



DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2870-26; DHS Docket No. USCIS-2026-0529]

RIN 1615-AD26

Removing Deference to Prior USCIS Determinations of Eligibility

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), proposes to remove 8 CFR 214.1(c)(5), which generally provides that USCIS gives deference to a prior approval involving the same facts when adjudicating a request to extend a petition for an alien's employment or stay. This change would better align DHS regulations with the statute, which places the burden of proving eligibility for all immigration benefits on the petitioner, applicant, or beneficiary; strengthen adjudicatory review; and support agency priorities to improve the integrity of the immigration system and better protect the interests of U.S. workers.

DATES: Written comments on the notice of proposed rulemaking (NPRM) must be submitted on or before [INSERT DATE 30 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-2026-0529 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 submitted in a manner other than via <https://www.regulations.gov>, including emails 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, DHS and 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 <https://www.regulations.gov>, please contact the Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, U.S. 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).

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Table of Abbreviations

CFR – Code of Federal Regulations
DHS – U.S. Department of Homeland Security
FR – *Federal Register*
HSA – Homeland Security Act of 2002
INA – Immigration and Nationality Act
NEPA – National Environmental Policy Act
NOID – Notice of Intent to Deny
NPRM – Notice of Proposed Rulemaking
OMB – Office of Management and Budget
PRA – Paperwork Reduction Act of 1995
RFA – Regulatory Flexibility Act of 1980
RFE – Request for Evidence
RIA – Regulatory Impact Analysis
RIN – Regulation Identifier Number
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 via <https://www.regulations.gov>, including emails 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-2026-0529 for this rulemaking. Please note all submissions will be posted, without change, to the Federal eRulemaking Portal at <https://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 <https://www.regulations.gov>.

Docket: For access to the docket and to read background documents or comments received, go to <https://www.regulations.gov>, referencing DHS Docket No. USCIS-2026-0529. 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. Background

A. Purpose and Summary of the Proposed Regulatory Action

The purpose of this proposed rule is to remove 8 CFR 214.1(c)(5). That regulation instructs USCIS officers to give deference to a prior determination of a petitioner's, applicant's, or beneficiary's eligibility when adjudicating a request filed on Form I-129, Petition for a Nonimmigrant Worker, involving the same parties and the same underlying facts.¹ This requirement most often applies when a petitioning employer seeks to extend a

¹ For most nonimmigrant classifications that use Form I-129, the filer is referred to as the "petitioner." However, for some classifications (for example, the E and TN classifications), the filer is referred to as the "applicant." For simplicity, references in this preamble to a "petitioner" also include an "applicant," and references to a "petition" also include an "application."

petition for an alien's employment or authorized stay in the United States under the same previously approved nonimmigrant worker classification. Under the current regulation, USCIS must generally defer to the prior determination of eligibility for the nonimmigrant worker classification unless there was a material error, a material change, or new material information. 8 CFR 214.1(c)(5).

When DHS promulgated 8 CFR 214.1(c)(5), the agency stated that petitioners would "continue to have the burden to present all required and relevant evidence" to establish eligibility for the requested nonimmigrant worker classification notwithstanding the prior approval. *See Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers*, 89 FR 103054, 103093 (Dec. 18, 2024). The agency also stated that "deference does not equate to a lack of USCIS review of the petition." *Id.*

DHS now believes, however, that the practical effect of the deference regulation is inconsistent with those statements. In particular, the deference regulation and policy effectively shift the burden from the petitioner to the USCIS officer to justify departing from a prior approval. DHS is also concerned that the deference policy has had the practical effect of encouraging USCIS officers to prioritize consistency with prior approvals and efficiency in adjudication of extension requests rather than fully exploring all facts and evidence to ensure continued eligibility for the nonimmigrant worker benefit. As a result, DHS believes that some petitioners have interpreted the deference policy as reducing their obligation to demonstrate continued eligibility for the requested nonimmigrant worker classification when seeking an extension of a prior approval. Overall, the deference regulation and policy risk undermining program integrity by potentially reducing scrutiny of extension requests of nonimmigrant worker classifications, thereby potentially perpetuating erroneous prior approvals and creating an

environment in which fraudulent and meritless petitions are less likely to be detected before approval. *See* Section III of this preamble.

Therefore, DHS proposes to remove 8 CFR 214.1(c)(5). DHS believes that this change would better align DHS regulations and USCIS adjudicatory practice with the agency's longstanding interpretation of the Immigration and Nationality Act (INA or Act), which places the burden of proof in establishing eligibility for all immigration benefits on the petitioner. *See* INA sec. 291, 8 U.S.C. 1361; *Matter of Chawathe*, 25 I. & N. Dec. 369, 375 n.7 (USCIS AAO, 2010) ("The burden of proving eligibility for the benefit sought remains entirely with the applicant"). Removing the deference requirement would also help to ensure that USCIS officers fully review the facts and evidence in every case to ensure continued eligibility. Overall, DHS believes that this change would promote more complete adjudications, strengthen program integrity in the adjudication of nonimmigrant worker benefits, reduce the risk of perpetuating erroneous approvals, and support the Administration's broader efforts to better protect U.S. workers and more faithfully enforce the immigration laws enacted by Congress.²

B. Legal Authority

The Secretary of Homeland Security (Secretary)'s authority for these proposed regulatory amendments is found in various sections of the INA, 8 U.S.C. 1101 et seq., and the Homeland Security Act of 2002 (HSA), Pub. L. 107-296, 116 Stat. 2135, 6 U.S.C. 101 et seq. General authority for issuing this proposed rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and

² *See, e.g.*, The White House, "President Trump Is Delivering for American Workers" (Sept. 1, 2025), <https://www.whitehouse.gov/articles/2025/09/president-trump-is-delivering-for-american-workers/>; The White House, "The Trump Effect: Higher Pay for American Workers" (June 6, 2025), <https://www.whitehouse.gov/articles/2025/06/trump-effect-higher-pay-for-american-workers/>; The White House, "Trump Administration Celebrates Successes for America's Workers" (Aug. 26, 2025), <https://www.whitehouse.gov/articles/2025/08/trump-administration-celebrates-successes-for-americas-workers/>; The White House, "America First Trade Policy" (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/america-first-trade-policy/>; The White House, "Report to the President on the America First Trade Policy: Executive Summary" (Apr. 3, 2025), <https://www.whitehouse.gov/fact-sheets/2025/04/report-to-the-president-on-the-america-first-trade-policy-executive-summary>.

enforce the immigration and nationality laws and 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.³ Further authority for these proposed regulatory amendments is found in:

- Section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), which authorizes the Secretary to prescribe, by regulation, the time and conditions of the admission of nonimmigrants;
- Section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1), which, *inter alia*, authorizes the Secretary to prescribe how an importing employer may petition for nonimmigrant workers, as well as the form of the petition and the information that an importing employer must provide in the petition;
- Section 235(d)(3) of the INA, 8 U.S.C. 1225(d)(3), which authorizes “any immigration officer . . . to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of [the INA] and the administration of [DHS]”;
- Section 287(b) of the INA, 8 U.S.C. 1357(b), which authorizes the taking and consideration of evidence “concerning any matter which is material or relevant to the enforcement of [the INA] and the administration of [DHS]”;

³ Although several provisions of the INA discussed in this NPRM 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* 6 U.S.C. 202(3), 251, 271(b), 542 note, 557; 8 U.S.C. 1103(a)(1), (g), 1551 note; *Nielsen v. Preap*, 586 U.S. 392, 397 n.2 (2019).

- Section 402 of the HSA, 6 U.S.C. 202, which charges the Secretary with “[e]stablishing and administering rules⁴ . . . governing the granting of visas or other forms of permission . . . to enter the United States” and “[e]stablishing national immigration enforcement policies and priorities”; *see also* HSA sec. 428, 6 U.S.C. 236; 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. Extensions of Stay and Petition Validity

Many aliens come to the United States under a nonimmigrant visa classification. Some of these classifications permit aliens to be employed or otherwise provide services in the United States for temporary periods. *See* INA secs. 101(a)(15) and 214, 8 U.S.C. 1101(a)(15) and 1184. Each classification for purposes of employment or otherwise performing services in the United States has its own eligibility requirements and requirements related to the period of admission or status, maintenance of status, the ability to change jobs or employers, and the ability to extend nonimmigrant status. *Id.*

For certain nonimmigrant visa classifications, a petitioner seeking the services of an alien beyond the previously granted period of admission may file an extension of stay request on Form I-129, Petition for Nonimmigrant Worker.⁵ 8 CFR 214.1(c)(1). An extension of stay 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. 8 CFR 214.1(c)(6). When

⁴ Section 102(e) of the HSA, 6 U.S.C. 112(e), provides that “the issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, except as specifically provided in this chapter, in laws granting regulatory authorities that are transferred by this chapter, and in laws enacted after November 25, 2002.”

⁵ The petitioner must file Form I-129 to request an extension of stay for E-1, E-2, E-3, H-1B, H-1B1, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, P-1S, P-2S, P-3S, Q-1, R-1, or TN nonimmigrant workers. For dependents of such workers, extension of stay requests may be filed on Form I-539, Application to Extend/Change Nonimmigrant Status.

requesting an extension of stay on Form I-129, the petitioner must submit evidence that the alien maintained his or her status along with all other initial evidence specified in the regulations and in accordance with form instructions. *See* 8 CFR 214.1(c)(1), (6); Form I-129 Instructions, Instructions for Petition for Nonimmigrant Worker, <https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf> (Sept. 9, 2026).

An extension of stay request is often submitted together with a request for an extension of petition validity, which is a request to allow the alien to continue to work for his or her current employer in the same nonimmigrant classification.⁶ The petition extension and extension of stay request are filed on Form I-129 along with evidence of continued eligibility for the nonimmigrant classification, and all other initial evidence specified in the regulations and in accordance with form instructions.⁷

A request for an extension of petition validity follows a previous finding of eligibility for the nonimmigrant classification. Although there is a previous finding of eligibility, the burden of proof in any immigration request – including a request for an extension of petition validity – remains on the petitioner. *See* INA sec. 291, 8 U.S.C. 1361.⁸ Officers are not bound to approve subsequent petitions seeking immigration benefits where eligibility has not been demonstrated, merely because of a prior approval.⁹ The prior approval may have been erroneous, in which case giving deference to that prior

⁶ USCIS Policy Manual, Volume 2, Part A, Chapter 4 “Extension of Stay, Change of Status, and Extension of Petition Validity, <https://www.uscis.gov/policy-manual/volume-2-part-a-chapter-4> (last visited July 13, 2026) (“The burden of proof to establish eligibility for an immigration benefit always falls solely on the benefit requestor. The burden of proof never shifts to USCIS.”).

⁷ Typically, determinations on extensions of petition validity are made by USCIS when adjudicating the Form I-129; however, in certain circumstances, U.S. Customs and Border Protection and U.S. Department of State may also make a determination on eligibility for an extension of petition validity.

⁸ *See also* *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010); *Matter of Skirball Cultural Center*, 25 I&N Dec. 799 (AAO 2012); *Matter of Simio Solutions, LLC*, 26 I. & N. Dec. 542 (AAO 2015); *Love Korean Church v. Chertoff*, 549 F.3d 749 (9th Cir. 2008); *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151 (D. Minn. 1999); *Mo v. USCIS*, 719 F.Supp.3d 21 (D.D.C. 2024); *Borushevskyi v. USCIS*, 664 F.Supp.3d 117 (D.D.C. 2023); *Web Saigon US LLC v. USCIS*, 541 F.Supp.3d 1160 (D. Ore. 2021); *Battineni v. Mayorkas*, 752 F.Supp.3d 195 (D.D.C. 2024); *Krasniqi v. Dibbins*, 558 F.Supp.3d 168 (D. N.J. 2021); 8 CFR 103.2(b)(1) (“An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication.”).

⁹ USCIS Policy Manual, Volume 2, Part A, Chapter 4 “Extension of Stay, Change of Status, and Extension of Petition Validity, <https://www.uscis.gov/policy-manual/volume-2-part-a-chapter-4> (last visited July 13, 2026); *Matter of Church Scientology Intl*, 19 I&N Dec. 593, 597 (Commissioner 1988).

determination of eligibility because the adjudicating officer was not aware of the error may perpetuate unmeritorious approvals. Even if the prior approval was not erroneous, the burden of proof remains on the petitioner to establish eligibility in each benefit request. USCIS decides each matter according to the evidence of record on a case-by-case basis.¹⁰

Despite these well-established principles, the regulation at 8 CFR 214.1(c)(5) instructs USCIS officers to give deference to a prior determination of eligibility when adjudicating a request filed on Form I-129 involving the same parties and the same underlying facts unless the officer determines that there was a material error involved with a prior approval, a material change in circumstances or eligibility requirements, or new, material information that adversely impacts eligibility. As discussed in Section III. of this preamble, DHS believes that the deference regulation is in tension with the statutory requirement that the petitioner must bear the burden to demonstrate eligibility for an immigration benefit, and it may unduly limit adjudicating officers' inherent fact-finding authority in certain cases.

D. History of Deference in USCIS Adjudications

While the codification of deference was relatively recent, USCIS has had a history of implementing and rescinding deference through a series of policy actions beginning in 2004. First, in April 2004, USCIS issued a memorandum discussing the significance of prior USCIS adjudications. *See* USCIS, "The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity," HQPRD 72/11.3 (Apr. 23, 2004). This memorandum, while recognizing USCIS' authority to question prior

¹⁰ 8 CFR 103.2(b)(1) ("An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication."); USCIS Policy Manual, Volume 2, Part A, Chapter 4, "Extension of Stay, Change of Status, and Extension of Petition Validity," <https://www.uscis.gov/policy-manual/volume-2-part-a-chapter-4> (last visited July 13, 2026).

determinations and that each matter must be decided according to the evidence of record on a case-by-case basis, first set out the policy instructing adjudications officers to give deference to a prior determination of eligibility in matters relating to an extension of nonimmigrant petition validity involving the same parties (petitioner and beneficiary) and the same underlying facts, unless there was material error, a substantial change in circumstances, or new material information.

In October 2017, USCIS issued a memorandum which rescinded the 2004 guidance, expressing concerns that the 2004 memorandum improperly shifted the burden from the petitioner to USCIS. *See* USCIS, “Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status,” PM-602-0151 (Oct. 23, 2017). In the 2017 memorandum, USCIS also expressed concerns that the deference policy unduly limited adjudicating officers’ inherent fact-finding authority in certain cases.

In April 2021, USCIS reinstituted its deference policy and incorporated it into the USCIS Policy Manual. *See* USCIS Policy Manual, Volume 2, Part A, Chapter 4 “Extension of Stay, Change of Status, and Extension of Petition Validity.” The policy manual acknowledges that officers are not required to approve subsequent petitions where eligibility has not been demonstrated strictly because of a prior approval but stressed that they should defer to prior determinations involving the same parties and underlying facts. According to the policy manual, if an officer determines that deference to a prior approval is not appropriate, the officer must acknowledge the previous approval(s) in the denial, Request for Evidence (RFE), or Notice of Intent to Deny (NOID) and articulate the reason for not deferring to the previous determination (for example, due to a material error, change in circumstances, or new adverse material information). *See id.* Officers must provide the petitioner with an opportunity to respond to the new information consistent with 8 CFR 103.2(b)(16)(i). *See id.*

In December 2024, DHS codified its deference policy at 8 CFR 214.1(c)(5) through the final rule *Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers*, 89 FR 103054 (Dec. 18, 2024) (Modernization Final Rule). Current 8 CFR 214.1(c)(5) states that when adjudicating a Form I-129, Petition for Nonimmigrant Worker, involving the same parties and the same underlying facts, USCIS gives deference to its prior determination of eligibility unless there is a material error, a material change, or new material information that adversely impacts eligibility.

III. Discussion of Proposed Rule

DHS proposes to remove its regulation at 8 CFR 214.1(c)(5), and the deference policy, which instructs USCIS officers to give deference to a prior determination of the petitioner's or beneficiary's eligibility when adjudicating a request filed on Form I-129 involving the same parties and the same underlying facts, unless there was a material error, a material change, or new material information that adversely impacts eligibility.¹¹ This proposed change would apply to all benefit requests filed using Form I-129, Petition for a Nonimmigrant Worker. This proposal would not prohibit USCIS officers from considering a prior approval where relevant. Rather, it would remove the requirement that officers begin from a position of deference to the prior approval. DHS believes that this change would better ensure that officers fully consider all relevant facts and evidence to ensure continued eligibility, and adjudicate each petition or request on a case-by-case basis to determine whether the petitioner has met its burden of proof to demonstrate continued eligibility for the benefit. Overall, DHS believes that removing deference

¹¹ If this proposed rule becomes final, USCIS would make corresponding changes to the current policy guidance on deference. See USCIS Policy Manual, Volume 2, Part A, Chapter 4 "Extension of Stay, Change of Status, and Extension of Petition Validity," <https://www.uscis.gov/policy-manual/volume-2-part-a-chapter-4> (last visited July 13, 2026).

would enhance program integrity and thereby better protect the interests of U.S. workers, consistent with this Administration's priorities.

A. Restoring the Proper Allocation of the Burden of Proof

Removing deference would better align DHS regulations with the agency's longstanding interpretation of section 291 of the INA, 8 U.S.C. 1361, which places the burden of proof on the petitioner or applicant to establish eligibility for each immigration benefit sought. *See also Matter of Chawathe*, 25 I. & N. Dec. 369, 375 n.7 (USCIS AAO, 2010) ("The burden of proving eligibility for the benefit sought remains entirely with the applicant."). Although an agency may establish reasonable evidentiary presumptions, *see e.g., Reno v. Flores*, 507 U.S. 292, 313 (1993), any such presumption must be consistent with the statutory text and scheme, *see Lin v. U.S. Dep't of Justice*, 494 F.3d 296, 308 (2d Cir. 2007) (en banc). Whether or not the deference regulation is consonant with the statute, DHS now believes that it has the practical effect of shifting the burden of proof from the petitioner to the agency, in tension with section 291 of the INA, 8 U.S.C. 1361, with respect to the eligibility criteria that Congress intended the agency to determine for each immigration benefit sought.

When DHS promulgated 8 CFR 214.1(c)(5), the agency stated that petitioners would continue to have the burden to demonstrate continued eligibility for the requested nonimmigrant worker classification. *See* 89 FR 103094. In practice, however, the deference policy effectively shifts the burden from the petitioner to the adjudicating officer who must identify a material error or change in circumstances to justify deviating from the prior approval.¹² In effect, this creates a default position that the prior approval

¹² Indeed, DHS also explained in the preamble of the Modernization Final Rule that under the deference regulation, USCIS officers must give "close scrutiny before deviating from a prior approval involving the same parties and same underlying facts." 89 FR 103094. USCIS implementing guidance also imposes several requirements on adjudicating officers who determine that deference is not appropriate, including acknowledging the previous approval, articulating the reasons for not deferring to that prior determination, obtaining supervisory approval before deviating from the prior approval, and giving the petitioner an opportunity to respond. *See* USCIS Policy Manual, Volume 2, Part A, Chapter 4, "Extension of Stay,

was correct, and the petitioner and beneficiary remain eligible for the benefit unless the officer finds that an enumerated exception to the deference policy applies (i.e., that there was a material error, material change in circumstances or eligibility requirements, or new, material information that adversely impacts eligibility). This structure effectively shifts the burden from the petitioner to the adjudicating officer. Instead of requiring the petitioner to establish that the alien is eligible to continue to work in the United States under a nonimmigration classification, the deference regulation and policy effectively require the officer to justify why the prior approval should not control.

B. Enhancing USCIS Officer Fact-Finding Authority

Removing deference would also better ensure that USCIS officers review the facts and evidence in every case to ensure continued eligibility before approving a petition extension and granting an extension of stay request. The deference policy suggests that a less than thorough review of each case may be acceptable and gives the impression of unduly limiting adjudicating officers' inherent fact-finding authority. Some officers may view deference as a restriction on their ability to consider all the facts of the case. Rather than taking appropriate action if eligibility was not demonstrated in the petition (such as issuing an RFE), some officers may simply grant the benefit absent glaring errors or changes as a result of the deference policy.

Indeed, as shown in Table 3 *infra*, the RFE rate increased by 2.9 percent more than the RFE rate for the comparison group after the deference policy was rescinded in 2017. DHS acknowledges that other changes unrelated to deference may have, in part, contributed to this increased RFE rate. However, DHS believes that it is reasonable to conclude that the rescission of the deference policy was one of the contributing factors

Change of Status, and Extension of Petition Validity,” <https://www.uscis.gov/policy-manual/volume-2-part-a-chapter-4> (last visited July 13, 2026). This further illustrates that the deference policy has the practical effect (if not the intent) of relaxing the petitioner's burden of proof by shifting the burden to the adjudicating officer to justify deviating from a prior approval. It also signals to officers that a less than thorough review is appropriate when adjudicating extension requests following a prior approval.

for this increased RFE rate. This increase is consistent with DHS's concern that the deference policy has had the effect of discouraging some officers from requesting additional evidence even in cases where the petitioner has not established eligibility for the nonimmigrant worker classification in connection with the current request.

An adjudicating officer's fact-finding authority should not be constrained by any prior petition approval. Instead, officers should thoroughly review a petition for eligibility and request additional documentation as appropriate based on the merits of each case, consistent with USCIS policy regarding requests for evidence, notices of intent to deny, and the adjudication of petitions for nonimmigrant benefits. Because deference may be viewed as a default position upon beginning review of certain filings, the deference policy may, in some cases, have had the unintended effect of limiting the ability of officers to conduct a thorough review of the facts and limiting assessment of eligibility in each case. While officers may, of course, reach the same conclusion as in a prior decision, they should not be compelled to do so as a default starting point.¹³

In addition, deference increases the risk of officers not discovering material errors in prior adjudications. Although the deference policy allows officers to deviate from the prior decision if there was a material error, if officers limited their review of the cases before them because of an assumption that the prior decision was correct, it would necessarily limit the discovery of material error. Deferring to a determination of eligibility for nonimmigrant worker classification that was made potentially up to several

¹³ DHS data also show that historical denial rates did not statistically differ during periods when the deference policy was in effect compared to when it was not in effect. One possible reason for this is that even when deference did not apply, petitioners may have been able to overcome issues raised in an RFE or NOID by submitting additional evidence or information. DHS believes, however, that the impact of the deference policy on officers' fact-finding authority is best reflected in RFE rates rather than approval or denial rates. The ultimate adjudicative decision reached by the officer is not reflective of the extent to which an officer's fact-finding authority may have been restricted during the adjudicative review process. Rather, the variations in RFE rates during periods when deference applied versus the RFE rate when deference did not apply strongly suggests that deference has had the effect of discouraging some officers from requesting additional evidence. Policies that discourage officers from issuing RFEs, even when the officer determines that the petitioner has not yet established eligibility, undermine the integrity of the lawful immigration system and are inconsistent with enhancing an officer's fact-finding authority, regardless of the ultimate adjudicative decision.

years before the adjudication of the petition extension, and that may be based on inaccurate or outdated facts or adjudicated under regulations which have changed since the original approval was issued, is inconsistent with this Administration's efforts to strengthen the integrity of the nonimmigrant worker system.

USCIS does not believe additional officer training or clarification on how to apply deference would sufficiently address these concerns. As discussed earlier in this preamble, USCIS has a history of applying deference over several years. Prior to its codification in the regulations in 2024, the deference policy was in place at USCIS from 2004 until its rescission in 2017 and was reinstituted in 2021. Therefore, USCIS officers generally have had training and operational guidance on how to adjudicate petitions with the deference policy in place. Training, however, is not the issue or solution. Rather, any deference requirement itself conveys a fundamental tension with an officer's obligation to conduct a fulsome review to ensure that the petitioner met its burden before granting a nonimmigrant worker benefit. Indeed, the deference policy was based in part on a desire to increase efficiency by reducing the officer's need to revisit prior determinations of eligibility. That efficiency, however, has had the unintended effect of discouraging officers from thoroughly reviewing a case when adjudicating extension requests for nonimmigrant worker classifications. DHS now believes that the deference policy is inconsistent with ensuring that officers fully evaluate eligibility in every case, which is necessary to protect the integrity of the immigration benefits system and the interests of U.S. workers by ensuring that petitioners and beneficiaries are eligible for the requested nonimmigrant worker benefit.

C. Strengthening Program Integrity

DHS also believes that deference may undermine program integrity, including by creating opportunities for unscrupulous petitioners to submit fraudulent or misleading petitions for nonimmigrant worker benefits. For example, an unscrupulous filer might

submit a petition of questionable merit, hoping that if it is approved, the approval can be used as an anchor for later filings involving similar facts, related beneficiaries, or the same employer. They may even file multiple of these types of petitions and use the fact pattern that is the most advantageous or that is the most quickly approved. Similarly, a petitioner might overstate the beneficiary's role, compensation, or qualifications in the first filing, expecting that once approved, future filings will receive less scrutiny. Further, petitioners may be less forthcoming about changes affecting their business operations or the proffered position (such as reduced operations, loss of contracts, altered job duties, or other compliance issues) if they believe a prior approval is binding. If deference is expected, the petitioner may be incentivized to file extensions without fully disclosing those changes.

Indeed, USCIS data provides some support for the concern that deference may undermine program integrity by reducing scrutiny in some cases and contributing to an environment in which misleading, non-compliant, or fraudulent extensions of nonimmigrant worker petitions are more likely to be approved. For example, the data demonstrate higher percentages of fraud and non-compliance identified in the H-1B and L-1A programs since the time when USCIS reinstituted its deference policy and incorporated it into the USCIS Policy Manual.¹⁴ Specifically, for H-1B extension cases from FY 2022 through FY 2025, the overall combined percentage of non-compliance and/or fraud among H-1B sites visited during USCIS administrative and targeted site visits was 22.39 percent. In comparison, when USCIS had a policy of no deference, the overall combined percentage of H-1B non-compliance and/or fraud among H-1B sites visited during FY 2018 through FY 2020 was 16.77 percent.¹⁵ For L-1A extension cases,

¹⁴ USCIS, Releasable Data Regarding Fraud and Noncompliance in the H-1B and L-1A Programs (Jun. 6, 2026). This data represents administrative and targeted site visits conducted exclusively on H-1B and L-1A extension petitions.

¹⁵ USCIS excluded FY 2021 data from this subset because the deference policy was reinstated partway through FY 2021 (in April 2021) and was not in effect for more than half of that fiscal year.

the overall combined percentage of non-compliance and/or fraud among L-1A sites visited during USCIS administrative and targeted site visits from FY 2022 through FY 2025 was 24.46 percent. In comparison, the overall combined percentage of L-1A non-compliance and/or fraud among L-1A sites visited from FY 2018 through FY 2020 was 18.37 percent.¹⁶

In other words, during the years that USCIS had a policy of deference, the combined percentage of non-compliance and/or fraud among sites visited in the H-1B and L-1A programs was higher than in the years that USCIS did not have a policy of deference. This trend reflected in a subset of H-1B and L-1A extension filings supports the concern that deference undermines program integrity in potentially limiting USCIS' ability to thoroughly review an extension petition on a case-by-case basis, which in turn may incentivize frivolous or fraudulent filings that falsely assert no material change. While DHS acknowledges that other factors besides or in addition to deference may have led to this higher percentage of identifying fraud or non-compliance, it is reasonable to conclude that deference was one of the contributing factors.

Removing deference would potentially disincentivize fraudulent filings and help restore the integrity of the lawful immigration system. This, in turn, would also better protect U.S. workers by ensuring that petitions for nonimmigrant workers are only approved if eligibility is established by the petitioner based on evidence submitted in support of each petition.

D. Reconsideration of the Deference Policy

DHS acknowledges the history of the deference policy and its recent codification at 8 CFR 214.1(c)(5) in the Modernization Final Rule. DHS also acknowledges that some of the statements in this proposed rule represent a shift from statements made in the

¹⁶ USCIS excluded FY 2021 data from this subset because the deference policy was reinstated partway through FY 2021 (in April 2021) and was not in effect for more than half of that fiscal year.

Modernization Final Rule. In the Modernization Final Rule, some commenters voiced concern that codifying deference would constrain USCIS officers' fact-finding authority. *See* 89 FR 103093. Commenters stated that USCIS officers should not be constrained in requesting additional evidence in the adjudication process. They also stated that requiring USCIS officers to confirm all material facts before granting a benefit request would serve as a fraud detection mechanism and deterrent.

At the time, DHS disagreed with the commenters' concerns. *Id.* However, DHS has reconsidered the issue since publication of the Modernization Final Rule and now believes that codification of the deference policy may have had the unintended effect of appearing to constrain USCIS officers' fact-finding authority, leading some USCIS officers to conduct a less than fulsome review, and thus undermining the agency's efforts to detect and deter fraud.¹⁷

In the NPRM proposing to codify deference, DHS stated that the benefits of deference included promoting consistency and efficiency for both USCIS and its stakeholders, and creating predictability for petitioners and beneficiaries. DHS now believes that these benefits were overstated and were not adequately weighed against the negative impacts of deference. It is not clear that the codification of deference actually promoted consistency and efficiency in adjudication, and to any extent that it did, it did so at the expense of program integrity. As discussed in this preamble, deference may incentivize non-meritorious filings, give the appearance of unduly limiting adjudicators' inherent fact-finding authority, and increase the risk that erroneous prior approvals continue to serve as the basis for granting extension petitions for nonimmigrant workers. Quite simply, the deference policy is inconsistent with this Administration's focus on restoring the integrity of the legal immigration system to better protect U.S. workers by

¹⁷ *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("[I]t 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.").

ensuring that only petitioners and beneficiaries who meet eligibility criteria and demonstrate eligibility are granted nonimmigrant worker benefits.

E. Reliance Interests and Alternatives Considered

DHS recognizes that some U.S. employers and nonimmigrant workers may assert reliance interests in the continuation of the deference policy. For example, U.S. employers that expect the continued approval of their Form I-129 petitions may have made business arrangements based on an assumption that these nonimmigrant workers would be able to continue working for them. Similarly, nonimmigrant workers may have made career and/or personal plans in the United States based on the assumption that they would be able to continue their employment and legal presence in the United States.

DHS has considered these reliance interests but believes that any such interests are limited. The deference regulation does not itself guarantee approval of an extension. Conversely, removing deference does not substantively change eligibility for the requested immigration benefit. This proposed change would not deprive U.S. employers of their ability to continue employing nonimmigrant workers, nor would it deprive nonimmigrant workers of their ability to continue working and living in the United States, so long as they are able to establish continued eligibility and obtain necessary approvals to continue such employment. Petitioners and beneficiaries do not have a legitimate expectation that an erroneous or unsupported prior approval would continue to result in future approvals.

To the extent there are legitimate reliance interests in the continuation of deference, DHS believes the negative impacts of the deference policy, as discussed in this preamble, outweigh the potential benefits to employers and aliens who may seek to rely on deference as codified at 8 CFR 214.1(c)(5). DHS believes that its interest in restoring integrity to the immigration system, including by ensuring that USCIS adjudicators conduct fulsome reviews of all benefits requests before granting a benefit, far outweighs

any interest a petitioner or beneficiary may have in expecting continued approvals. This is especially true when deference increases the risk of USCIS failing to identify petitioners and beneficiaries who were not eligible for approval in the first place. DHS therefore believes that removing 8 CFR 214.1(c)(5) and ending the deference policy is necessary to ensure the integrity of the legal immigration system, which in turn better protects U.S. workers.

DHS considered an alternative to removing the deference regulation whereby DHS would revise the regulation to more clearly state that USCIS has discretion whether to apply deference. This could be accomplished by revising the regulatory text to state that USCIS “may give deference in its discretion” instead of “USCIS gives deference” as currently stated at 8 CFR 214.1(c)(5). However, DHS is not proposing this alternative because it would likely create unnecessary confusion and uncertainty for both petitioners and USCIS officers as to whether deference should be applied. Further, this alternative would not adequately address the concerns with deference discussed above in Section III.A through III.C of this preamble. Overall, DHS believes that removing deference entirely is the most practical alternative to enhance program integrity, including by ensuring that the burden remains on the petitioner to establish eligibility for the requested immigration benefit, and that USCIS adjudicators thoroughly review each nonimmigrant worker extension request on its own merits before extending the benefit.

IV. Statutory and Regulatory Requirements

A. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 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 not designated this rule as a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it.

This proposed 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 proposed rule’s primary direct purpose 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).

Summary of Changes

The proposed rule would remove the deference provision at 8 CFR 214.1(c)(5), which currently instructs USCIS officers to give deference to a prior determination for Form I-129 requests when the parties and underlying facts remain the same, unless there was a material error, a material change, or new material information that adversely impacts eligibility. As a result of a more thorough review of each petition, the number of requests for evidence (RFE) is expected to increase, resulting in additional time burden for petitioners to submit additional supporting documentation and evidence. The rule would also impose costs on petitioners by lengthening adjudication times and increasing

uncertainty regarding continued employment. DHS estimates that the rule would produce new annual costs to petitioners of approximately \$133,987 due to an increase in RFEs. In addition, the rule would impose costs on USCIS by increasing the adjudicative workload and operational costs, as officers would spend more time reassessing eligibility issues previously reviewed and may issue an increased number of RFEs, thereby increasing overall resource demands.

There are primary benefits associated with removing the deference policy.

Removal would clarify and reinforce that the statutory burden of proof remains on the petitioner, not the agency. Removal would also encourage a more thorough review of each petition and its supporting evidence. Implementing a more thorough review process is expected to improve the ability to detect prior errors, inconsistencies, or indicators of fraud, and to eliminate the need to determine when deference applies. For the broader public and the immigration system, the change is expected to enhance confidence in the integrity and reliability of the adjudication process and align with agency priorities related to system integrity and protection of U.S. workers' interests. 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 Proposed Rule			
Provision	Description of the Change to Provisions	Estimated Costs of Removing Deference	Estimated Benefits of Removing Deference
8 CFR 214.1 (c)(5). Deference to a prior USCIS determination of eligibility	Removing 8 CFR 214.1 (c)(5), which instructs USCIS officers to give deference to a prior determination for Form I-129 requests when the parties and underlying facts remain the same, unless there was a material error, a material change, or new material information that adversely impacts eligibility.	Quantitative: Petitioners - ☐ As a result of a more thorough review of the petition, there may be an increase in the number of Requests for Evidence (RFE) and the associated time burden on petitioners. DHS estimates the annual increase in cost would be \$133,987 to petitioners due to an increase in RFEs. DHS/USCIS - ☐ None	Quantitative: Petitioners - ☐ None DHS/USCIS - ☐ None Qualitative: Petitioners – ☐ None. DHS/USCIS – ☐ Removing deference would clarify and reinforce that the statutory burden of proof remains on the petitioner rather than

		Qualitative: Petitioners – ☐ Petitioners may experience longer adjudication times and increased uncertainty regarding continued employment when seeking extensions of stay and petition validity. ☐ Removing deference may lead petitioners to spend additional staff, attorneys, or other resources preparing more complete and well-organized extension petitions, resulting in unquantified preparation costs. DHS/USCIS – ☐ Removal of deference may increase operational costs to USCIS because officers would spend more time assessing eligibility issues, increasing the overall adjudicative workload and reviewing process. ☐ The proposed rule may increase agency resource demands associated with adjudicative actions such as RFEs.	the agency, consistent with the statute. ☐ Removing deference would reinforce DHS’ authority to conduct a full, current review of the evidence in each petition, improving the ability to identify ineligibility or indicators of fraud. Public – ☐ Removing deference would increase confidence in the integrity of the adjudication process. ☐ Removing deference would ensure that only meritorious filings for nonimmigrant workers are approved and as a result, improve the integrity of the immigration system and advance policies that protect the interests of U.S. workers.
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Background and Population

The purpose of this proposed rule is to remove 8 CFR 214.1(c)(5), which instructs USCIS officers to give deference to a prior determination of the petitioner’s, applicant’s, or beneficiary’s eligibility when adjudicating a request filed using Form I-129, Petition for a Nonimmigrant Worker, involving the same parties and the same underlying facts, unless there was a material error, a material change, or new material information that adversely impacts eligibility.

The USCIS deference policy was first implemented and applied from April 2004 to October 2017. In April 2004, USCIS issued a memorandum directing officers to generally give deference to prior approvals when adjudicating petitions for extensions involving the same petitioner, the same beneficiary, and the same underlying facts. *See* USCIS, “The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity,” HQPRD 72/11.3 (Apr. 23, 2004). While recognizing that each case must be decided on its own merits and that prior decisions could be revisited, the policy established that officers should defer to that prior determination of eligibility absent material error, substantial changed circumstances, or new material information. *Id.*

In October 2017, USCIS issued a memorandum rescinding the April 2004 guidance. *See* USCIS, “Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status,” PM-602-0151 (Oct. 23, 2017). The agency expressed concern that the deference policy improperly shifted the burden of proof away from the petitioner and unduly restricted officers’ fact-finding authority. *Id.* From October 2017 to April 2021, officers were not instructed to defer to prior approvals and instead were instructed to make new determinations of eligibility without relying on earlier decisions.

USCIS reinstated the deference policy in April 2021 and incorporated it into the USCIS Policy Manual. *See* USCIS Policy Manual, Volume 2, Part A, Chapter 4 “Extension of Stay, Change of Status, and Extension of Petition Validity.” The manual instructs officers to generally defer to prior approvals involving the same parties and the same underlying facts, unless there was a material error in the prior decision, a material change in circumstances, or new material information that adversely impacts the petitioner’s or beneficiary’s eligibility. *Id.* Then, in December 2024, DHS codified the reinstated policy at 8 CFR 214.1(c)(5) in the H-1B Modernization Final Rule, requiring

deference to prior determinations in such cases unless one of the exceptions applies. *See* 89 FR 103054 (Dec. 18, 2024).

Table 2 presents the total number of Form I-129 petitions for nonimmigrant workers and the subset of those petitions that are potentially eligible for deference for each fiscal year (FY) from FY 2014 – FY 2025. Percentages show the petitions eligible for deference as a share of total Form I-129 petitions. In the table, “Deference Policy Status” informs the baseline for the proposed rule and indicates the fiscal years in which the deference policy was in effect for USCIS officers. Across FY2014 through FY2025, total Form I-129 petitions generally increased over time, reaching 7,206,852 overall. Of these, 2,168,394 petitions, or 30 percent, were eligible for deference. Eligibility generally ranged from 25 percent to 36 percent annually, with the highest share in FY2020. In the most recent period when the policy was in effect, FY2022 through FY2025, eligible petitions increased from 195,547 to 235,583, while the eligible share remained around 27 percent to 33 percent, with an average of 30 percent.

To estimate the population that would be subject to this proposed rule over the next 10 years, we use the historical average from the four most recent fiscal years, FY 2022 – FY 2025, because this period reflects consistent application of the deference policy. Since this rule is intended to remove the deference policy, the baseline population should represent a period in which the policy was fully in effect. Therefore, FY 2021 is excluded from the population estimation calculation because the deference policy was reinstated partway through the year (in April 2021) and was not in effect for more than half of that fiscal year.

Table 2. Form I-129 Nonimmigrant Worker Petitions and Deference Policy Status, by Fiscal Year				
Deference Policy Status	Fiscal Year	Total I-129 Petitions	Petitions Eligible for Deference*	Percentage of Petitions Eligible for Deference
In Effect	2014	453,649	139,028	31%
	2015	508,706	144,836	28%

	2016	564,134	142,548	25%
	2017	561,593	158,902	28%
Not In Effect	2018	583,469	163,884	28%
	2019	619,139	185,700	30%
	2020	590,357	209,705	36%
	2021	570,486	190,076	33%
In Effect	2022	713,773	195,547	27%
	2023	643,214	194,314	30%
	2024	683,522	208,271	30%
	2025	714,810	235,583	33%
	Total	7,206,852	2,168,394	30%
	4-Year Average (from FY 2022-2025)	688,830	208,429	30%

Source: USCIS Chief Data and Analytics Office - (CDAO), CLAIMS3 & ELIS, PAER #21508, queried May 2026.

*Deference is generally applied to petitions requesting an extension of stay, which can be identified using Part 2, Question 2 ('Basis for Classification') on Form I-129, specifically those where box 'b' or 'c' is checked. USCIS may also apply the deference policy to petitions with box 'f' checked, depending on what amendment the petitioner is requesting and whether the change is materially substantive. However, category 'f' is not included in this analysis because those cases cannot be reliably identified and separated. As a result, the population eligible for deference may be slightly undercounted.

USCIS, "Instructions for Petition for Nonimmigrant Worker (Form I-129)." OMB No. 1615-0009. Expires Dec. 31, 2027, available at: <https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf>.

Costs and Benefits of the Proposed Rule

DHS expects that the proposed rule would generate both quantified and unquantified costs and benefits, assessed relative to a baseline in which the existing deference policy remains in effect.

Quantified Costs

Quantified costs are captured as the additional time burden on petitioners resulting from more frequent RFEs. Removing the deference policy requires officers to more thoroughly assess eligibility, which may result in officers requesting additional documentation more often to independently verify eligibility for each extension request. Each RFE increases the time burden on petitioners, who must review the notice, collect and organize documents, and prepare and submit a response. To estimate the increase in RFEs attributable to removal of the deference policy, DHS uses historical data from

October 1, 2013, to April 27, 2021, covering periods when the deference policy was in effect (October 1, 2013, to October 11, 2017) and when it was not in effect (October 12, 2017, to April 27, 2021).¹⁸

In order to isolate the effect of removal of the deference policy on the number of RFEs, DHS uses a simple difference-in-difference (DID) approach.¹⁹ For this analysis, the DID approach compares changes in the RFE rate for the affected group (petitions affected by deference policy) during the periods when deference policy was in effect and when it was not in effect with changes in the RFE rate for the comparison group (petitions not affected by deference policy) over the same periods.

Table 3 compares RFE rates for petitions filed during periods when the deference policy was in effect and when it was not in effect, and it compares petitions affected by the deference policy (affected group) and petitions not affected by the deference policy (comparison group). The table shows that the RFE rate for the affected group increased by 4.5 percent from when the deference policy was in effect to when it was not in effect. However, this 4.5 percent increase does not account for broader changes in RFE rates that may have occurred over the same period for reasons unrelated to the deference policy. The DID approach uses the comparison group to account for those broader trends. Because the comparison group's RFE rate increased by 1.6 percent over the same period, the affected group's relative increase was 2.9 percent.²⁰ This method provides a better estimate of the policy-associated change than just the affected group change alone. DHS

¹⁸ Although both periods (October 1, 2013 to October 11, 2017) and (April 28, 2021 to the present) operated under a deference policy, this analysis did not include period, April 28, 2021 to the present, because the objective is to estimate the impact of the 2017 policy that removed deference, not the impact of the subsequent policy that reinstated deference.

¹⁹ See Columbia University, Mailman School of Public Health, *Difference-in-Difference Estimation*, <https://www.publichealth.columbia.edu/research/population-health-methods/difference-difference-estimation>. Difference-in-difference (DID) is a quasi-experimental research design that makes use of longitudinal data from treatment and control groups to obtain an appropriate counterfactual to estimate a causal effect. DID is typically used to estimate the effect of a specific intervention or treatment (such as a passage of law, enactment of policy, or large-scale program implementation) by comparing the changes in outcomes over time between a population that is enrolled in a program (the intervention group) and a population that is not (the control group).

²⁰ Calculation: 4.5 percent – 1.6 percent = 2.9 percent

applied the same DID approach to denial rates and found no corresponding change.²¹ As a result, this analysis does not indicate an expected impact on denial rates.

Table 3. Impact of Deference Policy on RFE Rates: Affected Group vs Comparison Group					
		Affected Group**		Comparison Group***	
		All*	RFE	All*	RFE
Deference Policy Status	Period	Number of Petitions Affected by Deference Policy	Number of RFEs for Petitions Affected by Deference Policy	Number of Petitions NOT Affected by Deference Policy	Number of RFEs for Petitions NOT affected by Deference Policy
In Effect	10/1/2013 – 10/11/2017	589,272	111,561	1,224,803	384,404
(RFE Rate)		(18.9%)		(31.4%)	
Not In Effect	10/12/2017 – 4/27/2021	653,142	152,856	1,109,502	366,023
(RFE Rate)		(23.4%)		(33.0%)	
Difference in RFE Rate (Deference Not in Effect - In Effect)		4.5%		1.6%	
Difference in Difference (Affected-Comparison)		2.9%			
Source: USCIS CDAO, CLAIMS3 & ELIS, PAER #21508, queried May 2026.					
*All: Total number of petitions in each period, including those that received RFEs and those that did not. Petitions are identified using Part 2, Question 2 (‘Basis for Classification’) on Form I-129, those where box ‘a’, ‘b’, ‘c’, ‘d’, or ‘e’ is checked. Category ‘f’ is not included because other policies affected RFE rate for this category while deference policy was not in effect.					
**Affected: Petitions are identified using Part 2, Question 2 (‘Basis for Classification’) on Form I-129, those where box ‘b’ or ‘c’ is checked.					
***Comparison: Petitions are identified using Part 2, Question 2 (‘Basis for Classification’) on Form I-129, those where box ‘a’, ‘d’, or ‘e’ is checked.					

Based on the simple DID estimate, the removal of 8 CFR 214.1(c)(5) and the deference policy may increase the RFE rate by 2.9 percentage points. We apply this percentage to the estimated affected population from Table 2 (208,429) to estimate that there would be approximately 6,044 additional RFEs annually after removing the deference policy.²² In order to estimate the opportunity cost of time for preparing an RFE

²¹ USCIS CDAO, CLAIMS3 & ELIS, PAER #21508, queried May 2026, USCIS Analysis.

²² Calculation: 6,044= 208,429 x 2.9 percent.

response, DHS assumes that a prospective petitioner would use an HR specialist, an in-house attorney, or an outsourced attorney to prepare an RFE response.²³ DHS estimates that, on average, 63 percent of RFEs were issued for petitions concurrently filed with a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.²⁴ Table 4 presents the estimated opportunity costs of time based on the time petitioners would spend gathering and submitting evidence in response to an increase in RFEs. The opportunity cost of time is calculated by multiplying the estimated time burden of 10 minutes (0.167 hours)²⁵ by the compensation rate for the different methods of preparation that petitioners choose to use. DHS does not know the exact number of petitioners who would choose an in-house or an outsourced attorney but assumes it may be a 50/50 split and, therefore, provides an average of the two to estimate the opportunity cost of time. DHS estimates the annual increase in cost would be approximately \$133,987 to petitioners due to the expected increase in RFEs. On average, the cost of an additional RFE would be \$22.17.²⁶

Table 4. Estimated Annual Costs to Form I-129 Petitioners from Removing the Deference Policy				
Petitioner	Affected Population*	Time Burden	Compensation Rate**	Estimated Cost
	A	B	C	D=A x B x C
HR specialist	2,236	0.167	\$57.55	\$21,494
In-house attorney	1,904	0.167	\$130.45	\$41,474
Outsourced attorney	1,904	0.167	\$223.38	\$71,019
Total	6,044			\$133,987
*Affected Population: HR specialist, 2,236= 6,044 x (100%-63%), Attorney 1,904=6044 x 63% x 0.5. **Compensation Rate: HR specialist (\$39.42), Attorney (\$89.35). See BLS, DOL, Occupational Employment and Wage Statistics, Occupational Employment and Wages, May 2025, 13-1071 Human Resources Specialists, 23-1011 Lawyers, https://www.bls.gov/news.release/archives/ocwage_05152026.htm (last modified June. 1, 2026). The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) ÷ (Wages and Salaries per hour) = (\$48.78 Total Employee Compensation per hour) ÷ (\$33.45 Wages and Salaries per hour) = 1.46 (rounded). See BLS, DOL, Economic News Release, Employer Costs for				

²³ DHS limited its analysis to HR specialists, in-house attorneys, and outsourced attorneys to present estimated costs. However, DHS understands that not all entities employ individuals with these occupations and, therefore, recognizes equivalent occupations may also prepare and submit these registrations.

²⁴ Source: USCIS CDAO, CLAIMS3 & ELIS, PAER #21508, queried May 2026.

²⁵ *Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers*, 89 FR 103054, 103177 (Dec. 18, 2024) (final rule).

²⁶ Calculation: \$133,987 estimated annual cost to respond to RFEs / 6,044 estimated increase in RFEs = \$22.17 average cost per RFE.

Employee Compensation - December 2025, Table 1. Employer Costs for Employee Compensation by ownership [Dec. 2025] (Mar. 20, 2026), https://www.bls.gov/news.release/archives/ecec_03202026.pdf. The Employer Costs for Employee Compensation measures the average cost to employers for wages and salaries and benefits per employee hour worked.

Calculation: $\$39.42 \times 1.46 = \57.55 total wage rate for HR specialists.

Calculation: $\$89.35 \times 1.46 = \130.45 total wage rate for In-house attorney.

Calculation: $\$89.35 \times 2.5 = \223.38 total wage rate for Outsourced attorney.

The DHS analysis in *Exercise of Time-Limited Authority to Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program*, 83 FR 24905 (May 31, 2018), used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages.

The U.S. Immigration and Customs Enforcement rule, Final Small Entity Impact Analysis: 'Safe-Harbor Procedures for Employers Who Receive a No-Match Letter' at G-4 (Aug. 25, 2008),

<https://www.regulations.gov/document/ICEB-2006-0004-0922>, also used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney based on information received in public comment to that rule. The methodology used in that analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule.

Note: Totals may not sum due to rounding. Calculations use unrounded values.

Unquantified Costs

Petitioners may experience longer adjudication times and increased uncertainty regarding continued employment when seeking extensions of stay and petition validity. Based on the average of the last four fiscal years (FY 2022 – FY 2025), the difference in processing time between petitions with and without an RFE is 64 days; therefore, we use the additional processing time associated with petitions that receive an RFE, which is 64 calendar days.²⁷ These longer timelines can delay the final decision, making it difficult for workers and employers to plan project timelines, staffing levels, and work assignments. During this extended period, petitioners may face added uncertainty as to the beneficiary's longer-term employment authorization and status, which could create operational challenges for employers, such as workforce planning and project scheduling and increase stress for workers who may have to wait significantly longer for clarity on their ability to continue employment beyond that already authorized. In cases where a petition to extend the beneficiary's stay has been timely filed, if the petition remained pending when the beneficiary's status expired, the beneficiary may remain in the United

²⁷ Source: USCIS CDAO, CLAIMS3 & ELIS, PAER #21508, queried May 2026. Processing time is measured as the number of days between the petition receipt date and the date the initial decision is made. From FY 2022 to FY 2025, the average of the median processing times was 76 days for petitions with an RFE and 12 days for petitions without an RFE, a difference of 64 days.

States in an authorized period of stay while awaiting the adjudication of the petition filed on their behalf and may be eligible to continue to work. *See, e.g.*, 8 CFR 274a.12(b)(20). The costs to beneficiaries then would be more related to unpredictability regarding when their petition is adjudicated.

DHS recognizes that removing deference may lead petitioners to devote additional time and resources to preparing extension petitions. USCIS did not find evidence that the Form G-28 filing rate increased as a result of removing deference.²⁸ However, petitioners may take additional steps to ensure that submissions are complete and well-organized at the outset, instead of merely relying on a prior approval. These efforts may help petitioners satisfy their burden of proof and may reduce the likelihood of deficiencies, but they may also impose unquantified costs in the form of additional staff time, attorney time, or other preparation costs. DHS is unable to quantify this cost with the available data.

Unquantified Benefits

Removing 8 CFR 214.1(c)(5) and the deference policy would clarify and reinforce that the statutory burden of proof remains on the petitioner rather than on the agency, consistent with the statute. *See* INA sec. 291, 8 U.S.C. 1361; *Matter of Chawathe*, 25 I. & N. Dec. 369, 375 n.7 (USCIS AAO, 2010) (“The burden of proving eligibility for the benefit sought remains entirely with the applicant”). This benefits the agency by underscoring that officers are not obligated to approve subsequent petitions seeking immigration benefits where eligibility has not been demonstrated, merely

²⁸ To assess this potential impact, DHS examined the share of petitions that were filed with a Form G-28, which indicates attorney or accredited representative involvement. The share increased for both deference-eligible petitions, the treated group, and deference non-eligible petitions, the control group, from the pre-policy period, when deference was in effect, to the policy period, when deference was not in effect. However, the increase was smaller for treated petitions than for control petitions, resulting in a difference-in-differences estimate of close to zero percentage points. This suggests that, although G-28 usage among petitions increased overall, the increase was not greater for the group affected by the no-deference policy. Therefore, DHS does not have evidence that removing deference would cause a meaningful increase in petitioners’ reliance on attorneys beyond the costs already considered in the analysis.

because of prior approval. Removing the deference policy would also compel adjudication officers not to rely on incomplete or outdated facts, and supports more accurate, record-based decisions. Clear allocation of the burden of proof can also promote more complete, better-organized filings, and may reduce the risk of erroneous approvals of extension petitions.

Moreover, removing deference would reinforce DHS's authority to conduct a full, current review of the evidence in each petition, improving the ability to identify ineligibility or indicators of fraud. When officers need not defer to prior approvals, they can better evaluate documentation and eligibility criteria based on updated information, policies, or patterns that may not have been apparent at the time of the earlier decision. This full-scope review could help reveal discrepancies between past and current filings, highlight evolving risk indicators, and identify potential mistakes in prior decisions. This approach would strengthen program integrity by helping the agency to correct mistakes, detect emerging fraud schemes, and refine guidance and training based on issues identified through ongoing examination of repeat filers.

Removing deference would also benefit the public and the broader immigration system by reinforcing that each petition is evaluated on the current record, which could increase confidence in the integrity of adjudications. Members of the public would have more assurance that approvals are not simply carried forward from prior decisions but are based on current facts and applicable standards. At the same time, removing deference would maintain the integrity of the immigration system and advance policies that better protect the interests of U.S. workers by supporting more accurate, evidence-driven decisions and reducing the risk that outdated or erroneous prior approvals continue to serve as the basis for granting immigration benefits.

Alternatives Considered

This proposed rule seeks to clarify and reinforce that the statutory burden of proof remains on the petitioner, encourage a more thorough review of each petition and its supporting evidence, and better protect the integrity of the legal immigration system. DHS believes that removing deference would impose relatively small additional compliance costs and that the resulting benefits it provides justify these costs. Therefore, DHS believes that removing the deference provision for extension of stay petitions would be the most effective way to achieve the goals of this rulemaking.

DHS considered an alternative to revise the deference regulation to more clearly state that USCIS has discretion whether to apply deference. DHS is not proposing this alternative because it would likely create unnecessary confusion and uncertainty for both petitioners and USCIS. Instead, DHS believes that removing deference entirely is the most practical alternative to enhance program integrity, including by ensuring that the burden remains on the petitioner to establish the nonimmigrant alien worker's eligibility to continue working in the United States, and that USCIS adjudicators thoroughly review each nonimmigrant worker extension request on its own merits before granting the benefit. DHS did not consider other alternatives. DHS welcomes public comments on this issue.

Total Quantified Costs of the Proposed Regulatory Changes

In this section, DHS presents the total quantified costs over 10-year analysis period and the corresponding annualized costs. DHS estimates the annual cost to be \$133,987. As shown in Table 5, the total undiscounted cost is estimated to be \$1,339,870 over the 10-year period. We estimate that, over the 10-year period and using a 3 percent discount rate, the total cost would be approximately \$1,142,936, and using a 7 percent discount rate, the total cost would be about \$941,069. The annualized cost is estimated to be \$133,987 at both the 3 percent and 7 percent discount rates.

Table 5. Discounted Costs over a 10-Year Period of Analysis	
	Total Estimated Costs

10-Year Undiscounted	\$1,339,870	
Year	Discounted at 3 percent	Discounted at 7 percent
1	\$130,084	\$125,221
2	\$126,296	\$117,029
3	\$122,617	\$109,373
4	\$119,046	\$102,218
5	\$115,578	\$95,531
6	\$112,212	\$89,281
7	\$108,944	\$83,440
8	\$105,771	\$77,982
9	\$102,690	\$72,880
10	\$99,699	\$68,112
10-year Total	\$1,142,936	\$941,069
Annualized	\$133,987	\$133,987
Source: USCIS Analysis		

Costs to the Federal Government

DHS is proposing to remove 8 CFR 214.1(c)(5) and the deference policy which may increase USCIS operational costs by requiring officers to assess eligibility for petitions that previously would have benefitted from deference, even when the underlying facts and circumstances remain unchanged. This additional effort would lead to greater use of adjudicative actions, particularly in the form of RFEs, which further increase agency resource demands and contribute to backlogs. Preparing and issuing RFEs, and reviewing responses to RFEs, require additional officer time, supervisory review, and administrative support, collectively raising the overall cost and time of processing.

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including administrative costs and services provided without charge to certain applicants and petitioners.²⁹ Fees are established at an amount that is necessary to recover these assigned costs, such as clerical, officer, and managerial salaries and benefits, plus an amount to recover unassigned overhead (e.g., facility rent, IT equipment and systems) and immigration benefits provided without a fee charge. These costs would be captured in the fees collected for the benefit request from petitioners. DHS established the current fees in

²⁹ See INA sec. 286(m), 8 U.S.C. 1356(m).

its FY 2024 fee rule based on empirical cost estimates. DHS notes that if this rule, if finalized as proposed, would increase USCIS' costs, then the fee schedule adjustment would be determined at USCIS' next comprehensive biennial fee review.

B. Regulatory Flexibility Act of 1980

Initial Regulatory Flexibility Analysis

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 50,000.³⁰ An "individual" is not considered a small entity and costs to an individual are not considered a small entity impact for RFA purposes. 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.³¹ Consequently, indirect impacts from a rule on a small entity are not considered as costs for RFA purposes. This proposed rule would affect small entities that submit Form I-129, Petition for a Nonimmigrant Worker. Consequently, DHS has prepared an initial regulatory flexibility analysis below for public comment.

³⁰ 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.

³¹ 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).

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

The purpose of this proposed rule is to remove 8 CFR 214.1(c)(5) and the deference policy which instructs USCIS officers to give deference to a prior determination of the petitioner's, applicant's or beneficiary's eligibility when adjudicating a request filed on Form I-129, Petition for a Nonimmigrant Worker, involving the same parties and the same underlying facts, unless there was a material error, a material change, or new material information that adversely impacts eligibility. This proposed change would better align the regulation with the statute, which places the burden of proof in establishing eligibility on the petitioner.

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 the preamble.

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

For this analysis, DHS used internal data for employers filing H-1B extension petitions for FY 2025.³² The proposed rule would affect extension petitions filed on Form I-129 for multiple nonimmigrant classifications. For purposes of this analysis, DHS relied on H-1B petitioner data as the best available source of employer-level information. Form I-129 is used for several nonimmigrant worker classifications; however, DHS does not have sufficiently reliable employer-level data for all non-H-1B classifications to conduct a comparable small entity analysis across all Form I-129 petitioners. H-1B petitions account for more than 75 percent of all Form I-129 filings and include employer-level data that allow DHS to evaluate petitioner size. Because H-1B filings constitute the majority of Form I-129 petitions and provide the most reliable available data for

³² USCIS CDAO, CLAIMS3 and ELIS, queried 4/2026, TRK #21030.

assessing small entity impacts, DHS used H-1B petitioner data as a reasonable proxy for the broader Form I-129 petitioner population. DHS merged the internal employer data with the Small Business Administration (SBA) table of size standards³³ 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 (NAICS) 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. However, DHS was unable to match approximately 36 percent of petitions to the SBA table of size standards because internal USCIS data did not contain the necessary information.

Using FY 2025 internal data on actual filings of H-1B extensions petitions, there were 165,347 petitions filed. DHS recognized 25,621 unique entities and was able to classify 16,447 as either small entities or not small entities. DHS determined that 57 percent of the total 16,447 classified unique entities that filed Form I-129 extensions under the H-1B classification were small entities. *See* Table 6.

Table 6. Number of Small Entities Filing H-1B Cap-Subject Petitions, FY 2025		
Unique Entities Classified	Number of Small Entities	Proportion of Population (%)
16,447	9,453	57%
Source: USCIS CDAO, CLAIMS3 and ELIS, queried 4/2026, TRK #21030.		

Table 7 presents the top 10 NAICS codes, ranked by the number of H-1B extension petitions filed by small entities for FY2025. The table shows the size standards for each NAICS code in millions of dollars or by number of employees. Top 10 categories for small entities include: Professional, scientific, and technical services (54),

³³ SBA, “Table of Size Standards” (Mar. 17, 2023), <https://www.sba.gov/document/support-table-size-standards>.

Manufacturing (33), Educational services (61), and Pharmaceutical preparation manufacturing (32).

Table 7. Top 10 NAICS Code for Small Entities Filing H-1B Extensions Petitions, FY2025			
NAICS Code	NAICS Code Description	Size Standards in Millions of Dollars	Size Standards in Number of Employees
541511	Custom Computer Programming Services	34	
541512	Computer Systems Design Services	34	
541330	Engineering Services	25.5	
541519	Other Computer Related Services	34	
334413	Semiconductor and Related Device Manufacturing		1,250
541714	Research and Development in Biotechnology (except Nanobiotechnology)		1,000
611110	Elementary and Secondary Schools	20	
325412	Pharmaceutical Preparation Manufacturing		1,300
541715	Research and Development in Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology)		1,000
541211	Offices of Certified Public Accountants	26.5	

The unquantifiable cost of this rule is the increased uncertainty and potential operational disruption associated with longer adjudication times for extension petitions that receive an RFE. Based on FY 2022 through FY 2025 data, petitions with an RFE took an average of 64 additional calendar days to process, which may affect employer planning for staffing, project timelines, and work assignments, as well as workers' uncertainty regarding their longer-term employment authorization and status.

The quantifiable cost is the opportunity cost of employer time spent preparing and submitting additional RFEs resulting from the expected increase in RFEs. As discussed in the "Quantified Costs" section of the RIA, DHS estimates that the annual increase in costs to petitioners would be \$133,987 across all affected employers for preparing additional supporting documentation and evidence to re-establish eligibility for an

estimated 6,044 additional RFEs. DHS identified 22,748 unique employers affected by this rule. DHS estimates the cost per RFE by dividing the total estimated annual cost of \$133,987 by the estimated increase in RFEs attributable to this rule, 6044, resulting in an estimated cost of approximately \$22 per RFE. Because the median number of petitions filed by small entities is one,³⁴ a small entity that receives an RFE due to the removal of deference would need to spend time submitting additional supporting documentation and evidence and would incur an estimated cost of approximately \$22. As shown in Table 3, the RFE rate during the period when the deference policy was not in effect was 23.4 percent. DHS therefore estimates that approximately 23.4 percent, or 3,637, of the small entities potentially affected by the rule would incur costs as a result of this rule. The estimated cost would be approximately \$22 per affected small entity. Therefore, although the rule may affect a substantial number of small entities, DHS does not expect the economic impact on affected small entities to be significant. DHS welcomes public comments on this analysis, particularly those comments that would provide further insight into the quantified costs of this proposed rule.

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 rule would increase compliance requirements primarily by increasing the number of RFEs associated with extension of stay petitions, because officers would no longer apply deference to prior approvals and would instead more thoroughly examine eligibility for each request. As a result, certain petitioners would need to review RFE notices more frequently, collect and organize additional supporting documentation, and maintain more robust records of prior approvals and ongoing

³⁴ USCIS CDAO, CLAIMS3 and ELIS, queried 4/2026, TRK #21030.

eligibility. DHS anticipates that these activities would generally be carried out by an HR specialist, an in-house attorney, or an outsourced attorney, who would be responsible for analyzing the RFEs, assembling the required documentation, and preparing timely, complete responses on behalf of the petitioner.

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, overlapping, or conflicting Federal rules, but 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

DHS did not consider any alternatives to the proposed rule other than revising the regulatory text to more clearly state that USCIS has discretion whether to apply deference. However, this alternative would not accomplish the stated objectives of this proposed rule. DHS believes that removing deference would impose relatively small additional compliance costs and that the resulting benefits justify these costs.

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 result in a \$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.³⁵

³⁵ See 2 U.S.C. 1532(a).

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).³⁶ This proposed rule does not contain a Federal mandate as the term is defined under UMRA.³⁷ 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, Federalism, 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 determined that this proposed rule meets the applicable standards provided in section 3 of E.O. 12988.

F. Executive Order 13175 (Consultation and Coordination with Indian Tribal Government)

³⁶ See DOL, BLS, “Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month,” (last visited July 29, 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 = $[(\text{Average monthly CPI-U for 2025} - \text{Average monthly CPI-U for 1995}) \div (\text{Average monthly CPI-U for 1995})] \times 100 = [(321.943 - 152.383) \div 152.383] = (169.560 \div 152.383) = 1.113 \times 100 = 111.3 \text{ percent} = 111 \text{ percent (rounded)}$. Calculation of inflation-adjusted value: \$100 million in 1995 dollars $\times 2.11 =$ \$211 million in 2025 dollars.

³⁷ The term “Federal mandate” means a Federal intergovernmental mandate or a Federal private sector mandate. See 2 U.S.C. 1502(1), 658(6).

This proposed rule does not have “tribal implications” because it will 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.

G. 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 to them 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)³⁸ 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. *See* 42 U.S.C. 4336(a)(2), 4336e(1). The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.³⁹

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

³⁸ The Instruction Manual, which contains DHS’s procedures for implementing NEPA, was issued on November 6, 2014, and is available at <https://www.dhs.gov/ocrso/eed/epb/nepa> (last updated Apr. 14, 2025).

³⁹ *See* Appendix A, Table 1.

for a significant environmental effect.⁴⁰ DHS is proposing to remove a regulatory provision at 8 CFR 214.1(c)(5) codifying deference to certain eligibility determinations to better align the regulation with the statute and better ensure the integrity of the immigration system, including the interests of U.S. workers. This proposed change to existing DHS regulations is strictly administrative in nature and the rule clearly fits within categorical exclusion A3(a).

Accordingly, DHS finds that the proposed 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. *See* Instruction Manual 023-01 at V.B(2)(a)-(c).

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3512, DHS must submit to the Office of Management and Budget (OMB) for review and approval, any reporting requirements inherent in a rule, unless they are exempt. This notice of proposed rulemaking does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

However, this notice of proposed rulemaking requires the use of USCIS Form I-129, Petition for a Nonimmigrant Worker. This form has previously been approved by OMB under the Paperwork Reduction Act. The OMB control number for this information collection is 1615-0009.

List of Subjects in 8 CFR part 214

⁴⁰ Instruction Manual 023-01 at V.B(2)(a)-(c).

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 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:

a. Removing and reserving paragraph (c)(5).

The revision reads as follows:

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

* * * * *

(c) * * *

(5) [Reserved]

* * * * *

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

