grace period at 8 CFR 214.1(l)(2) would lead to improved administrative efficiency and further enhance the integrity of the legal immigration system.

This proposed rule likely would not affect the national labor force or that of individual States. To the extent that this proposed rule would affect the labor force, the effects, if any, would be localized. As such, this proposed rule would not result in any significant tax or distributional impacts.

B. Regulatory Flexibility Act

The RFA, Pub. L. 96-354, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, 5 U.S.C. 601 through 612, requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.[71] An “individual” is not considered a small entity and therefore a rule’s impacts on individuals are not considered for RFA purposes. *See* 5 U.S.C. 601, 632. In addition, the courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates small entities.[72] Consequently, a rule’s

[71] A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632.

[72] *See* U.S. Small Business Administration (SBA), “A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act.” at 22 (Aug. 2017), https://advocacy.sba.gov/wp-content/uploads/2019/06/How-to-Comply-with-the-RFA.pdf. In *Aeronautical Repair Station Association, Inc. v. FAA*, the D.C. Circuit made clear that an entity is not “subject to” a regulation unless the regulation “imposes responsibilities directly on” the entity. 494 F.3d 161, 177 (D.C. Cir. 2007); *see also Mid-Tex Elec. Coop., Inc. v. FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (holding that the RFA’s requirements apply only to “small entities that would be directly regulated” by a challenged rule).

indirect impacts on a small entity not subject to the rule are not considered for RFA purposes. DHS estimates that 3,795 petitions for an E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN nonimmigrant worker (Form I-129) would be submitted by a new petitioner for a beneficiary within the 60-day discretionary grace period.

1. A Description of the Reason Why the Action by the Agency Is Being Considered

DHS is proposing to amend its regulations to remove 8 CFR 214.1(1)(2) from DHS regulations and no longer provide an up to 60 day discretionary grace period for aliens admitted or otherwise provided status in the E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN classifications, and their dependents, following cessation of the employment or services that was the basis for the alien's admission or grant of status. The proposed changes would better align the regulations with the statute, reduce administrative burdens, and better ensure program integrity. DHS believes these changes would better align the regulations with the statute and Congressional intent.

2. A Statement of the Objectives of, and Legal Basis for, the Proposed Rule

DHS's objectives and legal authority for this proposed rule are discussed earlier in Section IV.A. Need for the Proposed Rule, and in the Executive Summary Section II.B. Legal Authority, of the preamble.

3. A Description and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Changes Would Apply

This rule directly affects aliens, however we have included an analysis of the number of employers who are not subject to the rule but might be indirectly impacted by the rule for transparency. The small entities submitting petitions are not the directly regulated population.

For FY 2025, DHS estimates there were approximately 2,886 unique entities who submitted a Form I-129 Change of Employer petition for approximately 5,178 E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN nonimmigrant workers whose previously approved Form I-129 petition was revoked because the petitioner withdrew the petition in FY 2025 (see Table 3). These entities submitted a new petition for a nonimmigrant worker via Form I-129 in the possible up to 60-day discretionary grace period.[73] DHS merged the internal employer data with SBA's table of size standards[74] to identify small entities. To determine whether an entity is small for purposes of the RFA, DHS first identified the entity's North American Industry Classification System code and then used SBA guidelines to classify the revenue or employee count threshold for each entity. Some entities were classified as small based on their annual revenue, and some by their number of employees. Approximately 18 percent of petitions were not matched using SBA table of size standards. These unmatched employers were considered small entities if their number of employees was less than 500. In Table 5, DHS shows the classification of 2,886 unique entities by their small entity status according to SBA size standards.[75] Out of the 2,886 unique petitioners, 1,852 were determined to be small entities and 1,034 were determined to be non-small entities.[76]

Table 5: Small Entity Determination of Entities that filed Form I-129 petition on behalf of E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN beneficiaries in discretionary grace period

Parameter	Quantity	Proportion	Comments

[73] As stated above, due to data limitations DHS uses this population as a reasonable proxy to estimate the population that could have used the grace period, as data on aliens using the grace period is not captured on a form or otherwise reported to USCIS. DHS acknowledges that using I-129 withdrawal data likely would not enable estimation of all possible impacts, as it will not capture all beneficiaries that could have used the grace period. For instance, DHS notes that currently some employers do not notify USCIS or file a withdrawal when an H-1B worker ceases to work for the company but uses the up to 60-day discretionary grace period. Some classifications, like the E-1, E-2, E-3, H-1B1, L-1and TNs, do not have a requirement to notify USCIS of employment cessation or submit a withdrawal. Due to data limitations and availability, DHS is unable to estimate the number of companies who have not notified or filed a withdrawal letter with USCIS or who failed to do so immediately upon cessation of the alien's employment. Further, DHS is unable to estimate the number of aliens who changed employment prior to having their petition withdrawn and would not have utilized the grace period.

[74] SBA, "Table of Size Standards" (Mar. 17, 2023), https://www.sba.gov/document/support-table-size-standards.

[75] Source: USCIS CDAO, CLAIMS3 and ELIS, queried 1/2026 and 2/2026, PAER0020265 and PAER0020514.

[76] Office of Advocacy, SBA, "A Guide for Government Agencies, How to Comply with the Regulatory Flexibility Act," p. 19 (Aug. 2017), available at https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf (last visited July 17, 2026).

Population – Entities that filed Form I-129 petition on behalf of E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN beneficiaries in discretionary grace period	2,886	100%	Determined by basis for classification
Small entities	1,852	64.17%	Entities among the 2,886 entities considered small based on revenue or employee data
Non-small entities	1,034	35.83%	Number of non-small entities out of the 2,886 entities
Source: USCIS CDAO, CLAIMS3 and ELIS, queried 1/2026 and 2/2026, PAER0020265 and PAER0020514.			

A prospective petitioner (employer) may respond to the proposed rulemaking in several ways. Under the proposed rulemaking, DHS estimates that approximately 2,886 petitioners would lose the opportunity to submit petitions for an E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN nonimmigrants whose employment ended and do not have legal status or access to the up to 60-day grace period. Relying on information reported in Form I-129, DHS determined that approximately 99 percent of the unique entities that filed a new petition for nonimmigrant worker (Form I-129) under H-1B classification on behalf of H-1B beneficiaries in the up to 60-day discretionary grace period filed petitions that were not subject to the cap. Entities that hire E-1, E-2, E-3, H-1B1, L-1, O-1 or TN nonimmigrants filed applications or petitions that are not subject to a cap (either because a numerical cap does not apply to the classification or, if a cap does apply, the cap has not been reached). Given that almost all these entities described in Table 4 filed applications or petitions that are not subject to a numerical cap, DHS presumes that they will either offer the same jobs to equally qualified U.S. workers or go through the I-129 petition process depending on their workforce requirement. In some situations, aliens who have gone abroad can be readmitted for employment if the I-129 petition filed on their behalf is approved and the alien is admissible. Even though these petitioners would witness a temporary loss of productivity, they might be able to gain U.S. workers for the positions that were generally offered to E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN nonimmigrants during the possible grace period provided by 8 CFR 214.1(l)(2). The effects of this rulemaking on any given employer would depend in part on the interaction of a number of complex variables that constantly are in flux, including national, state, and local labor market conditions, economic and business factors, the type of occupations and skills involved, and the substitutability between E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN workers and U.S. workers. DHS has not been able to estimate the number of unique petitioners who offer employment to authorized dependents of primary E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN beneficiaries in their grace period, but acknowledges the impacts of the proposed rulemaking on such petitioners would be similar to what has been described above.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities that Will Be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record

The proposed rulemaking would not lead to any additional reporting, recordkeeping, and other compliance requirements on small entities.

5. An Identification of All Relevant Federal Rules, to the Extent Practical, that May Duplicate, Overlap, or Conflict with the Proposed Rule

DHS is unaware of any duplicative, or conflicting Federal rules, but invites the public to provide comments and information regarding any such rules.

DHS is aware of potential overlap in the beneficiary population with the Department of Labor's Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States Notice of Proposed

Rulemaking.[77] DOL is proposing to revise Employment and Training Administration (ETA) regulations governing the prevailing wages for employment opportunities that United States (U.S.) employers seek to fill with alien workers through certain EB-2 and EB-3 employment-based immigrant visas or through H-1B, H-1B1, or E-3 nonimmigrant visas. DHS has determined that there is potential overlap in the beneficiary population that is being regulated by DOL's Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States NPRM and DHS's Eliminating the Discretionary 60-Day Grace Period NPRM; however, no conflicts or duplications have been identified. DHS invites the public to provide comments and information regarding any such rules.

6. A Description of Any Significant Alternatives to the Proposed Rule that Accomplish the Stated Objectives of Applicable Statutes and that Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

There would be no significant economic impact on substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule that includes any Federal mandate that may

[77] Department of Labor, Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States. 91 FR 15454. [ETA-2026-0001] (March 27, 2026).

result in $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector.[78]

The inflation adjusted value of $100 million in 1995 is approximately $211 million in 2025 based on the Consumer Price Index for All Urban Consumers (CPI-U).[79] This proposed rule does not contain a Federal mandate as the term is defined under UMRA.[80] The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

D. Executive Order 13132 (Federalism)

This proposed rule would 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 proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988 (Civil Justice Reform)

This proposed rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. DHS has

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78 *See* 2 U.S.C. 1532(a).

79 *See* BLS, "Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month," https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202512.xlsx (last visited Aug. 25, 2026). Calculation of inflation: (1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2025); (2) Subtract reference year CPI-U from current year CPI-U; (3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U; (4) Multiply by 100=[(Average monthly CPI-U for 2025–Average monthly CPI-U for 1995)÷(Average monthly CPI-U for 1995)]×100=[(321.943 –152.383) ÷152.383]=(169.560/152.383)= 1.113×100=111.3 percent=111 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars×2.11=$211 million in 2025 dollars.

80 The term "Federal mandate" means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6).

determined that this proposed rule meets the applicable standards provided in section 3 of E.O. 12988.

F. Family Assessment

DHS has reviewed this proposed rule in line with the requirements of section 654 of the Treasury and General Appropriations Act, 1999,[81] enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.[82] DHS has systematically reviewed the criteria specified in section 654(c) of the Treasury and General Appropriations Act by evaluating whether this regulatory action: (1) impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions or substitutes governmental activity for the function; (4) affects disposable income or poverty of families and children; (5) only financially impacts families, if at all, to the extent such impacts are justified; (6) may be carried out by State or local government or by the family; or (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the agency determines a regulation may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

Through this rule, DHS proposes to restore its previous and long-standing policy of not providing E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN nonimmigrants, and their dependents, with an up to 60-day discretionary grace period upon cessation of employment with the petitioning employer prior to the expiration of the alien’s authorized period of stay. The proposed changes, if finalized as proposed, would require these nonimmigrants to immediately leave the United States upon cessation of the

[81] *See* 5 U.S.C. 601 note.
[82] *See* Pub. L. 105-277, 112 Stat. 2681 (1998).

employment or activity on which their nonimmigrant status is based, unless otherwise authorized to lawfully remain in the United States.

DHS has determined that the implementation of this regulation would not negatively affect family well-being as outlined in section 654 of the Treasury General Appropriations Act, 1999. While termination of employment of an E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN nonimmigrant worker could affect the disposable income of a family, the matter regulated in this rule eliminates the up to 60-day discretionary grace period, which would have allowed affected aliens to find new employment in the United States without departing the United States. The financial effect thus would not stem from this rulemaking but rather, is incidental to the alien's (and his or her family members) obligation under governing immigration laws to depart the United States after their employment has already terminated. The statutory and regulatory obligation that the alien (and the alien's family members, if any) who is no longer maintaining status must depart the United States is not meaningfully different from any other alien's obligation present in the United States who fails to maintain their nonimmigrant status. Therefore, DHS believes that any impact would be negligible and would be justified by better aligning DHS regulations with the INA.

G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule would not have tribal implications under Executive Order 13175 because it would not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

H. National Environmental Policy Act

DHS and its components analyze proposed regulatory actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq., applies and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 “Implementing the National Environmental Policy Act” (Dir. 023– 01 Rev. 01) and Instruction Manual 023-01-001-01 Rev. 01 (Instruction Manual)[83] establish the policies and procedures that DHS and its components use to comply with NEPA.

NEPA allows Federal agencies to establish, in their NEPA implementing procedures, categories of actions (“categorical exclusions”) that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement.[84] The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.[85]

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[86]

With this proposed rule, DHS is seeking to remove 8 CFR 214.1(1)(2) from DHS regulations and no longer provide an up to 60-day discretionary grace period for aliens admitted or otherwise provided status in the E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN classifications (and their dependents), following cessation of the employment or activities that formed the basis for the alien’s eligibility for the classification and associated admission or grant of status. The proposed rule, by removing the up to 60-day

[83] The Instruction Manual contains DHS’s procedures for implementing NEPA and was issued on November 6, 2014, https://www.dhs.gov/ocrso/eed/epb/nepa (last updated July 29, 2025).
[84] *See* 42 U.S.C. 4336(a)(2), 4336e(1).
[85] *See* Instruction Manual, Appendix A, Table 1.
[86] Instruction Manual at V.B(2)(a) through (c).

discretionary grace period, would better align the regulation with the statutory provision governing the impacted classifications, requiring the alien's immediate departure from the United States upon his or her failure to maintain the employment or activity that was the basis for the nonimmigrant status, unless otherwise authorized to lawfully remain in the United States. The purpose of the proposed regulation is also to reduce the administrative burden associated with the up to 60-day discretionary grace period. As such, this proposed rule is limited to amending DHS regulations governing aliens in the E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN nonimmigrant classifications. DHS has reviewed this proposed rule and finds that no significant impact on the environment, or any change in environmental effect, will result from the amendments being promulgated in this proposed rule.

Accordingly, DHS finds that the promulgation of this proposed rule's amendments to current regulations clearly fits within categorical exclusion A3 established in DHS's NEPA implementing procedures as an administrative change with no change in environmental effect, is not part of a larger Federal action, and does not present extraordinary circumstances that create the potential for a significant environmental effect. Therefore, the proposed regulatory amendments are categorically excluded from further NEPA review.

I. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. chapter 35, and its implementing regulations 5 CFR part 1320, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. This rule does not propose any new or revise any existing "collection[s] of information" within the meaning of the Paperwork Reduction Act.

This NPRM proposes to eliminate the up to 60-day discretionary grace period at 8 CFR 214.1(l)(2) for E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN nonimmigrants, and their dependents. USCIS has determined that there is no need to update the Petition for Nonimmigrant Worker (Form I-129) nor any other information collection related to E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN nonimmigrants. Form I-129 has previously been approved by OMB under the Paperwork Reduction Act. *See* OMB control number 1615-0009.

List of Subjects and Regulatory Amendments

List of Subjects

8 CFR Part 204

Administrative practice and procedure, Adoption and foster care, Immigration, Reporting and recordkeeping requirements

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

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

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1324a, 1641; 8 CFR part 2.

2. Amend § 204.5 by revising paragraph (p)(1)(i) to read as follows:

§ 204.5 Petitions for employment-based immigrants

* * * * *

(p) * * *

(1) * * *

(i) In the case of an initial request for employment authorization, the individual is in E-3, H-1B, H-1B1, O-1, or L-1 nonimmigrant status, including the periods authorized by § 214.1(l)(l), as well as any other periods of admission authorized by this chapter before a validity period begins or after the expiration of a validity period, on the date the application for employment authorization (Form I-765) is filed;

* * * * *

PART 214—NONIMMIGRANT CLASSES

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

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1188, 1221, 1281, 1282, 1301-1305, 1357, 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; Pub. L. 115-218, 132 Stat. 1547 (48 U.S.C. 1806).

2. Amend § 214.1 by removing paragraph (l)(2) and redesignating paragraph (l)(3) as paragraph (l)(2).

§ 214.1 Requirements for admission, extension, and maintenance of status

* * * * *

(l) * * *

(1) * * *

(2) An alien in any authorized period described in paragraph (l) of this section may apply for and be granted an extension of stay under paragraph (c)(4) of this section or change of status under 8 CFR 248.1, if otherwise eligible.

____

Markwayne Mullin,
Secretary,
U.S. Department of Homeland Security.

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