

## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Parts 103, 208, 209, 212, 214, 235, and 274a

[CIS No. 2630–18; DHS Docket No. USCIS–2019–0003]

RIN 1615–AC28

### Implementation of the Northern Mariana Islands U.S. Workforce Act of 2018

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Department of Homeland Security (DHS) is amending its regulations to implement provisions of the Northern Mariana Islands U.S. Workforce Act of 2018 (Workforce Act), which creates requirements to encourage the hiring of United States workers in the Commonwealth of the Northern Mariana Islands (CNMI) and to ensure that no U.S. worker is placed at a competitive disadvantage for employment compared to a non-U.S. worker or is displaced by a non-U.S. worker.

#### DATES:

*Effective date:* This rule is effective June 18, 2020.

*Comment date:* Written comments and related material must be submitted on or before July 13, 2020. Comments on the form, form instructions, and information collection revisions in this interim rule must be submitted on or before June 15, 2020.

**ADDRESSES:** You must submit comments, identified as DHS Docket No. USCIS–2019–0003, through *one* of the following methods:

· *Federal eRulemaking Portal* (preferred): <http://www.regulations.gov>. Follow the website instructions for submitting comments.

· *Mail:* Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529–2140. To ensure proper handling, please reference DHS Docket No. USCIS–2019–0003 in your correspondence. Mail must be postmarked by the comment submission deadline.

Comments submitted in a manner other than those listed above, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the interim final rule. Please note that DHS and USCIS cannot

accept any comments that are hand delivered or couriered. In addition, USCIS cannot accept mailed comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives.

#### FOR FURTHER INFORMATION CONTACT:

Michael Graham, Adjudications (Policy) Officer, Office of Policy and Strategy, U.S. Citizenship and Immigration Services (USCIS), DHS, 20 Massachusetts Avenue NW, Washington, DC 20529–2140; telephone 202–272–8377 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** This supplementary information section is organized as follows:

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#### 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 interim final rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim final rule. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to DHS in implementing these changes will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

*Instructions:* If you submit a comment, you must include the agency name (U.S. Citizenship and Immigration Services) and the DHS Docket No. USCIS–2019–0003 for this rulemaking. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at <http://www.regulations.gov>.

*Docket:* For access to the docket and to read background documents or comments received, go to <http://www.regulations.gov>, referencing DHS Docket No. USCIS–2019–0003. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

#### II. Executive Summary

##### A. Purpose of the Regulatory Action

The Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker (CW–1) program allows employers within the CNMI to apply for permission to employ nonimmigrant workers who are otherwise ineligible to work in the CNMI under other nonimmigrant

worker categories. *See* Commonwealth of the Northern Mariana Islands Transitional Worker Classification, 76 FR 55502 (Sept. 7, 2011). This transitional worker program was intended to provide for an orderly transition for those workers from the CNMI permit system to the U.S. federal immigration system under the Immigration and Nationality Act (INA), and to mitigate potential harm to the CNMI economy as employers adjust their hiring practices and as foreign workers obtain U.S. immigrant or nonimmigrant status.

On July 24, 2018, President Donald J. Trump signed the Northern Mariana Islands U.S. Workforce Act of 2018 (the Workforce Act), Public Law 115–218, 132 Stat. 1547. The stated purposes of the Workforce Act are to increase the percentage of United States workers in the total workforce of the CNMI, while maintaining the minimum number of non-U.S. workers to meet the demands of the CNMI's economy; to encourage the hiring of United States workers into the CNMI workforce; and to ensure that no U.S. worker is at a competitive disadvantage compared to a non-U.S. worker or is displaced by a non-U.S. worker. Workforce Act sec. 2. For a summary of the statutory history of CNMI immigration provisions, see section III below.

#### 1. Need for the Regulatory Action and How the Action Will Meet That Need

The Workforce Act makes a number of changes to the transitional provisions of Title VII of the Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110–229, 122 Stat. 754, 853–854—which extended the U.S. immigration laws, with limited exceptions, to the CNMI—and requires the Secretaries of Homeland Security and Labor to each promulgate an Interim Final Rule (IFR) implementing the related statutory changes no later than January 20, 2019, which is 180 days from the date of enactment.<sup>1</sup> (Pub. L. 115–218, sec. 3(b)(1), (2)). The Department of Labor (DOL) IFR was published on April 1, 2019, and went into effect on April 4, 2019.<sup>2</sup> The DHS IFR was delayed by a number of months. The Workforce Act provides the Secretary with the discretionary authority to delay statutory provisions relating to the CW–1 program, except for provisions providing annual numerical caps for

such workers, until the effective date of the IFR. (Pub. L. 115–218, sec. 3(e)(2)). On July 25, 2018, DHS announced that it would exercise its discretion, as provided in the Workforce Act, to delay implementation of other statutory changes to the CW–1 program affecting CW–1 filers until DHS issued an IFR.<sup>3</sup> In accordance with the Workforce Act, DHS is amending its regulations. The amendments would:

- Reflect the statutory extension of the transition period until December 31, 2029;
- Reflect the statutory CW–1 cap increase for fiscal year (FY) 2019 and codify the statutory CW–1 caps for subsequent fiscal years until the end of the transition period;
- Reflect the increase in the CNMI education funding fee to \$200 per worker and the Secretary's discretionary authority to increase this fee in the future and the requirement to submit a new mandatory \$50 fraud prevention and detection fee with each CW–1 petition filed;
- Specify the CW–1 numerical reservations for specific occupational categories;
- Require an approved temporary labor certification (TLC) from the DOL prior to filing a CW–1 petition;
- Reflect a minimum wage requirement;
- Impose a new CW–1 petition filing window;
- Require a CW–1 employer to file a semiannual reporting form to verify the CW–1 employment;
- Implement new revocation procedures;
- Revise the definitions of “legitimate business” (which includes participation in E-Verify as a condition of employing a CW–1 worker), “direct Guam transit,” “lawfully present in the CNMI,” and “United States worker,” as well as newly define “participant in good standing in the E-Verify program” and “successor in interest”;
- Establish a new long-term worker subcategory of CW–1;
- Continue the bar on eligibility of certain construction worker occupations under the CW–1 program;
- Make conforming amendments to DHS regulations regarding inadmissibility, deportability, and asylum;
- Extend the asylum bar in the CNMI until December 31, 2029; and

- Impose temporary departure requirements for certain CW–1 workers.

Certain provisions of the Workforce Act took effect immediately upon enactment. Specifically, the Workforce Act extended the CW–1 program through 2029, increased the CW–1 cap for FY 2019, provided new CW–1 caps for subsequent fiscal years, and mandated a new fraud prevention and detection fee with each petition. In addition to extending the CW–1 program, it also immediately extended the following Consolidated Natural Resources Act of 2008<sup>4</sup> provisions until December 31, 2029:

- The exemption from national caps for H–1B and H–2B workers in the CNMI and on Guam;
- The bar on asylum applications in the CNMI; and
- The CNMI-Only Nonimmigrant Investor (E–2C) program.

#### B. Legal Authority

The Secretary of Homeland Security's authority for the regulatory amendments is found in various provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, and the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.* General authority for issuing the rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws, and to establish such regulations as the Secretary deems necessary. In addition, section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), provides the Secretary with authority to prescribe by regulation the terms and conditions of any alien's admission to the United States as a nonimmigrant. Further authority for the regulatory amendments in this interim final rule is found in:

- Title VII of the Consolidated Natural Resources Act of 2008 (CNRA), which extended U.S. immigration law, with limited exceptions, to the CNMI and provided CNMI-specific provisions affecting foreign workers. *See* Public Law 110–229, 122 Stat. 754, 853–854. The CNRA authorized the Secretary of Homeland Security to create a nonimmigrant classification that would ensure CNMI employers have access to adequate labor during the transition period. *See* section 702(a) of the CNRA; 48 U.S.C. 1806(d).
- The Workforce Act, Public Law 115–218, which, among other things, sets statutory caps, imposes a mandatory fraud fee, extends the transition period until December 31,

<sup>4</sup> *See* Public Law 110–229, 122 Stat. 754, 853–854.

<sup>1</sup> The statutory deadline for rulemaking is 180 days after enactment, or January 20, 2019. However, under 1 CFR 18.17, when a date falls on a weekend or holiday, the next Federal business day is used for publication in the **Federal Register**. In this case, the next business day is January 22, 2019.

<sup>2</sup> 84 FR 12380 (Apr. 1, 2019).

<sup>3</sup> *See* USCIS, “New Law Extends CNMI CW–1 Program, Mandates New Fraud Fee, and Will Require E-Verify Participation,” available at <https://www.uscis.gov/news/alerts/new-law-extends-cnmi-cw-1-program-mandates-new-fraud-fee-and-will-require-e-verify-participation> (last visited May 28, 2019).

2029, and requires DHS to issue an interim final rule.

### C. Summary of the Major Provisions of This Regulatory Action

#### 1. Statutory Changes

This IFR amends DHS regulations at 8 CFR 214.2(w) to include the following major changes:

First, DHS will revise 8 CFR 214.2(w)(1)(xvi) to reflect the statutory extension of the transition period and the CW program through December 31, 2029. While the CW program was previously extended via the DOL's discretionary authority<sup>5</sup> and later via statute,<sup>6</sup> the related regulation was not revised to reflect any of the CW program extensions. This change will reflect the new sunset date in existing regulations.

Second, the Workforce Act provided new CW-1 numerical limitations (caps) for subsequent fiscal years until the end of the transition period on December 31, 2029. To date, the CW-1 caps have been published via Notice in the **Federal Register** for each fiscal year, beginning with FY 2013, in accordance with 8 CFR 214.2 (w)(1)(x). The new CW-1 caps are now set by the Workforce Act for the remainder of the transition period. Consequently, a yearly **Federal Register** Notice is no longer necessary. The CW-1 caps are reflected in this IFR.

Third, this IFR updates the regulation, at 8 CFR 103.7(b)(1)(i)(J) and 8 CFR 214.2(w)(5), to reflect that in 2017 Congress raised the supplemental CNMI education funding fee from \$150 to \$200<sup>7</sup> per each beneficiary issued CW-1 status, per year. Consistent with the Workforce Act, the IFR also provides the Secretary of Homeland Security the discretion to annually adjust this supplemental fee via notice in the **Federal Register**. This IFR also updates existing regulations, at 8 CFR 103.7(b)(1)(i)(J) and 8 CFR 214.2(w)(5), to include the Workforce Act's requirement that CW-1 employers must

pay a mandatory \$50 fraud prevention and detection fee with each petition, in addition to other current fees. This new fraud prevention and detection fee does not apply to CW petitions already filed and pending with USCIS as of July 24, 2018.

Fourth, this IFR updates regulations to include CW-1 cap reservations for certain occupational categories per fiscal year, as recommended by the Governor of the CNMI,<sup>8</sup> and indicates use of the DOL Standard Occupational Classification (SOC) system to specify which occupations are part of this cap reservation. See new 8 CFR 214.2(w)(1)(x)(D)(1) and (2).

Accordingly, this IFR makes the following reservations of CW-1 numbers for specified occupational categories: (i) 200 for occupational categories 29-0000 (Healthcare Practitioners and Technical Occupations) and 31-0000 (Healthcare Support Occupations); and (ii) 60 for occupational categories related to the operations of the CNMI public utilities services, to include, but not limited to 17-2081 (Water/Waste Water Engineers), 17-2071 (Electrical Engineers), 17-2141 (Mechanical Engineers), and Trades Technicians.<sup>9</sup> New 8 CFR 214.2(w)(1)(x)(D)(1). The reserved CW-1 numbers will be made available to eligible petitioners requesting such numbers for a fiscal year in order of filing until exhausted. Unused reserved numbers will not be available to other petitioners.

Fifth, this IFR revises petition procedures at 214.2(w)(6)(iv) to require that a CW-1 petition must be filed with an approved TLC<sup>10</sup> from DOL. The Workforce Act imposes this requirement for any CW-1 petition with an employment start date in FY 2020 and

beyond. The Workforce Act requires a TLC approved by DOL to confirm that there are not sufficient United States workers in the CNMI who are able, willing, qualified, and available to fill the petitioning CW-1 employer's job opportunity. 48 U.S.C. 1806(d)(2)(A). The TLC also confirms that the foreign worker's employment in the job opportunity will not adversely affect the wages or working conditions of similarly employed United States workers. *Id.*

Sixth, this IFR revises 8 CFR 214.2(w)(6)(ii)(I) to include the statutory minimum wage requirements for a CW petitioner. It now specifies that the petitioner will pay the beneficiary a wage that is not less than the greater of (1) the CNMI minimum wage; (2) the Federal minimum wage; or (3) the prevailing wage in the CNMI for the occupation in which the beneficiary will be employed, as established by the DOL.

Seventh, this IFR establishes a new filing timeframe for CW-1 petitioners at 8 CFR 214.2(w)(12)(ii). The Workforce Act states that an employer seeking to extend the employment of a CW-1 worker may petition USCIS no earlier than 180 calendar days before the expiration of the CW-1 status. Employers filing an initial petition for CW-1 status may not petition earlier than 120 days before the date of actual need for the beneficiary's services.

Eighth, this IFR requires a CW-1 employer to file a semiannual reporting form to verify the continuing employment and payment of the CW-1 worker under the terms and conditions set forth in the CW-1 petition. See new 8 CFR 214.2(w)(26). DHS will implement this new statutory requirement via a new standalone form which will capture data to provide USCIS with the information necessary to help verify the continuing employment and payment of the CW-1 worker, and will contain an attestation confirming those elements. USCIS will not require submission of evidence at the time of filing, but employers must retain documents and records which support the attestation for three years after the ending date of the petition validity period. An employer must retain evidence that supports the semiannual report, including but not limited to: (a) Personnel records for each CW-1 worker including the name, address of current residence in the Commonwealth, age, domicile, citizenship, point of hire, and approved employment contract termination date; (b) payroll records for each CW-1 worker including the O\*NET job classification, wage rate or salary,

<sup>5</sup> On June 3, 2014, the Secretary of Labor extended the CW program for an additional 5 years, through December 31, 2019. See Secretary of Labor Extends the Transition Period of the Commonwealth of the Northern Mariana Islands-Only Transitional Worker Program, 79 FR 31988 (June 3, 2014).

<sup>6</sup> On December 16, 2014, Congress amended the law to extend the transition period until December 31, 2019. See Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113-235, sec. 10, 128 Stat. 2130, 2134. Congress also eliminated the Secretary of Labor's authority to provide for future extensions of the CW-1 program, requiring the CW-1 program to sunset on December 31, 2019.

<sup>7</sup> In 2017, Congress enacted the Northern Mariana Islands Economic Expansion Act, Public Law 115-53, 131 Stat. 1091, which increased the supplemental fee paid for each CW permit to \$200 and banned issuing new CW-1 permits to construction workers.

<sup>8</sup> See Letter from Rafael DLG Torres, Governor of the CNMI, to Kirstjen Nielsen, Secretary, DHS (Aug. 8, 2018), available at <http://www.regulations.gov> under DHS Docket No. USCIS-2019-0003. References in this IFR to "the Governor" are to the Governor of the CNMI.

<sup>9</sup> A corresponding SOC code does not exist that would include all Trades Technicians occupations.

<sup>10</sup> To obtain a TLC, employers must submit a complete *Application for Prevailing Wage Determination* (Form ETA-9141C) with the OFLC National Prevailing Wage Center (NPWC) containing information about the job opportunity in which the nonimmigrant workers will be employed, as required by 20 CFR 655.410. Once the NPWC issues a prevailing wage determination, the employer may submit the *CW-1 Application for Temporary Employment Certification* and supporting documentation, as required by 20 CFR 655.420-423. Once all CW-1 regulatory requirements are met, the TLC is issued. Under the provisions at 20 CFR 655.452, if DOL issues a TLC, it will transmit a Final Determination notice and a copy of the certified *CW-1 Application for Temporary Employment Certification* (Form ETA-9142C) to the employer, with a copy to the employer's representative if it has one.

number of hours worked each week, gross compensation, itemized deductions, and evidence of net payments made and received biweekly; and (c) direct evidence of payment of wages and overtime, such as receipts for cash payments, cancelled checks, or deposit records of payment of wages and overtime.

Ninth, this IFR establishes revocation procedures, at new 8 CFR 214.2(w)(27), for an employer's CW-1 petition using existing revocation grounds in place for other nonimmigrants programs (such as the H classification revocation procedures at 8 CFR 214.2(h)(11)), which include automatic revocation grounds if the petitioner either ceases operations or files a written withdrawal of the petition, or DOL revokes the TLC upon which the petition is based. This IFR also includes discretionary grounds for revocation on a notice of intent to revoke (NOIR) to incorporate the good cause grounds listed in the Workforce Act. In accordance with the Workforce Act, for each beneficiary of a petition revoked in a fiscal year, USCIS will add a CW-1 cap number to the next fiscal year.

Tenth, this IFR incorporates the definition of legitimate business as set forth in the Workforce Act. The new definition, at 8 CFR 214.2 (w)(1)(vii), mirrors current section 214.2(w)(1)(vi), but adds a provision to address human trafficking in general (the previous definition specified human trafficking in minors). It also requires E-Verify participation as a condition of filing CW-1 petitions. Additionally, it updates the definition with the statutory requirement for substantial current and past compliance with wage and hour laws, occupational safety and health requirements, nondiscrimination, and all other Federal, CNMI, and local requirements relating to employment during the five-year period immediately preceding the date of filing the petition. Finally, also consistent with the Workforce Act, it precludes participation by businesses (including successors in interest to businesses) with an owner, investor, manager, operator, or person meaningfully involved with the undertaking, if such individual has been an owner, investor, manager, operator, or person otherwise meaningfully involved with an undertaking that was not in compliance with certain employment-related legal requirements at any time during which such individual was involved with the undertaking, or is an agent of such individual.

Eleventh, this IFR creates a subcategory of CW-1 workers known as "long-term workers" at 8 CFR

214.2(w)(1)(viii). Under the Workforce Act, these are workers who were admitted or otherwise granted status as a CW-1 during FY 2015, and during every subsequent fiscal year through July 24, 2018.<sup>11</sup> This subcategory of CW-1 workers is eligible for a longer period of stay, in increments of up to 3-year periods, during the transition period. These periods are renewable and will be counted against the cap on a yearly basis.

Twelfth, at 8 CFR 214.2(w)(2)(vii), this IFR amends the bar on certain construction worker occupations, which was enacted in 2017,<sup>12</sup> and prohibits the CW-1 classification from being available to workers who will be performing jobs classified as "construction and extraction occupations" as defined in the DOL's SOC system; this prohibition does not apply to "long-term workers" as defined by the Workforce Act.

Thirteenth, this IFR imposes temporary departure requirements for certain CW-1 workers at 8 CFR 214.2 (w)(18)(v). Specifically, it requires CW-1 workers who have received a second extension to depart the CNMI for at least 30 continuous days prior to filing for CW-1 status again. However, consistent with the Workforce Act, it exempts the "long-term workers" from this departure requirement.

## 2. Technical Changes

This IFR also makes a number of conforming amendments to DHS regulations regarding the asylum provisions to extend the asylum bar in the CNMI until December 31, 2029.<sup>13</sup>

### D. Summary of Costs and Benefits

The costs associated with the revisions to the DHS regulations in this interim final rule (IFR) include costs of preparing and filing the Petition for a CNMI-Only Nonimmigrant Transitional Worker (Form I-129CW), filing applications for extension of stay, participating in the E-Verify program, submitting semiannual reports and document retention, submitting notifications to USCIS, and filing revoked petitions. These costs are discussed in detail in the Executive Order 12866 and 13563 sections of this rule. Overall, the lower bound net total

estimated cost of the rule is \$73,578,345 undiscounted, \$62,851,776 discounted at 3 percent, and \$51,858,612 discounted at 7 percent from FY 2019 to 2030. Likewise, the upper bound net total estimated cost of the rule is \$61,741,219 undiscounted, \$52,693,918 discounted at 3 percent, and \$43,433,060 discounted at 7 percent from FY 2019 to 2030. The total estimated lower bound transfers are \$25,712 at 7 percent and \$32,361 at 3%, while the total estimated upper bound transfers are \$13,845,180 discounted at 7% and \$16,806,753 discounted at 3%. The annualized cost of the rule discounted at 7 percent is \$5,468,222 for the lower bound and \$6,528,999 for the upper bound estimates.

A petitioner is required to file Form I-129CW to employ nonimmigrant workers who are otherwise ineligible to work in the CNMI under other nonimmigrant worker categories. DHS estimates the total petitioners' cost to file Form I-129CW petitions to be \$57,047,877 undiscounted, \$48,668,535 discounted at 3 percent, and \$40,092,491 discounted at 7 percent from FY 2019 to 2030, which includes the opportunity cost of time to complete Form I-129CW, the postage cost to mail the completed form, and the costs associated with Form I-129CW filing fee, education funding fee, and fraud prevention and detection fee. Petitioners are also required to file a new petition to request an extension of stay for their currently approved CW-1 nonimmigrant employees. However, the cost of filing a petition for an extension of stay is already captured by the cost of filing Form I-129CW petitions.

The IFR requires that any employer petitioning for a CW-1 nonimmigrant worker must be an E-Verify program participant in good standing. Participating in the E-Verify program requires employers to enter information from their newly hired employee's Form I-9, Employment Eligibility Verification, to be electronically matched against records available to DHS and the Social Security Administration (SSA) to confirm the employee's identity and employment eligibility. This results in a cost burden to employers. Employers also incur additional cost burden for annual training in E-Verify as they continue to comply with E-Verify requirements. DHS estimates the total cost of participating in the E-Verify program to be \$1,224,618 undiscounted, \$1,061,385 discounted at 3 percent, and \$894,425 discounted at 7 percent from FY 2019 to 2030.

An employer whose petition has been approved will be required to submit a

<sup>11</sup> See 48 U.S.C. 1806(d)(7)(B). President Trump signed the Workforce Act on July 24, 2018.

<sup>12</sup> See Northern Mariana Islands Economic Expansion Act, Public Law 115-53 (amending Section 6 of Public Law 94-241, 48 U.S.C. 1806).

<sup>13</sup> The Department of Justice will be publishing a separate rule to make technical amendments to 8 CFR Chapter V to reflect that Congress has extended the statutory bar for asylum in the CNMI until December 31, 2029. See Workforce Act at sec. 3(a), 48 U.S.C. 1806(a)(2),(7).

semiannual report every six months to DHS, using Form I-129CWR, after the petition validity start date to verify the continuing employment and payment of the beneficiary under the terms and conditions of the approved petition. Petitioners are also required to retain all documents and records in support of the petition, and the semiannual report, for 3 years after the petition validity period end date. DHS estimates the total cost of semiannual reporting and document retention will be \$15,996,725 undiscounted, \$13,647,084 discounted at 3 percent, and \$11,242,286 discounted at 7 percent from FY 2019 to 2030.

DHS requires a petitioner to immediately notify USCIS of any changes in the terms and conditions of employment of a nonimmigrant worker which may affect eligibility under section 214.2(w) either by (1) filing an amended petition if the petitioner continues to employ the nonimmigrant worker, or (2) sending a letter to the USCIS office at which the CW-1 petition was filed explaining the basis on which the specific CW-1 nonimmigrant is no longer employed. DHS estimates the total cost of filing an amended petition to be \$215,296 undiscounted, \$183,673 discounted at 3 percent, and \$151,307 discounted at 7 percent from FY 2019 to 2030. In the absence of data to estimate the total cost of submitting a notification letter, DHS estimates a unit cost of mailing a notification letter to USCIS. An affected petitioner on average will incur a unit cost of \$43.65 to send a letter notifying USCIS that a CW-1 nonimmigrant is no longer working for him or her.

USCIS reserves the authority to fully or partially revoke petitions at any time under specified conditions. The conditions for immediate and automatic revocations and the discretionary grounds for revocation on notice are discussed in the preamble of this IFR. For each beneficiary of a petition revoked in a fiscal year, USCIS will add it to a CW-1 numerical cap of the next fiscal year. DHS estimates employers' total cost to file Form I-129CW petitions for such additions to the numerical cap to be \$108,957 undiscounted, \$90,410 discounted at 3 percent, and \$71,834 discounted at 7 percent from FY 2019 to 2030. The IFR also provides the conditions for appealing revoked petitions. DHS is unable to estimate the cost employers will incur appealing petitions that have been revoked on notice in the implementation period (FY 2019 to 2030); however, DHS estimates a unit cost to show the minimum cost petitioners are likely to incur appealing petitions revoked on notice. DHS

estimates that an affected employer on average incurs a cost of \$782.95 appealing a petition revoked on notice.

Qualifying dependents (*i.e.*, an eligible spouse or child) of nonimmigrant workers with a CW-1 status may file applications requesting a grant of a CW-2 status using Form I-539, Application to Extend/Change Nonimmigrant Status. DHS estimates the total cost of filing applications for CW-2 status to be \$7,826,181 undiscounted, \$6,676,651 discounted at 3 percent, and \$5,500,136 discounted at 7 percent for nonimmigrant in FYs 2019 to 2030.

The IFR states that an extension of stay may be granted for a period of up to three years if the CW-1 worker is a long-term worker. DHS estimates the cost savings for petitioners who will request a three-year extension of stay for their long-term workers using the lower and upper bound estimates for the net number of beneficiaries for whom a three-year extension of stay will be requested. Accordingly, the total cost savings to petitioners resulting from filing a three-year extension of stay for long-term nonimmigrant workers range from \$978,034 to \$8,802,309 undiscounted (\$827,067 to \$7,443,600 discounted at 3 percent, and \$674,239 to \$6,068,155 discounted at 7 percent) from FY 2019 to 2030.

### III. Background

#### A. Legal Framework

Under the INA, as amended by the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135 (codified at 6 U.S.C. 101 *et seq.*), the Secretary of Homeland Security is charged with the administration and enforcement of the INA, and all other laws relating to the immigration and naturalization of aliens, except as such laws relate to the powers, functions, or duties conferred upon the President, the Attorney General, the Secretary of State, or consular officers. *See* INA 103(a)(1), 8 U.S.C. 1103(a)(1). The Homeland Security Act, however, preserved the functions of the Executive Office for Immigration Review (EOIR) (including the immigration judges, the Board of Immigration Appeals (BIA), and the Office of the Chief Administrative Hearing Officer (OCAHO)) within the Department of Justice (DOJ) under the authority of the Attorney General. *See* 6 U.S.C. 521; INA 103(g), 8 U.S.C. 1103(g). In addition, DOJ's Civil Rights Division, Immigrant and Employee Rights Section (IER) continues to have authority to enforce the INA's employment anti-discrimination provisions. *See* INA 274B, 8 U.S.C. 1324b.

The changes implemented under the Workforce Act affect existing regulations governing DHS immigration policy and procedures, and these revisions to the DHS regulations are described in Part IV below.

However, given the authority of the immigration judges and the BIA to adjudicate asylum claims for aliens who are placed in proceedings before the immigration judges and the BIA, the Attorney General is publishing a separate rule to make technical amendments to the EOIR regulations (*i.e.*, a change of date) to reflect that Congress has provided that the statutory bar to applying for asylum in the CNMI will continue prior to January 1, 2030.

#### B. Legislative Authority

##### 1. Legislation Prior to the Workforce Act

The CNMI, located in the Western Pacific, is a self-governing commonwealth in political union with, and under the sovereignty of, the United States. In 1976, Congress approved the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (the 1976 Covenant), which defined the political relationship between the CNMI and the United States, provided U.S. citizenship to certain CNMI residents, and exempted the CNMI from certain federal minimum wage provisions and immigration laws but reserved the right of the federal government to apply federal law in these exempted areas without the consent of the CNMI government.<sup>14</sup> As a result, the CNMI administered its own immigration system under the terms of the 1976 Covenant with the United States for many years.

In 2008, Title VII of the Consolidated Natural Resources Act (CNRA) amended the 1976 Covenant, by extending U.S. immigration law, with limited exceptions, to the CNMI and providing CNMI-specific provisions affecting foreign workers. *See* Public Law 110-229, 122 Stat. 754, 853-854; 48 U.S.C. 1806(d). Since 1978, the CNMI had admitted a substantial number of foreign workers who constituted a majority of the CNMI labor force. The CNRA provided for a transition period to phase out the CNMI's nonresident contract worker program and phase in the U.S. federal immigration system in a manner that minimized adverse economic and fiscal effects and maximized the CNMI's potential for future economic and

<sup>14</sup> *See* A Joint Resolution to Approve the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Public Law 94-241, 90 Stat. 263 (1976), 48 U.S.C.1801 note.

business growth. See sections 701 and 702(a) of the CNRA.

The CNRA authorized the Secretary of Homeland Security to create a nonimmigrant classification that would ensure adequate employment in the CNMI during the transition period. See section 702(a) of the CNRA; 48 U.S.C. 1806(d). DHS published a final rule on September 7, 2011, amending the regulations at 8 CFR 214.2(w) to implement a temporary, CNMI-only transitional worker nonimmigrant classification (CW classification, which includes CW-1 for principal workers and CW-2 for spouses and minor children). See Commonwealth of the Northern Mariana Islands Transitional Worker Classification, 76 FR 55502 (Sept. 7, 2011).

The CNRA mandated an annual reduction in the number of permits issued per year and the total elimination of the CW nonimmigrant classification by the end of the transition period. See section 702(a) of the CNRA. At the outset of the transitional worker program, DHS set the CW-1 numerical limitation (also known as the CW-1 cap) for FY 2011 at 22,417 and for FY 2012 at 22,416. DHS announced these annual caps in DHS regulations at 8 CFR 214.2(w)(1)(viii)(A) and (B). DHS published subsequent annual caps by **Federal Register** notice. See 8 CFR 214.2(w)(1)(viii)(C).

The CNRA directed the U.S. Secretary of Labor to determine whether an extension of the CW program for an additional period of up to five years beyond the expiration of the initial transition period on December 31, 2014, was necessary to ensure that an adequate number of workers would be available for legitimate businesses in the CNMI. See section 702(a) of the CNRA. The CNRA further provided the Secretary of Labor with the authority to provide for such an extension through notice in the **Federal Register**. See *id.*

On June 3, 2014, the Secretary of Labor extended the CW program for an additional five years, through December 31, 2019. See *Secretary of Labor Extends the Transition Period of the Commonwealth of the Northern Mariana Islands-Only Transitional Worker Program*, 79 FR 31988 (June 3, 2014). Since the Secretary of Labor extended the CW program at least until December 31, 2019, DHS decided to generally preserve the then current conditions relating to CW-1 workers, rather than aggressively reduce CW-1 permit numbers for FY 2015. DHS therefore reduced the CW-1 cap nominally by one, resulting in an FY 2015 limit of

13,999.<sup>15</sup> See Commonwealth of the Northern Mariana Islands Transitional Worker Classification (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2015, 79 FR 58241 (Sept. 29, 2014).

On December 16, 2014, Congress amended the law to extend the transition period until December 31, 2019. See Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113-235, sec. 10, 128 Stat. 2130, 2134. Congress also eliminated the Secretary of Labor's authority to provide for future extensions of the CW-1 program, requiring the CW-1 program to end (or sunset) on December 31, 2019. See *id.*

The Northern Mariana Islands Economic Expansion Act (NMIEEA), Public Law 115-53, 131 Stat. 1091 (2017), which was enacted into law on August 22, 2017, revised the CW-1 visa classification to, among other things, (1) add 350 CW-1 visas to the FY 2017 CW-1 cap for purposes of extending certain existing CW-1 permits, raising the total number of visas that may be issued in that fiscal year from 12,998 to 13,348; and (2) prohibit the CW-1 classification from being available to workers who will be performing jobs classified as "construction and extraction occupations" as defined in the DOL's SOC system, other than to extend CW-1 permits of such workers first issued before October 1, 2015. This latter provision effectively barred employers of new construction and extraction occupation workers from using the CW-1 classification. As described by the NMIEEA's sponsor in

<sup>15</sup> This section only discusses legislation prior to the enactment of the Workforce Act. It is important to note that after establishing the transitional worker program, DHS published **Federal Register** Notices to reduce the CW-1 cap. DHS set the CW-1 numerical limitation at 15,000 and 14,000 respectively for FY 2013 and FY 2014. See CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2013, 77 FR 71287 (Nov. 30, 2012); CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2014, 78 FR 58867 (Sept. 25, 2013). DHS reduced the CW-1 cap for FY 2015 nominally in response to the Secretary of Labor's extension of the transition period (explained above). For FY 2016, DHS reduced the cap by 1,000 to a limit of 12,999. See Commonwealth of the Northern Mariana Islands Transitional Worker Classification (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2016, 80 FR 63911 (Oct. 22, 2015). DHS reduced the cap for FY 2017 by only one to 12,998. See Commonwealth of the Northern Mariana Islands Transitional Worker Classification (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2017, 81 FR 60581 (Sept. 2, 2016). In 2017, DHS published a reduction plan to inform the public of the number of CW-1 workers available during each of the fiscal years for the remainder of the transition period. See Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Years 2018 Through 2020, 82 FR 55493 (Nov. 22, 2017).

the Congressional Record, the bar on construction and extraction workers is intended to require construction companies to fill new positions (including those filled by CW-1 workers after October 1, 2015) with non-CW-1 workers.<sup>16</sup>

## 2. The Workforce Act

On July 24, 2018, President Trump signed the Workforce Act, Public Law 115-218, 132 Stat. 1547. The stated purposes of the Workforce Act are to increase the percentage of United States workers in the total workforce of the CNMI while maintaining the minimum number of non-U.S. workers to meet the demands of the CNMI's economy; encourage the hiring of United States workers into the CNMI workforce; and ensure that no U.S. worker is at a competitive disadvantage compared to a non-U.S. worker.

In discussing the background and need for the Workforce Act, the accompanying Senate Report notes the CNMI's continuing dependence on foreign labor.<sup>17</sup> The Senate Report cites the May 2017 report by the Government Accountability Office (GAO), entitled *Commonwealth of the Northern Mariana Islands; Implementation of Federal Minimum Wage and Immigration Laws*, noting that since FY 2013, demand for CW-1 permits had doubled, and in FY 2016, demand exceeded the numerical cap for the first time.<sup>18</sup> In 2016, USCIS received enough petitions to approve 12,999 CW-1 permits by May 5, 2016, reaching the cap five months prior to the end of the fiscal year.<sup>19</sup> For the 2017 fiscal year cap, USCIS received a sufficient number of petitions to reach the CW-1 cap of 12,998 by October 14, 2016.<sup>20</sup> On April 11, 2017, USCIS received a sufficient number of petitions to reach the FY 2018 cap of 9,998.<sup>21</sup> The GAO report

<sup>16</sup> See 163 Cong. Rec. E1132 (daily ed. Aug. 15, 2017) (statement of Delegate Sablan).

<sup>17</sup> See S. Rep. No. 115-214, at 7 (2018), available at <https://www.congress.gov/115/crpt/srpt214/CRPT-115srpt214.pdf> (last visited May 28, 2019).

<sup>18</sup> See U.S. Govt. Accountability Office, Commonwealth of the Northern Mariana Islands: Implementation of Federal Minimum Wage and Immigration Laws, GAO-17-437 (May 2017), <https://www.gao.gov/products/GAO-17-437> (last visited May 28, 2019).

<sup>19</sup> See "USCIS Reaches CW-1 Cap for Fiscal Year 2016," available at <https://www.uscis.gov/archive/archive-news/uscis-reaches-cw-1-cap-fiscal-year-2016> (last visited May 28, 2019).

<sup>20</sup> See "USCIS Reaches CW-1 Cap for Fiscal Year 2017," available at <https://www.uscis.gov/news/alerts/uscis-reaches-cw-1-cap-fiscal-year-2017> (last visited May 28, 2019).

<sup>21</sup> See "As CNMI Transitional Worker Program Draws Down, USCIS Announces Cap for Final Three Fiscal Years," available at <https://>

attributes the increased demand for CW-1 permits to the CNMI's recent economic expansion, specifically, the construction of casinos and hotels.

The CNMI business community expressed concern that the reduced levels of available CW-1 permits would have a negative impact on the CNMI's economy. The GAO report found that in 2015, foreign workers (totaling 12,784) made up more than half of the CNMI's workforce and filled 80 percent of all hospitality and construction jobs. The GAO also found that in 2015, if all CW-1 workers were removed from the CNMI's labor market, the CNMI's gross domestic product would be reduced by between 26 and 62 percent. The GAO report noted that the unemployed domestic workforce, estimated at 2,386 in 2016, would be well below the CNMI's demand for labor.

The Senate Report notes that, in response to labor abuses by certain employers in the CNMI, there is a call for additional labor protections, including higher minimum wage requirements, the potential for revocation, legitimate business requirements, and the prohibition on the use of CW-1 permits for construction workers.<sup>22</sup>

Certain provisions of the Workforce Act took effect immediately. Specifically, it extended the CNMI-Only Transitional Worker program (the CW-1 program) through 2029, increased the CW-1 cap for FY 2019, provided new CW-1 caps for subsequent fiscal years, and mandated a new fraud prevention and detection fee with each petition. In addition to extending the CW-1 program, it also extended the following CNRA provisions until December 31, 2029:

- The exemption from national caps for H-1B and H-2B workers in the CNMI and on Guam;
- The bar on asylum applications in the CNMI; and
- The CNMI-Only Nonimmigrant Investor (E-2C) program.

The Workforce Act's section 3(a) also amends the 1976 Covenant to make a number of changes to the transitional provisions and, as noted above, requires the Secretaries of Homeland Security and Labor to each promulgate an IFR implementing the related statutory changes no later than January 20, 2019, which is 180 days from the date of

enactment.<sup>23</sup> (Pub. L. 115-218, sec. 3(b)(1), (2)). The Department of Labor (DOL) IFR was published on April 1, 2019, and went into effect on April 4, 2019.<sup>24</sup> The DHS IFR was delayed by a number of months.

The Workforce Act provides the Secretary with the discretionary authority to delay statutory provisions relating to the CW-1 program, except for provisions providing annual numerical caps for such workers, until the effective date of the IFR. (Pub. L. 115-218, sec. 3(e)(2)). On July 25, 2018, DHS announced that it would exercise its discretion, as provided in the Workforce Act, to delay implementation of other statutory changes to the CW-1 program affecting CW-1 filers until DHS issued an IFR.<sup>25</sup>

#### IV. Changes to DHS Regulations

##### A. Codifying the Provisions Effective Immediately Pursuant to the Workforce Act

###### 1. Extension of the Transition Period

DHS is revising 8 CFR 214.2(w)(1)(xvi) to update the extension of the transition period, and thus the CW-1 program, through December 31, 2029. While the transition period has been previously extended, the related regulation was not revised to reflect any of the CW-1 program extensions. This change will reflect the new sunset date within existing regulations.

This IFR also revises 8 CFR 214.2(e)(23) to extend the E-2C program until December 31, 2029. The E-2C visa classification allows foreign, long-term investors to remain lawfully present in the CNMI through the transition period and is extendable in 2 year increments.<sup>26</sup> See 8 CFR 214.2(e)(23)(xii), (xiv). The E-2 CNMI Investor program was intended to provide a smooth transition for existing CNMI investors and to mitigate potential adverse consequences to the CNMI economy if the current

<sup>23</sup> The statutory deadline for rulemaking is 180 days after enactment, or January 20, 2019. However, under 1 CFR 18.17, when a date falls on a weekend or holiday, the next Federal business day is used for publication in the **Federal Register**. In this case, as January 20 was a Sunday and January 21 was a Federal holiday, the next business day is January 22, 2019.

<sup>24</sup> 84 FR 12380 (Apr. 1, 2019).

<sup>25</sup> See USCIS, "New Law Extends CNMI CW-1 Program, Mandates New Fraud Fee, and Will Require E-Verify Participation," available at <https://www.uscis.gov/news/alerts/new-law-extends-cnmi-cw-1-program-mandates-new-fraud-fee-and-will-require-e-verify-participation> (last visited May 28, 2019).

<sup>26</sup> While E-2C status can be extended, the filing period for initial requests for the E-2C classification ended on January 18, 2013. See 8 CFR 214.2(e)(23)(i).

investments could not otherwise be maintained as a basis for immigration status during the transition period. As with the CW-1 classification, the E-2C classification also ceases to exist at the end of the transition period. See 8 CFR 214.2(e)(23)(xiv).

This IFR also updates DHS regulations to make a number of conforming amendments to extend the asylum bar in the CNMI, see INA sec. 208(e), 8 U.S.C. 1158(e), until December 31, 2029.

###### 2. CW-1 Numerical Limitation

As previously noted, the CNRA mandated an annual reduction (not a specific numerical reduction) in the number of permits issued per year and the total elimination of the CW nonimmigrant classification by the end of the transition period. See 48 U.S.C. 1806(d)(2). DHS regulations provided that the CW-1 cap for any fiscal year would be less than the number established for the previous fiscal year, and that the adjusted number would be reasonably calculated in DHS's discretion to reduce the number of CW-1 nonimmigrant workers to zero by the end of the program. 8 CFR 214.2(w)(1)(viii)(C). DHS could adjust the cap for a fiscal year or any other period, at any time by publishing a Notice in the **Federal Register**, as long as the number was less than the cap for the previous fiscal year. See 8 CFR 214.2(w)(1)(viii)(D).

At the outset of the transitional worker program, DHS set the CW-1 numerical limitation (also known as the CW-1 cap) for FY 2011 at 22,417 and for FY 2012 at 22,416. DHS announced these annual caps in DHS regulations at 8 CFR 214.2(w)(1)(viii)(A) and (B). DHS subsequently published annual caps by **Federal Register** notice. See 8 CFR 214.2(w)(1)(viii)(C). DHS set the CW-1 numerical limitation at 15,000 and 14,000 respectively for FY 2013 and FY 2014. See CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2013, 77 FR 71287 (Nov. 30, 2012); CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2014, 78 FR 58867 (Sept. 25, 2013). For FY 2015, DHS reduced the numerical limitation nominally by one, resulting in an FY 2015 limit of 13,999. See CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2015, 79 FR 58241 (Sept. 29, 2014). For FY 2016, DHS reduced the cap by 1,000 to a limit of 12,999. See Commonwealth of the Northern Mariana Islands Transitional Worker Classification (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2016, 80 FR 63911 (Oct. 22, 2015). DHS

[www.uscis.gov/news/news-releases/cnmi-transitional-worker-program-draws-down-uscis-announces-cap-final-three-fiscal-years](http://www.uscis.gov/news/news-releases/cnmi-transitional-worker-program-draws-down-uscis-announces-cap-final-three-fiscal-years) (last visited May 28, 2019).

<sup>22</sup> See S. Rep. No. 115-214, at 8 (2018), available at <https://www.congress.gov/115/crpt/srpt214/CRPT-115srpt214.pdf> (last visited May 28, 2019).

reduced the cap for FY 2017 by only one to 12,998. See Commonwealth of the Northern Mariana Islands Transitional Worker Classification (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2017, 81 FR 60581 (Sept. 2, 2016). Finally, in 2017, DHS published a reduction plan to inform the public of the number of CW-1 workers available during each of the fiscal years for the remainder of the then-existing transition period. See Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Years 2018 through 2020, 82 FR 55493 (Nov. 22, 2017). DHS set the CW-1 cap for FY 2018 at 9,998. For FY 2019, the cap was set at 4,999. For FY 2020, the cap was set at 2,499 and was to be in effect until the previous end of the transition period on December 31, 2019. See *id.* DHS believed that this approach would further encourage the recruitment of United States workers and the transition into the U.S. immigration system, consistent with the goals of the CNRA and the general policy direction provided by Executive Order 13,788, Buy American and Hire American, 82 FR 18837, 18838 (Apr. 21, 2017) “to protect the interests of United States workers in the administration of our immigration system.”

The Workforce Act did not make any changes to the CW-1 cap for FY 2018. However, it immediately raises the CW-1 cap for FY 2019 and then provides gradually diminishing CW-1 caps for subsequent fiscal years until the end of the transition period on December 31, 2029. It starts with a cap of 13,000 for FY 2019, then reduces each fiscal year by 500 through FY 2023; that number then declines by 1,000 for each fiscal year through 2029. By FY 2029 it drops to 5,000 and then to 1,000 for FY 2030 (until December 31, 2029).

The new caps took effect immediately and are reflected in this interim final rule as follows:

- (1) 9,998 for fiscal year 2018;
- (2) 13,000 for fiscal year 2019;
- (3) 12,500 for fiscal year 2020;
- (4) 12,000 for fiscal year 2021;
- (5) 11,500 for fiscal year 2022;
- (6) 11,000 for fiscal year 2023;
- (7) 10,000 for fiscal year 2024;
- (8) 9,000 for fiscal year 2025;
- (9) 8,000 for fiscal year 2026;
- (10) 7,000 for fiscal year 2027;
- (11) 6,000 for fiscal year 2028;
- (12) 5,000 for fiscal year 2029; and
- (13) 1,000 for the first quarter of fiscal year 2030.

### 3. CNMI Education Fee

The Workforce Act implements the raise in the supplemental CNMI

education funding fee from \$150 to \$200 (per each beneficiary issued CW-1 status, per year). See 48 U.S.C. 1806(a)(6)(A)(i). It also provides the Secretary of Homeland Security the discretion to annually adjust this supplemental fee. See 48 U.S.C. 1806(a)(6)(A)(ii). Beginning in FY 2020, the Secretary, through notice in the **Federal Register**, may annually adjust the supplemental fee by a percentage equal to the annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics. See 48 U.S.C. 1806(a)(6)(A)(ii). This IFR updates the regulation at 8 CFR 103.7(b)(1)(i)(J) and 8 CFR 214.2(w)(5) to include the new fee and the Secretary’s discretionary authority for inflation adjustment.

### 4. Fraud Prevention and Detection Fee

The Workforce Act requires DHS to impose a \$50 fee for fraud prevention and detection purposes on each CW-1 petitioner. See 48 U.S.C. 1806(a)(6)(A)(iv)(I). This fee is for the sole purpose of preventing and detecting immigration benefit fraud in the Northern Mariana Islands. See 48 U.S.C. 1806(a)(6)(A)(iv)(II). USCIS implemented the antifraud fee as soon as it began accepting new petitions under the revised FY 2019 CW-1 cap.<sup>27</sup> This new fraud prevention and detection fee did not apply to CW-1 petitions already filed and pending with USCIS as of July 24, 2018, but was imposed on any petitions received after July 24, 2018. USCIS rejects petitions with incorrect or insufficient fees. This IFR updates the regulation at 8 CFR 103.7(b)(1)(i)(J) and 8 CFR 214.2(w)(5) to include the new fraud prevention and detection fee.

### B. CW-1 Numerical Reservation for Specific Occupational Categories

Section 3(b)(3) of the Workforce Act requires the Secretary of Homeland Security to consider the Governor’s recommendations in developing the interim final rule implementing the law. The Workforce Act specifically states that DHS shall consider in good faith any written public recommendations regarding Workforce Act implementation that are submitted by the Governor of the Commonwealth not later than 60 days after the date of the Workforce Act’s enactment. The Workforce Act further provides that

<sup>27</sup> See USCIS, “New Law Extends CNMI CW-1 Program, Mandates New Fraud Fee, and Will Require E-Verify Participation,” available at <https://www.uscis.gov/news/alerts/new-law-extends-cnmi-cw-1-program-mandates-new-fraud-fee-and-will-require-e-verify-participation> (last visited May 28, 2019).

DHS may include provisions in its IFR that are responsive to any recommendation of the Governor and not inconsistent with the Workforce Act, including a recommendation to reserve a number of permits each year for occupational categories necessary to maintain public health or safety in the Commonwealth.

In an August 8, 2018 letter,<sup>28</sup> Governor Torres requested that DHS reserve 200 CW-1 permits in FY 2019 for “occupational categories” 29-0000 (Healthcare Practitioners and Technical Occupations) and 31-0000 (Healthcare Support Occupations). For FY 2019, Governor Torres also requested that DHS reserve 60 CW-1 permits for occupational categories related to the operations of the CNMI public utilities services, to include Water/Waste Water Engineers, Electrical Engineers, Mechanical Engineers, and Trades Technicians. Governor Torres stressed the importance of reserving these cap numbers in order to maintain labor access and, therefore, adequate staffing of the CNMI’s healthcare system and public utilities services. Additionally, Governor Torres recommended that the CW-1 cap reservations should be changed based on labor demands within these sectors. Finally, Governor Torres requested the ability to recommend changes to these CW-1 cap reservations throughout the duration of the transition period as this would help the CNMI’s goals of truly transitioning occupations toward U.S. citizens, or alternative visa classifications when United States workers are not available.

As directed by the Workforce Act, DHS considered the Governor’s recommendations in developing this IFR. As mentioned above, the Governor requested that DHS reserve 200 CW-1 permits for health occupations and 60 CW-1 permits for public utilities occupations for FY 2019. In an October 29, 2018 response to Governor Torres,<sup>29</sup> DHS explained that it did not have the authority to reserve permits for occupational categories prior to the IFR taking effect and that the ability to make any such reservations for FY 2019, as opposed to future fiscal years, would depend upon when the IFR takes effect and whether FY 2019 CW-1 permits are still available at that time.

<sup>28</sup> See Letter from Rafael DLG Torres, Governor of the CNMI, to Kirstjen Nielsen, Secretary, DHS (Aug. 8, 2018), available at <http://www.regulations.gov> under DHS Docket No. USCIS-2019-0003.

<sup>29</sup> See Letter from L. Francis Cissna, Director, USCIS to Rafael DLG Torres, Governor of CNMI (October 29, 2018), available at <http://www.regulations.gov> under DHS Docket No. USCIS-2019-0003.

DHS understands the Governor's concerns regarding the availability of CW-1 cap numbers for these critical occupations. After careful consideration, DHS will include a CW-1 cap reservation for all critical occupations, as recommended by the Governor.

With respect to the occupational categories identified by the Governor regarding the operations of the CNMI public utilities services, DHS is concerned that the Governor's recommendation refers to these occupations in general terms rather than providing a specific definition or offering a more precise way to identify them. DHS can better implement and operationally manage a CW-1 cap reservation by defining the occupational categories that will be considered as part of that cap reservation.

After careful consideration, DHS has determined that, consistent with the Governor's use of the occupational categories to refer to health occupations, DHS will generally use the DOL SOC<sup>30</sup> system to specify which occupations are part of this cap reservation. The SOC system is a federal statistical standard used by federal agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data.<sup>31</sup> DOL uses the SOC system to group and classify jobs and occupations. The purpose of the SOC system is to organize occupational data and classify workers into distinct occupational categories. It covers all occupations where work is performed for pay or for profit. Occupations are generally categorized based on the type of work performed. Additionally, certain occupations are also classified based on the skills, education and training required to perform the job. The SOC system is organized using codes, which generally consist of six numerical digits. In sum, the SOC code provides an objective approach to define affected groups.

<sup>30</sup> See U.S. Department Labor, Bureau of Labor Statistics, Standard Occupational Classification, available at <https://www.bls.gov/soc/> (last visited May 28, 2019).

<sup>31</sup> The Office of Management and Budget is charged by statute with coordinating the U.S. Federal statistical system. All workers are classified into one of 867 detailed occupations according to their occupational definition. To facilitate classification, detailed occupations are combined to form 459 broad occupations, 98 minor groups, and 23 major groups. Detailed occupations in the SOC with similar job duties, and in some cases skills, education, and/or training, are grouped together. For an overview, see "Office of Management and Budget, Statistical Programs & Standards," available at <https://www.whitehouse.gov/omb/information-regulatory-affairs/statistical-programs-standards/> (last visited May 28, 2019).

Currently, USCIS uses these SOC codes as one basis for determining whether the beneficiary's proposed employment qualifies for CW-1 classification.<sup>32</sup> For purposes of adjudicating the Form I-129CW, USCIS reviews the totality of the record, including the listed SOC code and any additional evidence submitted by the CW-1 petitioner. If all information found in the Form I-129CW is consistent with the TLC, and provided all other eligibility requirements are met, then USCIS may approve the Form I-129CW and use the SOC code listed on the petition to identify the petitions set aside for the cap reservation. If the SOC code is blank or if the evidence submitted with the Form I-129CW does not establish that the proposed employment matches the SOC code listed on the petition, USCIS may request additional information. In determining whether the proposed employment matches the listed SOC code, USCIS considers factors including but not limited to the job duties and responsibilities of the proposed employment, and any educational, experience, and/or training requirements. If USCIS finds a mismatch between the SOC code on the Form I-129CW and the TLC, or finds conflicting information in the Form I-129CW and TLC, then USCIS may consider such information to deny or revoke the Form I-129CW.<sup>33</sup>

USCIS already collects the SOC code on the Form I-129CW to help administer the statutory prohibition of construction occupations.<sup>34</sup> This IFR adopts this same approach of using the SOC code to help USCIS properly identify the occupations for which a portion of the CW-1 numerical limitation is reserved. However, it is noted that the occupational categories related to the operations of the CNMI public utilities may not be able to be properly limited or defined to specific corresponding SOC codes. For example, there is not a specific SOC code for "Trades Technicians." Rather, there are a large number of SOC codes which could potentially be used to describe a number of different technicians. For this occupation, it is not practical to include

<sup>32</sup> See Instructions for Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, available at <https://www.uscis.gov/i-129cw> (last visited May 28, 2019).

<sup>33</sup> USCIS generally defers to DOL to determine the correct SOC code for purposes of the TLC. Nevertheless, USCIS maintains the authority to consider the SOC code as one basis for purposes of adjudicating the Form I-129CW.

<sup>34</sup> In fiscal year 2017, DHS also used the SOC codes to identify CW-1 health care workers to manage the statutory sub-cap for healthcare workers.

every possible code that would be eligible for the CW-1 cap reservation. As a result, this IFR includes a single SOC code for the specific occupational category related to the operations of the CNMI public utilities services, if known, but does not limit this CW-1 cap reservation only to the included SOC codes.

Accordingly, this IFR makes the following reservations of CW-1 numbers for specified occupational categories: (i) 200 total for occupational categories 29-0000 (Healthcare Practitioners and Technical Occupations) and 31-0000 (Healthcare Support Occupations); and (ii) 60 for occupational categories related to the operations of the CNMI public utilities services, to include, but not limited to, 17-2081 (Water/Waste Water Engineers), 17-2071 (Electrical Engineers), 17-2141 (Mechanical Engineers), and Trades Technicians.<sup>35</sup> New 8 CFR 214.2(w)(1)(x)(D)(1). The reserved CW-1 numbers will be made available to eligible petitioners requesting such numbers for a fiscal year in order of filing until exhausted. New 8 CFR 214.2(w)(1)(x)(D)(2). DHS will not impose an arbitrary deadline for petitioners to exhaust this cap reservation as it would be contrary to the CNMI government's request to preserve access to labor in these critical occupations. As a result, unused reserved numbers for these occupational categories will not be available to other petitioners. *Id.* Accordingly, DHS is also updating the Form I-129CW to include a new data field on the Form I-129CW requesting whether the petitioner would like to be considered under one of the occupational category reservations. This approach is consistent with the Governor's request to reserve CW-1 numbers for specified occupations.

This new CW-1 cap reservation will not apply to any fiscal year cap that has been reached prior to the effective date of this IFR. For any fiscal year cap that has not been reached as of the date this IFR takes effect, the CW-1 cap reservation will be considered completely unsubscribed at that time and will only be filled by petitions received on or after such date that specifically request consideration under the Governor's recommendations in the corresponding data field on the Form I-129CW.

As noted above, the Governor also recommended that any CW-1 cap reservation should be subject to change based on labor demand and requested the ability to recommend changes to

<sup>35</sup> A corresponding SOC code does not exist that would include all Trades Technicians occupations.

these CW–1 cap reservations throughout the duration of the transition period. DHS agrees with the Governor’s recommendation that any CW–1 cap reservation should be adjustable to future labor market needs, in light of the declining number of CW–1 visas available in future years. As such, this IFR, per new 8 CFR 214.2(w)(1)(x)(D)(3), provides that DHS may adjust the reservation of numbers for specified occupational categories for a fiscal year or other period via notice in the **Federal Register**, as long as such adjustment is consistent with the numerical limitations set forth by statute and as updated in new 8 CFR 214.2(w)(1)(x)(A) for FY 2018 through the first quarter of FY 2030. DHS may adjust this CW–1 cap reservation in future years following consideration of a range of factors, including, but not limited to, demand for the reservation of numbers and if any reservation resulted in unused permits, the overall numerical decreases in permits in future years, and any recommendation received from the Governor of the CNMI relating to CNMI labor market needs, consistent with the Workforce Act and this IFR. This will provide DHS with the flexibility to make future adjustments to the CW–1 cap reservation in response to the CNMI’s labor workforce needs and to the decreasing yearly caps.

#### C. U.S. Department of Labor, Temporary Labor Certification Requirement

The current DHS CW–1 regulations do not require that an employer obtain any documentation from DOL as a prerequisite to filing a CW–1 petition with USCIS. The Workforce Act changed petition procedures by imposing a temporary labor certification requirement beginning with CW–1 petitions filed with USCIS with employment start dates in FY 2020.<sup>36</sup> See 48 U.S.C. 1806(d)(2)(A)(i).

<sup>36</sup> On September 24, 2019, USCIS announced it was providing a one-time, limited accommodation to facilitate the initial implementation of the new requirement that CW–1 petitions with employment start dates on or after October 1, 2019 include a TLC approved by DOL. USCIS would consider certain FY 2020 CW–1 petitions seeking an extension of status for temporary workers present in the CNMI to be filed on time, even if USCIS received them after the worker’s current period of CW–1 petition validity expires, under the following limited circumstances: (1) The petition was otherwise properly filed, and included an approved TLC with a start date on or after October 1, 2019; (2) USCIS received the petition no later than 30 days after the date of TLC approval, or by November 1, 2019, whichever was earliest; and (3) the expiration date of the currently approved petition was on or after September 1, 2019. If an employer filed an extension petition meeting these requirements, the CW–1 worker could continue employment with the same employer for up to 240 days beginning on the expiration of the authorized period of stay, pending

Now, as a prerequisite to filing a CW–1 petition with USCIS, an employer must first obtain an approved TLC from DOL confirming that: (1) There are not sufficient United States workers in the CNMI who are able, willing, qualified, and available at the time and place needed to perform the services or labor involved in the petition; and (2) the employment of a nonimmigrant worker who is the subject of a petition will not adversely affect the wages and working conditions of similarly employed United States workers. See 48 U.S.C. 1806(d)(2)(A).

To ensure that the CW–1 employment will not adversely affect similarly employed United States workers’ wages and working conditions, the Workforce Act also mandates minimum wage requirements. Specifically, it requires the employer to pay a CW–1 worker the greater of the CNMI minimum wage, the federal minimum wage, or the prevailing wage as determined by DOL. 48 U.S.C. 1806(d)(2)(C). It requires DOL to make a prevailing wage determination, by allowing DOL to meet this requirement in a number of ways. 48 U.S.C. 1806(d)(2)(B). DOL will use or make available to employers annual occupational wage surveys conducted by the Governor meeting the statistical standards established by DOL for determining prevailing wages in the CNMI. 48 U.S.C. 1806(d)(2)(B)(i). In the absence of a DOL-approved Governor’s survey, the Workforce Act sets forth that the prevailing wage for an occupation in the CNMI is the arithmetic mean of the wages of workers similarly employed in the territory of Guam according to the Occupational Employment Statistics Survey conducted by DOL’s Bureau of Labor Statistics. 48 U.S.C. 1806(d)(2)(B)(ii).

Consistent with the Workforce Act, DOL administers these additional labor protections and has issued a separate regulation<sup>37</sup> governing the TLC process, but this IFR updates DHS regulations to include the new TLC requirement at 8 CFR 214.2(w)(6)(iv) as a prerequisite to filing a CW–1 petition with USCIS. Any CW–1 petition requesting an employment start date on or after October 1, 2019 must be filed with a

adjudication of the petition (or, in the case of a non-frivolous petition for extension of stay with change of employer, until USCIS adjudicates the petition). See USCIS, Filing Guidance for CW–1 Petitions Seeking to Extend Status for Fiscal Year 2020, <https://www.uscis.gov/news/alerts/filing-guidance-cw-1-petitions-seeking-extend-status-fiscal-year-2020> (Last Reviewed/Updated Sept. 24, 2019).

<sup>37</sup> The DOL IFR was published on April 1, 2019, and went into effect on April 4, See Labor Certification Process for Temporary Employment in the Commonwealth of the Northern Mariana Islands (CW–1 Workers), 84 FR 12380 (Apr. 1, 2019).

DOL approved TLC. The certified TLC confirms that there are not sufficient United States workers in the CNMI who are able, willing, qualified, and available at the time and place needed to perform the services or labor involved in the petition, and that the employment of the CW–1 nonimmigrant will not adversely affect the wages and working conditions of similarly employed United States workers. Any petition filed without the approved DOL TLC will be rejected. If the TLC approves certain education, training, experience, or special requirements, USCIS will further require sufficient evidence to determine whether the CW–1 worker qualifies for the job offer. The IFR also updates 8 CFR 214.2(w)(6)(ii)(I) to include the related minimum wage statutory requirements.

#### D. CW–1 Petition Filing Window

The Workforce Act sets forth new CW–1 petition filing windows for employers renewing the permits of their CW–1 workers and for those requesting new CW–1 workers. It provides that employers renewing the permits of their CW–1 employees can file 180 days before the expiration of current CW–1 status. Employers filing for new CW–1 employment authorization may file no more than 120 days prior to the need for such employment. 48 U.S.C. 1806(d)(3)(D)(i).

To adhere to this filing window, it is important to note again that, a CW–1 petition for temporary employment filed with USCIS must be accompanied by an approved TLC from DOL. 48 U.S.C. 1806(d)(2). This prerequisite does not change the statutory filing window. Under DOL regulations at 20 CFR 655.420 (b)(1), an employer seeking to hire a CW–1 worker must first apply for a TLC with DOL, no more than 120 calendar days before the employer’s date of need. However, where the employer is seeking a TLC to support a petition to renew a visa (extending the employment of a CW–1 worker), 20 CFR 655.420(b)(2) requires that the employer file the TLC application no more than 180 calendar days before the date on which the CW–1 status expires. Once DOL approves the TLC, the employer can file the CW–1 petition with USCIS.

#### E. Semiannual Report for CW–1 Employers

The Workforce Act prescribes that DHS shall establish a system for each CW–1 employer to submit a semiannual report to the Secretary of Homeland Security and the Secretary of Labor that provides evidence to verify the continuing employment and payment of such worker under the terms and

conditions set forth in the CW-1 petition that the employer filed on behalf of such worker. 48 U.S.C. 1806(d)(3)(D)(ii). In order to implement the semiannual reporting requirement, USCIS created a standalone form, the Form I-129CWR, Semiannual Report for CW-1 Employers (semiannual report). USCIS is requiring petitioners to file the semiannual report, with a required attestation, in order to capture data to verify the continued employment and payments to their CW-1 workers. See new 8 CFR 214.2(w)(26)(i) and (ii).

In accordance with the Workforce Act's reporting requirement, all approved CW-1 petitioners must file a semiannual report. USCIS interprets this as a filing requirement for all approved CW-1 petitioners, whose petitions have been approved for a validity period of six months or more, to be submitted during the petition's validity period. An approved CW-1 petition may be approved for a period of up to one year, unless the beneficiary is a long-term worker, in which case an approved petition will be valid for a period of up to three years. As a result, CW-1 petitions have varying validity periods, as petitioners can request the entire validity period available or any shortened period of time necessary for the employment opportunity. USCIS will use the semiannual report to verify the continuing employment and payment of such workers, on a semiannual basis, whether the CW-1 petitioner is requesting a validity period of up to 1 year or up to 3 years. Under 8 CFR 214.2(w)(26)(i)(A), an employer whose CW-1 petition has been approved for an employment start date on or after October 1, 2019 and for a validity period of six months or more, must file a semiannual report every six months after the petition validity start date up to and including the sixth month preceding the petition's validity end date. As such, a CW-1 petition approved for a validity period of 1 year requires the filing of a single semiannual report while a CW-1 petition approved for a validity period of 3 years requires the filing of 5 semiannual reports. The semiannual report must be filed within a 60 day window surrounding each six-month anniversary of the petition validity start date, with the filing window opening 30 days before and closing 30 days after the six-month anniversary of the petition validity start date.

This form creates a streamlined approach for easy USCIS intake while creating targeted data requests to ensure that USCIS captures the information necessary for verification of the CW-1 employment. Data fields include

information to verify what was approved on the petition versus the actual terms under which the CW-1 is employed. For example, the form requests information on how many CW-1 beneficiaries were approved on the original petition; how many of the approved beneficiaries remain in CW-1 status and are still working for the petitioner; the wage offered, per week or year, on the approved Form I-129CW versus the actual wage, per week or per year, currently paid to the CW-1 workers; and the hours per week, offered on the approved Form I-129CW versus the actual hours worked per week. Petitioners can file one form to report the information on multiple beneficiaries as long as they were approved on the same petition.

Although this IFR does not require submission of evidence at the time of filing the semiannual report, it does contain an attestation of compliance for the petitioner to affirm, under penalty of perjury, the continuing employment and payment of the CW-1 worker under the terms and conditions set forth in the petition. The attestation serves as initial evidence to USCIS regarding the petitioner's continued eligibility as a CW-1 petitioner.

In addition, although there is no requirement to submit evidence, the regulations are revised to add a new document retention requirement at 8 CFR 214.2(w)(26)(iii). In accordance with these requirements, the petitioner must retain documents and records meeting their burden to demonstrate compliance with this rule, and must provide the documents and records upon the request of DHS or DOL, such as in the event of an audit or investigation. An employer must retain evidence that supports the approved petition and semiannual report including, but not limited to: (a) Personnel records for each CW-1 worker including the name, current residence address in the Commonwealth, age, domicile, citizenship, point of hire, and approved employment contract termination date; (b) Payroll records for each CW-1 worker, including the O\*NET job classification wage rate or salary, number of hours worked each week, gross compensation, itemized deductions, and evidence of net payments made and received biweekly; and (c) Direct evidence of payment of wages and overtime, such as receipts for cash payments, cancelled checks or deposit records of payment of wages and overtime. Petitioners must retain all documents and records in support of an approved petition and any semiannual report(s) for a period of three years after

the ending date of the petition validity period. If requested, petitioners must provide the documents and records supporting the information in the approved petition and the semiannual report to DHS and DOL at any time during the aforementioned retention period. The document retention is necessary from an investigative perspective as the information collected may be used in conjunction with any site visits conducted by DHS or requests for additional evidence to verify compliance. Per 8 CFR 214.2(w)(26)(ii), DHS may provide such semiannual reports to other federal partners, including DOL for investigative or other use as DOL may deem appropriate. Failure to comply with the semiannual report requirement may be a basis for revocation of an approved petition as provided below or for denial of subsequent petitions filed by the employer.

To ensure fairness and equal footing among CW-1 petitioners in the application of this statutory requirement, this IFR establishes that the semiannual report shall be required beginning with all CW-1 petitions approved by USCIS with employment start dates in FY 2020 for a validity period of six months or more. The semiannual reporting requirement will apply to CW-1 petitions with such employment start dates approved by USCIS before the effective date of this IFR and before the requirement was stated in the instructions for the CW-1 petition. Completion of the report will rely on readily attainable facts by the petitioner that are based on the terms and conditions previously set forth in the CW-1 petition. Requiring the semiannual report for all CW-1 petitions approved by USCIS with employment start dates in FY 2020 for a validity period of six months or more ensures uniform compliance with the statutory requirement by requiring the submission of the same information across the same period of time, and will avoid data gaps and incomplete information collections for the initial FY 2020 reporting period.

#### *F. Revocations*

The Workforce Act provides the Secretary discretionary authority to revoke a petition approval for good cause and provides a non-exhaustive list of examples that may serve as a basis for revocation, such as: The employer failing to maintain the continuous employment of the CW-1 worker, failing to pay the CW-1 worker, or failing to timely file a semiannual report; if the employer commits any other violation of the terms and

conditions of employment, or otherwise ceases to operate as a legitimate business; if the beneficiary of such petition does not apply for admission to the CNMI by the date that is 10 days after the period of petition validity begins, if the employer has requested consular processing; or if the employer fails to provide a former, current, or prospective CW-1 worker with the original (or a certified copy of the original) of all petitions, notices, and other written communication related to the worker (other than sensitive financial or proprietary information of the employer, which may be redacted) that has been exchanged between the employer and the DOL, DHS, or any other Federal agency or department. *See* 48 U.S.C. 1806(d)(3)(D)(iii)(I).

The Workforce Act also authorizes the Secretary to reallocate a revoked permit to the following fiscal year. *See* 48 U.S.C. 1806(d)(3)(D)(iii)(II). Pursuant to section 3(b)(3) of the Workforce Act,<sup>38</sup> Governor Torres submitted comments and recommendations to DHS on the implementation of this revocation provision.<sup>39</sup> On the statutory revocation provision, the Governor expressed concern with a specific statutory provision, allowing for revocation of a permit if the petition was approved for consular processing and the beneficiary does not apply for admission to the CNMI during the ten day period after the start date of petition validity. He requested that DHS delay the implementation of the statutory revocation provision until the U.S. Department of State's role in this process is established or alternatively, that the provision be interpreted and implemented so that it does not immediately disqualify admission into the CNMI if all other petition criteria are met. The Governor stated that consular processing delays, which are outside the control of employers, may lead to petition revocations and this would be detrimental to the CNMI business community.<sup>40</sup>

<sup>38</sup> As stated in sec. 3(b)(3), the Secretary shall consider, in good faith, any written public recommendations regarding the implementation of this Act that are submitted by the CNMI Governor and may include provisions in the IFR that are responsive to any recommendation of the Governor that is not inconsistent with the Workforce Act.

<sup>39</sup> *See* Letter from Rafael DLG Torres, Governor of the CNMI, to Kirstjen Nielsen, Secretary, DHS (Sept. 18, 2018), available at <http://www.regulations.gov> under DHS Docket No. USCIS-2019-0003.

<sup>40</sup> While the Governor's letter does not mention concerns regarding admission, it is important to note that the statutory basis for revocation is tied to admission, and therefore to U.S. Customs and Border Protection's (CBP) role, rather than to visa issuance. That said, delays in consular processing of visas with DOS would inherently delay any admission by CBP.

In accordance with the Workforce Act, DHS has considered the Governor's recommendations in the development of this regulation. The Workforce Act is clear that petition revocation is within the Secretary's discretionary authority and therefore does not mandate automatic revocation pursuant to any of the listed grounds. However, in considering how to implement the revocation authority based on "good cause," including for any of the examples specified in the Workforce Act, DHS examined the revocation procedures already in place for other nonimmigrant classifications. For example, the H classification revocation procedures at 8 CFR 214.2(h)(11)(ii) include immediate and automatic revocation if the petitioner goes out of business or files a written withdrawal of the petition, or DOL revokes the temporary labor certification upon which the petition is based. Similarly, the provisions relating to the H classification at 8 CFR 214.2(h)(11)(iii) provide for revocation on notice and issuance of a NOIR on certain grounds, which are tied to elements specified in the petition. These procedures provide for a NOIR if the beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or the beneficiary is no longer receiving training as specified in the petition; the statement of facts contained in the petition or on the application for a temporary labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; the petitioner violated terms and conditions of the approved petition; the petitioner violated requirements of section 101(a)(15)(H) of the INA or 8 CFR 214.2(h); or the approval of the petition violated related regulations or involved gross error. *Id.*

The Workforce Act does not provide specific procedural requirements for implementation but DHS is closely mirroring existing revocation procedures already in place for other nonimmigrant classifications.<sup>41</sup> Under

<sup>41</sup> For example, provisions related to the O and P classifications also provide for immediate and automatic revocation if the petitioner or employer goes out of business, or files a written withdrawal of the petition, or notifies USCIS that the beneficiary is no longer employed by the petitioner. *See* 8 CFR 214.2(o)(8)(ii) and 8 CFR 214.2(p)(10)(ii). The R classification regulations include immediate and automatic revocation if the petitioner ceases to exist or files a written withdrawal of the petition. *See* 8 CFR 214.2(r)(18)(ii). As with the H classifications, the O, P, and R regulations also provide for revocation on notice and issuance of a NOIR on certain elements specified in the petition. *See* 8 CFR 214.2(o)(8)(iii), 8 CFR 214.2(p)(10)(iii), and 8 CFR 214.2(r)(18)(iii). However, these classifications do not require an approved TLC as a prerequisite to filing the petition with USCIS.

new 8 CFR 214.2(w)(27)(i), the petitioner must immediately notify USCIS of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility. If the petitioner continues to employ the beneficiary, it must notify USCIS of these changes on an amended Form I-129CW petition. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter to the office at which the CW-1 petition was filed explaining the basis on which the specific CW-1 nonimmigrant is no longer employed.

Under 8 CFR 214.2(w)(27)(ii), a petition will be immediately and automatically revoked if the petitioner ceases operations or files a written withdrawal of the petition, or if DOL revokes the temporary labor certification upon which the petition is based. Under 8 CFR 214.2(w)(27)(iii), USCIS will also pursue discretionary NOIRs in a manner that mirrors the existing H classification grounds for revocation on notice and for additional elements listed in the Workforce Act. Specifically, under 8 CFR 214.2(w)(27)(iii)(A), USCIS may, in its discretion, send the petitioner a NOIR for good cause, including if it finds that:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
- (2) The petition or the application for a temporary labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact;
- (3) The petitioner violated terms and conditions of the approved petition;
- (4) The petitioner violated a requirement of 8 CFR 214.2(w);
- (5) The approval of the petition violated 8 CFR 214.2(w) or involved gross error;
- (6) The petitioner failed to maintain the continuous employment of the CW-1 nonimmigrant, failed to pay the nonimmigrant, failed to timely file a semiannual report, committed any other violation of the terms and conditions of employment, or otherwise ceased to operate as a legitimate business;
- (7) The beneficiary did not apply for admission to the CNMI within 10 days after the beginning of the petition validity period if the petition has been approved for consular processing; or
- (8) The employer failed to provide a former, current, or prospective CW-1 nonimmigrant, not later than 21 business days after a written request from such individual, with the original (or a certified copy of the original) of all petitions, notices, and other written communication related to the worker (other than sensitive financial or proprietary information of the employer

which may be redacted) that has been exchanged between the employer and DOL, DHS, or any other Federal agency or department.

Under 8 CFR 214.2(w)(27)(iii)(B), the NOIR will state the grounds for the revocation. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. USCIS may revoke the petition in whole or in part. There is no appeal of an automatic revocation. Under 8 CFR 214.2(w)(28), revocations on notice may be appealed under existing appeal procedures in 8 CFR 103.

The grounds listed in 8 CFR 214.2(w)(27)(iii) provide clear guidelines for the program consistent with the Workforce Act. The new 8 CFR 214.2(w)(27) creates automatic revocation grounds for clear-cut scenarios, consistent with other nonimmigrant classifications, allows for revocation for good cause, and specifies the statutory grounds for instituting revocation-on-notice proceedings while providing petitioners with notice and an opportunity to cure any deficiencies. For each beneficiary of a petition revoked, entirely or in part in a fiscal year, USCIS will add a CW-1 cap number to the next fiscal year and inform the public as appropriate. See new 8 CFR 214.2(w)(1)(x)(C). These new revocation provisions shall apply to all CW-1 petitions approved by USCIS or that otherwise remain valid as of the effective date of this IFR.

#### G. Definition of Legitimate Business

The Workforce Act retains the regulatory definition of a “legitimate business”<sup>42</sup> as set forth in 8 CFR 214.2(w)(1)(vi), and adds an E-Verify requirement. 48 U.S.C. 1806(d)(3)(D)(iv). Further, it states that a CW-1 petition may not be approved for a CW-1 employer that is not a legitimate business. *Id.* While The Workforce Act authorizes the Secretary to determine what constitutes a legitimate business, it also specifically defines the term “legitimate business” as a real, active, and operating commercial or

<sup>42</sup> The “legitimate business” definition set forth in the CNRA was incorporated into DHS CW transitional worker regulations via the final rule, published on September 7, 2011. 76 FR 55502 (Sept. 7, 2011). On December 16, 2014, Congress amended the law to extend the transition period until December 31, 2019. See Consolidated and Further Continuing Appropriations Act, 2015.

Public Law 113-235, sec. 10, 128 Stat. 2130, 2134 (codified at 48 U.S.C. 1806(d)). Congress also eliminated the Secretary of Labor’s authority to provide for future extensions of the CW-1 program, requiring the CW-1 program to end (or sunset) on December 31, 2019. Public Law 113-235 removed section (d)(5), the DOL extension provision, which is where the definition of legitimate business was contained in the original Act.

entrepreneurial undertaking that the Secretary determines, in the Secretary’s sole discretion: Produces services or goods for profit, or is a governmental, charitable, or other validly recognized nonprofit entity; meets applicable legal requirements for doing business in the CNMI; has substantially complied with wage and hour laws, occupational safety and health requirements, and all other Federal, CNMI, and local requirements related to employment during the preceding 5 years; does not directly or indirectly engage in, or knowingly benefit from, prostitution, human trafficking, or any other activity that is illegal under Federal, CNMI, or local law; and is a participant in good standing in the E-Verify program. *Id.* Further pursuant to The Workforce Act, a “legitimate business” must not have, as a current or former owner, investor, manager, operator, or person meaningfully involved with the undertaking, who has not substantially complied with wage and hour laws, occupational safety and health requirements, and all other Federal, Commonwealth, and local requirements related to employment during the preceding 5 years; or who directly or indirectly engages in, or knowingly benefits from, prostitution, human trafficking, or any other activity that is illegal under Federal, Commonwealth, or local law. *Id.* Also under the Workforce Act, a “legitimate business” must not be the agent of such an individual, or a successor in interest to an undertaking that does not comply with such requirements. *Id.*

This IFR incorporates the revised definition of legitimate business into 8 CFR 214.2(w)(1)(vii) to include the new E-Verify requirement and successor in interest prohibitions. Pursuant to 48 U.S.C. 1806(d)(3)(D)(iv), only legitimate businesses may petition for a CW-1 employer. The statutory definition of a legitimate business, among other things, requires CW-1 employers to be a participant in good standing in the E-Verify program as a prerequisite for filing for a CW-1 worker. This IFR implements the Workforce Act’s E-Verify requirement for CW-1 employers at 8 CFR 214.2(w)(1)(vii)(E) and provides a definition of a participant in good standing for E-Verify purposes at 8 CFR 214.2(w)(1)(xii).

The E-Verify program is a web-based system that allows enrolled employers to confirm the eligibility of their employees to work in the United States.<sup>43</sup> E-Verify employers verify the identity and employment eligibility of

newly hired employees by electronically matching information provided by employees on the Form I-9, Employment Eligibility Verification, against records available to DHS and SSA. While E-Verify is a voluntary program, some employers are required to enroll in it as a condition of federal contracting, or a result of state legislation or other applicable law.

Before an employer can participate in the E-Verify program, the employer must enter into a Memorandum of Understanding (MOU) with DHS. By executing the MOU, employers agree to abide by lawful hiring requirements and to follow the E-Verify process to prevent unauthorized disclosure of personal information and unlawful discriminatory practices based on national origin or citizenship status. Specifically, in the MOU, the employer agrees not to use E-Verify for pre-employment screening of job applicants or in support of any unlawful employment practice. The employer further agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA, 8 U.S.C. 1324b, by not discriminating unlawfully against any individual in hiring, firing, employment eligibility verification, or recruitment or referral practices because of his or her national origin or citizenship status, or by committing discriminatory documentary practices. Illegal practices can include selective verification, improper use of E-Verify, or discharging or refusing to hire employees because they appear or sound “foreign” or have received tentative non-confirmations. The MOU also makes clear that USCIS may suspend or terminate an employer’s access to E-Verify if the employer violates Title VII or section 274B of the INA, 8 U.S.C. 1324b, fails to follow required verification procedures, or otherwise fails to comply with E-Verify requirements. Any employer who violates the immigration-related unfair employment practices provisions in section 274B of the INA could face civil penalties, including back pay awards. Employers who violate Title VII face potential back pay awards, as well as compensatory and punitive damages. Under the MOU, employers who violate either section 274B of the INA or Title VII may have their participation in E-Verify terminated. DHS may also immediately suspend or terminate the MOU, and thereby the employer’s participation in E-Verify, if DHS or the SSA determines that the employer failed to comply with established E-Verify procedures or requirements. In sum, violation of the terms of this agreement

<sup>43</sup> See E-Verify, available at <https://www.e-verify.gov/> (last visited May 28, 2019).

by the employer is grounds for immediate termination of its participation in the program.<sup>44</sup>

Employers participating in E-Verify must still complete a Form I-9 for each newly hired employee, as required under current law.<sup>45</sup> Following completion of Form I-9, the employer must enter the newly hired worker's information into E-Verify, which then checks that information against information contained in government databases.<sup>46</sup> It is important to note that once an employer enrolls in E-Verify, that employer is responsible for verifying all new hires in E-Verify, at the hiring site(s) identified in the MOU executed between the employer and DHS.<sup>47</sup> The earliest an employer may use E-Verify with respect to an individual is after the individual accepts an offer of employment and the employee and employer complete the Form I-9.<sup>48</sup> Verification of the employee's identity and employment eligibility and creating the E-Verify case must be done no later than the end of three business days after the new hire's first day of employment. E-Verify applies to new hires only and cannot be used to verify expiring work authorization of a current employee (including CW-1 employees).

While participation in E-Verify is a new requirement for CW-1 employers, it is not a new requirement for certain employers that are required to enroll in it as a condition of federal contracting, or a result of state legislation or other applicable law. It is also a requirement for employers of certain nonimmigrants. For example, employers of certain F-1 students with science, technology, engineering, or mathematics (STEM)<sup>49</sup> degrees are subject to E-Verify

requirements. Employers of these nonimmigrants must remain participants in good standing in the E-Verify program, as determined by USCIS in its discretion.<sup>50</sup> While the requirements of the program are clearly defined in the MOU and related guidance, DHS has not expressly defined "participant in good standing" in the regulations applicable to that program.<sup>51</sup>

An explicit definition of this term, applicable exclusively to the context of CW-1 adjudication, will provide greater transparency for CW-1 employers as to their responsibilities as E-Verify participants. Defining "participant in good standing" will also help USCIS more closely monitor employer compliance with E-Verify requirements for CW-1 employers throughout the period of participation with E-Verify. Under new 8 CFR 214.2(w)(1)(xii), which is limited to CW-1 petitioners, a participant in good standing in the E-Verify program means an employer that has enrolled in E-Verify with respect to all hiring sites in the United States as of the time of filing a petition; is in compliance with all requirements of the E-Verify program as identified in the MOU and program guidance, including but not limited to verifying the employment eligibility of newly hired employees in the United States; and continues to be a participant in good standing in E-Verify at any time during which the employer employs any CW-1 nonimmigrant. Accordingly, the Form I-129CW is updated to include a new data field on the Form I-129CW to capture the employer's E-Verify information (employer's name as listed in E-Verify, along with the E-Verify Company Identification Number).

This rule requires participating employers to have enrolled in E-Verify with respect to all hiring sites in the United States. DHS had other options for implementing the E-Verify requirement. DHS could require enrollment only for work at the specific worksite, could require E-Verify across hiring sites in the CNMI only, or could require that the employer enroll in E-Verify for all its worksites. Under current procedures, applicable to voluntary E-Verify participation, an employer can choose which hiring sites will participate in E-Verify, and each employer has the ability to organize or incorporate itself as it chooses and enroll as that chosen entity in E-

Verify.<sup>52</sup> While the Workforce Act was silent on this issue, and while any of the above interpretations are reasonable, Congress could have specified the reach of the E-Verify requirement or could have simply limited such participation in statute, but it did not provide any limits on the requirement.

The Workforce Act's definition of "legitimate business" states that determinations regarding whether an employer is a "legitimate business" are "in the Secretary's sole discretion," thus demonstrating Congressional intent that this authority would be exercised flexibly, as deemed appropriate by DHS. The definition of "legitimate business," which contains the E-Verify participation requirement, also contains multiple elements that relate to an employer's operations in the CNMI, as well as activities in the United States outside of the CNMI. In particular, the business must have substantially complied with all Federal laws relating to employment, and not to have engaged in or benefited from activities such as human trafficking or any other activity that is illegal under Federal law. If, for example, a business complied with laws related to its CNMI operations, but was engaged in human trafficking in Guam or elsewhere in the United States, the employer would not be a legitimate business under this definition.

With respect to the E-Verify requirement, if it were limited to new hires at hiring sites in the CNMI only, the rule would be impractical for DHS to manage and too easy for an employer to undermine because an employer could avoid enrolling a non-CNMI work site in E-Verify. Not all hires of an employer are hired through the location where they work. It is very common for an employer to hire through a central site that has no connection to various work sites. In addition, there are few employers who have segregated their workforces to have no interaction with other worksites. Modern technology, most notably electronic messaging, has

<sup>44</sup> See E-Verify, Employers, Enrolling in E-Verify: The E-Verify Memorandum of Understanding for Employers, available at <https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf> (last visited May 28, 2019).

<sup>45</sup> See E-Verify, Employers, Monitoring and Compliance available at <https://www.e-verify.gov/employers/monitoring-and-compliance> (last visited May 28, 2019).

<sup>46</sup> See *id.* For example, E-Verify compares employee information against records in the SSA database and those available to DHS. Most employees are automatically confirmed as work authorized. In Fiscal Year Q3 2018 (Oct. 2017–June 2018), the E-Verify program processed a total of 27,357,051 cases. During this same time period, 98.88 percent of employees were automatically confirmed as authorized to work ("work authorized") either instantly or within 24 hours, requiring no employee or employer action. See E-Verify, About E-Verify, E-Verify Data, E-Verify Performance available at <https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-performance> (last visited May 28, 2019).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> See 8 CFR 214.2(f)(10)(ii)(C)(5).

<sup>50</sup> See 8 CFR 214.2(f)(10)(ii)(C)(5) and 8 CFR 274a.12(b)(21).

<sup>51</sup> *But see* 81 FR 13039, 13082 (Mar. 11, 2016) (interpreting the participant in good standing requirement to apply to a specific hiring site or work site).

<sup>52</sup> See the Benefit Analysis Issues discussion in the E-Verify FAR Case 2007-013 at 73 FR 67651, 67689 (Nov. 14, 2008). The "E-Verify User Manual for Corporate Administrators" defines hiring sites as follows: "2.1.1 HIRING SITES A hiring site is the location where the employer hires employees and they complete Form I-9. If your company creates cases in E-Verify at the same location, it is a verification location and a hiring site. Employers select which sites participate in E-Verify on a hiring site by hiring site basis. This means that if you decide to have a hiring site participate in E-Verify, you must verify all newly hired employees for that hiring site. If you decide not to have a hiring site participate, you are not permitted to verify any employees at that location." Available at <https://www.e-verify.gov/e-verify-user-manual-for-corporate-administrators-20-company-location-administration-21> (last visited June 26, 2019).

broadened and facilitated doing work in multiple dispersed locations through a national and even international network of collaborators. For example, an employer could hire an employee through a hiring site in Guam and then station that person in the CNMI, thereby circumventing the E-Verify requirement. Thus, narrowly defining the verification requirement would be too unwieldy for an effective rule, making enforcement of this aspect of the rule too difficult and making the rule too easy to misinterpret or undermine, such as in situations as the above example illustrated, the employer can merely hire an employee at one hiring site and then transfer him/her to a worksite in the CNMI. Consequently, DHS believes it is reasonable to take a more expansive interpretation to fully support increased participation.

DHS's more expansive interpretation is also consistent with Executive Order (E.O.) 13788, "Buy American Hire American",<sup>53</sup> which among other elements, directs the Secretary of Homeland Security, "to protect the interests of U.S. workers in the administration of our immigration system, including through the prevention of fraud or abuse." See E.O. 13788 Section 5(a). A main purpose of E-Verify is to ensure that U.S. employers hire only people who are legally permitted to work. This interpretation directly supports the E.O. by requiring that CW-1 employers use E-Verify to confirm the employment eligibility of their new employees at all hiring sites in the United States to ensure the integrity of the immigration system and preserve jobs for U.S. workers.

Under this IFR, a CW-1 employer will need to enroll and participate in E-Verify with respect to all of its hiring sites, to include the CNMI and other locations in the rest of the United States, as of the time of filing a petition. A hiring site is the location where the employer hires employees and they complete Form I-9.<sup>54</sup> This means that the CW-1 employer must select all hiring sites to participate in E-Verify so that the employer can verify all newly hired employees for all hiring sites. The Workforce Act further bars petitioners that have not substantially complied with wage and hour laws, occupational

safety and health requirements, and all other Federal, Commonwealth, and local requirements related to employment during the preceding 5 years and that have directly or indirectly engaged in, or knowingly benefitted from, prostitution, human trafficking, or any other activity that is illegal under Federal, Commonwealth, or local law. Notably, the current regulatory definition mentioning trafficking in minors will be amended to the more expansive term, human trafficking. These statutory changes to the legitimate business definition also cast a wider net by expanding the population it covers by extending these prohibitions to any "successor in interest." This IFR, consistent with DOL's implementing interim regulation for the Workforce Act,<sup>55</sup> defines successor in interest at 8 CFR 214.2(w)(1)(xiv) as an employer that is controlling and carrying on the business of a previous employer. The following factors may be considered in determining whether an employer is a successor in interest; no one factor is dispositive, but all of the circumstances will be considered as a whole to have:

- Substantial continuity of the same business operations;
- Use of the same facilities;
- Continuity of the work force;
- Similarity of jobs and working conditions;
- Similarity of supervisory personnel;
- Whether the former management or owner retains a direct or indirect interest in the new enterprise;
- Similarity in machinery, equipment, and production methods;
- Similarity of products and services; and
- The ability of the predecessor to provide relief.

#### H. Long-Term Workers

The Workforce Act creates a new subcategory of CW-1 workers. Per statute, a long-term worker is one who was admitted to the CNMI as a CW-1 nonimmigrant during FY 2015, and who was granted CW-1 nonimmigrant status, as defined by DHS, during each of FYs 2016 through 2018. 48 U.S.C. 1806(d)(7)(B). As provided by the Workforce Act, long-term workers are exempt from the prohibition on Construction and Extraction Occupations (under DOL's SOC Group 47-0000). 48 U.S.C. 1806(d)(3)(D)(v). Extensions for long-term workers may be granted for a period of up to three

years until the end of the transition period, subject to the numerical limitation. 48 U.S.C. 1806(d)(7)(B) and new 8 CFR 214.2(w)(13). Long-term workers are not subject to the temporary departure requirement. 48 U.S.C. 1806(d)(7)(A) and new 8 CFR 214.2(w)(18)(v).

Current regulations do not differentiate between a beneficiary with initial CW-1 status and a beneficiary that has been in status for a number of years. CW-1 status currently may be granted for a period of up to one year only. An employer may request an extension of status by filing a new I-129CW petition. Extensions are also granted in periods that are not to exceed one year. However, the Workforce Act now distinguishes between certain CW-1 beneficiaries, based on their previous status as a CW-1, and provides this new subcategory of CW-1 beneficiaries, the long-term workers, with up to a three year validity period. This IFR incorporates the statutory definition of "long-term workers" at 8 CFR 214.2(w)(1)(viii); the exemption from the construction prohibition at 8 CFR 214.2(w)(2)(vii); the exemption from the temporary departure requirement at 8 CFR 214.2(w)(18)(v) and the longer extension period at 8 CFR 214.2(w)(18)(iii).

USCIS will begin accepting CW-1 petitions requesting long-term workers as of the effective date of this IFR. Accordingly, the Form I-129CW is updated to specifically identify a request for such long-term workers.

#### I. Bar on Certain Construction Worker Occupations

The Workforce Act amends the ban on certain construction worker occupations first enacted in 2017<sup>56</sup> and prohibits the CW-1 classification from being available to workers who will be performing jobs classified as "construction and extraction occupations," as defined in DOL's SOC system, other than long-term workers (CW-1 workers first issued such status before October 1, 2015). 48 U.S.C. 1806(d)(3)(D)(v). It bans employers of new construction and extraction occupation workers from using the CW-1 classification.

<sup>53</sup> On April 18, 2017, the President issued Executive Order (E.O.) 13788, "Buy American and Hire American" available at <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-buy-american-hire-american/>, (last visited June 26, 2019).

<sup>54</sup> See "The E-Verify User Manual for Corporate Administrators", available at <https://www.e-verify.gov/e-verify-user-manual-for-corporate-administrators-20-company-location-administration-21> (last visited June 26, 2019).

<sup>55</sup> See 20 CFR 655.402(rr). DHS has not previously defined this concept by regulation and finds the DOL definition relating to TLCs for CW-1 petitions applicable here.

<sup>56</sup> The Northern Mariana Islands Economic Expansion Act (the NMIEEA), Public Law 115-53, which was enacted into law on August 22, 2017, revised the CW-1 visa classification to, among other things, prohibit the CW-1 classification from being available to workers who will be performing jobs classified as "construction and extraction occupations" as defined in the U.S. Department of Labor's SOC system other than to extend CW-1 permits of such workers first issued before October 1, 2015.

As noted above, the original construction ban was imposed in 2017, but DHS did not update its regulations at that time. USCIS interpreted the 2017 exemption to the ban as applying to extensions from the same petitioner and same qualifying beneficiary. This new exemption broadly allows any CW-1 petitioner to request a CW-1 beneficiary for “construction and extraction occupations” as long as that beneficiary qualifies as a long-term worker. Accordingly, this IFR updates DHS regulations to include this amended bar on construction workers (and an exemption for long-term workers) at 8 CFR 214.2(w)(2)(vii), but does not change any other petitioning procedures.

Petitioners are required to comply with all U.S. Federal and CNMI labor laws including the requirements to submit a DOL-approved TLC. While USCIS will consider the job classification identified on these documents, USCIS is not bound by this determination and may make a separate and independent judgment on the CW-1 petition based on a preponderance of the evidence in each case. USCIS will deny CW-1 petitions for construction and extraction occupations if it is not established that the beneficiary is eligible for the long-term worker subcategory.

#### J. Temporary Departure Requirement

The Workforce Act contains a requirement for CW-1 transitional workers (other than “long-term workers” who have had CW-1 status continuously since FY 2015) to remain outside the United States after a second renewal period (*i.e.*, extending up to a total of three years of CW-1 status) before another petition for CW-1 classification may be filed. 48 U.S.C. 1806(d)(7). Specifically, the language states, “at the expiration of the second renewal period, an alien may not again be eligible for such a permit until after the alien has remained outside of the United States for a continuous period of at least 30 days prior to the submission of a renewal petition on their behalf.” 48 U.S.C. 1806(d)(7)(A)(ii).

In a September 18, 2018 letter to Secretary Nielsen, Governor Torres requested that DHS interpret the requirement for a CW-1 permit holder to remain outside of the United States for 30 continuous days prior to the submission of a [third] renewal petition by their employer such that the first relevant renewal petition would be filed for employment in FY 2020.<sup>57</sup> Governor

Torres stated that this approach would provide clarity to employers on the mandates of the Workforce Act and allow them to make the necessary adjustments to their internal processes to plan for the departure of their CW-1 employees following the end of the second renewal.

In accordance with the Workforce Act, DHS has considered the Governor’s recommendations in the development of this regulation. The Governor’s request is inconsistent with the best reading of the statute. The Workforce Act exempts long-term workers from the departure requirement. Eligibility for the long-term worker subcategory is specifically based on their CW-1 status before the date of enactment (*i.e.*, in CW-1 status since FY 2015). DHS therefore believes the Workforce Act is best read as indicating that pre-enactment renewals will be taken into consideration in applying the departure bar to other workers. Otherwise, DHS is arguably (at least for the first two years) creating an exception for all workers that Congress did not intend. The Workforce Act specifically exempts long-term workers from the departure requirement and ensures that they receive preferential consideration under the cap. As a result, this provision limits the stay of CW-1 workers, other than long-term workers, by imposing a new 30-day departure before the third petition to renew CW-1 classification.

USCIS will count renewals issued before the interim final rule effective date, so that the 30-day departure requirement is implemented immediately. As such, it shall apply to all CW-1 petitions filed with USCIS on or after the effective date of this IFR. This reading of the Workforce Act is more in line with Congressional intent (given the express carve-out for the long-term workers from the 30-day departure requirement). New 8 CFR 214.2(w)(18)(v).

#### K. Transit Through Guam

The Workforce Act also authorizes CW-1 and CW-2 status holders to transit through Guam. Existing regulations allow direct Guam transit under limited conditions only. This IFR updates regulations at 8 CFR 214.2(w)(1)(ii) and (w)(23)(iii) to incorporate the statutory language.

Under the current 8 CFR 214.2(w)(22), CW-1 and CW-2 status is only applicable in the CNMI. It does not authorize entry to Guam or to any other part of the United States. Entry, employment, and residence in the rest

implementation recommendations of the Governor submitted within 60 days after enactment.

of the United States (including Guam) require the appropriate visa or visa waiver eligibility. An alien with CW-1 or CW-2 status who enters or attempts to enter, who travels or attempts to travel to any other part of the United States without the appropriate visa or visa waiver eligibility, or who violates conditions of nonimmigrant stay applicable to any such authorized status in any other part of the United States is deemed to have violated CW-1 or CW-2 status. However, the regulations provide an exception to this limitation on travel to Guam. Currently, under 8 CFR 214.2(w)(22)(iii), USCIS allows a CW-1 or CW-2 who is a national of the Philippines, to travel from the CNMI to the Philippines (and back) via a direct Guam transit without being deemed to violate that status. Under 8 CFR 214.2(w)(1)(ii), such direct transit can only be on a direct itinerary involving a flight stopover or connection in Guam (and no other place) within 8 hours of arrival in Guam, without the alien leaving the Guam airport. Under this limited travel exception, if an immigration officer determines that the individual warrants a discretionary exercise of parole authority, the CW may be paroled into Guam via direct Guam transit to undergo pre-inspection outbound from Guam for admission to the CNMI pursuant to 8 CFR 235.5(a) or to proceed for inspection upon arrival in the CNMI. During any such pre-inspection, the individual may be admitted in CW-1 or CW-2 status if the immigration officer in Guam determines that the he or she is admissible to the CNMI. A condition of the admission is that the individual must complete the direct Guam transit.

DHS included this regulatory exception to alleviate the travel problems arising from the general limitation of CW status to the CNMI. While this provision helped reduce the travel restrictions placed on certain CW workers, the 8-hour limitation often proved challenging for travelers as they are subject to limited flight schedules which exceeded these regulatory time limits. In these cases, CBP could waive the 8-hour limit and extend up to 24 hours on a case-by-case basis.<sup>58</sup>

As this limited travel exception is applicable only to Philippine nationals, other CW status holders cannot easily transit through Guam, which continues

<sup>58</sup> See USCIS, Legal Resources, Immigration From the Commonwealth of the Northern Mariana Islands (CNMI), “CNMI Transitional Worker Classification Questions and Answers,” available at <https://www.uscis.gov/legal-resources/immigration-commonwealth-northern-mariana-islands-cnmi/cnmi-transitional-worker-classification-questions-and-answers> (last visited May 28, 2019).

<sup>57</sup> As previously stated, the Workforce Act states that DHS should consider in good faith the

to pose travel problems for other CW nonimmigrants. The latter cannot travel without advance approval of travel by USCIS.<sup>59</sup> Such CW status holders must first obtain an approved advance parole from USCIS in order to transit via Guam when arriving from a foreign place.

The statutory provision reduces the existing travel issues by removing the travel restrictions and allowing transit of all CW status holders through Guam. New 8 CFR 214.2 (w)(1)(ii) and (w)(23)(iii) allow all CW status holders to travel to and from a foreign place via a direct Guam transit without being deemed to violate that status.

#### L. Other Technical Amendments

This IFR revises DHS regulations to reflect that Congress has extended the statutory bar for asylum in the CNMI, *see* INA sec. 208(e), 8 U.S.C. 1158(e), until December 31, 2029. *See* Workforce Act at sec. 3(a); 48 U.S.C. 1806(a)(2). *See* Part IV.A.1 above.

### V. Statutory and Regulatory Requirements

#### A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to issue a proposed rule before revising legislative regulations, subject to certain exceptions. *See* 5 U.S.C. 553(b). The Workforce Act specifically exempts this rulemaking from the notice-and-comment requirement, and instead directs the Secretary of Homeland Security to publish in the **Federal Register** an IFR that specifies how the Secretary intends to implement the Workforce Act's amendments. Pursuant to section 3(e)(2) of the Workforce Act, this authority persists even in the event that the IFR is published after the 180-day deadline established in the Act. DHS is proceeding by IFR as a consequence of these statutory provisions. DHS nevertheless invites written comments on this interim rule and will consider those comments in the development of a final rule in this action.

*B. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)*

Executive Order (E.O.) 12866 directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select

regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. E.O. 13771 directs agencies to reduce regulation and control regulatory costs. This interim final rule (IFR) is considered a regulatory action for the purposes of E.O. 13771.

The Office of Information and Regulatory Affairs, of the Office of Management and Budget, has designated this rule a "significant regulatory action" that is not economically significant because it is not estimated to have an annual effect on the economy of \$100 million or more, under section 3(f)(1) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation.

#### 1. Summary

The Northern Mariana Islands U.S. Workforce Act of 2018 (Workforce Act) creates requirements to encourage the hiring of United States workers in the Commonwealth of the Northern Mariana Islands (CNMI). The Workforce Act extends the transition period through December 31, 2029 and provides new CW-1 numerical limitations for each fiscal year until the end of the transition period. This IFR amends the relevant sections of USCIS regulations to reflect these changes. The provisions of the IFR are discussed in detail in the sections that follow.

The costs associated with the IFR include costs of preparing and filing Form I-129CW petitions, filing applications for extension of stay, participating in the E-Verify program, submitting semiannual reports and document retention, submitting notifications to USCIS, and filing revoked petitions. Accordingly, the lower bound net total estimated cost of the regulatory changes to employers and nonimmigrant CW-2 applicants is \$73,578,345 undiscounted, \$62,851,776 discounted at 3 percent, and \$51,858,612 discounted at 7 percent from FY 2019 to 2030. Likewise, the upper bound net total estimated cost of the regulatory changes to employers and nonimmigrant CW-2 applicants is \$61,741,219 undiscounted, \$52,693,918 discounted at 3 percent, and \$43,433,060 discounted at 7 percent from FY 2019 to 2030. These costs are summarized in Table 1. The total estimated lower bound transfers are \$25,712 at 7 percent and \$32,361 at 3% while the total estimated upper bound

transfers are \$13,845,180 discounted at 7% and \$16,806,753 discounted at 3%. The annualized cost of the regulatory changes to employers and nonimmigrant CW-2 applicants discounted at 7 percent is \$5,468,222 for the lower bound and \$6,528,999 for the upper bound estimates.

A petitioner is required to file Form I-129CW to employ nonimmigrant workers who are otherwise ineligible to work in the CNMI under other nonimmigrant worker categories. DHS estimates the total petitioners' cost to file Form I-129CW petitions to be \$57,047,877 undiscounted, \$48,668,535 discounted at 3 percent, and \$40,092,491 discounted at 7 percent from FY 2019 to 2029, which includes the opportunity cost of time to complete Form I-129CW, the postage cost to mail the completed form, and the costs associated with Form I-129CW filing fee, education funding fee and fraud prevention and detection cost.

Petitioners are also required to file a new petition to request an extension of stay for their currently approved CW-1 nonimmigrants employees. Because the cost of filing a petition for an extension of stay is already captured by the cost of filing Form I-129CW petitions, DHS does not separately present the cost of filing an extension of stay.

The IFR requires that any employer petitioning for a CW-1 nonimmigrant worker must be an E-Verify program participant in good standing. Participating in the E-Verify program requires entering newly hired employees' information from Form I-9 to electronically match against records available to DHS and the SSA to confirm the employees' identity and employment eligibility. This results in a cost burden to employers that petition for CW-1 nonimmigrant workers and operate in the CNMI and other locations in the U.S. Employers also incur additional cost burden for annual training in E-Verify as they continue to comply with E-Verify requirements. DHS estimates the total cost of participating in the E-Verify program to be \$1,224,618 undiscounted, \$1,061,385 discounted at 3 percent, and \$894,425 discounted at 7 percent from FYs 2019 to 2030.

An employer whose petition has been approved will be required to submit a semiannual report to USCIS every six months, using Form I-129CWR, after the petition validity start date to verify the continuing employment and payment of the beneficiary under the terms and conditions of the approved petition. Petitioners are also required to retain all documents and records in support of the petition, including

<sup>59</sup> These individuals file a Form I-131 Application for Travel Document with the fee at the USCIS Guam Office to obtain an advance parole document.

information submitted to USCIS in the semiannual report, for three years from the petition validity start date. DHS estimates the total cost of semiannual reporting and document retention will be \$15,996,725 undiscounted, \$13,647,084 discounted at 3 percent, and \$11,242,286 discounted at 7 percent from FY 2019 to 2030.

The IFR requires a petitioner to immediately notify USCIS of any changes in the terms and conditions of employment of a nonimmigrant worker which may affect eligibility for CW-1 status either by (1) filing an amended petition if the petitioner continues to employ the nonimmigrant worker, or (2) sending a letter to the USCIS office at which the CW-1 petition was filed explaining the basis on which the CW-1 nonimmigrant worker no longer works for the petitioner. DHS estimates the total cost of filing an amended petition to be \$215,296 undiscounted, \$183,673 discounted at 3 percent, and \$151,307 discounted at 7 percent from FY 2019 to 2030. Although DHS is not able to estimate the total cost of submitting a notification letter due to lack of data, DHS provides a unit cost of mailing a notification letter. Hence, an affected petitioner on average will incur a unit cost of \$43.65 to send a letter notifying USCIS that a CW-1 nonimmigrant is no longer working for him or her. This unit cost estimate consists of the opportunity cost of time to prepare a notification letter and the postage cost to mail the notification letter to USCIS.

USCIS reserves the authority to fully or partially revoke petitions at any time under specified conditions. The conditions for immediate and automatic revocations and the discretionary grounds for revocation on notice are discussed in the preamble of this IFR. For each beneficiary of a petition revoked in a fiscal year, USCIS will add it to a CW-1 numerical cap of the next fiscal year. DHS estimates employers' total cost to file Form I-129CW petitions for such additions to the numerical cap to be \$108,957 undiscounted, \$90,410 discounted at 3 percent, and \$71,834 discounted at 7 percent from FY 2019 to 2030. The IFR also provides the conditions for appealing revoked petitions. For revocation on notice, a petitioner may file an appeal with the USCIS Administrative Appeals Office or a motion with the USCIS office that revoked the petition by submitting Form I-1290B, Notice of an Appeal or Motion, in accordance with 8 CFR 103. There is no appeal of an automatic revocation. DHS is unable to estimate the total cost employers will incur appealing petitions that have been revoked on notice in the implementation period, however, DHS estimates a unit cost to show the minimum cost petitioners are likely to incur appealing petitions revoked on notice. DHS estimates that an affected employer on average incurs a cost of \$782.95 appealing a petition revoked on notice. This unit cost estimate consists of the filing fee for

Form I-290B, the opportunity cost of time to complete the form, and the postage cost to mail the form to USCIS.

Qualifying dependents (*i.e.*, an eligible spouse or child) of nonimmigrant workers with a CW-1 status may file applications requesting an extension of CW-2 status using Form I-539, Application to Extend/Change Nonimmigrant Status. DHS estimates the total cost of filing applications for CW-2 status to be \$7,826,181 undiscounted, \$6,676,651 discounted at 3 percent, and \$5,500,136 discounted at 7 percent for nonimmigrant CW-2 applicants from FY 2019 to 2030.

The IFR states that an extension of stay may be granted for a period of up to three years if the employee is a long-term worker. DHS estimates the cost savings for petitioners who will request a three-year extension of stay for their long-term workers using the lower and upper bound estimates for the net number of beneficiaries for whom a three-year extension of stay will be requested. Accordingly, the total cost savings to petitioners resulting from filing a three-year extension of stay for long-term nonimmigrant workers range from \$978,034 to \$8,802,309 undiscounted (\$827,067 to \$7,443,600 discounted at 3 percent, and \$674,239 to \$6,068,155 discounted at 7 percent) from FY 2019 to 2030.

Table 1 provides a detailed summary of the regulatory changes and their impacts.

TABLE 1—SUMMARY OF MAJOR PROVISIONS AND ECONOMIC IMPACTS OF THE RULE

Provisions	Regulatory changes	Expected impact of regulatory changes
Amending 8 CFR 103.7 by revising paragraph (b)(1)(i)(J) and CFR 214.2(w)(5).	<p>This is not a new fee as in 2017 Congress enacted the Northern Mariana Islands Economic Expansion Act, Public Law 115-53, 131 Stat. 109, which raised the supplemental CNMI education funding fee from \$150 to \$200 per each beneficiary issued CW-1 permit status. The Act also banned issuing new CW-1 permits to construction workers.</p> <p>This IFR also updates existing regulations, to include the Workforce Act's requirement that CW-1 employers must pay a mandatory \$50 fraud prevention and detection fee per petition. The additional \$50 fee is intended for a new and permanent site visit program. The fee is for the sole purpose of fraud deterrence and detecting immigration benefit fraud in the Northern Mariana Islands. DHS characterizes this fee as a cost because in general, fee revenues will support new activities that were not previously conducted.</p>	<p><i>Quantified Costs</i></p> <ul style="list-style-type: none"> <li>Total cost of \$40.1 million discounted at 7 percent</li> </ul> <p><i>Transfers</i></p> <ul style="list-style-type: none"> <li>The \$50 increase in the education funding fee would be a transfer of \$13.8 million discounted at 7 percent.</li> </ul>
Amending 8 CFR 214.2(w)(18)(iii).	<p>DHS provides that an extension of CW-1 status may be granted for a period of up to 1 year (or up to 3 years of the beneficiary is a long-term worker).</p>	<p><i>Quantified Cost Savings</i></p> <ul style="list-style-type: none"> <li>Because approved extension of stay requests are counted towards each year's numerical cap, the cost of filing a one-year extension of stay is already captured by the above CW-1 petition filing cost</li> <li>Using sensitivity analysis, the total cost savings to petitioners arising from three-year extension of stay requests range from \$0.07 million to \$6.1 million discounted at 7 percent.</li> </ul>

TABLE 1—SUMMARY OF MAJOR PROVISIONS AND ECONOMIC IMPACTS OF THE RULE—Continued

Provisions	Regulatory changes	Expected impact of regulatory changes
Amending 8 CFR 214.2(w)(1)(vii)(E).	DHS imposes the requirement that petitioners who file Form I-129CW petitions must be an E-Verify program participant in good standing.	<i>Quantified Costs</i> • Total cost of \$0.89 million discounted at 7 percent.
Amending 8 CFR 214.2(w)(26)(i)&(iii).	DHS requires petitioners to submit semiannual reports every six months and retain all documents and records in support of the petition for 3 years.	<i>Quantified Costs</i> • Total cost of \$11.2 million discounted at 7 percent.
Amending 8 CFR 214.2(w)(27)(i)(A).	DHS requires petitioners to immediately notify USCIS when changes that affect the employment of CW-1 nonimmigrant workers occur.	<i>Quantified Costs</i> • Total cost of \$ \$0.15 million discounted at 7 percent.
Adding 8 CFR 214.2(w)(27)(ii) & (iii).	DHS adds the number of petitions revoked in a fiscal year to the next year's numerical cap so that petitioners may file Form I-129CW petitions for each revoked petition.	<i>Quantified Costs</i> • Total cost of \$0.07 million discounted at 7 percent, to file revoked petitions <i>Transfer Payments</i> • A transfer of \$0.03 million education funding discounted at 7 percent.
Adding 8 CFR 214.2(w)(28)	DHS adds a provision that a petition revoked on notice may now be appealed.	<i>Quantified Costs</i> • Total cost not estimated due to lack of data; a unit cost of \$783 to appeal a petition revoked on notice.
8 CFR 214.2(w)(16) .....	Current DHS requirement for nonimmigrant workers with approved CW-1 status to file Form I-539 requesting an extension of CW-2 status for their qualifying dependents.	<i>Quantified Costs</i> • Total cost of \$5.5 million discounted at 7 percent to nonimmigrant CW-2 applicants <i>Note:</i> This cost is estimated because the current rule was set to expire on FY 2020 before the Workforce Act extends it to FY 2030. Hence, the CW-2 extension of stay requirement will be applied to the affected population during the IFR implementation period. To account for the overlapping period (FYs 2019 & 2020) the difference between the proposed and current numerical caps is taken as shown in Table 8.

2. Background and Purpose of the Rule

The Consolidated Natural Resources Act of 2008 (CNRA) amended the 1976 Covenant by extending the U.S. immigration laws, with limited exceptions, to the CNMI and providing CNMI-specific provisions affecting foreign workers. The CNMI had been admitting a substantial number of foreign workers since 1978 who constituted a majority of the CNMI labor force. The CNRA provided for a transition period to phase out the CNMI's nonresident contract worker program and phase in the U.S. federal immigration system in a manner that minimized adverse economic and fiscal effects and maximized the CNMI's potential for future economic and business growth.

The CNRA authorized the Secretary of DHS to create a nonimmigrant classification that would ensure adequate employment in the CNMI during the transition period, also known as CW nonimmigrant classification. The CNRA also mandated an annual reduction in the number of permits issued per year and the total elimination of the CW nonimmigrant classification by the end of the transition period. As a result, DHS published a final rule on September 7, 2011, amending the regulations at 8 CFR 214.2(w) to implement a temporary, CNMI-only

transitional worker nonimmigrant classification (CW classification, which includes CW-1 for principal workers and CW-2 for spouses and minor children).<sup>60</sup> DHS also set the CW-1 numerical limitations (or caps) starting from FY 2011. DHS initially announced annual caps for the first two fiscal years in the DHS regulations at 8 CFR 214.2(w)(1)(viii)(A) and (B), and thereafter published subsequent annual caps in **Federal Register** notices.<sup>61</sup>

The Northern Mariana Islands U.S. Workforce Act of 2018 (the Workforce Act) creates requirements to encourage the hiring of United States workers in the CNMI in order to (a) increase the percentage of U.S. workers in the CNMI while maintaining the minimum number of workers who are not U.S. workers to meet the changing demands of the CNMI economy, and (b) ensure that no U.S. worker is placed at a competitive disadvantage for employment compared to a non-U.S. worker or is displaced by a non-U.S. worker. The Workforce Act amends the statute by which employers within the CNMI may apply for permission to employ nonimmigrant workers who are otherwise ineligible to work in the

<sup>60</sup> See Commonwealth of the Northern Mariana Islands Transitional Worker Classification, 76 FR 55502 (Sept. 7, 2011)

<sup>61</sup> See 8 CFR 214.2(w)(1)(viii)(C).

CNMI under other nonimmigrant worker categories. The Workforce Act makes a number of changes to the transitional provisions (which extended U.S. immigration law, with limited exceptions, to the CNMI) and requires the Secretary of DHS to promulgate an Interim Final Rule (IFR) implementing the related statutory changes. These changes are discussed in detail in the next section.

3. Changes in the IFR

This section provides a brief description of the major regulatory changes in this IFR. The regulatory changes in the IFR arise from the statutory requirements of the Workforce Act.

In accordance with the statutory requirements in the Workforce Act, DHS amends its regulations in this IFR. DHS extends the transition period and the CW-1 program through December 31, 2029, reflecting the new sunset date in existing regulations. As the Workforce Act provides new CW-1 numerical limitations for each fiscal year until the end of the transition period, this IFR amends the relevant sections of USCIS regulations to reflect these changes.

This IFR updates existing regulations to reflect that the supplemental CNMI education funding fee is raised from

\$150 to \$200<sup>62</sup> per each nonimmigrant worker with a CW-1 status per year. This education fee is paid by petitioners on behalf of the CW-1 worker.

Consistent with the Workforce Act, this IFR also provides DHS the discretion to annually adjust this supplemental fee via notice in the **Federal Register**.

However, in providing DHS with the discretion to adjust the fee, the Workforce Act also sets forth that DHS can only adjust the fee by a percentage equal to the annual change in the Consumer Price Index for All Urban Consumers. Furthermore, this IFR updates existing regulations to include the statutory requirement that CW-1 petitioners must pay a mandatory \$50 fraud prevention and detection fee with each petition, in addition to other current fees. This new fraud prevention and detection fee does not apply to CW-1 petitions already filed and pending with USCIS as of July 24, 2018.

This IFR revises existing procedures to require that a CW-1 petition be filed with an approved TLC from DOL.<sup>63</sup> The Workforce Act imposes this requirement for any CW-1 petition with an employment start date in FY 2020 and beyond. Per the Workforce Act, a TLC approved by DOL confirms that there are not sufficient United States workers in the CNMI who are able, willing, qualified, and available to fill the petitioning CW-1 employer's job opportunity. The TLC also confirms that the foreign worker's employment in the job opportunity will not adversely affect the wages or working conditions of similarly employed United States workers.

DHS is revising existing regulations to include the statutory minimum wage requirements for a CW-1 petitioner. It now specifies, in alignment with the Workforce Act, that the petitioner will pay the nonimmigrant worker a wage that is not less than the greater of (1) the CNMI minimum wage; (2) the Federal

minimum wage; or (3) the prevailing wage in the CNMI for the occupation in which the nonimmigrant worker will be employed as established by the DOL.

Additionally, DHS will now require a CW-1 employer to file a semiannual reporting form to verify the continuing employment and payment of the CW-1 nonimmigrant worker under the terms and conditions set forth in the CW-1 petition. DHS implements this new statutory requirement via a new standalone form that captures data to provide USCIS with information necessary to help verify the continuing employment and payment of the CW-1 nonimmigrant worker. The standalone form also contains employers' attestations confirming the validity of the data provided. USCIS will not require submission of evidence at the time of filing, but employers must retain documents and records which support the attestation for three years after the ending date of petition validity period.

DHS will now require employers filing CW-1 petitions to be E-Verify program participants in good standing. The E-Verify program is a USCIS web-based system that allows enrolled employers to confirm the eligibility of their employees to work in the United States.<sup>64</sup> Employers participating in the E-Verify program are required to verify the identity and employment eligibility of newly hired workers by electronically matching information provided by workers on the Form I-9, Employment Eligibility Verification, against records available to DHS and the SSA. A participant in good standing in the E-Verify program means an employer that has enrolled in E-Verify with respect to all hiring sites in the United States, not just the CNMI locations, as of the time of filing a petition, and is in compliance with all requirements of the E-Verify program, including but not limited to verifying the employment eligibility of newly hired employees in the United States, and not just in the CNMI. This is a new requirement with respect to all CW-1 employers and affects how they handle new hires at all hiring sites, not just in the CNMI.

This IFR establishes notification and revocation procedures for approved CW-1 petitions. Specifically, DHS will now require a petitioner to immediately notify USCIS of any changes in the terms and conditions of employment of a nonimmigrant worker that may affect eligibility either by (1) filing an amended petition if the petitioner continues to employ the nonimmigrant worker, or (2) sending a letter to the

USCIS office at which the CW-1 petition was filed explaining the basis on which the specific CW-1 nonimmigrant no longer works for the petitioner. Further, this IFR establishes conditions for immediate and automatic revocations and the discretionary grounds for revocation on notice. A petition that has been revoked on notice, in whole or in part, may be appealed under 8 CFR 103; however, automatic revocations may not be appealed. Further, under this IFR, for each beneficiary of a petition revoked in a fiscal year, USCIS will add an equivalent number of CW-1 visas to a CW-1 numerical cap of the next fiscal year. This recapture of CW-1 visas does not exist under the current regulations.

#### 4. Population

The population affected by this IFR consists of petitioners (or employers) within the CNMI who file Form I-129CW requesting a CW-1 visa for nonimmigrant workers and the nonimmigrant workers who are beneficiaries of the program. DHS estimates the number of the affected population based on the CNMI transitional worker program historical data for FYs 2012 to 2018 and the numerical caps set by this IFR limiting the total number of visas to be issued each year during the implementation period (FY 2019 to 2030).

##### i. CNMI Only Transitional Worker Program Historical Data

Table 2 shows historical data on the number of Form I-129CW petitions received, beneficiaries approved, and petitions denied by USCIS in FYs 2012 to 2018.<sup>65</sup> DHS estimates the number of petitions approved by subtracting the number of petitions denied from the number of petitions received for each year. Since a petitioner can request more than one beneficiary on a Form I-129CW, DHS also estimates the number of beneficiaries approved per petitioner by dividing the number of beneficiaries approved by the number of petitions approved for each year. Over the 7-year period, USCIS received an average of 6,880 petitions from 1,471 petitioners (or employers) and approved an average of 6,391 petitions and 10,276 beneficiaries annually. Based on this, DHS concludes that USCIS approves 93 percent of the CW-1 petitions annually and that a petitioner files a petition on average for approximately 2

<sup>62</sup> In 2017, Congress enacted Public Law 115-53, which increased the supplemental fee paid for each CW permit to \$200 and banned issuing new CW-1 permits to construction workers.

<sup>63</sup> To obtain a TLC, employers must submit a complete *Application for Prevailing Wage Determination* (Form ETA-9141C) with the OFLC National Prevailing Wage Center (NPWC) containing information about the job opportunity in which the nonimmigrant workers will be employed, as required by 20 CFR 655.410. Once the NPWC issues a prevailing wage determination, the employer may submit the *CW-1 Application for Temporary Employment Certification* as required by 20 CFR 655.410 and supporting documentation, as required by 20 CFR 655.420-423. Once all CW-1 regulatory requirements are met, the TLC is issued. Under the provisions at 20 CFR 655.452, the TLC is considered both, the Final Determination notice and a copy of the certified *CW-1 Application for Temporary Employment Certification* (Form ETA-9142C).

<sup>64</sup> See E-Verify, available at <https://www.e-verify.gov/> (last visited May 28, 2019).

<sup>65</sup> The number of beneficiaries approved is based on the validity start date. If validity start date is unavailable, approval is based on approval date. The number of petitions denied is based on the date the application was denied irrespective of the initial date of submission.

beneficiaries (or CW-1 nonimmigrant workers).

TABLE 2—TOTAL NUMBER OF FORM I-129CW PETITIONS RECEIVED AND APPROVED [FY 2012 to 2018]

Fiscal year	Number of petitioners who filed Form I-129CW	Form I-129CW petitions received	Form I-129CW beneficiaries approved	Form I-129CW petitions denied	Form I-129CW petitions approved	Number of beneficiaries approved per petition	Percent of Form I-129CW petitions approved (%)
	A	B	C	D	E = B - D	F = C ÷ E	G = E ÷ B
2012 .....	1,789	5,899	10,548	244	5,655	1.87	95.9
2013 .....	1,393	7,057	6,325	540	6,517	0.97	92.3
2014 .....	1,698	7,196	9,188	564	6,632	1.39	92.2
2015 .....	1,668	6,388	9,715	442	5,946	1.63	93.1
2016 .....	1,503	7,805	13,299	668	7,137	1.86	91.4
2017 .....	1,189	6,537	13,563	259	6,278	2.16	96.0
2018 .....	1,054	7,278	9,294	708	6,570	1.41	90.3
Total .....		48,160	71,932	3,425	44,735		
7-year average .....	1,471	6,880	10,276	489	6,391	2.00	93.0

Source: Office of Policy and Strategy, Research and Evaluation Division (OP&S RED) and USCIS analysis.

Table 3 shows the number of Form I-129CW petitions amended by petitioners and CW-1 visas revoked by USCIS out of the total number of petitions and beneficiaries (or visas) approved, respectively, in FYs 2012 to

2018. Based on these historical data, DHS estimates the percentage of petitions amended and visas revoked in each year. Over the 7-year period, from an average of 6,391 approved petitions, an average of 141 (or 2.20 percent)

petitions were amended annually, and from an average of 10,276 approved beneficiaries, an average of 20 (or 0.20 percent) petitions were revoked annually.

TABLE 3—TOTAL NUMBER OF FORM I-129CW PETITIONS AMENDED AND CW-1 VISAS REVOKED [FY 2012 to 2018]

Fiscal year	Form I-129CW petitions approved	Form I-129CW beneficiaries approved	Form I-129CW petitions amended	Form I-129CW petitions revoked	Percent of Form I-129CW petitions amended (%)	Percent of Form I-129CW revoked (%)
	A	B	C	D	E = C ÷ A	F = D ÷ B
2012 .....	5,655	10,548	72	38	1.27	0.36
2013 .....	6,517	6,325	124	25	1.90	0.40
2014 .....	6,632	9,188	124	21	1.87	0.23
2015 .....	5,946	9,715	175	14	2.94	0.14
2016 .....	7,137	13,299	127	22	1.78	0.17
2017 .....	6,278	13,563	171	11	2.72	0.08
2018 .....	6,570	9,294	194	7	2.95	0.08
Total .....	44,735	71,932	987	138		
7-year average .....	6,391	10,276	141	20	2.20	0.20

Source: Office of Policy and Strategy, Research and Evaluation Division (OP&S RED) and USCIS analysis.

The historical data also show the number of petitioners who filed applications requesting extension of stay for their CW-1 workers in FYs 2013 to 2018.<sup>66</sup> Petitioners are required to file a new petition using Form I-129CW to request an extension of stay for their currently approved CW-1

nonimmigrants employees. As shown in Table 4, DHS estimates the number of applications approved by subtracting the number of applications denied from the total number of applications received for each year. DHS also estimates the number of beneficiaries approved per application by dividing

the number of beneficiaries approved by the number of applications approved for each year. Over the 6-year period, USCIS received an average of 5,271 extension of stay applications and approved 5,056 applications and 7,545 beneficiaries (or CW-1 nonimmigrant workers) annually. DHS then concludes

<sup>66</sup>The data on extension of stay for FY 2012 are incomplete and therefore, dropped from this analysis.

that USCIS approves 96 percent of extension of stay applications annually and that a petitioner files an extension of stay application on average for approximately 2 beneficiaries per petition.

TABLE 4—TOTAL NUMBER OF EXTENSION OF STAY APPLICATIONS RECEIVED AND APPROVED [FY 2013 to 2018]

Fiscal year	Extension of stay applications received A	Beneficiaries approved B	Applications denied C	Applications approved D = A - C	Beneficiaries approved per application E = B ÷ D	Percent of applications approved (%) F = D ÷ A
2013 .....	4,743	6,003	464	4,279	1.40	90.2
2014 .....	6,293	8,327	245	6,048	1.38	96.1
2015 .....	4,899	7,230	174	4,725	1.53	96.4
2016 .....	7,672	11,151	202	7,470	1.49	97.4
2017 .....	3,767	6,280	102	3,665	1.71	97.3
2018 .....	4,253	6,280	102	4,151	1.51	97.6
Total .....	31,627	45,271	1,289	30,338	.....	.....
6-year average .....	5,271	7,545	215	5,056	2.00	96.0

Source: Office of Policy and Strategy, Research and Evaluation Division (OP&S RED) and USCIS analysis.

To estimate the proportion of extension of stay applications filed on behalf of CW-1 nonimmigrant workers out of the total petitions approved, DHS divides the total number of extension of

stay applications received by the total number of Form I-129CW petitions approved in FYs 2013 to 2018 as shown in Table 5. Overall, of the total number of CW-1 nonimmigrant workers that

have been approved in FYs 2013 to 2018, an average of 80 percent of applications request an extension of stay.

TABLE 5—PERCENT OF EXTENSION OF STAY APPLICATIONS [FY 2013 to 2018]

Fiscal year	Form I-129CW petitions approved A	Extension of stay applications received <sup>a</sup> B	Percent of extension of stay applications (%) C = B ÷ A
2013 .....	6,517	4,743	72.8
2014 .....	6,632	6,293	94.9
2015 .....	5,946	4,899	82.4
2016 .....	7,137	7,672	107.5
2017 .....	6,278	3,767	60.0
2018 .....	6,570	4,253	64.7
Total .....	39,080	31,627	.....
6-year average .....	6,513	5,271	80.0

Source: Office of Policy and Strategy, Research and Evaluation Division (OP&S RED) and USCIS analysis.

<sup>a</sup>Data for extension of stay applications are not available for FY 2012.

DHS uses the data from Form I-539, Application to Extend/Change Nonimmigrant Status, on applicants for an initial grant or extension of a CW-2 status, shown in Table 6, to determine the total number of qualifying dependents (i.e., eligible spouse or child) of nonimmigrant workers with a CW-1 visa in FYs 2012 to 2018. DHS estimates the number of applications

approved by subtracting the number of applications denied from the number of applications received for each year. DHS also estimates the number of dependents approved per application by dividing the number of dependents approved by the number of applications approved for each year. Over the 7-year period, USCIS received on average 933 applications and approved 898

applications and 782 qualified dependents annually. Table 6 also shows that USCIS approves 96 percent of applications for CW-2 status annually and that an applicant uses Form I-539 to apply for a CW-2 status on average for approximately 1 dependent.

TABLE 6—TOTAL NUMBER OF APPLICATIONS FOR CW-2 STATUS (FORM I-539) RECEIVED AND APPROVED [FY 2012 to 2018]

Fiscal year	CW-2 applications received A	CW-2 dependents approved B	CW-2 applications denied C	CW-2 applications approved D = A - C	CW-2 dependents approved per application E = B ÷ D	Percent of CW-2 applications approved (%) F = D ÷ A
2012 .....	889	426	28	861	0.495	96.9
2013 .....	687	622	85	602	1.033	87.6
2014 .....	1,081	799	33	1,048	0.762	96.9
2015 .....	906	785	13	893	0.879	98.6
2016 .....	1,406	1,034	21	1,385	0.747	98.5
2017 .....	867	934	27	840	1.112	96.9
2018 .....	695	873	35	660	1.323	95.0
Total .....	6,531	5,473	242	6,289	.....	.....
6-year average .....	933	782	35	898	1.00	96.0

Source: Office of Policy and Strategy, Research and Evaluation Division (OP&S RED) and USCIS analysis.

To estimate the proportion of applications who filed for CW-2 status, DHS assumes that qualifying dependents of nonimmigrant workers file Form I-539 for CW-2 status after the CW-1 status of the nonimmigrants

workers have been approved by USCIS. Hence, DHS divides the total number of applications received for CW-2 status by the total number of CW-1 petitions approved in FYs 2013 to 2018 as shown in Table 7. The result shows that

applications requesting a CW-2 status are filed by qualifying dependents of on average 15 percent of the total number of nonimmigrant workers with approved CW-1 status in FYs 2013 to 2018.

TABLE 7—PERCENT OF CW-2 APPLICATIONS [FY 2013 to 2018]

Fiscal year	Form I-129 CW-1 petitions approved A	Form I-539 CW-2 initial or extension of stay applications received B	Percent of initial or extension of stay applications (%) C = B ÷ A
2013 .....	5,655	889	15.7
2013 .....	6,517	687	10.5
2014 .....	6,632	1,081	16.3
2015 .....	5,946	906	15.2
2016 .....	7,137	1,406	19.7
2017 .....	6,278	867	13.8
2018 .....	6,570	695	10.6
Total .....	39,080	6,531	.....
6-year average .....	6,513	933	15.0

Source: Office of Policy and Strategy, Research and Evaluation Division (OP&S RED) and USCIS analysis.

ii. CNMI-Only Transitional Worker Program Numerical Limitations

The Consolidated Natural Resources Act of 2008 (CNRA), which extended U.S. immigration and naturalization laws to the CNMI, authorized DHS to create a temporary nonimmigrant worker permit program and to gradually reduce the annual number of visas issued to zero at the end of the five-year transition period. However, in December 16, 2014, Congress extended the transition period until the first quarter of FY 2020 (or December 31,

2019),<sup>67</sup> DHS had to readjust the CW-1 numerical limitations in such a way that the annual number of visas issued would become zero at the sunset date of December 31, 2019. DHS published these annual numerical caps in a series of **Federal Register** notices. Table 8 shows the numerical caps set by DHS for each year prior to this IFR (see column A).

<sup>67</sup> See Public Law 113-235, section 10 (Dec. 16, 2014).

The Workforce Act extended the CW-1 program through FY 2030, increased the CW-1 numerical cap for FY 2019, and provided new CW-1 numerical caps for subsequent fiscal years as shown in column B of Table 8. For FYs 2018 through 2020, DHS estimates the net numerical caps resulting from the Workforce Act by subtracting the numerical caps prior to the Workforce Act from those in the Workforce Act (see column C, Table 8). For FYs 2021 through 2030, the net numerical caps

are the same as those set by the Workforce Act.

TABLE 8—NUMERICAL CAPS FOR CW-1 VISAS PRIOR TO THIS IFR AND SET BY THE WORKFORCE ACT

Fiscal year	CW-1 visa numerical caps prior to this IFR	CW-1 visa numerical caps set by the Workforce Act	Net CW-1 visas numerical caps as a result of the Workforce Act
	A	B	C = B - A
2011	<sup>68</sup> 22,417		
2012	22,416		
2013	<sup>69</sup> 15,000		
2014	<sup>70</sup> 14,000		
2015	<sup>71</sup> 13,999		
2016	<sup>72</sup> 12,999		
2017	<sup>73</sup> 13,348		
2018	<sup>74</sup> 9,998	9,998	0
2019	4,999	13,000	8,001
2020	<sup>75</sup> 2,499	12,500	10,001
2021		12,000	12,000
2022		11,500	11,500
2023		11,000	11,000
2024		10,000	10,000
2025		9,000	9,000
2026		8,000	8,000
2027		7,000	7,000
2028		6,000	6,000
2029		5,000	5,000
2030		<sup>76</sup> 1,000	1,000

### iii. Population Affected by This IFR

DHS uses the estimates derived from the historical data in Tables 1 through

<sup>68</sup> DHS announced the 2011 and 2012 numerical caps in its current regulation at 8 CFR 214.2(w)(1)(viii)(A) and (B).

<sup>69</sup> See CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2013, 77 FR 71287 (Nov. 30, 2012).

<sup>70</sup> See CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2014, 78 FR 58867 (Sept. 25, 2013).

<sup>71</sup> DHS decided to preserve the status quo at 13,999 for 2015, nominally reducing the 2014 cap by one, rather than aggressively reducing the 2015 CW-1 numbers since DOL and later Congress extended the CW program until Dec. 31, 2019. See Commonwealth of the Northern Mariana Islands Transitional Worker Classification (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2015, 79 FR 58241 (Sept. 29, 2014).

<sup>72</sup> For FY 2016, DHS reduced the cap by 1,000 to a limit of 12,999. See Commonwealth of the Northern Mariana Islands Transitional Worker Classification (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2016, 80 FR 63911 (Oct. 22, 2015).

<sup>73</sup> DHS reduced the cap for FY 2017 by only one to 12,998. See Commonwealth of the Northern Mariana Islands Transitional Worker Classification (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2017, 81 FR 60581 (Sept. 2, 2016). But Congress enacted Public Law 115-53, 2 to add 350 CW-1 permits to the 2017 cap (*i.e.*, 13,348 = 12,998 + 350).

<sup>74</sup> In 2017, DHS published a reduction plan on the number of CW-1 workers available during fiscal years 2018 through 2020. See Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Years 2018 Through 2020, 82 FR 55493 (Nov. 22, 2017).

7 and the numerical limitations set by the Workforce Act in Table 8 to estimate the total population affected by this IFR. The net numerical caps in this IFR show the maximum number of persons who may be granted CW-1 visas during each of the FYs 2019 through 2030.<sup>77</sup> DHS assumes that employers petition for, and DHS approves, the maximum number of available visas for each fiscal year. As the historical data in Table 2 show, the number of petitions received and beneficiaries approved exceeded the CW-1 numerical cap, in certain fiscal years.<sup>78</sup> Receiving more petitions than

<sup>75</sup> Prior to the Workforce Act, the sunset date for CNMI-Only Transitional Worker Program was quarter one of FY 2020 (or Dec. 31, 2019).

<sup>76</sup> The Workforce Act now extends the sunset date for the CNMI-Only Transitional Worker Program to quarter one of FY 2030 (or Dec. 31, 2029).

<sup>77</sup> For this analysis the statutory changes start from fiscal year 2019 because the Workforce Act did not change the numerical caps for 2018 set by DHS on Nov. 22, 2017.

<sup>78</sup> Generally, CW-1 petitions are adjudicated on a first-come, first-serve basis. As the number of CW-1 workers approaches the numerical limit, USCIS will monitor the number of petitions received (including the number of beneficiaries requested) until a determination is made on the final receipt date. Petitions will be accepted in the order in which the petitions are filed until such time as USCIS has accepted the number of petitions necessary to achieve the numerical limit (the "cap"). Once this happens, USCIS will announce the final receipt date, which is the date after which USCIS will not accept any petitions subsequently filed. Any petitions that were received after the final receipt date will be rejected.

would potentially be approved helps minimize the number of CW-1 visas that may remain unused in each fiscal year due to beneficiaries who may not ultimately be granted a CW-1 visa or whose petition may ultimately be denied. Similarly, to ensure that there are no unused visas in any fiscal year during the IFR's implementation period, DHS assumes that USCIS receives more petitions than may potentially be approved each year to account for the number of petitions that may be denied each year. As shown in Table 2, because USCIS may on average approve 93 percent of the petitions, on average 7 percent of the petitions may be denied each year. This means USCIS may receive on average 7 percent more petitions each year to ensure the net numerical caps are met as shown in Table 8.

As shown in Table 2, on average one petition is for approximately two beneficiaries. USCIS estimates the number of petitions that may be approved each year by dividing the number of visas available for each year by the average number of beneficiaries per petition (two). Overall, a total of 98,502 CW-1 visas are available for the implementation period. These 98,502 CW-1 visas would be filed by 49,251

petitioners<sup>79</sup> and be approved by USCIS. To account for the number of beneficiaries who may not ultimately be granted a CW-1 visa or whose petition may ultimately be denied, DHS uses the

average denial rate (7 percent) as described above. Hence to approve 49,251 petitions and use all available visas, USCIS will accept a total of 52,699 petitions during the

implementation period.<sup>80</sup> Table 9 shows the estimated number of petitions that would be approved and filed in FYs 2019 to 2030.

TABLE 9—ESTIMATED NUMBER OF FORM I-129CW PETITIONS APPROVED AND FILED [FY 2019 to 2030]

Fiscal year	Net CW-1 visa numerical cap limitation <sup>81</sup> (from Table 8) A	Estimated number of Form I-129CW petitions approved B = A ÷ 2	Estimated number of Form I-129CW petitions filed with USCIS C = B × (1+7%)
2019 .....	8,001	4,001	4,281
2020 .....	10,001	5,001	5,351
2021 .....	12,000	6,000	6,420
2022 .....	11,500	5,750	6,153
2023 .....	11,000	5,500	5,885
2024 .....	10,000	5,000	5,350
2025 .....	9,000	4,500	4,815
2026 .....	8,000	4,000	4,280
2027 .....	7,000	3,500	3,745
2028 .....	6,000	3,000	3,210
2029 .....	5,000	2,500	2,675
2030 .....	1,000	500	535
Total .....	98,502	49,251	52,699

Source: USCIS analysis.

The IFR allows petitioners to request an extension of stay for their CW-1 nonimmigrant workers by filing a new Form I-129CW petition. The extension of stay may be granted for a period of up to one year (or a period of up to three years if the employee is a long-term worker). However, as the three year extension period for long-term nonimmigrant workers is a new provision in the IFR, DHS does not have historical data showing the total number of CW-1 long-term workers in the CNMI. As a result, DHS is not able to estimate the number of long-term workers for FYs 2019 to 2030. In the absence of historical data, DHS assumes that the extension of stay request will be granted for a period of one year for non-long-term workers, and for a period of three years for long-term workers. DHS conducts a sensitivity analysis to

estimate the potential range of 0 to 90 percent of petitioners who may request an extension of stay for a period of three years (which conversely means 10 to 100 percent of petitioners will be requesting an extension of stay for a period of one year). In this analysis, DHS reports the case where 100 percent of petitioners are requesting an extension of stay for a period of one year as well as the 10 percent lower bound and 90 percent upper bound estimates for the number of petitioners requesting an extension of stay for a period of three years.

Table 10 shows the number petitioners requesting a one-year extension of stay. DHS multiplies the estimated number of petitions that will be approved in FYs 2019 to 2030 by 80 percent (see Table 5) to obtain the estimated number of extension of stay applications that may be filed in the

same period. Similarly, DHS multiplies the estimated number of extension of stay applications that may be filed in FYs 2019 to 2030 by 96 percent (see Table 4) to obtain the estimated number of extension of stay applications that will be approved in the same period. DHS also calculates the estimated number of nonimmigrant workers whose extension of stay requests will be granted each year by multiplying the estimated number of extension of stay applications that will be approved each year by the average number of nonimmigrant workers approved per application. Overall, a total of 39,401 petitioners in the CNMI may file a one-year extension of stay applications, of which 37,825 petitions requesting a one-year extension of stay for a total of 75,650 beneficiaries may be approved by USCIS in FYs 2019 to 2030.

<sup>79</sup> 49,251 petitions to be approved = 98,502 available visas ÷ 2 employees per petition.

<sup>80</sup> 52,699 petitions would need to be filed with USCIS to fill the cap limitations = 49,251 petitions to be approved × (1 + 7 percent).

<sup>81</sup> These numerical caps represent the maximum number of visas (CW-1 nonimmigrant workers) that will be approved during the implementation period.

TABLE 10—TOTAL NUMBER OF EXTENSION OF STAY APPLICATIONS AND CW–1 NONIMMIGRANT WORKERS APPROVED [FY 2019 to 2030]

Fiscal year	Estimated number of petitions approved A	Estimated number of extension of stay applications B = A × 80%	Estimated number of workers requesting extension of stay C = B × 2	Estimated number of petitions approved D = B × 96.0%	Estimated number of workers whose extensions of stay approved E = D × 2
2019	4,001	3,200.4	6,400.8	3,072.4	6,144.8
2020	5,001	4,000.4	8,000.8	3,840.4	7,680.8
2021	6,000	4,800.0	9,600.0	4,608.0	9,216.0
2022	5,750	4,600.0	9,200.0	4,416.0	8,832.0
2023	5,500	4,400.0	8,800.0	4,224.0	8,448.0
2024	5,000	4,000.0	8,000.0	3,840.0	7,680.0
2025	4,500	3,600.0	7,200.0	3,456.0	6,912.0
2026	4,000	3,200.0	6,400.0	3,072.0	6,144.0
2027	3,500	2,800.0	5,600.0	2,688.0	5,376.0
2028	3,000	2,400.0	4,800.0	2,304.0	4,608.0
2029	2,500	2,000.0	4,000.0	1,920.0	3,840.0
2030	500	400.0	800.0	384.0	768.0
Total	49,251	39,401.0	78,802.0	37,825.0	75,650.0

Source: USCIS analysis.

As shown in Tables 11 and 12, the three-year extension of stays requested in FY 2019 will be valid, if ultimately granted, for three consecutive years (FYs 2020 to 2022), and hence will be counted towards these years' numerical caps. The same applies for extension of stay requests in the rest of the implementation years. To illustrate

using numbers from Table 11, a three-year extension of stay is requested for 640 beneficiaries in FY 2019, which if granted will be valid for three consecutive years (FYs 2020 to 2022) and counted towards the numerical caps of 800, 960 and 920 in the corresponding years. As a result, the number of valid three-year extension of

stays will be 640 in FY 2020,<sup>82</sup> 160 in FY 2021,<sup>83</sup> and 160 in FY 2022.<sup>84</sup> The footnotes to Tables 11 and 12 show similar calculations for the net number of beneficiaries for whom three-year extension of stay will be requested in the rest of the implementation years.

TABLE 11—ESTIMATED NUMBER OF APPLICATIONS FOR THREE-YEAR EXTENSION OF STAY (LOWER BOUND) [FY 2019 to 2030]

Fiscal year	Number of beneficiaries for whom extension of stay requested (from Table 10) <sup>a</sup> A	Number of beneficiaries for whom three-year extension of stay can be requested B = A × 10 percent	Net number of beneficiaries for whom three-year extension of stay requested C = B adjusted for three-year validity period	Estimated number of applications for three-year extension of stay D = C ÷ 2
2019	6,401	640	.....	.....
2020	8,001	800	640	320
2021	9,600	960	160	80
2022	9,200	920	160	80
2023	8,800	880	<sup>b</sup> 600	300
2024	8,000	800	<sup>c</sup> 120	60
2025	7,200	720	<sup>d</sup> 80	40
2026	6,400	640	<sup>e</sup> 520	260
2027	5,600	560	<sup>f</sup> 40	20
2028	4,800	480	<sup>g</sup> 0	0
2029	4,000	400	<sup>h</sup> 440	220
2030	800	80	0	0
Total	78,802	7,880	2,760	1,380

Source: USCIS analysis.

<sup>a</sup> This assumes that all the requests are only for one-year extension of stay.

<sup>82</sup> There will be 640 valid three-year extension of stays in FY 2020 because the validity period of the 640 extension of stay requests made in FY 2019 will start in FY 2020.

<sup>83</sup> 160 net three-year extension of stays in FY 2021 = (800 requests for extension of stay

beneficiaries in FY 2020 whose validity period starts in FY 2021) – (640 beneficiaries from FY 2020 counted towards FY 2021 numerical cap).

<sup>84</sup> 160 net three-year extension of stays in FY 2022 = (960 requests for extension of stay beneficiaries in FY 2021 whose validity period

starts in FY 2022) – (640 beneficiaries from FY 2020 counted towards FY 2022 numerical cap) – (160 beneficiaries from FY 2021 counted towards FY 2022 numerical cap).

<sup>b</sup> 600 net three-year extension of stay requests in FY 2023 = (920 requests for extension of stay beneficiaries in FY 2022 whose validity period starts in FY 2023) – (160 beneficiaries from FY 2021 counted towards FY 2022 numerical cap) – (160 beneficiaries from FY 2022 counted towards FY 2023 numerical cap).

<sup>c</sup> 120 net three-year extension of stay requests in FY 2024 = (880 requests for extension of stay beneficiaries in FY 2023 whose validity period starts in FY 2024) – (160 beneficiaries from FY 2022 counted towards FY 2024 numerical cap) – (600 beneficiaries from FY 2023 counted towards FY 2024 numerical cap).

<sup>d</sup> 80 net three-year extension of stay requests in FY 2025 = (800 requests for extension of stay beneficiaries in FY 2024 whose validity period starts in FY 2025) – (600 beneficiaries from FY 2023 counted towards FY 2025 numerical cap) – (120 beneficiaries from FY 2024 counted towards FY 2025 numerical cap).

<sup>e</sup> 520 net three-year extension of stay requests in FY 2026 = (720 requests for extension of stay beneficiaries in FY 2025 whose validity period starts in FY 2026) – (120 beneficiaries from FY 2024 counted towards FY 2026 numerical cap) – (80 beneficiaries from FY 2025 counted towards FY 2026 numerical cap).

<sup>f</sup> 0 net three-year extension of stay requests in FY 2027 = (640 requests for extension of stay beneficiaries in FY 2026 whose validity period starts in FY 2027) – (80 beneficiaries from FY 2025 counted towards FY 2027 numerical cap) – (520 beneficiaries from FY 2026 counted towards FY 2027 numerical cap).

<sup>g</sup> 0 net three-year extension of stay requests in FY 2028 = (560 requests for extension of stay beneficiaries in FY 2027 whose validity period starts in FY 2028) – (520 beneficiaries from FY 2026 counted towards FY 2028 numerical cap) – (40 beneficiaries from FY 2027 counted towards FY 2028 numerical cap).

<sup>h</sup> 440 net three-year extension of stay requests in FY 2029 = (480 requests for extension of stay beneficiaries in FY 2028 whose validity period starts in FY 2029) – (40 beneficiaries from FY 2027 counted towards FY 2029 numerical cap) – (0 beneficiaries from FY 2028 counted towards FY 2029 numerical cap).

<sup>i</sup> There is no new three-year extension of stay request in FY 2030 because the 400 and 80 requests for extension of stay beneficiaries in FYs 2029 and 2030, respectively, will not be requested for three-year validity period. Instead, all will be a one-year extension of stay requests.

TABLE 12—ESTIMATED NUMBER OF APPLICATIONS FOR THREE-YEAR EXTENSION OF STAY (UPPER BOUND)  
[FY 2019 to 2030]

Fiscal year	Number of beneficiaries for whom extension of stay requested (from Table 10) <sup>a</sup>	Number of beneficiaries for whom three-year extension of stay can be requested	Net number of beneficiaries for whom three-year extension of stay requested	Estimated number of applications for three-year extension of stay
	A	B = A × 90 percent	C = B adjusted for three-year validity period	D = C ÷ 2
2019 .....	6,401	5,761	.....	.....
2020 .....	8,001	7,201	<sup>b</sup> 5,761	2,880
2021 .....	9,600	8,640	<sup>c</sup> 1,440	720
2022 .....	9,200	8,280	<sup>d</sup> 1,439	720
2023 .....	8,800	7,920	<sup>e</sup> 5,401	2,700
2024 .....	8,000	7,200	<sup>f</sup> 1,080	540
2025 .....	7,200	6,480	<sup>g</sup> 719	360
2026 .....	6,400	5,760	<sup>h</sup> 4,681	2,340
2027 .....	5,600	5,040	<sup>i</sup> 360	180
2028 .....	4,800	4,320	0	0
2029 .....	4,000	3,600	<sup>k</sup> 3,960	1,980
2030 .....	800	720	0	0
Total .....	78,802	70,921	24,841	12,420

Source: USCIS analysis.

<sup>a</sup> This assumes that all the requests are only for one-year extension of stay.

<sup>b</sup> 5,761 extension of stays will be requested in FY 2020 because the validity period of the 5,761 extension of stay requests made in FY 2019 will start in FY 2020.

<sup>c</sup> 1,400 net three-year extension of stay requests in FY 2021 = (7,201 requests for extension of stay beneficiaries in FY 2020 whose validity period starts in FY 2021) – (5,761 beneficiaries from FY 2020 counted towards FY 2021 numerical cap).

<sup>d</sup> 1,439 net three-year extension of stay requests in FY 2022 = (8,640 requests for extension of stay beneficiaries in FY 2021 whose validity period starts in FY 2022) – (5,761 beneficiaries from FY 2020 counted towards FY 2022 numerical cap) – (1,440 beneficiaries from FY 2021 counted towards FY 2022 numerical cap).

<sup>e</sup> 5,401 net three-year extension of stay requests in FY 2023 = (8,280 requests for extension of stay beneficiaries in FY 2022 whose validity period starts in FY 2023) – (1,440 beneficiaries from FY 2021 counted towards FY 2022 numerical cap) – (1,439 beneficiaries from FY 2022 counted towards FY 2023 numerical cap).

<sup>f</sup> 1,080 net three-year extension of stay requests in FY 2024 = (7,920 requests for extension of stay beneficiaries in FY 2023 whose validity period starts in FY 2024) – (1,439 beneficiaries from FY 2022 counted towards FY 2024 numerical cap) – (5,401 beneficiaries from FY 2023 counted towards FY 2024 numerical cap).

<sup>g</sup> 719 net three-year extension of stay requests in FY 2025 = (7,200 requests for extension of stay beneficiaries in FY 2024 whose validity period starts in FY 2025) – (5,401 beneficiaries from FY 2023 counted towards FY 2025 numerical cap) – (1,080 beneficiaries from FY 2024 counted towards FY 2025 numerical cap).

<sup>h</sup> 4,681 net three-year extension of stay requests in FY 2026 = (6,480 requests for extension of stay beneficiaries in FY 2025 whose validity period starts in FY 2026) – (1,080 beneficiaries from FY 2024 counted towards FY 2026 numerical cap) – (719 beneficiaries from FY 2025 counted towards FY 2026 numerical cap).

<sup>i</sup> 360 net three-year extension of stay requests in FY 2027 = (5,760 requests for extension of stay beneficiaries in FY 2026 whose validity period starts in FY 2027) – (719 beneficiaries from FY 2025 counted towards FY 2027 numerical cap) – (4,681 beneficiaries from FY 2026 counted towards FY 2027 numerical cap).

<sup>j</sup> 0 net three-year extension of stay requests in FY 2028 = (5,040 requests for extension of stay beneficiaries in FY 2027 whose validity period starts in FY 2028) – (4,681 beneficiaries from FY 2026 counted towards FY 2028 numerical cap) – (360 beneficiaries from FY 2027 counted towards FY 2028 numerical cap). The result is rounded from – 1 that shows an extra three-year extension of stay request above the FY 2027 cap limit (5,040) whose validity period starts in 2028.

<sup>k</sup> 3,960 net three-year extension of stay requests in FY 2029 = (4,320 requests for extension of stay beneficiaries in FY 2028 whose validity period starts in FY 2029) – (360 beneficiaries from FY 2027 counted towards FY 2029 numerical cap) – (0 beneficiaries from FY 2028 counted towards FY 2029 numerical cap).

<sup>1</sup>There is no new three-year extension of stay request in FY 2030 because the 3,600 and 720 requests for extension of stay beneficiaries in FYs 2029 and 2030, respectively, will not be requested for three-year validity period. Instead, all will be a one-year extension of stay requests.

The IFR provides that, of the total number of approved petitions, petitioners may amend a certain number of petitions when there are material changes in the terms and conditions of employment. USCIS may revoke some of the approved petitions, in whole or in part, immediately and automatically if the petitioner ceases operations, files a written withdrawal of the petition, or DOL revokes the temporary labor certification. USCIS also has the discretion to revoke on notice when petitioners violate the grounds for revocation as listed in the preamble of this IFR. From the historical data presented in Table 3, on average 2.20 percent of approved petitions were amended annually while 0.20 percent of approved visas were revoked annually. DHS uses these rates to estimate the number of petitions to be amended and

visas to be revoked, respectively, during the implementation period.

Accordingly, DHS multiplies the number of petitions to be approved in the implementation period by 2.20 percent to obtain the estimated number of petitions that may be amended in the same period. Similarly, DHS multiplies the number of visas available for the implementation period by 0.20 percent to obtain the estimated number of visas that may be revoked in the same period. DHS also estimates the number of petitions to be revoked each year by dividing the number of visas to be revoked each year by the average number of beneficiaries per petition. Table 13 shows these calculations in detail. In general, a total of 1,084 petitions will be amended by petitioners<sup>85</sup> and 197 visas may be revoked by USCIS<sup>86</sup> from FYs 2019 to 2030.

As discussed in the preamble, for each beneficiary of a petition revoked in a fiscal year, DHS will add an equivalent number of CW-1 visas to the numerical caps of the next fiscal year. This means that visas revoked in FY 2019 will be added to the numerical cap of FY 2020, visas revoked in FY 2020 will be added to the numerical cap of FY 2021, and so on. As a result, all the revoked visas will be available for filing in the subsequent years. For example, the 16 visas revoked in FY 2019 will be added to FY 2020 numerical cap and available for filing in FY 2020. As a result, approximately 8 petitions will be filed in FY 2020 to request these 16 available visas.<sup>87</sup> Columns E and F in Table 13 show the estimated number of revoked visas that will be added and available for filing and the corresponding number of petitions filed in the subsequent FYs 2020 to 2030.<sup>88</sup>

TABLE 13—TOTAL NUMBER OF FORM I-129CW PETITIONS AMENDED, PETITIONS AND VISAS REVOKED AND SUBSEQUENTLY ADDED VISAS [FY 2019 to 2030]

Fiscal year	CW-1 visa numerical caps A	Estimated number of petitions approved B	Estimated number of petitions amended C = B × 2.20%	Estimated number of visas revoked D = A × 0.20%	Estimated number of revoked visas filed E	Estimated number of revoked petitions filed <sup>a</sup> F = E ÷ 2
2019	8,001	4,001	88.0	16.0		
2020	10,001	5,001	110.0	20.0	16.0	8.0
2021	12,000	6,000	132.0	24.0	20.0	10.0
2022	11,500	5,750	126.5	23.0	24.0	12.0
2023	11,000	5,500	121.0	22.0	23.0	11.5
2024	10,000	5,000	110.0	20.0	22.0	11.0
2025	9,000	4,500	99.0	18.0	20.0	10.0
2026	8,000	4,000	88.0	16.0	18.0	9.0
2027	7,000	3,500	77.0	14.0	16.0	8.0
2028	6,000	3,000	66.0	12.0	14.0	7.0
2029	5,000	2,500	55.0	10.0	12.0	6.0
2030	1,000	500	11.0	2.0	10.0	5.0
Total	98,502	49,251	1,083.5	197.0	195.0	97.5

Source: USCIS analysis.

<sup>a</sup>To estimate the approximate number of petitions that will be filed, USCIS divides the number of revoked visas by the number of beneficiaries per petition (2). This is because the numerical caps for subsequent years are increased by the number of visas revoked in the preceding years and made available for use by any petitioner.

Qualifying dependents (*i.e.*, eligible spouse or child) of nonimmigrant workers with valid CW-1 status can apply for CW-2 status using Form I-539. DHS assumes that applications requesting a CW-2 status are filed by qualifying dependents of approximately 15 percent of the total number of nonimmigrant workers with approved CW-1 status (see Table 7) during the implementation period. DHS also

assumes that 96 percent of these CW-2 applications will be approved in FYs 2019 to 2030, where on average one beneficiary is approved per application (see Table 6). DHS multiplies the estimated number of petitions that will be approved in FYs 2019 to 2030 by 15 percent to obtain the estimated number of CW-2 applications that may be filed in the same period. DHS multiplies the estimated number of CW-2 applications

that may be filed in FYs 2019 to 2030 by 96 percent to obtain the estimated number of CW-2 applications that will be approved in the same period. DHS also calculates the estimated number of dependents of the nonimmigrants workers whose request for CW-2 status will be approved each year by multiplying the estimated number of CW-2 applications that will be approved each year by the average

<sup>85</sup> 1,084 petitions amended = 49,251 petitions approved × 2.20 percent of petitions amended annually.

<sup>86</sup> 197 visas revoked = 98,502 visas approved × 0.20 percent visas revoked annually.

<sup>87</sup> 8 petitions filed = 16 visas revoked ÷ 2 beneficiaries per petition.

<sup>88</sup> Note that two visas (in column D), revoked in fiscal year 2030 cannot be filed before the end of the implementation period.

number of dependents approved per application (1). Overall, nonimmigrant workers are expected to file a total of 14,775 applications requesting a CW-2

status for their qualifying dependents from FYs 2019 to 2030, of which 14,184 applications (or dependents) may be approved by USCIS.<sup>89</sup> Table 14 shows

the total number of CW-2 applications and dependents whose request for CW-2 status may be approved in FYs 2019 to 2030.

TABLE 14—TOTAL NUMBER OF CW-2 FORM I-539 APPLICATIONS FILED AND APPROVED [FY 2019 to 2030]

Fiscal year	Estimated number of Form I-539 applications approved A	Estimated number of CW-2 Form I-539 applications B = A × 15%	Estimated number of dependents for whom CW-2 status requested C = B × 1	Estimated number of CW-2 Form I-539 applications approved D = C × 96%	Estimated number of dependents whose CW-2 status approved E = D × 1
2019 .....	8,001	1,200.2	1,200.2	1,152.1	1,152.1
2020 .....	10,001	1,500.2	1,500.2	1,440.1	1,440.1
2021 .....	12,000	1,800.0	1,800.0	1,728.0	1,728.0
2022 .....	11,500	1,725.0	1,725.0	1,656.0	1,656.0
2023 .....	11,000	1,650.0	1,650.0	1,584.0	1,584.0
2024 .....	10,000	1,500.0	1,500.0	1,440.0	1,440.0
2025 .....	9,000	1,350.0	1,350.0	1,296.0	1,296.0
2026 .....	8,000	1,200.0	1,200.0	1,152.0	1,152.0
2027 .....	7,000	1,050.0	1,050.0	1,008.0	1,008.0
2028 .....	6,000	900.0	900.0	864.0	864.0
2029 .....	5,000	750.0	750.0	720.0	720.0
2030 .....	1,000	150.0	150.0	144.0	144.0
Total .....	98,502	14,775	14,775	14,184	14,184

Source: USCIS analysis.

5. Cost-Benefit Analysis

This section presents the costs and benefits associated with the requirements for hiring CW-1 nonimmigrant workers in the CNMI based on the numerical caps set by the Workforce Act. A total of 1,471 petitioners (see Table 2) in the CNMI will file 52,699 petitions for a total 98,502 visas (see Table 9) available in the implementation period (FYs 2019 to 2030). These constitute the total estimated number of affected population for petitioners, petitions and nonimmigrant workers (beneficiaries), respectively. In this analysis, DHS uses an hourly compensation rate for estimating the opportunity cost of time for human resources (HR) specialists. DHS uses this occupation as a proxy of who might prepare and complete these petitions for an entity. DHS notes that not all entities may have an HR specialist, but rather some equivalent occupation may prepare and complete

the petition. DHS also uses an hourly compensation rate to determine the opportunity costs of time for qualifying dependents (i.e., spouse or child) of the CW-1 nonimmigrant workers who file applications for CW-2 status. DHS estimates the hourly compensation rates by adjusting the average hourly wage rates by a benefit-to-wage multiplier to account for the full cost of benefits such as paid leave, insurance, and retirement. Based on the most recent report by the Bureau of Labor Statistics (BLS) on the average employers' costs for employee compensation for all civilian workers in major occupational groups and industries, DHS estimates that the benefits-to-wage multiplier is 1.46.<sup>90</sup>

DHS uses an average hourly compensation rate of \$36.30 for HR specialists in Guam<sup>91</sup> as a reasonable proxy for the CNMI in the estimation of the opportunity cost of time for preparing and filing a Form I-129CW petition on behalf of CW-1

nonimmigrant workers.<sup>92</sup> Additionally, DHS uses an average hourly compensation rate of \$10.59 in the CNMI<sup>93</sup> as a reasonable proxy for dependents of CW-1 nonimmigrant workers in the CNMI in the estimation of the opportunity cost of time for filing Form I-539 applications requesting a CW-2 status.

i. Baseline Estimate of Current Costs

As mandated by the Consolidated Natural Resources Act of 2008 (CNRA), which created a Commonwealth of the Northern Mariana Islands Transitional Worker Classification to employ adequate numbers of nonimmigrant workers in the CNMI during the 5-year transitional period, DHS published a final rule on September 7, 2011 to implement a temporary CW classification that included CW-1 for principal workers and CW-2 for spouses and minor children. Since then, DHS has been setting the CW-1 numerical

<sup>89</sup> Because nonimmigrant workers with CW-1 status apply on average for one family member in each CW-2 application, the number of applications is equal to the number of dependents.

<sup>90</sup> The benefits-to-wage multiplier is calculated as follows: (\$36.63 Total Employee Compensation per hour) ÷ (\$25.03 Wages and Salaries per hour) = 1.463 = 1.46 (rounded). See Economic News Release, *Employer Cost for Employee Compensation (September 2018)*, U.S. Department of Labor, BLS, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major

occupational and industry group. Released December 14, 2018, available at [https://www.bls.gov/news.release/archives/ecec\\_12142018.pdf](https://www.bls.gov/news.release/archives/ecec_12142018.pdf) (last visited February 4, 2019).

<sup>91</sup> Hourly compensation of \$36.30 = \$24.86 average hourly wage rate for HR specialists × 1.46 benefits-to-wage multiplier. See Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment Statistics, May 2018 National Occupational Employment and Wage Estimates Guam, SOC 13-1071—Human Resources Specialist. Available at [https://www.bls.gov/oes/2018/may/oes\\_gu.htm](https://www.bls.gov/oes/2018/may/oes_gu.htm) (last visited June 20, 2019).

<sup>92</sup> The Bureau of Labor Statistics does not report hourly wage rates for the CNMI.

<sup>93</sup> Hourly compensation of \$10.59 = \$7.25 federal minimum hourly wage rate in the CNMI × 1.46 benefits-to-wage multiplier. See Employee Rights Under The Fair Labor Standards Act, Federal Minimum Wage In the Commonwealth Of The Northern Mariana Islands, Department of Labor, Wage and Hour Division, September 30, 2018. Available at <https://www.dol.gov/whd/regs/compliance/posters/cnmi.pdf> (last visited June 13, 2019).

caps on the number of nonimmigrant workers employed annually by announcing them, first by amending its existing regulations and later in **Federal Register** notices. The CNRA mandated an annual reduction in the number of permits issued per year and the total elimination of the CW nonimmigrant classification by the end of the transition period. The transition period was initially set to expire on December 31, 2014, but the Secretary of the Department of Labor later extended it to December 31, 2019 as per the provision in the CNRA.

However, before the expiration of the transition period on December 31, 2019, the Workforce Act was signed into law on July 24, 2018. The Workforce Act extends the transition period to December 31, 2029 and makes several changes that affect, among others, existing regulations governing DHS immigration policy and procedures. As a result, DHS issues this IFR to make amendments to its existing regulations and establish procedures to implement the provisions of the Workforce Act.

The provisions of the Workforce Act will be implemented in a period primarily occurring after the previously authorized transition period, because the overlap between that transition period and the transition period established by the Workforce Act is only for about two years, of the 12 transition years.<sup>94</sup> This indicates that the numerical caps set by the Workforce Act on the number of CW-1 nonimmigrant workers employed annually took effect before DHS's previously scheduled reductions in the numerical cap took effect. As a result, to account for the net number of CW-1 permits available during the overlap period, DHS subtracts the numerical caps authorized during the previous transition period from the numerical caps established by the Workforce Act as shown in Table 8. Therefore, the net number of CW-1 permits available during the overlapping period is 8,001 and 10,001 for FYs 2019 and 2020, respectively.<sup>95</sup> This helps shorten the steps required to separately estimate costs, first for the previously authorized transition period,

<sup>94</sup> The overlap between the previously authorized transition period (ending on December 31, 2019) and the transition period established by the Workforce Act (ending on December 31, 2029) is only between the last quarter of fiscal year 2018 (which has already elapsed), fiscal year 2019, and the first quarter of fiscal year 2020.

<sup>95</sup> For FY 2019: 8,001 net numerical cap in the IFR = 13,000 numerical cap set by the Workforce Act - 4,999 numerical cap authorized in the previous transition period. For FY 2020: 10,001 net numerical cap in the IFR = 12,500 numerical cap set by the Workforce Act - 2,499 numerical cap authorized in the previous transition period.

second for the transition period established by the Workforce Act, and then take the difference between these costs to capture the net cost attributable to the IFR in the overlapping period. DHS estimates the costs resulting from the regulatory changes and incurred in the implementation period (*i.e.*, FYs 2019 to 2030) using the affected population estimated based on the net numerical caps in FYs 2019 and 2020 (*i.e.*, 8,001 and 10,001, respectively) and the numerical caps set forth by the Workforce Act for FYs 2021 to 2030.

#### ii. Costs of Regulatory Changes to Petitioners

The new costs associated with the IFR include costs of preparing and filing Form I-129CW petitions, filing applications for extension of stay, participating in the E-Verify program, submitting semiannual reports and document retention, filing amended petitions and sending notifications, and filing revoked petitions. These costs are presented in detail in the following subsections.

##### (a) Cost of Filing Form I-129CW Petitions

A petitioner is required to file Form I-129CW to employ nonimmigrant workers who are otherwise ineligible to work in the CNMI under other nonimmigrant worker categories. DHS estimates that the time burden per response, which includes the time for reviewing instructions, gathering the required documentation and information, completing the petition, preparing statements, attaching necessary documentation, and submitting the petition, is 4 hours.<sup>96</sup> The filing fee for an employer to petition on behalf of one or more nonimmigrant workers is \$460 per petition.

Additionally, DHS is increasing the supplemental CNMI education funding fee from \$150 to \$200 per beneficiary issued CW-1 status per year. This updates the regulation, at 8 CFR 103.7(b)(1)(i)(I) to reflect that in 2017 Congress raised the supplemental CNMI education funding fee from \$150 to \$200<sup>97</sup> per each beneficiary issued CW-1 status, per year. Consistent with the Workforce Act, the IFR also provides the Secretary of Homeland Security the

<sup>96</sup> USCIS Office of Policy and Strategy, PRA Compliance provided the time burden for Form I-129 CW.

<sup>97</sup> In 2017, Congress enacted the Northern Mariana Islands Economic Expansion Act, Public Law 115-53, 131 Stat. 1091, which increased the supplemental fee paid for each CW permit to \$200 and banned issuing new CW-1 permits to construction workers.

discretion to annually adjust this supplemental fee via notice in the **Federal Register**. This fee is characterized as a transfer payment<sup>98</sup> for the purposes of our analysis.

This IFR also updates existing regulations, at 8 CFR 214.2(w)(5), to include the Workforce Act's requirement that CW-1 employers must pay a mandatory \$50 fraud prevention and detection fee with each petition, in addition to other current fees DHS is updating the regulatory provision as the increase is not new and has been in effect since 2017. The additional \$50 fraud prevention and detection fee per each petition is intended for a new and permanent site visit program. The fee is for the sole purpose of fraud deterrence and detecting immigration benefit fraud in the Northern Mariana Islands.<sup>99</sup> DHS characterizes this fee as a cost because in general, fee revenues will support new activities that were not previously conducted.

DHS estimates the opportunity cost of time to complete and submit Form I-129CW by multiplying the estimated total number of petitions filed (52,699) in the implementation period by the average time it takes to complete and submit a petition (4 hours) and the average hourly compensation rate for a HR specialist (\$36.30). DHS estimates the costs associated with a petition filing fee, supplemental education funding fee and fraud prevention and detection fee by multiplying the estimated total affected population under each case by their respective fee amounts. DHS also applies the average mailing cost per package (\$53.50)<sup>100</sup> to the total number of petitions filed

<sup>98</sup> Transfer payments are monetary payments from one group to another that do not affect total resources available to society. See Office of Management and Budget (OMB). Circular A-4 pages 14 and 38 for further discussion on transfer payments and distributional effects. September 17, 2003. Available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>.

<sup>99</sup> This fee is for the sole purpose of preventing and detecting immigration benefit fraud in the Northern Mariana Islands. The fraud fee will also assist with any new filings processed for review, site visits, and/or administrative investigation by USCIS Fraud Detection and National Security personnel at the California Service Center.

<sup>100</sup> Although petitioners may choose other means of shipping, for the purposes of this analysis, DHS uses the shipping prices of United States Postal Service (USPS) Domestic Priority Mail Express Flat Rate Envelopes, which is currently priced at \$53.50 per package, as a proxy estimate for the postage cost of mailing a package containing completed Form I-129CW. DHS also assumes that the package on average weighs three pounds and ships to zone 8 (from CNMI to Laguna Niguel, California Service Center). See U.S. Postal Service, Price List, Notice 123, Effective January 27, 2019 at: [https://pe.usps.com/text/dm300/Notice123.htm#\\_c011](https://pe.usps.com/text/dm300/Notice123.htm#_c011) (last visited May 29, 2019).

(52,699) in the implementation period to estimate the postage cost associated

with mailing the completed petitions to USCIS. Table 15 shows the detailed

calculation of the total petition filing cost of the IFR in FYs 2019 to 2030.

TABLE 15—PETITION FILING COST FOR PETITIONERS [FY 2019 to FY 2030]

Fiscal year	CW-1 numerical caps (or number of beneficiaries) (from Table 9) A	Number of CW-1 petitions to be filed (from Table 9) B	OCT to complete Form I-129CW C = B × 4 hours × \$36.30/hour	Form I-129CW filing fee cost D = B × \$460 filing fee	Education funding fee cost (per beneficiary) E = A × \$200 education fee	Fraud prevention & detection fee cost F = B × \$50 fraud fee	Postage cost to mail completed Form I-129CW G = B × \$53.50 postage cost	Total petition filing cost H = C + D + E + F + G
2019	8,001	4,281	\$621,534	\$1,969,046	\$1,600,200	\$214,027	\$229,009	\$4,633,815
2020	10,001	5,351	776,898	2,461,246	2,000,200	267,527	286,254	5,792,124
2021	12,000	6,420	932,184	2,953,200	2,400,000	321,000	343,470	6,949,854
2022	11,500	6,153	893,343	2,830,150	2,300,000	307,625	329,159	6,660,277
2023	11,000	5,885	854,502	2,707,100	2,200,000	294,250	314,848	6,370,700
2024	10,000	5,350	776,820	2,461,000	2,000,000	267,500	286,225	5,791,545
2025	9,000	4,815	699,138	2,214,900	1,800,000	240,750	257,603	5,212,391
2026	8,000	4,280	621,456	1,968,800	1,600,000	214,000	228,980	4,633,236
2027	7,000	3,745	543,774	1,722,700	1,400,000	187,250	200,358	4,054,082
2028	6,000	3,210	466,092	1,476,600	1,200,000	160,500	171,735	3,474,927
2029	5,000	2,675	388,410	1,230,500	1,000,000	133,750	143,113	2,895,773
2030	1,000	535	77,682	246,100	200,000	26,750	28,623	579,155
<b>Total</b>	<b>98,502</b>	<b>52,699</b>	<b>7,651,832</b>	<b>24,241,342</b>	<b>19,700,400</b>	<b>2,634,929</b>	<b>2,819,373</b>	<b>57,047,877</b>

Source: USCIS analysis.  
 Note: Totals may not sum due to rounding.

As discussed in the preamble to this IFR, an employer filing a petition is eligible to apply for a waiver of the petition fee (but not the CNMI education funding fee or the fraud prevention and detection fee) based upon inability to pay.<sup>101</sup> However, it is important to note that due to lack of historical data on fee waiver requests, DHS is unable to estimate the fee waiver cost in this analysis. As a result, the estimated petition filing cost (\$57,047,877) represents an upper bound cost in this analysis being that it could be lower by the value of the fee waiver cost because granted fee waivers accrue as cost savings to petitioners.

(b) Cost Savings From Filing Extension of Stay Applications

Petitioners will be required to file a new petition to request an extension of stay for their currently approved CW-1 nonimmigrant employees. However, DHS does not estimate the cost of filing an extension of stay applications to avoid double counting. The cost of filing new petitions requesting an extension of stay for an existing CW-1 nonimmigrant worker is already captured under the cost of filing petitions for CW-1 status

discussed in subsection (a). The cost of filing petitions is estimated using the total number of visas (98,502) available for the duration of the IFR’s implementation period, based on the numerical caps set for each year in the IFR, and the total estimated number of petitions that can potentially be filed in this period (52,699, see Table 9). Because an employer’s request for extending the period of stay for an existing CW-1 worker in a given year counts towards the numerical cap in the same year, estimating the cost for those who petition for an extension of stay for their nonimmigrant workers results in double counting the cost.<sup>102</sup> That means, whether petitioning for a new CW-1 nonimmigrant worker or requesting an extension of stay for an existing CW-1 nonimmigrant worker, it counts towards the same numerical cap that limits the number of visas available in a given year. Any request for an extension of stay is bound by the numerical caps and USCIS does not accept petitions once the number of visas set for a given year are fully used.<sup>103</sup>

The IFR also states that an extension of stay may be granted for a period of

up to three years if the employee is a long-term worker. DHS estimates the cost savings for petitioners who will request a three-year extension of stay for their long-term workers using the lower and upper bound estimates for the net number of beneficiaries for whom a three-year extension of stay will be requested (see Tables 11 and 12). That means, instead of filing a new request to extend permits for all nonimmigrant workers every year, petitioners will save time and resources by applying a three-year extension of stay for their long-term employees once every three years. DHS estimates the cost savings in terms of the opportunity cost of time for filing Form I-129CW, paying a filing fee of \$460 and a fraud prevention and detection fee of \$50 per application, and a postage cost of \$53.50 for mailing the completed application.<sup>104</sup> As shown in Tables 16 and 17, the total petitioners’ cost savings resulting from filing a three-year extension of stay for long-term nonimmigrant workers, as opposed to filing a one-year extension of stay, ranges from \$978,034 to \$8,802,309 from FY 2019 to 2030.

<sup>101</sup> See 8 CFR 214.2(w)(5).

<sup>102</sup> The 52,699 initial petitions filed for 98,502 permits available for the implementation period (see Table 9) can also be viewed as consisting of the 39,401 extension of stay applications filed for 78,802 nonimmigrant workers of which 75,650 nonimmigrant workers will be granted an extension of stay (see Table 10).

<sup>103</sup> The IFR states that “USCIS may reject an employer’s petition for new or extended CW-1 status if the numerical limitation has been met.” When such cases arise, USCIS notifies employers “that numbers are unavailable for the CW nonimmigrant classification.” 8 CFR 214.7(w)(21).

<sup>104</sup> It should be noted that there will be no cost savings from paying the educational fund fee as the

Workforce Act requires this fee to be collected from all beneficiaries for each year of approval. The educational fee is represented in this analysis as a transfer. See Section (VI)(5)(ii)(b) in this economic analysis.

TABLE 16—PETITIONERS' COST SAVINGS FROM APPLYING FOR THREE-YEAR EXTENSION OF STAY (LOWER BOUND)  
[FY 2019 to 2030]

Fiscal year	Estimated number of applications for three-year extension of stay (from Table 11) A	OCT to complete Form I-129CW <sup>a</sup> B = A × 4 hours × \$36.30/hour	Form I-129CW filing fee cost C = A × \$460 filing fee	Fraud prevention & detection fee cost D = A × \$50 fraud fee	Postage cost to mail completed Form I-129CW E = A × \$53.50 postage cost	Total application filing cost F = B + C + D + E
2019 .....	320	\$46,470	\$147,218	\$16,002	\$17,122	\$226,812
2020 .....	80	11,616	36,800	4,000	4,280	56,696
2021 .....	80	11,610	36,782	3,998	4,278	56,668
2022 .....	300	43,566	138,018	15,002	16,052	212,638
2023 .....	60	8,712	27,600	3,000	3,210	42,522
2024 .....	40	5,802	18,382	1,998	2,138	28,320
2025 .....	260	37,758	119,618	13,002	13,912	184,290
2026 .....	20	2,904	9,200	1,000	1,070	14,174
2027 .....	0	0	0	0	0	0
2028 .....	220	31,944	101,200	11,000	11,770	155,914
2029 .....	0	0	0	0	0	0
2030 .....	0	0	0	0	0	0
Total .....	1,380	200,382	634,818	69,002	73,832	978,034

Source: USCIS analysis.

<sup>a</sup>OCT denotes the opportunity cost of time and estimated by multiplying the time burden to complete Form I-129CW (4 hours) by the average hourly compensation rate of a HR specialist (36.30).

TABLE 17—PETITIONERS' COST SAVINGS FROM APPLYING FOR THREE-YEAR EXTENSION OF STAY (UPPER BOUND)  
[FY 2019 to 2030]

Fiscal year	Estimated number of applications for three-year extension of stay (from Table 12) A	OCT to complete Form I-129CW <sup>a</sup> B = A × 4 hours × \$36.30/hour	Form I-129CW filing fee cost C = A × \$460 filing fee	Fraud prevention & detection fee cost D = A × \$50 fraud fee	Postage cost to mail completed Form I-129CW E = A × \$53.50 postage cost	Total application filing cost F = B + C + D + E
2019 .....	2,880	\$418,228	\$1,324,966	\$144,018	\$154,099	\$2,041,311
2020 .....	720	104,544	331,200	36,000	38,520	510,264
2021 .....	720	104,492	331,034	35,982	38,501	510,009
2022 .....	2,700	392,092	1,242,166	135,018	144,469	1,913,745
2023 .....	540	78,408	248,400	27,000	28,890	382,698
2024 .....	360	52,220	165,434	17,982	19,241	254,877
2025 .....	2,340	339,820	1,076,566	117,018	125,209	1,658,613
2026 .....	180	26,136	82,800	9,000	9,630	127,566
2027 .....	0	0	0	0	0	0
2028 .....	1,980	287,496	910,800	99,000	105,930	1,403,226
2029 .....	0	0	0	0	0	0
2030 .....	0	0	0	0	0	0
Total .....	12,420	1,803,436	5,713,366	621,018	664,489	8,802,309

Source: USCIS analysis.

<sup>a</sup>OCT denotes the opportunity cost of time and estimated by multiplying the number of extension of stay applications in each year by the time burden to complete Form I-129CW (4 hours) and the average hourly compensation rate of a HR specialist (36.30).

Please note that totals may not sum due to rounding.

### (c) Cost of Participating in the E-Verify Program

This IFR requires that any employer petitioning for a CW-1 nonimmigrant worker must be an E-Verify program participant in good standing. The E-Verify program is a DHS USCIS web-

based system that allows enrolled employers to confirm the eligibility of their employees to work in the United States.<sup>105</sup> DHS does not charge a fee to

<sup>105</sup> See E-Verify, available at <https://www.e-verify.gov/> (last visited May 29, 2019).

E-Verify employers to create cases to confirm the identity and employment eligibility of newly hired employees by electronically matching information provided by employees on the Form I-9, Employment Eligibility Verification,

against records available to DHS and the SSA.

The E-Verify requirement will result in a cost burden to employers currently participating in the E-Verify program as well as to newly enrolling employers. While the employers who will be newly enrolling in the E-Verify program incur startup enrollment or program initiation costs, employers who are currently participating in the E-Verify program do not incur these costs as they already have incurred them previously. However, both groups of employers incur additional cost burdens for ongoing training in E-Verify as they continue to comply with E-Verify requirements and for verifying the identity and work authorization of all of their newly hired employees including new CW-1 nonimmigrant workers.

DHS estimates the number of employers in the CNMI currently participating in the E-Verify program using the data obtained from E-Verify Usage Statistics that tracks E-Verify enrollment and usage on a quarterly basis. The Usage Statistics provide information on enrolled memoranda of understanding (MOU), FY 2018 cases, and usage by U.S. states and territories. Accordingly, there are a total of 141 employers in the CNMI enrolled to use E-Verify and agreed to the terms of the MOU.<sup>106</sup> DHS uses historical data on Form I-129CW petitions from FYs 2012 to 2018 to estimate the number of employers operating in the CNMI each year. These data capture the number of approved employees per petitioning business entity in each fiscal year.<sup>107</sup>

DHS estimates that on average 1,471 business entities (or employers) petitioned for CW-1 nonimmigrants workers each year in the CNMI from FY 2012 to 2018 (see Table 2). Instead of assuming that on average the same number of business entities will continue to petition for CW-1 nonimmigrants workers in FYs 2019 to 2030, DHS uses a linear projection of the FYs 2012 to 2018 data to capture the declining trend in the number of business entities participating in E-Verify during the 12-year implementation period (see Table 19). Because 141 of the 1,771 business entities operating in the CNMI in FY 2019 are currently participating in the E-Verify program, the remaining 1,630

business entities<sup>108</sup> need to enroll in the E-Verify program and incur costs associated with enrollment in order to continue employing CW-1 workers. However, all the business entities will incur the additional time burden cost of ongoing training in E-Verify and creating E-Verify cases to confirm the identity and work authorization of newly hired employees.

Participating in the E-Verify program and remaining in good standing requires employers to enroll online in the program,<sup>109</sup> electronically sign the associated MOU with DHS that set the terms and conditions of participation in the program, and use E-Verify for all newly hired employees. The MOU requires employers to agree to abide by lawful hiring procedures and to ensure that no employee will be unfairly discriminated against as a result of the E-Verify program. Violating the terms of this agreement by the employer is grounds for immediate termination of its participation in the program.<sup>110</sup> Additionally, employers are required to designate and register at least one person that serves as an E-Verify administrator on behalf of the company.

For this analysis, DHS assumes that each employer participating in the E-Verify program designates one HR specialist if operating only in the CNMI, and at least one additional HR specialist if the company is also operating in other U.S. states, to manage the E-Verify program on behalf of the company. Based on the most recent Paperwork Reduction Act Information Collection Package for the E-Verify program, DHS estimates the time burden for the HR specialist to undertake the tasks associated with the E-Verify program. DHS estimates that the enrollment process takes the HR specialist on average 2.26 hours to provide basic company information, review and sign the MOU, take a new user training, and review the user guides. Once enrolled in the E-Verify program, the HR specialist takes training on new features and system updates every year, which takes on average one hour.<sup>111</sup>

<sup>108</sup> 1,630 business entities newly enrolling in E-Verify = 1,771 number of businesses petitioning for CW-1 nonimmigrants workers in FY 2019 – 141 businesses already participating in the E-Verify program.

<sup>109</sup> See the enrollment process at <https://www.e-verify.gov/employers/enrolling-in-e-verify/the-enrollment-process> (last visited May 29, 2019).

<sup>110</sup> See USCIS, The E-Verify Memorandum of Understanding for Employers, available at [http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify\\_Native\\_Documents/MOU\\_for\\_E-Verify\\_Employer.pdf](http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/MOU_for_E-Verify_Employer.pdf) (last visited May 29, 2019).

<sup>111</sup> The USCIS Office of Policy and Strategy, PRA Compliance Branch estimates the average time

Once an employer enrolls in E-Verify program, the employer is responsible for ensuring that the hiring process is undertaken as per the requirements of the MOU and verifying all newly hired employees. Hence, after completing Form I-9, Employment Eligibility Verification, the employer must enter the newly hired employee's information in E-Verify, where the information is checked against records available to SSA and DHS. After checking a worker's information against these records, E-Verify returns the case processing results, which could either automatically confirm the worker as employment authorized or return a tentative non-confirmation (TNC). Receiving a TNC does not mean a worker is not authorized to work in the United States; rather it indicates there is an initial system mismatch between the information the employer entered in E-Verify from the worker's Form I-9 and the records available to DHS or SSA. Workers receiving a TNC have the option to contest (take action) or not contest (not take action) to resolve the DHS or SSA TNC case result. E-Verify requires employers to inform the employee about the TNC and provide instructions for contesting it. The E-Verify website also provides detailed information about contesting the TNC.<sup>112</sup>

As the nationwide E-Verify historical data show, while 98.88 percent of workers are automatically confirmed as work authorized, 1.12 percent have received a TNC as of June 2018.<sup>113</sup> The E-Verify performance data also show that, of the 1.12 percent of workers who receive initial system mismatches, 0.16 percent are later confirmed as work authorized after contesting and resolving the mismatches and the remaining 0.96 percent are not found to be work authorized. Again, of the 0.96 percent of workers not found work authorized, 0.43 percent do not contest the mismatch either because they do not choose to do so or are unaware of the opportunity to contest and as a result are not found work authorized; only 0.02 percent contest the mismatch and

burdens. See Paperwork Reduction Act (PRA) E-Verify Program (OMB control number 1615-0092), May 24, 2016. The PRA Supporting Statement can be found under Question 12 at <https://www.regulations.gov/document?D=USCIS-2007-0023-0081> (last visited May 29, 2019).

<sup>112</sup> See the following for more detailed information <https://www.e-verify.gov/employees/tentative-nonconfirmation-overview/how-to-correct-a-tentative-nonconfirmation> (last visited May 29, 2019).

<sup>113</sup> USCIS E-Verify Performance Statistics, Verification Information System (VIS) Transaction Data. See <https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-performance> (last visited May 29, 2019).

<sup>106</sup> The E-Verify data was updated on Oct. 5, 2018. See <https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-usage-statistics> (last visited May 29, 2019).

<sup>107</sup> Office of Policy and Strategy, Research and Evaluation Division (OP&S RED) provided the data. The data identify each petitioning business entity by name and tax ID.

are not found work authorized; and the remaining 0.51 percent are unresolved cases either because the employer closed the case as “self-terminated” or the case was awaiting further action by either the employer or worker as of June 2018.

DHS estimates the time burden to submit a query in E-Verify as a weighted average of the time required to enter

workers’ initial information for verification and the time required to assist workers with the TNC contestation process to resolve the mismatch,<sup>114</sup> using the above E-Verify case processing results as weights. The most recent Paperwork Reduction Act Information Collection Package for the E-Verify program estimates the time burdens to enter workers’ initial

information in E-Verify and assist workers with the TNC contestation to be 0.12 hours (or 7.2 minutes) and 0.5 hours (or 30 minutes) per worker, respectively.<sup>115</sup> DHS estimates that on average it takes an HR specialist 0.121 hours (or 7.26 minutes) per worker to submit a query in E-Verify. Table 18 shows estimation of this time burden in detail.

TABLE 18—AVERAGE TIME BURDEN ESTIMATION FOR INITIAL EMPLOYEE CASE VERIFICATION USING E-VERIFY

E-Verify performance categories	Case processing results (%)	Time to submit initial verification query (hours)	Time to resolve mismatch (hours)	Total time burden (hours per worker)	Weighted product
	A	B	C	D = B + C	E = A × D
Automatically confirmed as work authorized .....	98.88	0.12	0	0.12	0.118656
Confirmed after initial mismatch .....	0.16	0.12	0.5	0.62	0.000992
Not confirmed after initial mismatch is contested .....	0.02	0.12	0.5	0.62	0.000124
Not found authorized <sup>a</sup> .....	0.94	0.12	0	0.12	0.001128
<b>Total</b> .....	<b>100%</b>	.....	.....	.....	<b>0.121</b>
<b>Weighted Average<sup>b</sup></b> .....	.....	.....	.....	.....	<b>0.121</b>

Source: USCIS E-Verify Performance Statistics, Verification Information System (VIS) Transaction Data as of June 2018. Time burden data from Paperwork Reduction Act (PRA) E-Verify Program (OMB control number 1615–0092), May 24, 2016.

<sup>a</sup>0.94 percent not found authorized = 0.43 percent do not contest the mismatch + 0.51 percent unresolved cases.

<sup>b</sup>0.121 hours weighted average time burden for submitting a verification query = 0.121 hours sum of weighted product in column E ÷ 100% sum of case processing results in column A.

Using the number of affected populations and the time burdens estimated above, and the hourly compensation rates for HR specialists, DHS estimates the opportunity cost of time of employers participating in the E-Verify program in two parts. First, DHS estimates the opportunity cost of time for employers petitioning for CW–1 nonimmigrant workers in the CNMI. Second, DHS estimates the opportunity cost of time for employers who are

operating both in the CNMI and other locations in the U.S. and use E-Verify to confirm the identity and work authorization of all their newly hired employees during the IFR implementation period.

Employers Petitioning for CW–1 Nonimmigrant Workers in the CNMI

Table 19 shows in detail estimation of the opportunity cost for the time employers in the CNMI will spend to enroll in E-Verify, take annual training,

and submit a query in E-Verify. As discussed above, 1,630 of the 1,771 employers that petition for CW–1 nonimmigrant workers in FY 2019 need to enroll in E-Verify and incur a one-time enrollment cost at the beginning of the implementation period. Hence, for employers petitioning for CW–1 nonimmigrant workers in the CNMI the total opportunity cost of participating in the E-Verify program is \$1,097,732 from FY 2019 to 2030.<sup>116</sup>

TABLE 19—EMPLOYERS’ OPPORTUNITY COST OF TIME TO PARTICIPATE IN E-VERIFY PROGRAM [FY 2019 to 2030]

Fiscal year	Estimated number of employers in the CNMI <sup>a</sup>	Newly enrolling employers <sup>b</sup>	CW–1 numerical caps (or number of beneficiaries) (from Table 9)	Enrollment cost for newly enrolling employers	Employers’ annual training cost	Case submission and verification cost	Total E-Verify participation cost in CNMI
	A	B = A – 141 currently participating employers	C	D = B × 2.26 hours × \$36.30/hour	E = A × 1 hour × \$36.30/hour	F = C × 0.121 hour × \$36.30/hour	G = D + E + F
2019 .....	1,771	1,630	8,001	\$133,722	\$64,287	\$35,143	\$233,152
2020 .....	1,671	.....	10,001	.....	60,657	43,927	104,585
2021 .....	1,571	.....	12,000	.....	57,027	52,708	109,735
2022 .....	1,471	.....	11,500	.....	53,397	50,511	103,909
2023 .....	1,370	.....	11,000	.....	49,731	48,315	98,046

<sup>114</sup> Here, DHS estimates the amount of time the employer spends in the TNC contestation process, not the time burden for the contesting workers.

<sup>115</sup> The USCIS Office of Policy and Strategy, PRA Compliance Branch estimates the average time burdens. See Paperwork Reduction Act (PRA) E-

Verify Program (OMB control number 1615–0092), May 24, 2016. The PRA Supporting Statement can be found under Question 12 at <https://www.regulations.gov/document?D=USCIS-2007-0023-0081> (last visited May 29, 2019).

<sup>116</sup> Note that this cost estimate does not include the cost of job search for employees who are legally able to work in the U.S. but choose not to contest a TNC for whatever reason and lose their jobs. DHS does not have data to estimate the job search cost for this group of employees.

TABLE 19—EMPLOYERS’ OPPORTUNITY COST OF TIME TO PARTICIPATE IN E-VERIFY PROGRAM—Continued  
[FY 2019 to 2030]

Fiscal year	Estimated number of employers in the CNMI <sup>a</sup>	Newly enrolling employers <sup>b</sup>	CW-1 numerical caps (or number of beneficiaries) (from Table 9)	Enrollment cost for newly enrolling employers	Employers’ annual training cost	Case submission and verification cost	Total E-Verify participation cost in CNMI
	A	B = A - 141 currently participating employers	C	D = B × 2.26 hours × \$36.30/hour	E = A × 1 hour × \$36.30/hour	F = C × 0.121 hour × \$36.30/hour	G = D + E + F
2024 .....	1,270	.....	10,000	.....	46,101	43,923	90,024
2025 .....	1,170	.....	9,000	.....	42,471	39,531	82,002
2026 .....	1,069	.....	8,000	.....	38,805	35,138	73,943
2027 .....	969	.....	7,000	.....	35,175	30,746	65,921
2028 .....	869	.....	6,000	.....	31,545	26,354	57,899
2029 .....	769	.....	5,000	.....	27,915	21,962	49,876
2030 .....	668	.....	1,000	.....	24,248	4,392	28,641
Total .....	.....	.....	98,502	133,722	531,359	432,650	1,097,732

Source: USCIS analysis

<sup>a</sup>DHS uses a linear forecasting equation  $y = -100.29x + 1,871.7$  (obtained using the FY 2012 to 2018 data shown in Table 2, Column A) to estimate the number of business entities that will be petitioning for CW-1 nonimmigrant workers in the CNMI each year during the implementation period. In this equation, y denotes the number of business entities estimated for each year, while x denotes each year of the implementation period (where year 1 represents FY 2019, year 2 represents FY 2020, and so on). For example, the number of business entities operation in the CNMI (y) in FY 2019 (or year 1) =  $-100.29 \times (1) + 1,871.7 = 1,771$  (rounded). For each of the remaining years, the number of business entities operating in the CNMI can be estimated in the same way. Averaging over all years, DHS estimates that an average of 1,220 business entities will be operating in the CNMI each year during the implementation period.

<sup>b</sup>Of the number of business entities operating in the CNMI in FY 2019 (1,771), 141 of them are already participating in the E-Verify program and do not need to enroll in the E-Verify program.

Employers Operating in the CNMI and Other Locations in the U.S. and Hiring New U.S. Employees

To estimate the opportunity cost of time to confirm the identity and work authorization of newly hired U.S. employees using E-Verify, DHS first estimates the number of employers (businesses) that petition for CW-1 nonimmigrant workers operating both in the CNMI and other locations in the U.S. DHS identified a total of 2,481 business entities that have operated in the CNMI and petitioned for CW-1 nonimmigrant workers at one time or another from FY 2012 to 2018. DHS provided the names and Tax ID of these 2,481 business entities to the USCIS E-Verify, Verification Information System (VIS) to identify whether the entities are (a) enrolled in E-Verify and (b) operating in other locations in the U.S. (i.e., outside the CNMI).<sup>117</sup> The E-Verify team conducted individual business name and Tax ID searches in the VIS database and reported the data, based on which DHS estimates that of the total business

entities that have been operating in the CNMI and petitioned for CW-1 workers (2,481), only 101 (or 4.1 percent) have already been enrolled in E-Verify for at least one hiring site in the CNMI and other locations in the U.S. Of the 101 enrolled in E-Verify, 70 use E-Verify for at least one hiring site in the CNMI, 30 are operating in other locations in the U.S. but are not enrolled in E-Verify for those locations, and 1 is enrolled in E-Verify for hiring sites in the CNMI and other locations in the U.S. For the remaining number of businesses not enrolled in E-Verify in the CNMI (2,380),<sup>118</sup> USCIS did not assess whether they are operating in other locations in the United States.

Overall, DHS concludes that of the 2,481 business entities only 31 (1.2 percent) operate in the CNMI and other locations in the U.S. DHS applies this rate to the estimated number of employers operating in the CNMI who are expected to petition for CW-1 nonimmigrant workers during the IFR implementation period to obtain that on average 15 employers<sup>119</sup> will be operating both in the CNMI and other locations in the U.S. each year during

the implementation period. As per the requirement to participate in the E-Verify program in good standing, all employers operating both in the CNMI and other locations in the U.S. are required to use E-Verify to confirm the identity and work authorization of all their newly hired U.S. employees during the implementation period.

DHS estimates the average number of new employees each of the employers operating in the CNMI and other locations in the U.S. will be hiring each year during the implementation period based on the average employment size of businesses operating in the U.S. and their average hiring rate. As the data obtained from the U.S. Census Bureau shows, the average employment size for a business entity operating in the U.S. is 17 employees.<sup>120</sup> Using the Bureau of Labor Statistics (BLS) 2018 data from the Job Openings and Labor Turnover Survey (JOLTS) Database, DHS also estimates the annual hires rate across all industries in the U.S. to be 51 percent.<sup>121</sup> DHS multiplies the average

<sup>117</sup>DHS searches information for the 2,481 petitioning business entities in the E-Verify VIS database because this database provides two important pieces of information relevant to the analysis: (a) Whether the entities are enrolled in E-Verify program and (b) where they are operating in the U.S. In addition, conducting a global name search for the 2,481 petitioning business entities using other external databases is a time-consuming endeavor as it involves conducting searches in multiple databases only to identify their locations of operation. Given the time constraint to complete the rulemaking, DHS opts to use the E-Verify VIS database as the most viable option to extract both the E-Verify enrollment and location information from a single and reliable source.

<sup>118</sup> 2,380 business entities not enrolled in E-Verify = 2,481 total number of business entities - 101 business entities enrolled in E-Verify.

<sup>119</sup> 15 (rounded) average number of employers operating in the CNMI and other locations in the U.S. = 1,220 average number of employers operating in the CNMI each year × 1.2 percent of business entities operating in the CNMI and other locations in the U.S. Alternatively, the same result is obtained by averaging the number of employers operating in CNMI and other U.S. locations each year shown in Table 20, Column B.

<sup>120</sup> This is estimated by dividing the total number of employment to the total number of establishments in each industry using the U.S. 6-digit NAICS data obtained from the U.S. Census Bureau. Taking the average over all industries, DHS obtains that a business entity in the U.S. on average employs 17 employees. See U.S. Census Bureau, Statistics of U.S. Businesses (SUBS), 2016 SUBS Annual Data Tables by Establishment Industry, released on Dec. 18, 2018. <https://www.census.gov/data/tables/2016/econ/subs/2016-susb-annual.html> (last visited June 19, 2019).

<sup>121</sup> BLS, News Release, Job Openings and Labor Turnover—January 2019, Table 14. Annual hires rates by industry and region, not seasonally adjusted. Released March 15, 2019. See <https://>

employment size across businesses (17 employees per business entity) by the annual hires rate (51 percent per business entity) to estimate that an employer in the U.S. hires approximately 9 new employees each

year.<sup>122</sup> Finally, DHS multiplies the number of employers operating in the CNMI and other locations in the U.S. each year by the average number of new hires per year to estimate an average of approximately 123 newly hired

employees each year during the implementation period.<sup>123</sup> Table 20 shows in detail estimation of the total number of new hire U.S. employees for FY 2019 to 2030.

TABLE 20—ESTIMATED NUMBER OF CNMI EMPLOYERS OPERATING IN OTHER STATES IN THE U.S. AND NUMBER OF NEW HIRES

[FY 2019 to 2030]

Fiscal year	Estimated number of employers operating in CNMI A	Number of employers operating in CNMI & other U.S. locations B = A × 1.2 percent	Average number of employees per businesses entity in U.S. C	Average number of new hires per business entity per year D = C × 51 percent	Total number of new hires per year in other U.S. locations E = B × D
2019	1,771	21.3	17	8.7	185
2020	1,671	20.1	17	8.7	175
2021	1,571	18.9	17	8.7	164
2022	1,471	17.7	17	8.7	154
2023	1,370	16.4	17	8.7	143
2024	1,270	15.2	17	8.7	132
2025	1,170	14.0	17	8.7	122
2026	1,069	12.8	17	8.7	111
2027	969	11.6	17	8.7	101
2028	869	10.4	17	8.7	90
2029	769	9.2	17	8.7	80
2030	668	8.0	17	2.2 <sup>a</sup>	18
Average	1,220	15	17	8.2	123

Source: USCIS analysis

<sup>a</sup> The IFR implementation period ends in FY 2030 quarter 1. Accordingly, the average number of new hires per business entity is estimated only for 3 months for FY 2030 (i.e., 17 × (51 percent ÷ 12 months) × 3 months = 2.2).

Employers that will petition for CW-1 nonimmigrant workers and operate only in the CNMI are also required to use E-Verify to confirm the identity and work authorization of all their newly hired employees. For these businesses operating only in the CNMI, DHS assumes the average employment size to be 15 employees per entity<sup>124</sup> and the annual hires rate across all industries to

be 25 percent<sup>125</sup> during the implementation period. DHS estimates that a CW-1 nonimmigrant petitioning employer that operates only in the CNMI on average employs nearly 4 new hires each year,<sup>126</sup> of which approximately 2 will be U.S. employees.<sup>127</sup> Finally, DHS multiplies the number of these employers operating only in the CNMI by the

average number of new hire U.S. employees per year to estimate an average of approximately 2,092 new hire U.S. employees each year during the implementation period. Table 21 shows the estimation of the total number of new hire U.S. employees for employers operating only in the CNMI.

[www.bls.gov/news.release/archives/jolts\\_03152019.pdf](http://www.bls.gov/news.release/archives/jolts_03152019.pdf) (last visited August 7, 2019). The hires rate is the number of hires during a reference period as a percent of total employment. The number of hires is the total additions to the payroll occurring at any time during the reference month, including (but not limited to) both new and rehired employees, full-time and part-time, permanent, short-term and seasonal employees.

<sup>122</sup> 9 (rounded) number of new hires per business entity per year = 17 number of employees per business entity × 51 percent hires rate per year. Note that the average number of new hires per business entity falls to 8.2 when we include the new hires for FY 2030 quarter 1.

<sup>123</sup> 123 (rounded) average number of newly hired employees each year = 15 average number of employers operating in the CNMI and other states in the U.S. each year × 8.72 average number of new hires per business entity per year. Table 20 shows in detail the estimation for each year.

<sup>124</sup> This is estimated by dividing the total number of employment to the total number of business entities operating in the CNMI in 2016. According to the CNMI 2016 Prevailing Wage and Workforce Assessment Study (PWWAS) released in September 2017, there were 32,061 employees working for 2,146 employers. 15 employees per business entity = 32,061 employees ÷ 2,146 business entities. See 2018 Draft Modification to the Workforce Innovation and Opportunities Act (WIOA) State Plan for the CNMI, submitted by the State Workforce Development Board, final publication date March 15, 2018. <https://www.marianaslabor.net/resources/files/CNMIIModifiedUnifiedStatePlanunderWIOA02072018.pdf> (last visited June 24, 2019).

<sup>125</sup> Id. This is estimated based on projected demand for additional employees over and above the total number of employees in the CNMI in 2016. According to PWWAS, the newly approved projects in the CNMI would raise the demand for additional

employees by 8,000 in the following year, resulting in annual hires rate of 25 percent (i.e., 25 percent = (8,000 additional employees ÷ 32,061 number of employees in 2016) × 100).

<sup>126</sup> 4 (rounded) number of new hires per entity per year = 15 number of employees per entity × 25 percent hires rate per year.

<sup>127</sup> 2 (rounded) number of new hire U.S. workers per year = 3.6 number of new hires per year × 47 percent. Using the 2011 to 2016 data obtained from the 2018 GAO report, DHS estimates that U.S. workers account on average for 47 percent of the total workforce in the CNMI. See United States Government Accountability Office (GAO), Testimony Before the Committee on Energy and Natural Resources, U.S. Senate, Commonwealth of the Northern Mariana Islands, Recent Economic Trends and Preliminary Observations on Workforce Data. GAO-18-373T, Feb. 2018. GAO used the most recent available CNMI tax data.

TABLE 21—ESTIMATED NUMBER OF EMPLOYERS OPERATING ONLY IN THE CNMI AND THEIR NEWLY HIRED U.S. EMPLOYEES [FY 2019 to 2030]

Fiscal year	Estimated number of employers operating only in CNMI <sup>a</sup>	Average number of employees per business entity in CNMI	Average number of new hires per business entity per year	Number of newly hired U.S. employees in CNMI	Total number of newly hired U.S. employees per year in CNMI
	A	B	C = B × 25%	D = C × 47%	E = A × D
2019	1,750	15	3.8	1.8	3,149.5
2020	1,651	15	3.8	1.8	2,971.6
2021	1,552	15	3.8	1.8	2,793.8
2022	1,453	15	3.8	1.8	2,615.9
2023	1,354	15	3.8	1.8	2,436.5
2024	1,255	15	3.8	1.8	2,258.6
2025	1,156	15	3.8	1.8	2,080.8
2026	1,056	15	3.8	1.8	1,901.2
2027	957	15	3.8	1.8	1,723.3
2028	859	15	3.8	1.8	1,545.5
2029	760	15	3.8	1.8	1,367.6
2030	660	15	<sup>b</sup> 0.9	0.4	264.0
Total	1,205	15	3.6	1.7	2,092.4

Source: USCIS analysis

<sup>a</sup> Calculation: Number of employers operating only in CNMI = Number of employers operating in CNMI (from Table 20, Column A) – Number of employers operating in CNMI & other U.S. locations (Table 20, Column B).

<sup>b</sup> The IFR implementation period ends in FY 2030 quarter 1. Accordingly, the average number of new hires per business entity is estimated only for 3 months for FY 2030 (i.e., 15 × 2.1 percent × 3 = 0.9 (rounded)).

Using the number of newly hired U.S. employees shown in Tables 20 and 21, DHS estimates the opportunity cost of time to participate in the E-Verify program for employers operating in the CNMI and other locations in the U.S. While employers operating in other locations in the U.S. incur costs for taking annual training and submitting a query in E-Verify for their newly hired employees, employers operating only in the CNMI incur the cost for submitting

a query in E-Verify for their newly hired employees.<sup>128</sup> As described above, employers operating both in the CNMI and other locations in the U.S. assign at least one additional HR specialist to handle the case submissions for the new employees hired in other locations in the U.S. DHS uses the average hourly compensation rate of \$46.88 for an HR specialist located outside the CNMI<sup>129</sup> and \$36.30 for an HR specialist located in the CNMI (as discussed before).

Table 22 shows estimation of the opportunity cost of time employers operating in other locations in the U.S. spend to confirm the identity and work authorization of their newly hired U.S. employees in FYs 2019 to 2030. Likewise, Table 23 shows estimation of the opportunity cost of time employers operating only in the CNMI spend to confirm the identity and work authorization of their newly hired U.S. employees in FYs 2019 to 2030.

TABLE 22—EMPLOYERS OPPORTUNITY COST OF TIME TO PARTICIPATE IN E-VERIFY PROGRAM (OPERATING IN OTHER U.S. LOCATIONS) [FY 2019 to 2030]

Fiscal year	Number of CNMI employers operating in other U.S. locations	Total number of new hire U.S. employees per year	Employers' annual training cost	Case submission and verification cost	Total E-Verify participation cost in other U.S. locations
	A	B	C = A × 1 hour × \$46.88/hour	D = B × 0.121 hours × \$46.88/hour	E = C + D
2019	21.3	185.3	\$999	\$1,051	\$2,050
2020	20.1	174.9	942	992	1,934
2021	18.9	164.4	886	933	1,819
2022	17.7	154.0	830	874	1,703
2023	16.4	142.7	769	809	1,578
2024	15.2	132.2	713	750	1,463
2025	14.0	121.8	656	691	1,347
2026	12.8	111.4	600	632	1,232

<sup>128</sup> It should be noted that the costs to enroll in E-Verify and annual training have already been accounted for in Table 19.

<sup>129</sup> Hourly compensation of \$46.88 = \$32.11 average hourly wage rate for HR specialists (national) × 1.46 benefits-to-wage multiplier. See Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment Statistics, May

2018 National Occupational Employment and Wage Estimates National, SOC 13–1071—Human Resources Specialist. [https://www.bls.gov/oes/2018/may/oes\\_nat.htm](https://www.bls.gov/oes/2018/may/oes_nat.htm) (last visited June 20, 2019).

TABLE 22—EMPLOYERS OPPORTUNITY COST OF TIME TO PARTICIPATE IN E-VERIFY PROGRAM (OPERATING IN OTHER U.S. LOCATIONS)—Continued  
[FY 2019 to 2030]

Fiscal year	Number of CNMI employers operating in other U.S. locations A	Total number of new hire U.S. employees per year B	Employers' annual training cost C = A × 1 hour × \$46.88/hour	Case submission and verification cost D = B × 0.121 hours × \$46.88/hour	Total E-Verify participation cost in other U.S. locations E = C + D
2027 .....	11.6	100.9	544	572	1,116
2028 .....	10.4	90.5	488	513	1,001
2029 .....	9.2	80.0	431	454	885
2030 .....	8.0	17.6	375	100	475
Total .....	175.6	1475.7	8,232	8,371	16,603

Source: USCIS analysis

TABLE 23—EMPLOYERS OPPORTUNITY COST OF TIME TO PARTICIPATE IN E-VERIFY PROGRAM (OPERATING ONLY IN THE CNMI)  
[FY 2019 to 2030]

Fiscal year	Total number of new hire U.S. employees per year in CNMI A	Case submission and verification cost B = A × 0.121 hours × \$36.30/hour
2019 .....	3,149.5	\$13,833
2020 .....	2,971.6	13,052
2021 .....	2,793.8	12,271
2022 .....	2,615.9	11,490
2023 .....	2,436.5	10,702
2024 .....	2,258.6	9,921
2025 .....	2,080.8	9,139
2026 .....	1,901.2	8,350
2027 .....	1,723.3	7,569
2028 .....	1,545.5	6,788
2029 .....	1,367.6	6,007
2030 .....	264.0	1,160
Total .....	25,108.3	110,283

Source: USCIS analysis

(d) Cost of Obtaining TLC From DOL

All new petitions and extension of stay petitions are required to include a TLC approved by the DOL if they are requesting an employment start date on or after October 1, 2019. The TLC is used to confirm that there are not sufficient United States workers in the CNMI who are able, willing, qualified and available at the time and place needed to perform the services or labor involved in the petition, and that the employment of the CW-1 nonimmigrant will not adversely affect the wages and working conditions of similarly employed United States workers. Obtaining a TLC results in a cost burden

to petitioners. However, this cost is addressed in the DOL rulemaking.<sup>130</sup>

(e) Cost of Semiannual Reporting and Document Retention

An employer whose petition has been approved will be required to submit a semiannual report every six months after the petition validity start date to DHS to verify the continuing employment and payment of the beneficiary under the terms and conditions of the approved petition. The petitioners must retain all documents and records in support of the petition, including information submitted to DHS in the semiannual report, for 3 years

<sup>130</sup> See Labor Certification Process for Temporary Employment in the Commonwealth of the Northern Mariana Islands (CW-1 Workers), 84 FR 12380 (Apr. 1, 2019).

from the petition validity end date. Petitioners are also required to provide the documents and records supporting the information in the semiannual report to DHS and DOL upon request.

Petitioners use the newly developed Form I-129CWR, Semiannual Report for CW-1 Employers, to submit their semiannual reports to DHS. DHS estimates that the time burden for completing Form I-129CWR, which includes reviewing instructions, gathering the required documentation and information, attaching necessary documentation, and completing and submitting the form, is 2.5 hours.<sup>131</sup> DHS also estimates that the time burden

<sup>131</sup> USCIS Office of Policy and Strategy, PRA Compliance Branch, Instruction on Form I-129CWR.

for gathering and retaining documents and records is at least 1 hour for the duration of the 3-year document retention period.<sup>132</sup> DHS assumes that petitioners retain separate documents and records for each approved petition.

As a result, the affected population is the number of petitions approved each year.

DHS applies the time burdens, the frequency of reporting and an HR specialist's hourly compensation rate to

the affected population to estimate the total cost of semiannual reporting and document retention. As shown in Table 24, DHS estimates the total semiannual reporting and document retention cost to be \$15,996,725 for FYs 2019 to 2030.

TABLE 24—SEMIANNUAL REPORTING AND DOCUMENT RETENTION COST FOR EMPLOYERS (FY 2019 to 2030)

Fiscal year	Estimated number of CW-1 petitions approved (from Table 9) A	OCT to complete form I-129CWR <sup>a</sup> B = A × 2 reports per year × 2.5 hours × \$36.30/hour	Postage cost to mail completed Form I-129CWR C = A × 2 reports per year × \$53.50 postage cost	OCT to gather and retain documents & records <sup>b</sup> D = A × 1 hour × \$36.30/hour	Total semiannual reporting & document retention cost E = B + C + D
2019 .....	4,001	726,091	428,054	145,218	1,299,362
2020 .....	5,001	907,591	535,054	181,518	1,624,162
2021 .....	6,000	1,089,000	642,000	217,800	1,948,800
2022 .....	5,750	1,043,625	615,250	208,725	1,867,600
2023 .....	5,500	998,250	588,500	199,650	1,786,400
2024 .....	5,000	907,500	535,000	181,500	1,624,000
2025 .....	4,500	816,750	481,500	163,350	1,461,600
2026 .....	4,000	726,000	428,000	145,200	1,299,200
2027 .....	3,500	635,250	374,500	127,050	1,136,800
2028 .....	3,000	544,500	321,000	108,900	974,400
2029 .....	2,500	453,750	267,500	90,750	812,000
2030 .....	500	90,750	53,500	18,150	162,400
Total .....	49,251	8,939,057	5,269,857	1,787,811	15,996,725

Source: USCIS analysis.

<sup>a</sup>OCT denotes the opportunity cost of time estimated by multiplying the number of CW-1 petitions in each year by the number of reports per year (2), the time burden to complete Form I-129CWR (2.5 hours), and the average hourly compensation rate of a HR specialist (\$36.30). It should be noted that there is no filing fee for Form I-129CWR.

<sup>b</sup>OCT denotes the opportunity cost of time estimated by multiplying the number of CW-1 petitions in each year by the time burden to gather and retain documents and records (1 hour) and the average hourly compensation rate of a HR specialist (\$36.30).

(f) Cost of Notifications

The IFR requires a petitioner to immediately notify USCIS if there are any changes in the terms and conditions of employment of the CW-1 nonimmigrant worker that may affect eligibility for CW-1 classification. Petitioners can notify USCIS about the changes that affect the eligibility of the nonimmigrant worker in two ways. Petitioners may file an amended or new petition that reflects the changes using Form I-129CW if the nonimmigrant worker is still working for them. The amended or new petition must be submitted with a new TLC approved by DOL that supports the new terms and

conditions. The second way of notifying USCIS is by sending a letter to the office at which the CW-1 petition was filed explaining the basis on which the specific CW-1 nonimmigrant is no longer employed. DHS estimates the number of petitions to be amended during the implementation period based on estimates derived from historical data on CNMI-Only Transitional Worker program as shown in Table 13. However, due to lack of similar data on the number of notification letters sent to USCIS or relevant proxy measure, DHS is not able to estimate the number of letters to be sent during the implementation period. DHS assumes

that filing an amended petition takes the same amount of time as filing a new petition (4 hours)<sup>133</sup> while sending a letter takes approximately 1 hour,<sup>134</sup> which includes gathering the relevant information, preparing the letter, and sending the letter to USCIS. DHS uses the postage cost of \$53.50 for mailing amended petitions<sup>135</sup> and \$7.35 for mailing withdrawal letters.<sup>136</sup> DHS estimates the opportunity cost of time (OCT) of completing amended petitions by multiplying the number of petitions amended each year by the time burden to complete Form I-129CW (4 hours) and the average hourly compensation rate of an HR specialist (\$36.30). DHS

<sup>132</sup> The joint USCIS and DOL temporary final rule, Exercise of Time-Limited Authority to Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program uses 1 hour for document retention. See 83 FR 24905 (May 31, 2018).

<sup>133</sup> USCIS Office of Policy and Strategy, PRA Compliance Branch provided the time burden for completing Form I-129 CW.

<sup>134</sup> DHS is not able to find data on how much time it would take to prepare a withdrawal letter and send it to USCIS. However, DHS assumes that it would not take more than 1 hour.

<sup>135</sup> Although petitioners may choose other means of shipping, for the purposes of this analysis, DHS uses the shipping prices of United States Postal Service (USPS) Domestic Priority Mail Express Flat Rate Envelopes, which is currently priced at \$53.50 per package, as a proxy estimate for the postage cost of mailing a package containing amended Form I-129CW. DHS also assumes that the package on average weighs three pounds and ships to zone 8 (from CNMI to Laguna Niguel, California Service Center). See U.S. Postal Service, Price List, Notice 123, Effective January 27, 2019 at: [https://pe.usps.com/text/dmm300/Notice123.htm#\\_c011](https://pe.usps.com/text/dmm300/Notice123.htm#_c011) (last visited May 29, 2019).

<sup>136</sup> Although petitioners may choose other means of shipping, for the purposes of this analysis, DHS uses the shipping prices of United States Postal Service (USPS) Domestic Priority Mail Flat Rate Envelopes, which is currently priced at \$7.35 per package, as a proxy estimate for the postage cost of mailing an envelope containing a withdrawal letter. DHS also assumes that the mail ships to Laguna Niguel, California Service Center. See U.S. Postal Service, Price List, Notice 123, Effective January 27, 2019 at: [https://pe.usps.com/text/dmm300/Notice123.htm#\\_c011](https://pe.usps.com/text/dmm300/Notice123.htm#_c011) (last visited May 29).

applies the postage cost of 53.50 per package to the number of petitions amended and sent to USCIS each year to estimate the postage cost of mailing amended petitions. Table 25 shows these calculations in detail for FYs 2019 to 2030.

Although DHS is not able to estimate the cost of submitting notification letters due to lack of data on the number of notification letters sent to USCIS or a

relevant proxy measure, DHS provides a unit cost estimates for the opportunity cost of time of preparing and submitting a withdrawal letter and for the postage cost of mailing the letter to USCIS. DHS obtains an opportunity cost of time of \$36.30 by multiplying the time burden to prepare and submit a notification letter to USCIS (1 hour) by the average hourly compensation rate of an HR specialist (\$36.30). DHS adds the

postage cost of mailing the notification letter (\$7.35) to the estimated opportunity cost of time to obtain a total unit cost of \$43.65 per notification letter. This means, an affected petitioner on average will incur a unit cost of \$43.65 to send a letter notifying USCIS that a CW-1 nonimmigrant is no longer working for him or her.

TABLE 25—EMPLOYERS NOTIFICATION COST FOR FILING AMENDED PETITIONS  
[FY 2019 to 2030]

Fiscal year	Estimated number of petitions amended (from Table 13) A	OCT to complete amended petitions (Form I-129CW) B = A × 4 hours × \$36.30/hour	Postage cost to mail amended petitions C = A × \$53.50 postage cost	Total notification cost D = B + C
2019 .....	88	\$12,779	\$4,709	\$17,488
2020 .....	110	15,974	5,886	21,859
2021 .....	132	19,166	7,062	26,228
2022 .....	127	18,368	6,768	25,136
2023 .....	121	17,569	6,474	24,043
2024 .....	110	15,972	5,885	21,857
2025 .....	99	14,375	5,297	19,671
2026 .....	88	12,778	4,708	17,486
2027 .....	77	11,180	4,120	15,300
2028 .....	66	9,583	3,531	13,114
2029 .....	55	7,986	2,943	10,929
2030 .....	11	1,597	589	2,186
Total .....	1,084	157,327	57,968	215,296

Source: USCIS analysis.

(g) Cost of Filing Revoked Petitions

As discussed in the preamble of this IFR, USCIS has the authority to fully or partially revoke petitions at any time under specified conditions. The approval of any petition may either be immediately and automatically revoked or revoked on notice. An immediate and automatic revocation of an approved petition occurs if the petitioner ceases operations, files a written withdrawal of the petition, or DOL revokes the labor certification upon which the petition is based. For revocation on notice, USCIS has the discretion to send to the petitioner a notice of intent to revoke the petition in relevant part, for good cause, based on grounds for revocation specifically listed in this IFR. The grounds listed in 8 CFR 214.2(w)(27)(iii)

provide clear guidelines for the program consistent with the Workforce Act. This IFR also states that for each beneficiary of a petition revoked entirely or in part in a fiscal year, the numerical limitation for the next fiscal year will be increased by the number of nonimmigrant workers of such petitions subject to such revocation.<sup>137</sup> This means all the petitions revoked in a given year will be added to a subsequent year's numerical cap. To estimate an upper bound cost, DHS assumes that the CW-1 petitions revoked in a given year will be filed in the subsequent year given the larger numerical cap available. Table 13 shows the CW-1 revoked visas (or revoked petitions) that will be filed each year using Form I-129CW. As in the case for initial filing of Form I-129CW, a

petitioner incurs the opportunity cost of time to complete Form I-129CW (\$145.204),<sup>138</sup> the postage cost to mail the form to USCIS (\$53.50), and the costs associated with filing fee (\$460), education funding fee (\$200 per approved beneficiary), and fraud prevention and detection fee (\$50). DHS applies these unit costs to the relevant affected population under consideration to estimate the total cost of filing revoked petitions as shown in Table 26. DHS also estimates the cost of confirming the identity and work authorization of beneficiaries whose permits are revoked and subsequently filed using E-Verify.<sup>139</sup> DHS estimates that the total cost of filing Form I-129CW for revoked petitions is \$108,957 for FYs 2019 to 2030.

<sup>137</sup> See 8 CFR 214.2 (w)(1)(x)(C).

<sup>138</sup> \$145.20 unit cost for opportunity cost of time estimation = 4 hours, the time burden to complete

Form I-129CW × \$56.30 average hourly compensation rate for an HR specialist.

<sup>139</sup> See section V.A.5.ii(c) for the details in the estimation of the case submission and verification cost.

TABLE 26—REVOKED PETITIONS REFILEING COST FOR PETITIONERS  
[FY 2019 to 2030]

Fiscal year	Estimated number revoked permits to be filed (from Table 13) A	Estimated number revoked petitions to be filed (from Table 13) B	OCT to complete Form I-129CW for revoked petitions C = B × 4 hours × \$36.30/hour	Form I-129CW filing fee cost D = B × \$460 filing fee	Education funding fee cost (per worker) E = A × \$200 education fee	Fraud prevention & detection fee cost F = B × \$50 fraud fee	Postage cost to mail completed Form I-129CW G = B × \$53.50 postage cost	Case submission and verification cost (for E-Verify) H = B × 0.121 hours × \$36.30/hour	Total revoked petition filing cost I = C+D+E+F+G+H
2019 .....	16	8	1,162	3,680	3,200	400	428	70.29	8,941
2020 .....	20	10	1,452	4,600	4,000	500	535	87.85	11,176
2021 .....	24	12	1,742	5,520	4,800	600	642	105.42	13,410
2022 .....	23	12	1,670	5,290	4,600	575	615	101.02	12,851
2023 .....	22	11	1,597	5,060	4,400	550	589	96.63	12,292
2024 .....	20	10	1,452	4,600	4,000	500	535	87.85	11,175
2025 .....	18	9	1,307	4,140	3,600	450	482	79.06	10,057
2026 .....	16	8	1,162	3,680	3,200	400	428	70.28	8,940
2027 .....	14	7	1,016	3,220	2,800	350	375	61.49	7,822
2028 .....	12	6	871	2,760	2,400	300	321	52.71	6,705
2029 .....	10	5	726	2,300	2,000	250	268	43.92	5,587
2030 .....									
Total .....	195	98	14,157	44,851	39,001	4,875	5,216	857	108,957

(h) Cost of Appealing Revoked Petitions

As discussed above, the IFR sets forth the conditions that lead to an immediate and automatic revocation and the grounds to revoke on notice the approval of any petition. While the IFR provides that only a petition that has been revoked on notice (in whole or in part) may be appealed, it prohibits the appeal of petitions that are automatically revoked.<sup>140</sup> Due to lack of historical data on the appeal process, DHS is unable to estimate the cost employers incur appealing petitions that have been revoked on notice during the implementation period. However, given that the total number of petitions revoked (due to immediate and automatic as well as on notice revocations) are estimated to be only 197 for FYs 2019 to 2030, DHS assumes that the proportion of appeals due to revocation on notice alone is likely to be smaller.

To show the minimum cost employers appealing revoked petitions are likely to incur, DHS uses the cost of filing Form I-290B, Notice of Appeal or Motion, as a unit cost estimate. The filing fee for Form I-290B is \$675 and the time burden to complete this form is 1.5 hours. DHS multiplies the time burden

by the average hourly compensation rate of a HR specialist (\$36.30) to obtain the opportunity cost of time to complete Form I-290B (\$54.45).<sup>141</sup> Adding the postage cost of mailing the completed form to USCIS (\$53.50) to the above costs, DHS estimates that an affected employer on average incurs a cost of \$782.95 appealing a petition revoked on notice.<sup>142</sup>

iii. Cost to Nonimmigrant CW-2 Applicants

Qualifying dependents (*i.e.*, an eligible spouse or child) of nonimmigrant workers with a CW-1 status are eligible to apply for a grant of a CW-2 status. The CW-2 applicants must use Form I-539, Application to Extend/Change Nonimmigrant Status, to apply for an initial grant or extension of stay of a CW-2 status if the qualifying dependent is in the CNMI. Table 14 shows the number of applications that will be filed each year requesting a CW-2 status for qualifying dependents of nonimmigrant workers in the CNMI in FYs 2019 to 2030.

The filing fee for Form I-539 is \$370 for each dependent applicant and it takes a nonimmigrant applicant 2 hours to review instructions and complete and

submit the form.<sup>143</sup> DHS uses \$10.59 as the average hourly compensation rate for dependent applicants in the CNMI. Additionally, each qualifying dependent applicant must submit a biometric services fee of \$85 with the application, or must obtain a waiver of the biometric services fee for any biometric services provided, including but not limited to reuse of previously provided biometric information for background checks. However, a biometric services fee is not required for qualifying dependents under the age of 14 or who are at least 79 years of age. As described above, historical data are not available to estimate the number of applicants that request a waiver of the biometric services fee in the implementation period.

DHS applies the opportunity cost of time (\$21.18),<sup>144</sup> Form-I-539 filing fee (\$370), biometric fee (\$85), and the postage cost (\$53.50) to the number of applications that will be filed each year for CW-2 status to estimate the total cost of filing applications for CW-2 status as shown in Table 27. DHS estimates that the total cost of filing applications for CW-2 status is \$7,826,181 for nonimmigrant applicants in the CNMI from FYs 2019 to 2030.

<sup>140</sup> See 8 CFR 214.2 (w)(27)–(28).

<sup>141</sup> \$54.45 opportunity cost of time to complete Form I-290 B = 1.5 hours, time burden to complete Form I-290B × \$36.30 hourly compensation rate for a HR specialist.

<sup>142</sup> \$782.95 unit cost of appealing a petition revoked on notice = \$675 filing fee for Form I-290B + \$54.45 opportunity cost of time to complete Form I-290B + \$53.50 postage cost of mailing completed form.

<sup>143</sup> USCIS Office of Policy and Strategy, PRA Compliance Branch, Instruction on Form I-539.

<sup>144</sup> \$21.18 opportunity cost of time = 2 hours, time burden to complete Form I-539 × \$10.59 average hourly compensation rate for CW-2 applicants in the CNMI.

TABLE 27—APPLICATION FILING COST FOR CW-2 STATUS  
[FY 2019 to 2030]

Fiscal year	Estimated number of applications for CW-2 status (from Table 14) A	OCT to complete Form I-539 B = A × 2 hours × \$10.59/hour	Form I-539 filing fee cost C = A × \$370 filing fee	Biometric services fee cost D = A × \$85 biometric fee	Postage cost to mail completed Form I-539 E = A × \$53.50 postage cost	Total application cost for CW-2 status F = B + C + D + E
2019	1,200	\$25,419	\$444,056	\$102,013	\$64,208	\$635,695
2020	1,500	31,773	555,056	127,513	80,258	794,599
2021	1,800	38,124	666,000	153,000	96,300	953,424
2022	1,725	36,536	638,250	146,625	92,288	913,698
2023	1,650	34,947	610,500	140,250	88,275	873,972
2024	1,500	31,770	555,000	127,500	80,250	794,520
2025	1,350	28,593	499,500	114,750	72,225	715,068
2026	1,200	25,416	444,000	102,000	64,200	635,616
2027	1,050	22,239	388,500	89,250	56,175	556,164
2028	900	19,062	333,000	76,500	48,150	476,712
2029	750	15,885	277,500	63,750	40,125	397,260
2030	150	3,177	55,500	12,750	8,025	79,452
Total	14,775	312,941	5,466,861	1,255,901	790,479	7,826,181

Source: USCIS analysis.

iv. Total Estimated and Discounted Costs of Regulatory Changes to Employers and Nonimmigrant CW-2 Applicants

Table 28 summarizes the total estimated and discounted costs of regulatory changes in this IFR to

employers and nonimmigrant CW-2 applicants. DHS estimates the total cost of the rule by summing the total estimated costs in Tables 15, 19, 22 through 27. To compare costs over time, DHS applies 3-percent and 7-percent discount rates to the total estimated

costs of the IFR. Over the 12 years of implementation, DHS estimates that the total cost of the IFR to employers and nonimmigrant CW-2 applicants is \$82,419,653 undiscounted, \$70,327,737 discounted at 3-percent, and \$57,952,479 discounted at 7-percent.

TABLE 28—TOTAL ESTIMATED AND DISCOUNTED COSTS TO EMPLOYERS AND NONIMMIGRANT CW-2 APPLICANTS  
[FY 2019 to 2030]

Fiscal year	Form I-129CW petition filing cost	Total E-Verify program participation cost	Semiannual reporting & document retention cost	Notification cost	Revoked petitions filing cost	Application cost for CW-2 status	Total IFR cost		
							Undiscounted	Discounted at 3%	Discounted at 7%
2019	\$4,633,815	\$249,035	\$1,299,362	\$17,488	\$0	\$635,695	\$6,835,396	\$6,636,307	\$6,388,221
2020	5,792,124	119,571	1,624,162	21,859	8,941	794,599	8,361,257	7,881,287	7,303,046
2021	6,949,854	123,825	1,948,800	26,228	11,176	953,424	10,013,307	9,163,595	8,173,841
2022	6,660,277	117,102	1,867,600	25,136	13,410	913,698	9,597,222	8,527,008	7,321,675
2023	6,370,700	110,326	1,786,400	24,043	12,851	873,972	9,178,292	7,917,275	6,543,995
2024	5,791,545	101,407	1,624,000	21,857	12,292	794,520	8,345,622	6,989,327	5,561,040
2025	5,212,391	92,488	1,461,600	19,671	11,175	715,068	7,512,393	6,108,263	4,678,341
2026	4,633,236	83,525	1,299,200	17,486	10,057	635,616	6,679,120	5,272,559	3,887,309
2027	4,054,082	74,606	1,136,800	15,300	8,940	556,164	5,845,892	4,480,389	3,179,778
2028	3,474,927	65,688	974,400	13,114	7,822	476,712	5,012,663	3,729,892	2,548,184
2029	2,895,773	56,769	812,000	10,929	6,705	397,260	4,179,435	3,019,312	1,985,619
2030	579,155	30,275	162,400	2,186	5,587	79,452	859,055	602,524	381,431
Total	57,047,877	1,224,618	15,996,725	215,296	108,957	7,826,181	82,419,653	70,327,737	57,952,479
Annualized								7,065,271	7,296,332

DHS estimates the net total cost by subtracting the cost savings to petitioners shown in Tables 16 and 17 from the total estimated cost shown in Table 28. To compare the net total estimated costs over time, DHS applies 3-percent and 7-percent discount rates to the net total estimated costs attributable to the IFR. Tables 29 and 30, respectively, show the summary of lower and upper bound undiscounted and discounted net total estimated costs

to employers and nonimmigrant CW-2 applicants.<sup>145</sup> Over the implementation

<sup>145</sup> It should be noted that because the upper bound cost savings are much larger than the lower bound cost savings, DHS subtracts the upper bound cost savings from the total estimated cost to provide a lower bound net total cost. Similarly, DHS subtracts the lower bound cost savings from the total estimated cost to provide an upper bound net total cost. Estimated this way, the lower and upper bound net total costs can provide intuitively meaningful net total costs that range from a low to high value.

period, DHS estimates the lower bound net total estimated costs of the IFR to employers and nonimmigrant CW-2 applicants to be \$73,578,345 undiscounted, \$62,851,776 discounted at 3-percent, and \$51,858,612 discounted at 7-percent. Likewise, DHS estimates the upper bound net total estimated costs of the IFR to employers and nonimmigrant CW-2 applicants to be \$61,741,219 undiscounted, \$52,693,918 discounted at 3-percent,

and \$43,433,060 discounted at 7-percent.<sup>146</sup>

TABLE 29—NET TOTAL ESTIMATED AND DISCOUNTED COSTS (LOWER BOUND)  
[FY 2019 to 2030]

Fiscal year	Total estimated cost A	Transfers B	Cost savings (upper bound) <sup>a</sup> C	Net total IFR cost (lower bound)		
				Undiscounted (= A – B – C)	Discounted at 3%	Discounted at 7%
2019	\$6,835,396			\$6,835,396	\$6,636,307	\$6,388,221
2020	8,361,257	3,200	2,041,311	6,316,746	5,954,139	5,517,291
2021	10,013,307	4,000	510,264	9,499,043	8,692,970	7,754,049
2022	9,597,222	4,800	510,009	9,082,413	8,069,606	6,928,929
2023	9,178,292	4,600	1,913,745	7,259,947	6,262,494	5,176,242
2024	8,345,622	4,400	382,698	7,958,524	6,665,139	5,303,101
2025	7,512,393	4,000	254,877	7,253,516	5,897,772	4,517,125
2026	6,679,120	3,600	1,658,613	5,016,907	3,960,393	2,919,886
2027	5,845,892	3,200	127,566	5,715,126	4,380,168	3,108,650
2028	5,012,663	2,800	0	5,009,863	3,727,809	2,546,760
2029	4,179,435	2,400	1,403,226	2,773,809	2,003,859	1,317,817
2030	859,055	2,000	0	857,055	601,121	380,543
<b>Total</b>	<b>82,419,653</b>	<b>39,000</b>	<b>8,802,309</b>	<b>73,578,345</b>	<b>62,851,776</b>	<b>51,858,612</b>
<b>Annualized</b>					<b>6,310,318</b>	<b>6,528,999</b>

<sup>a</sup> Because the upper bound cost savings are much larger than the lower bound cost savings, DHS subtracts the upper bound cost savings from the total estimated costs to construct a meaningful range for the net total estimated cost.

TABLE 30—NET TOTAL ESTIMATED AND DISCOUNTED COSTS (UPPER BOUND)  
[FY 2019 to 2030]

Fiscal year	Total estimated cost A	Transfers B	Cost savings (Lower bound) <sup>a</sup> C	Net total IFR cost (Upper bound)		
				Undiscounted (= A – B – C)	Discounted at 3%	Discounted at 7%
2019	6,835,396	1,600,200		5,235,196	5,082,715	4,892,707
2020	8,361,257	2,000,200	226,812	6,134,245	5,782,114	5,357,887
2021	10,013,307	2,400,000	56,696	7,556,611	6,915,370	6,168,446
2022	9,597,222	2,300,000	56,668	7,240,554	6,433,138	5,523,784
2023	9,178,292	2,200,000	212,638	6,765,654	5,836,113	4,823,818
2024	8,345,622	2,000,000	42,522	6,303,100	5,278,747	4,200,022
2025	7,512,393	1,800,000	28,320	5,684,073	4,621,672	3,539,755
2026	6,679,120	1,600,000	184,290	4,894,830	3,864,024	2,848,836
2027	5,845,892	1,400,000	14,174	4,431,718	3,396,543	2,410,561
2028	5,012,663	1,200,000	0	3,812,663	2,836,979	1,938,165
2029	4,179,435	1,000,000	155,914	3,023,521	2,184,256	1,436,453
2030	859,055	200,000	0	659,055	462,248	292,628
<b>Total</b>	<b>82,419,653</b>	<b>19,700,400</b>	<b>978,034</b>	<b>61,741,219</b>	<b>52,693,918</b>	<b>43,433,060</b>
<b>Annualized</b>					<b>5,290,469</b>	<b>5,468,222</b>

<sup>a</sup> Because the lower bound cost savings are much smaller than the upper bound cost savings, DHS subtracts the lower bound cost savings from the total estimated costs to construct a meaningful upper range for the net total estimated cost.

E.O. 13771 directs agencies to reduce regulation and control regulatory costs. This interim final rule (IFR) is considered a regulatory action for the purposes of E.O. 13771. The total annualized cost over a perpetual time period using a 7 percent discount rate,

in 2016 dollars, and discounted back to 2016 is \$2,608,771.

v. Costs to DHS

USCIS incurs costs while administering the requirements set forth by this IFR. However, these costs are

covered by fees collected from employers and nonimmigrant workers covered by this rule when they apply for the benefits this IFR provides. Therefore, there are no additional costs incurred by USCIS in this IFR.

<sup>146</sup> Note that the upper bound net total estimated cost is smaller than the lower bound net total cost

due to the fact that the upper bound cost savings are much larger than the lower bound cost savings.

## vi. Benefits of the Regulatory Changes

This IFR specifies the conditions under which DHS intends to implement the statutory changes and provisions in the Workforce Act. This section presents a qualitative description of the benefits of the regulatory changes in the IFR.

The IFR provides an orderly transition from the CNMI permit system to the United States federal immigration system under the Immigration and Nationality Act (INA), which mitigates the potential harm to the CNMI economy as employers adjust their hiring practices and as nonimmigrant workers obtain the United States' nonimmigrant status. In this regard, the purposes of the Workforce Act are (a) to increase the percentage of United States workers in the total workforce of the CNMI, while maintaining the minimum number of non-U.S. workers to meet the changing demands of the CNMI's economy; (b) to encourage the hiring of United States workers into the CNMI workforce; and (c) to ensure that no United States worker is at a competitive disadvantage for employment compared to a non-U.S. worker or is displaced by a non-U.S. worker. The IFR also provides additional benefits to petitioners. The requirement to enroll in the E-Verify program allows employers to ensure that they hire only CW-1 nonimmigrant workers with valid work authorization, serving as an additional layer of the work authorization confirmation process. Recapturing the number of beneficiaries of petitions revoked in a fiscal year by adding it to the CW-1 numerical cap of the next fiscal year can be considered as a benefit to petitioners because it helps preserve the total number of CW-1 visas available each year during the implementation period.

To achieve the stated purposes, the Workforce Act sets numerical caps limiting the total number of permits to be issued to prospective employers each year during the implementation period (FYs 2019 to 2030). To implement the Workforce Act, this IFR establishes terms and conditions to administer and enforce a system for allocating the visas to be issued each year. According to the 2018 GAO report, after nearly a decade of annual decline, the total number of workers employed in the CNMI increased from 2013 through 2016, in which nonimmigrant workers accounted for 53 percent of the total workforce in 2016, compared to 76 percent in 2002.<sup>147</sup> Particularly, during the period

when the number of approved CW-1 permits were increasing from 7,127 in FY 2012 to 12,862 in FY 2017, the proportion of nonimmigrant workers in the CNMI workforce declined from 55 percent to 53 percent.<sup>148</sup> Conversely, this means the proportion of United States workers in the CNMI increased from 45 percent to 47 percent between 2012 and 2017, indicating that the increase in the number of United States workers was higher than the increase in the number of nonimmigrant workers. DHS believes that the Workforce Act will further contribute to this declining trend in the proportion of nonimmigrant workers in the CNMI workforce because it limits the number of permits to be issued to CW-1 nonimmigrants workers to 13,000 for FY 2019 and sets it to decline gradually to 1,000 in FY 2030.

To ensure that no United States worker is at a competitive disadvantage compared to a non-U.S. worker or is displaced by a non-U.S. worker, the Workforce Act prohibits employers from paying nonimmigrant workers a wage that is not less than the greater of (a) the statutory minimum wage in the CNMI, (b) the federal minimum wage, or (c) the prevailing wage in the CNMI for the occupation in which the nonimmigrant worker is employed. The fact that the Workforce Act requires employers not to underpay nonimmigrant workers serves as a protection to the United States workers from unfair competition, and ensures that the employment of the nonimmigrant worker will not adversely affect the wages and working conditions of similarly employed U.S. workers. Additionally, under the Workforce Act, employers must prove to DOL, via the TLC that, there are not sufficient U.S. workers in the CNMI who are able, willing, qualified, and available. These requirements help discourage employers from employing CW-1 nonimmigrant workers at an uncompetitive or unfair wage and from resorting to hiring nonimmigrant workers before they exhaustively search for equally qualified locally available workers.

According to GAO's projection in its 2017 report,<sup>149</sup> if all nonimmigrant

MARIANA ISLANDS, Recent Economic Trends and Preliminary Observations on Workforce Data. GAO-18-373T, Feb. 2018. GAO used the most recent available CNMI tax data.

<sup>148</sup> *Id.* The numerical caps set by DHS on the CNMI-Only Transitional Worker (CW-1) permits available for foreign workers were set to decline from 22,416 in fiscal year 2012 to 13,348 in fiscal year 2017.

<sup>149</sup> United States Government Accountability Office (GAO), Report to Congressional Addressees, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, Implementation of Federal Minimum Wage and Immigration Laws. GAO-17-437, May 2017.

workers with the CW-1 visas were removed from the CNMI's labor market in 2015, the CNMI's 2015 gross domestic product (GDP) would have declined by 26 percent to 62 percent. This shows the continuing demand for and the substantial contribution of these nonimmigrant workers to the CNMI's economy, and hence highlights the significance of the CNMI-Only Transitional Worker program. The GAO report also indicates that the demand for nonimmigrant workers in the CNMI exceeded the available CW-1 visas in 2016. Accordingly, the GAO report projects that the demand for nonimmigrant workers would continue to grow and, if the CNMI-Only Transitional Worker program ended in 2019 in accordance with the termination date established prior to enactment of the Workforce Act, the domestic workforce would be well below the CNMI's demand for labor. DHS believes that the Workforce Act alleviates the anticipated labor shortage in the CNMI as it extends the CNMI-Only Transitional Worker program and makes additional CW-1 visas available for the period extending from FY 2019 to FY 2030.

## C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice and comment rulemaking. This rule is exempt from notice and comment rulemaking. Therefore, a regulatory flexibility analysis is not required for this rule.

## D. 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.

<sup>147</sup> United States Government Accountability Office (GAO), Testimony Before the Committee on Energy and Natural Resources, U.S. Senate, COMMONWEALTH OF THE NORTHERN

This rule is exempt from the written statement requirement, because DHS did not publish a notice of proposed rulemaking for this rule.

In addition, this rule does not exceed the \$100 million expenditure in any one year when adjusted for inflation (\$165 million in 2018 dollars, per the CPI-U), and this rulemaking does not contain such a mandate.

#### *E. Congressional Review Act*

The Office of Information and Regulatory Affairs has determined that this interim final rule is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking pursuant to the Congressional Review Act, Public Law 104-121, sec. 251, 110 Stat. 868, 873 (codified at 5 U.S.C. 804). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

#### *F. Executive Order 13132 (Federalism)*

This interim final rule does 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 No. 13132, 64 FR 43,255 (Aug. 4, 1999), this interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### *G. Executive Order 12988 (Civil Justice Reform)*

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order No. 12988, 61 FR 4729 (Feb. 5, 1996).

#### *H. National Environmental Policy Act (NEPA)*

The DHS Management Directive (Dir.) 023-01 Rev. 01 establishes the procedures that DHS and its components use to comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4375, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500-1508.

The CEQ regulations allow federal agencies to establish, with CEQ review and concurrence, categories of actions ("categorical exclusions") which experience has shown do not

individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(1)(iii), 1508.4. Dir. 023-01 Rev. 01 establishes Categorical Exclusions that DHS has found to have no such effect. Dir. 023-01 Rev. 01 Appendix A Table 1. For an action to be categorically excluded, Dir. 023-01 Rev. 01 requires the action to satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Dir. 023-01 Rev. 01 section V.B (1)-(3).

DHS analyzed this action and has determined that because Congress has left DHS with no discretion as to the number of CW-1 permits that may be issued during the transition period, NEPA, which only applies to discretionary actions, does not apply to this IFR. This regulation largely implements amendments to the Workforce Act that dictates both the initial numbers of CW-1 permits that may be issued by DHS on day one as well as the numbers of visas that may be issued in ten years, leaving DHS no discretion.

#### *I. Paperwork Reduction Act*

Under the PRA of 1995, 44 U.S.C. 3501 *et seq.*, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. DHS is amending application requirements and procedures for aliens to receive nonimmigrant status in the CNMI. DHS has revised Form I-129CW, Petition for CNMI-Only Nonimmigrant Transition Worker, and created a new form, Form I-129CWR, Semiannual Report for CW-1 Employers. These DHS forms are considered information collections and are covered under the PRA. DHS has also updated the estimated number of respondents for the E-Verify information collection. E-Verify is covered under the PRA.

#### Forms I-129CW and I-129CWR

The revised information collection has been submitted for approval to OMB for review and approval under procedures covered under the PRA. USCIS is requesting comments on this information collection for 30 days until June 15, 2020. When submitting comments on the information

collection, your comments should address one or more of the following four points:

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

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

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

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

#### *Overview of information collection:*

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for CNMI-Only Nonimmigrant Transition Worker; Semiannual Report for CW-1 Employers.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-129CW; I-129CWR; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. An employer uses Form I-129CW to petition USCIS for an alien to temporarily enter as a nonimmigrant into the CNMI to perform services or labor as a CNMI-Only Transitional Worker (CW-1). An employer also uses Form I-129CWR to request an extension of stay or change of status on behalf of the alien worker. An employer uses Form I-129CWR to comply with reporting requirements. These forms serve the purpose of standardizing requests for these benefits, and ensuring that the basic information required to determine eligibility, is provided by the petitioners.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-129CW is 5,975 and the estimated hour burden per response is 4 hours; the estimated total number of respondents for the information collection I-129CWR is 5,975 and the estimated hour burden per response is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 38,388 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$3,809,063.

#### E-Verify

The revised information collection has been submitted for approval to OMB for review and approval under procedures covered under the PRA. DHS has revised the estimated number of respondents for this information collection, and noted that E-Verify enrollment will be mandatory for employers petitioning for a CW-1 nonimmigrant worker. USCIS is requesting comments on this information collection for 30 days until June 15, 2020. When submitting comments on the information collection, your comments should address one or more of the following four points:

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

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

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

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

#### Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* E-Verify Program.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No form number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. E-Verify allows employers to electronically confirm the employment eligibility of newly hired employees.

(5) *An estimate of the total number of respondents and the amount of time*

*estimated for an average respondent to respond:*

○ 66,330 respondents averaging 2.26 hours (2 hours, 16 minutes) per response (enrollment time includes review and signing of the MOU, registration, new user training, and review of the user guides); plus

○ 425,000, the number of already-enrolled respondents receiving training on new features and system updates averaging 1 hour per response; plus

○ 425,000, the number of respondents submitting E-Verify cases averaging .129 hours (approximately 8 minutes) per case.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,590,281 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$1,887,000.

#### J. Family Assessment

DHS has reviewed this regulation and has determined that it may affect family well-being as that term is defined in section 654 of the Treasury General Appropriations Act, 1999, Public Law 105-277, Div. A, 112 Stat. 2681-528 (Oct. 21, 1998), as amended, 5 U.S.C. 601 note. This action has been assessed in accordance with the criteria specified by section 654(c)(1). This regulation will enhance family well-being by providing immigration benefits that enhance the economic opportunities for those granted CW-1 status and allows certain family members to obtain CW-2 nonimmigrant status once the principal applicant has received status, while also addressing public safety and fraud concerns.

#### K. Signature

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel, for purposes of publication in the **Federal Register**.

#### List of Subjects

##### 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

##### 8 CFR Part 208

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

##### 8 CFR Part 209

Aliens, Immigration, Refugees.

##### 8 CFR Part 212

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

##### 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign Officials, Health Professions, Reporting and recordkeeping requirements, Students.

##### 8 CFR Part 235

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

##### 8 CFR Part 274a

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

#### Regulatory Amendments

Accordingly, DHS amends 8 CFR parts 103, 208, 209, 212, 214, 235, and 274a as follows:

#### PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 48 U.S.C. 1806; Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*), E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112-54, 125 Stat 550. Pub. L. 115-218.

■ 2. Section 103.7 is amended by revising paragraphs (b)(1)(i)(J) to read as follows:

##### § 103.7 Fees.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) \* \* \*

(J) Petition for Nonimmigrant Worker in CNMI, Form I-129CW. For an employer to petition on behalf of one or more beneficiaries: \$460 plus the following fees: A supplemental CNMI education funding fee of \$200 per beneficiary per year and a \$50 fraud prevention and detection fee per employer filing a petition. The CNMI

education and fraud fees cannot be waived. The Secretary may adjust the education fee annually by notice in the Federal Register for petitions filed on or after each adjustment's effective date, based on a percentage equal to the annual change in the unadjusted All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average published by the Bureau of Labor Statistics.

**PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL**

■ 3. The authority citation for part 208 is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110-229; 8 CFR part 2; Pub. L. 115-218.

■ 4. Section 208.1 is amended by revising the first two sentences of paragraph (a)(2) to read as follows:

**§ 208.1 General.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \* The provisions of this subpart A shall not apply prior to January 1, 2030, to an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands seeking to apply for asylum. No application for asylum may be filed prior to January 1, 2030, pursuant to section 208 of the Act by an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands.

\* \* \* \* \*

■ 5. Section 208.2 is amended by revising paragraphs (c)(1)(iii), (iv), (vii), and (viii) to read as follows:

**§ 208.2 Jurisdiction.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) An alien who is an applicant for admission pursuant to the Visa Waiver Program under section 217 of the Act, except that if such an alien is an applicant for admission to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum prior to January 1, 2030;

(iv) An alien who was admitted to the United States pursuant to the Visa Waiver Program under section 217 of the Act and has remained longer than authorized or has otherwise violated his or her immigration status, except that if such an alien was admitted to the Commonwealth of the Northern Mariana Islands, then he or she shall not be

eligible for asylum in the Commonwealth of the Northern Mariana Islands prior to January 1, 2030;

\* \* \* \* \*

(vii) An alien who is an applicant for admission to Guam or the Commonwealth of the Northern Mariana Islands pursuant to the Guam-CNMI Visa Waiver Program under section 212(l) of the Act, except that if such an alien is an applicant for admission to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum prior to January 1, 2030; or

(viii) An alien who was admitted to Guam or the Commonwealth of the Northern Mariana Islands pursuant to the Guam-CNMI Visa Waiver Program under section 212(l) of the Act and has remained longer than authorized or has otherwise violated his or her immigration status, except that if such an alien was admitted to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum in the Commonwealth of the Northern Mariana Islands prior to January 1, 2030.

\* \* \* \* \*

■ 6. Section 208.4 is amended by revising the last three sentences of paragraph (a)(2)(ii) to read as follows:

**§ 208.4 Filing the application.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(ii) \* \* \* For aliens present in or arriving in the Commonwealth of the Northern Mariana Islands, the 1-year period shall be calculated from either January 1, 2030 or the date of the alien's last arrival in the United States (including the Commonwealth of the Northern Mariana Islands), whichever is later. No period of physical presence in the Commonwealth of the Northern Mariana Islands prior to January 1, 2030, shall count toward the 1-year period. After November 28, 2009, any travel to the Commonwealth of the Northern Mariana Islands from any other State shall not re-start the calculation of the 1-year period.

\* \* \* \* \*

■ 7. Section 208.5 is amended by revising the last sentences of paragraphs (a) and (b)(1)(iii) to read as follows:

**§ 208.5 Special duties toward aliens in custody of DHS.**

(a) \* \* \* No application for asylum may be filed prior to January 1, 2030, under section 208 of the Act by an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands.

(b) \* \* \*

(1) \* \* \*

(iii) \* \* \* However, such an alien crewmember is not eligible to request asylum pursuant to section 208 of the Act prior to January 1, 2030.

\* \* \* \* \*

■ 8. Section 208.30 is amended by revising the last sentences of paragraphs (a) and (e)(2) to read as follows:

**§ 208.30 Credible fear determinations involving stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act or whose entry is limited or suspended under section 212(f) or 215(a)(1) of the Act.**

(a) \* \* \* Prior to January 1, 2030, an alien present in or arriving in the Commonwealth of the Northern Mariana Islands is ineligible to apply for asylum and may only establish eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \* However, prior to January 1, 2030, in the case of an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands, the officer may only find a credible fear of persecution if there is a significant possibility that the alien can establish eligibility for withholding of removal pursuant to section 241(b)(3) of the Act.

\* \* \* \* \*

**PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM**

■ 9. The authority citation for part 209 is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; Title VII of Pub. L. 110-229; 8 CFR part 2; Pub. L. 115-218.

■ 10. Section 209.2 is amended by revising paragraph (a)(3) to read as follows:

**§ 209.2 Adjustment of status of alien granted asylum.**

\* \* \* \* \*

(a) \* \* \*

(3) No alien arriving in or physically present in the Commonwealth of the Northern Mariana Islands may apply to adjust status under section 209(b) of the Act in the Commonwealth of the Northern Mariana Islands prior to January 1, 2030.

\* \* \* \* \*

**PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE**

■ 11. The authority citation for part 212 is revised to read as follows:

**Authority:** 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; section 7209 of Pub. L. 108–458 (8 U.S.C. 1185 note); Title VII of Pub. L. 110–229 (8 U.S.C. 1185 note); 8 CFR part 2; Pub. L. 115–218.

Section 212.1(q) also issued under section 702, Pub. L. 110–229, 122 Stat. 754, 854.

■ 12. Section 212.1 is amended by revising the last two sentences of paragraphs (q)(8)(i)(A) and (q)(8)(ii)(A) to read as follows:

**§ 212.1 Documentary requirements for nonimmigrants.**

\* \* \* \* \*

(q) \* \* \*

(8) \* \* \*

(i) \* \* \*

(A) \* \* \* The provisions of 8 CFR subpart 208 subpart A shall not apply to an alien present or arriving in the CNMI seeking to apply for asylum prior to January 1, 2030. No application for asylum may be filed pursuant to section 208 of the Act by an alien present or arriving in the CNMI prior to January 1, 2030; however, aliens physically present in the CNMI during the transition period who express a fear of persecution or torture only may establish eligibility for withholding of removal pursuant to INA 241(b)(3) or pursuant to the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

\* \* \* \* \*

(ii) \* \* \*

(A) \* \* \* The provisions of 8 CFR part 208 subpart A shall not apply to an alien present or arriving in the CNMI seeking to apply for asylum prior to January 1, 2030. No application for asylum may be filed pursuant to section 208 of the INA by an alien present or arriving in the CNMI prior to January 1, 2030; however, aliens physically present or arriving in the CNMI prior to January 1, 2030, may apply for withholding of removal under section 241(b)(3) of the Act and withholding and deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture, Inhuman or Degrading Treatment or Punishment.

\* \* \* \* \*

**PART 214—NONIMMIGRANT CLASSES**

■ 13. The authority citation for part 214 is revised to read as follows:

**Authority:** 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218.

■ 14. Section 214.2 is amended by revising paragraphs (e)(23)(ii)(F) and (e)(23)(xiv) to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(23) \* \* \*

(ii) \* \* \*

(F) Transition period means the period beginning on the transition program effective date and ending on December 31, 2029.

\* \* \* \* \*

(xiv) *Expiration of the transition period.* Upon expiration of the transition period, the E–2 CNMI Investor nonimmigrant status will automatically terminate.

\* \* \* \* \*

■ 16. Section 214.2 is amended by revising paragraph (w) to read as follows:

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

\* \* \* \* \*

(w) *CNMI-Only Transitional Worker (CW–1)—(1) Definitions.* The following definitions apply to petitions for and maintenance of CW status in the Commonwealth of the Northern Mariana Islands (the CNMI or the Commonwealth):

(i) *CW–1 Application for Temporary Employment Certification* means the Office of Management and Budget (OMB)-approved Form ETA–9142C (or successor form) and the appropriate appendices, a valid prevailing wage determination (Form ETA–9141C, or successor form), and all supporting documentation submitted by an employer, as set forth in the U.S. Department of Labor’s (DOL) regulations at 20 CFR 655.420 through 655.422, to secure a temporary labor certification determination from DOL’s Office of Foreign Labor Certification (OFLC) Administrator.

(ii) *Direct Guam transit* means travel from the CNMI to a foreign place by an alien in CW status, or from a foreign place to the CNMI by an alien with a valid CW visa, on a direct itinerary involving a flight stopover or connection in Guam (and no other place).

(iii) *Doing business* means the regular, systematic, and continuous provision of goods or services by an employer as defined in this paragraph and does not include the mere presence of an agent or office of the employer in the CNMI.

(iv) *Employer* means a person, firm, corporation, contractor, or other association, or organization which:

(A) Engages a person to work within the CNMI; and

(B) Has or will have an employer-employee relationship with the CW–1 nonimmigrant being petitioned for.

(v) *Employer-employee relationship* means that the employer will hire, pay, fire, supervise, and control the work of the employee.

(vi) *Lawfully present in the CNMI* means that the alien was lawfully admitted or paroled into the CNMI under the immigration laws on or after the transition program effective date, other than an alien admitted or paroled as a visitor for business or pleasure (B–1 or B–2, under any visa-free travel provision or parole of certain visitors from Russia and the People’s Republic of China), and remains in a lawful immigration status or if paroled into the CNMI, the authorized parole period has not expired.

(vii) *Legitimate business*, as determined by DHS, means a real, active, and operating commercial or entrepreneurial undertaking that:

(A) Produces services or goods for profit, or is a governmental, charitable or other validly recognized nonprofit entity;

(B) Meets applicable legal requirements for doing business in the CNMI;

(C) Has substantially complied with wage and hour laws, occupational safety and health requirements, nondiscrimination, and all other Federal, CNMI, and local requirements relating to employment during the five-year period immediately preceding the date of filing the petition, and continues to be in substantial compliance with such requirements;

(D) Does not directly or indirectly engage in, or knowingly benefit from, prostitution, human trafficking, or any other activity that is illegal under Federal, CNMI, or local law;

(E) Is a participant in good standing in the E-Verify program;

(F) Does not have, as an owner, investor, manager, operator, or person meaningfully involved with the undertaking, any individual who has been an owner, investor, manager, operator, or person otherwise meaningfully involved with an undertaking that was not in compliance with paragraph (w)(1)(vii)(C) of this section at the time of the individual's involvement and within the five years immediately preceding the date of filing the petition; or that was not in compliance with clause paragraph (w)(1)(vii)(D) of this section at any time during which the individual was involved with the undertaking, or is an agent of such individual; and

(G) Is not a successor in interest to an undertaking that has not complied with paragraphs (C) or (D).

(viii) *Long-term worker* means an alien who was admitted to the CNMI, or otherwise granted status, as a CW-1 nonimmigrant during fiscal year 2015, and during each of fiscal years 2016 through 2018.

(ix) *Minor child* means a child as defined in section 101(b)(1) of the Act who is under 18 years of age.

(x) *Numerical limitation* means the maximum number of persons who may be granted CW-1 status in a given fiscal year, as follows:

(A) For fiscal years 2018 through the first quarter of fiscal year 2030, the numerical limitations are:

- (1) 9,998 for fiscal year 2018;
- (2) 13,000 for fiscal year 2019;
- (3) 12,500 for fiscal year 2020;
- (4) 12,000 for fiscal year 2021;
- (5) 11,500 for fiscal year 2022;
- (6) 11,000 for fiscal year 2023;
- (7) 10,000 for fiscal year 2024;
- (8) 9,000 for fiscal year 2025;
- (9) 8,000 for fiscal year 2026;
- (10) 7,000 for fiscal year 2027;
- (11) 6,000 for fiscal year 2028;
- (12) 5,000 for fiscal year 2029; and
- (13) 1,000 for the first quarter of fiscal year 2030.

(B) A long-term worker granted CW-1 nonimmigrant status for a period exceeding one year shall be counted toward the numerical limitation, and toward any reservation of CW-1 numbers, as described in paragraph (w)(1)(x)(D)(1) of this section, if applicable, for each fiscal year within the period of petition validity.

(C) For each petition revoked entirely or in part in a fiscal year, the numerical limitation for the next fiscal year shall be increased by the number of beneficiaries of such petitions subject to such revocation before the end of the validity period of the petition.

(D)(i) Within the numerical limitations described in paragraph

(w)(1)(x)(A) of this section, the following reservations of CW-1 numbers for specified occupational categories shall apply:

(i) 200 for occupational categories 29-0000 (Healthcare Practitioners and Technical Occupations) and 31-0000 (Healthcare Support Occupations); and

(ii) 60 for occupational categories related to the operations of the CNMI public utilities services, including, but not limited to, 17-2081 (Water/Waste Water Engineers), 17-2071 (Electrical Engineers), 17-2141 (Mechanical Engineers), and Trades Technicians.

(2) Reserved CW-1 numbers described in paragraph (w)(1)(x)(D)(1) of this section will be made available to eligible petitioners requesting such numbers for a fiscal year in order of filing, separately under either paragraph (w)(1)(x)(D)(1)(i) or (ii) of this section, until exhausted. Unused reserved numbers under either paragraph (w)(1)(x)(D)(1)(i) or (ii) of this section will not be available to other petitioners.

(3) DHS may adjust the reservation of numbers for specified occupational categories for a fiscal year or other period via publication of a notice in the **Federal Register**, as long as such adjustment is consistent with paragraph (w)(1)(x)(A) of this section. DHS will base any such adjustment on factors including: The level of past demand for reserved numbers compared to supply; whether a reservation of numbers has resulted in unused numbers; reservation of numbers compared to overall numerical limitation in a fiscal year; and any recommendation received from the Governor of the CNMI regarding the adjustment of the reservation of numbers.

(E) If the numerical limitation is not reached for a specified fiscal year, unused numbers do not carry over to the next fiscal year.

(F) If USCIS receives a sufficient number of petitions to meet the numerical limitation in paragraph (w)(1)(x)(A) of this section in a fiscal year, USCIS will cease processing further cap-subject petitions in that fiscal year, and DOL may cease processing cap-subject applications for temporary labor certification for that fiscal year.

(xi) *Occupational category* means those employment activities that DHS has determined require alien workers to supplement the resident workforce and includes:

- (A) Professional, technical, or management occupations;
- (B) Clerical and sales occupations;
- (C) Service occupations;
- (D) Agricultural, fisheries, forestry, and related occupations;

- (E) Processing occupations;
- (F) Machine trade occupations;
- (G) Benchwork occupations;
- (H) Structural work occupations; and
- (I) Miscellaneous occupations.

(xii) *Participant in good standing in the E-Verify program* means an employer, as defined in paragraph (w)(1)(iv) of this section, that has enrolled in E-Verify with respect to all hiring sites in the United States as of the time of filing a petition; is in compliance with all requirements of the E-Verify program, including but not limited to verifying the employment eligibility of newly hired employees in the United States; and continues to be a participant in good standing in E-Verify at any time during which the employer employs any CW-1 nonimmigrant.

(xiii) *Petition* means USCIS Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, a successor form, other form, or electronic equivalent, any supplemental information requested by USCIS, and additional evidence as may be prescribed or requested by USCIS.

(xiv) *Successor in interest* means an employer that is controlling and carrying on the business of a previous employer. The following factors may be considered in determining whether an employer is a successor in interest; no one factor is dispositive, but all of the circumstances will be considered as a whole:

- (A) Substantial continuity of the same business operations;
- (B) Use of the same facilities;
- (C) Continuity of the work force;
- (D) Similarity of jobs and working conditions;
- (E) Similarity of supervisory personnel;
- (F) Whether the former management or owner retains a direct or indirect interest in the new enterprise;
- (G) Similarity in machinery, equipment, and production methods;
- (H) Similarity of products and services; and
- (I) The ability of the predecessor to provide relief.

(xv) *Temporary Labor Certification or TLC* means the certification made by the DOL OFLC Administrator, based on the CW-1 Application for Temporary Employment Certification, and all supporting documentation, with respect to an employer seeking to file with a CW-1 petition.

(xvi) *Transition period* means the period beginning on the transition program effective date and ending on December 31, 2029.

(xvii) *United States worker* means a citizen or national of the United States,

an alien lawfully admitted for permanent residence, or a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau who is eligible for nonimmigrant admission and is employment-authorized under the Compacts of Free Association between the United States and those nations.

(2) *Eligible aliens.* Subject to the numerical limitation, an alien may be classified as a CW-1 nonimmigrant if, during the transition period, the alien:

(i) Will enter or remain in the CNMI for the purpose of employment within the transition period in an occupational category that DHS has designated as requiring alien workers to supplement the resident workforce;

(ii) Is petitioned for by an employer;

(iii) Is not present in the United States, other than the CNMI;

(iv) If present in the CNMI, is lawfully present in the CNMI;

(v) Is not inadmissible to the United States as a nonimmigrant or has been granted a waiver of each applicable ground of inadmissibility;

(vi) Is ineligible for status in a nonimmigrant worker classification under section 101(a)(15) of the Act; and

(vii) Will not be employed in a Construction and Extraction Occupation (as defined by the U.S. Department of Labor as Standard Occupational Classification Group 47-0000 or successor provision) unless the alien is a long-term worker.

(3) *Derivative beneficiaries—CW-2 nonimmigrant classification.* The spouse or minor child of a CW-1 nonimmigrant may accompany or follow the alien as a CW-2 nonimmigrant if the alien:

(i) Is not present in the United States, other than the CNMI;

(ii) If present in the CNMI, is lawfully present in the CNMI; and

(iii) Is not inadmissible to the United States as a nonimmigrant or has been granted a waiver of each applicable ground of inadmissibility.

(4) *Eligible employers.* To be eligible to petition for a CW-1 nonimmigrant worker, an employer must:

(i) Be engaged in legitimate business;

(ii) Obtain a TLC from DOL and consider all available United States workers for the position being filled by the CW-1 worker;

(iii) Offer terms and conditions of employment which are consistent with the nature of the petitioner's business and the nature of the occupation, activity, and industry in the CNMI; and

(iv) Comply with all Federal and Commonwealth requirements relating to employment, including but not limited to nondiscrimination, occupational

safety, and minimum wage requirements.

(5) *Petition requirements.* An employer who seeks to classify an alien as a CW-1 worker must file a petition with USCIS and pay the requisite petition fees as provided in 8 CFR 103.7(b)(1)(i)(J), along with any required documents and in accordance with form instructions. An employer filing a petition is eligible to apply for a waiver of the petition fee (but not the CNMI education fee or the fraud prevention and detection fee) based upon inability to pay as provided by 8 CFR 103.7(c). If the beneficiary will perform services for more than one employer, each employer must file a separate petition with fees with USCIS.

(6) *Appropriate documents.* Documentary evidence establishing eligibility for CW status is required. A petition must be accompanied by:

(i) Evidence demonstrating the petitioner meets the definition of eligible employer in this section;

(ii) An attestation by the petitioner certified as true and accurate by an appropriate official of the petitioner, of the following:

(A) The employer has not displaced and will not displace a United States worker in order to employ the beneficiary as agreed to in the *CW-1 Application for Temporary Employment Certification*;

(B) The employer is doing business as defined in paragraph (w)(1)(iii) of this section;

(C) The employer is a legitimate business as defined in paragraph (w)(1)(vii) of this section;

(D) The employer is an eligible employer as described in paragraph (w)(4) of this section and will continue to comply with the requirements for an eligible employer until such time as the employer no longer employs the CW-1 nonimmigrant worker;

(E) The beneficiary meets the qualifications for the position;

(F) The beneficiary, if present in the CNMI, is lawfully present in the CNMI;

(G) The position is not temporary or seasonal employment, and the petitioner does not reasonably believe it to qualify as eligible for any other nonimmigrant worker classification, including H-2A or H-2B;

(H) The position falls within the list of occupational categories designated by DHS;

(I) The petitioner will pay the beneficiary a wage that is not less than the greater of—

(1) The CNMI minimum wage;

(2) The Federal minimum wage; or

(3) The prevailing wage in the CNMI for the occupation in which the

beneficiary will be employed as established by the U.S. Department of Labor; and

(J) The petitioner will comply with the reporting and retention requirements in paragraph 26.

(iii) Evidence of licensure if an occupation requires a Commonwealth or local license for an individual to fully perform the duties of the occupation. Categories of valid licensure for CW-1 classification are:

(A) *Licensure.* An alien seeking CW-1 classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the CNMI and immediately engage in employment in the occupation.

(B) *Temporary licensure.* If a temporary license is available and allowed for the occupation with a temporary license, USCIS may grant the petition at its discretion after considering the duties performed, the degree of supervision received, and any limitations placed on the alien by the employer and/or pursuant to the temporary license.

(C) *Duties without licensure.* If the CNMI allows an individual to fully practice the occupation that usually requires a license without a license under the supervision of licensed senior or supervisory personnel in that occupation, USCIS may grant CW-1 status at its discretion after considering the duties performed, the degree of supervision received, and any limitations placed on the alien if the facts demonstrate that the alien under supervision could fully perform the duties of the occupation.

(iv) For any petition requesting an employment start date on or after October 1, 2019, including both new petitions and petitions for renewal of an existing permit, a TLC approved by DOL, confirming that there are not sufficient United States workers in the CNMI who are able, willing, qualified, and available at the time and place needed to perform the services or labor involved in the petition, and that the employment of the CW-1 nonimmigrant will not adversely affect the wages and working conditions of similarly employed United States workers. If the TLC accepts certain education, training, experience, or special requirements of the beneficiary, the petition must also be accompanied by documentation that the CW-1 nonimmigrant worker qualifies for the job offer as specified in the TLC.

(7) *Change of employers.* A change of employment to a new employer inconsistent with paragraphs (w)(7)(i) and (ii) of this section will constitute a failure to maintain status within the

meaning of section 237(a)(1)(C)(i) of the Act. A CW-1 nonimmigrant may change employers if:

(i) The prospective new employer files a petition to classify the alien as a CW-1 worker in accordance with paragraph (w)(5) of this section, and

(ii) An extension of the alien's stay is requested if necessary for the validity period of the petition.

(iii) A CW-1 worker may work for a prospective new employer after the prospective new employer files a Form I-129CW petition on the employee's behalf if:

(A) The prospective employer has filed a nonfrivolous petition for new employment before the date of expiration of the CW-1 worker's authorized period of stay; and

(B) Subsequent to his or her lawful admission, the CW-1 worker has not been employed without authorization in the United States.

(iv) Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such authorization shall cease.

(v) If a CW-1 worker's employment has been terminated prior to the filing of a petition by a prospective new employer consistent with paragraphs (w)(7)(i) and (ii), or if the CW-1's current petition has been revoked (other than for the reason described in paragraph (w)(27)(iii)(A)(7) of this section) the CW-1 worker will not be considered to be in violation of his or her CW-1 status during the 30-day period immediately following the date on which the CW-1 worker's employment terminated if a nonfrivolous petition for new employment is filed consistent with this paragraph within that 30-day period and the CW-1 worker does not otherwise violate the terms and conditions of his or her status during that 30-day period.

(8) *Amended or new petition.* If there are any material changes in the terms and conditions of employment, the petitioner must file an amended or new petition to reflect the changes. An amended or new petition must be submitted with a new TLC approved by DOL.

(9) *Multiple beneficiaries.* A petitioning employer may include more than one beneficiary in a CW-1 petition if the beneficiaries will be working in the same occupational category, under the same terms and conditions, for the same period of time, and in the same location.

(10) *Named beneficiaries.* The petition must include the name of the beneficiary and other required information, as indicated in the form

instructions, at the time of filing. Unnamed beneficiaries are not permitted.

(11) *Early termination.* The petitioning employer must pay the reasonable cost of return transportation of the alien to the alien's last place of foreign residence if the alien is dismissed from employment for any reason by the employer before the end of the period of authorized admission.

(12) *Approval.* USCIS will consider all the evidence submitted and such other evidence required in the form instructions to adjudicate the petition. USCIS will notify the petitioner of the approval of the petition on Form I-797, Notice of Action, or in another form as USCIS may prescribe.

(i) The approval notice will include the CW-1 classification and name of the beneficiary or beneficiaries and the petition's period of validity. A petition for more than one beneficiary may be approved in whole or in part.

(ii) The application for a TLC may not be filed with DOL earlier than 120 days before the date of actual need for the beneficiary's services for an initial petition for CW-1 status, or 180 days before the date of expiration of CW-1 status in the case of an extension petition described in paragraph (w)(18) of this section. The petition may then be filed with USCIS after the TLC is approved. If DOL debars an employer from obtaining a CW-1 TLC, USCIS may not approve future petitions during the debarment period.

(13) *Petition validity.* An approved petition will be valid for a period of up to one year, unless the beneficiary is a long-term worker in which case an approved petition will be valid for a period of up to three years.

(14) *Validity of the labor certification.* A TLC is valid only for the period of employment as approved on the CW-1 *Application for Temporary Employment Certification*. The TLC expires on the last day of authorized employment.

(15) *How to apply for CW-1 or CW-2 status.* (i) Upon approval of the petition, a beneficiary, his or her eligible spouse, and his or her minor child(ren) outside the CNMI will be informed in the approval notice of where they may apply for a visa authorizing admission in CW-1 or CW-2 status.

(ii) If the beneficiary is present in the CNMI, the petition also serves as the application for a grant of status as a CW-1.

(iii) If the eligible spouse and/or minor child(ren) are present in the CNMI, the spouse or child(ren) may apply for CW-2 dependent status on Form I-539 (or such alternative form as USCIS may designate) in accordance

with the form instructions. The CW-2 status may not be approved until approval of the CW-1 petition. A spouse or child applying for CW-2 status on Form I-539 is eligible to apply for a waiver of the fee based upon inability to pay as provided by 8 CFR 103.7(c).

(16) *Biometrics and other information.* The beneficiary of a CW-1 petition or the spouse or child applying for a grant or, extension of CW-2 status, or a change of status to CW-2 status, must submit biometric information as requested by USCIS. For a petition where the beneficiary is present in the CNMI, the employer must submit the biometric service fee described in 8 CFR 103.7(b)(1) with the petition for each beneficiary for which CW-1 status is being requested or request a fee waiver for any biometric services provided, including but not limited to reuse of previously provided biometric information for background checks. For a Form I-539 application where the applicant is present in the CNMI, the applicant must submit a biometric service fee for each CW-2 nonimmigrant on the application with the application or obtain a waiver of the biometric service fee described in 8 CFR 103.7(b)(1) for any biometric services provided, including but not limited to reuse of previously provided biometric information for background checks. A biometric service fee is not required for beneficiaries under the age of 14, or who are at least 79 years of age.

(17) *Period of admission.* (i) A CW-1 nonimmigrant will be admitted for the period of petition validity, plus up to 10 days before the validity period begins and 10 days after the validity period ends. The CW-1 nonimmigrant may not work except during the validity period of the petition. A CW-2 spouse will be admitted for the same period as the principal alien. A CW-2 minor child will be admitted for the same period as the principal alien, but such admission will not extend beyond the child's 18th birthday.

(ii) The temporary departure from the CNMI of the CW-1 nonimmigrant will not affect the derivative status of the CW-2 spouse and minor children, provided the familial relationship continues to exist and the principal remains eligible for admission as a CW-1 nonimmigrant.

(18) *Extension of petition validity and extension of stay.* (i) The petitioner may request an extension of an employee's CW-1 nonimmigrant status by filing a new petition.

(ii) A request for a petition extension may be filed only if the validity of the original petition has not expired.

(iii) Extensions of CW-1 status may be granted for a period of up to 1 year (or a period of up to 3 years if the beneficiary is a long-term worker) until the end of the transition period, subject to any numerical limitation.

(iv) To qualify for an extension of stay, the petitioner must demonstrate that the beneficiary or beneficiaries:

(A) Continuously maintained the terms and conditions of CW-1 status;

(B) Remains admissible to the United States; and

(C) Remains eligible for CW-1 classification.

(v) A beneficiary (other than a long-term worker) may not be granted CW-1 status beyond three consecutive petition validity periods unless the beneficiary has departed and remained outside of the United States for a continuous period of at least 30 days after the expiration of the third petition validity period and before the filing of any new petition on behalf of the beneficiary.

(vi) The derivative CW-2 nonimmigrant may file an application for extension of nonimmigrant stay on Form I-539 (or such alternative form as USCIS may designate) in accordance with the form instructions. The CW-2 status extension may not be approved until approval of the CW-1 extension petition.

(19) *Change or adjustment of status.* A CW-1 or CW-2 nonimmigrant can apply to change nonimmigrant status under section 248 of the Act or apply for adjustment of status under section 245 of the Act, if otherwise eligible. During the transition period, CW-1 or CW-2 nonimmigrants may be the beneficiary of a petition for or may apply for any nonimmigrant or immigrant visa classification for which they may qualify.

(20) *Effect of filing an application for or approval of a permanent labor certification, preference petition, or filing of an application for adjustment of status on CW-1 or CW-2 classification.* An alien may be granted, be admitted in and maintain lawful CW-1 or CW-2 nonimmigrant status while, at the same time, lawfully seeking to become a lawful permanent resident of the United States, provided he or she intends to depart the CNMI voluntarily at the end of the period of authorized stay. The filing of an application for or approval of a permanent labor certification or an immigrant visa preference petition, the filing of an application for adjustment of status, or the lack of residence abroad will not be the basis for denying:

(i) A CW-1 petition filed on behalf of the alien;

(ii) A request to extend a CW-1 status pursuant to a petition previously filed on behalf of the alien;

(iii) An application for CW-2 classification filed by an alien;

(iv) A request to extend CW-2 status pursuant to the extension of a related CW-1 alien's extension; or

(v) An application for admission as a CW-1 or CW-2 nonimmigrant.

(21) *Rejection.* USCIS may reject an employer's petition for new or extended CW-1 status if any numerical limitation has been met. In that case, the petition and accompanying fee will be rejected and returned with the notice that numbers are unavailable for the CW nonimmigrant classification. The beneficiary's application for admission based upon an approved petition will not be rejected based upon the numerical limitation.

(22) *Denial.* The ultimate decision to grant or deny CW-1 or CW-2 classification or status is a discretionary determination, and the petition or the application may be denied for failure of the petitioner or the applicant to demonstrate eligibility or for other good cause. The denial of a petition to classify an alien as a CW-1 may be appealed to the USCIS Administrative Appeals Office or any successor body. The denial of CW-1 or CW-2 status within the CNMI, or of an application for change or extension of status filed under this section, may not be appealed.

(23) *Terms and conditions of CW Nonimmigrant status—(i) Geographical limitations.* CW-1 and CW-2 statuses are only applicable in the CNMI. Entry, employment and residence in the rest of the United States (including Guam) require the appropriate visa or visa waiver and nonimmigrant classification. Except as provided in paragraph (w)(23)(iii) of this section, an alien with CW-1 or CW-2 status who enters or attempts to enter, or travels or attempts to travel to any other part of the United States without an appropriate visa or visa waiver, or who violates conditions of nonimmigrant stay applicable to any such authorized status in any other part of the United States, will be deemed to have violated CW-1 or CW-2 status.

(ii) *Re-entry.* An alien with CW-1 or CW-2 status who travels abroad from the CNMI will require a CW-1 or CW-2 or other appropriate visa to be re-admitted to the CNMI.

(iii) *Travel outside the CNMI—(A) Direct Guam transit from the CNMI.* An alien with CW-1 or CW-2 status may travel to a foreign place via a direct Guam transit without being deemed to violate that status.

(B) *Travel from a foreign place to the CNMI.* An alien with a valid CW-1 or

CW-2 visa, who is admissible to the CNMI in such status, may be admitted to the United States in CW-1 or CW-2 status in Guam for the purpose of a direct Guam transit to the CNMI. An alien who violates the terms of direct Guam transit violates his or her CW-1 or CW-2 status.

(iv) *Employment authorization.* An alien with CW-1 nonimmigrant status is only authorized employment in the CNMI for the petitioning employer. An alien with CW-2 status is not authorized to be employed.

(24) *Expiration of status.* CW-1 status expires when the alien violates his or her CW-1 status (or in the case of a CW-1 status violation caused solely by termination of the alien's employment, at the end of the 30 day period described in paragraph (w)(7)(v) of this section), 10 days after the end of the petition's validity period, when the petition is revoked, or at the end of the transitional worker program, whichever is earlier. CW-2 nonimmigrant status expires when the status of the related CW-1 alien expires, on a CW-2 minor child's 18th birthday, when the alien violates his or her status, or at the end of the transitional worker program, whichever is earlier. No alien will be eligible for admission to the CNMI in CW-1 or CW-2 status, and no CW-1 or CW-2 visa will be valid for travel to the CNMI, after the transitional worker program ends.

(25) *Waivers of inadmissibility for applicants lawfully present in the CNMI.* An applicant for CW-1 or CW-2 nonimmigrant status, who is otherwise eligible for such status and otherwise admissible to the United States, and who possesses appropriate documents demonstrating that the applicant is lawfully present in the CNMI, may be granted a waiver of inadmissibility under section 212(d)(3)(A)(ii) of the Act, including the grounds of inadmissibility described in sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i)(II) of the Act, as a matter of discretion for the purpose of granting the CW-1 or CW-2 nonimmigrant status. Such waiver may be granted without additional form or fee. Appropriate documents required for such a waiver include a valid unexpired passport and other documentary evidence demonstrating that the applicant is lawfully present in the CNMI, such as a DHS-issued Form I-94. Evidence that the applicant possesses appropriate documents may be provided by an employer to accompany a petition, by an eligible spouse or minor child to accompany the Form I-539 (or such alternative form as USCIS may designate), or in such other manner as USCIS may designate.

(26) *Semiannual report*—(i) *Filing*. During the validity period of the petition, an employer whose petition has been approved for an employment start date on or after October 1, 2019 and for a validity period of six months or more, shall file a semiannual report, every six months after the petition validity start date up to and including the sixth month preceding the petition's validity end date. The semiannual report must be filed within a 60 day window surrounding the six month anniversary of the petition validity start date, with the filing window opening 30 days before and closing 30 days after the six month anniversary of the petition validity start date. The semiannual report must be filed with USCIS in the form and containing such evidence as USCIS may direct, to verify the continuing employment and payment of the beneficiary under the terms and conditions of the approved petition.

(ii) *Use*. DHS may provide such semiannual reports to other federal partners, including DOL for investigative or other use as the DOL may deem appropriate. Failure to comply with the requirements of paragraph (w)(26) of this section may be a basis for revocation of an approved petition as provided in paragraph (w)(27) of this section, or for denial of subsequent petitions filed by the employer.

(iii) *Document retention*. (A) An employer must retain all documents and records in support of an approved petition, and any semiannual report. An employer must retain evidence that supports the semiannual report including, but not limited to:

(1) Personnel records for each CW-1 worker including the name, address of current residence in the Commonwealth, age, domicile, citizenship, point of hire, and approved employment contract termination date;

(2) Payroll records for each CW-1 worker including the O\*NET job classification; wage rate or salary, number of hours worked each week, gross compensation, itemized deductions, and evidence of net payments made and received biweekly; and

(3) Direct evidence of payment of wages and overtime, such as receipts for cash payments, cancelled checks or deposit records. Petitioners must provide such documents and records to DHS and DOL at any time, during the retention period specified in paragraph (w)(26)(iii)(B) of this section.

(B) An employer must retain documents and records until the date that is three years after the ending date of the petition validity period.

(27) *Revocation of approval of petition*—(i) *General*. (A) The petitioner shall immediately notify USCIS of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under this paragraph (w). To notify USCIS of such changes, an amended petition shall be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter to the office at which the CW-1 petition was filed explaining the basis on which the specific CW-1 nonimmigrant is no longer employed.

(B) USCIS may revoke a petition at any time, even after the expiration of the petition.

(ii) *Immediate and automatic revocation*. The approval of any petition is immediately and automatically revoked if the petitioner ceases operations, files a written withdrawal of the petition, or the U.S. Department of Labor revokes the temporary labor certification upon which the petition is based.

(iii) *Revocation on notice*—(A) *Grounds for revocation*. USCIS may in its discretion send to the petitioner a notice of intent to revoke the petition in relevant part, for good cause, including, if it finds that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(2) The facts contained in the petition or on the application for a temporary labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact;

(3) The petitioner violated terms and conditions of the approved petition;

(4) The petitioner violated a requirement of paragraph (w) of this section;

(5) The approval of the petition violated paragraph (w) this section or involved gross error;

(6) The petitioner failed to maintain the continuous employment of the CW-1 nonimmigrant, failed to pay the nonimmigrant, failed to timely file a semiannual report described in paragraph (w)(26) of this section, committed any other violation of the terms and conditions of employment, or otherwise ceased to operate as a legitimate business;

(7) The beneficiary did not apply for admission to the CNMI within 10 days after the beginning of the petition validity period if the petition has been approved for consular processing; or

(8) The employer failed to provide a former, current, or prospective CW-1 nonimmigrant, not later than 21 business days after a written request from such individual, with the original

(or a certified copy of the original) of all petitions, notices, and other written communication related to the worker (other than sensitive financial or proprietary information of the employer which may be redacted) that has been exchanged between the employer and the Department of Labor, the Department of Homeland Security, or any other Federal agency or department.

(B) *Notice and decision*. The notice of intent to revoke shall state the grounds for the revocation. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. USCIS shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

(28) *Appeal of a revocation of a petition*. A petition that has been revoked on notice in whole or in part may be appealed under part 103 of this chapter. Automatic revocations may not be appealed.

(29) *Notice to DOL*. USCIS will provide notice to DOL of CW-1 petition revocations.

## PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 17. The authority citation for part 235 is revised to read as follows:

**Authority:** 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2004 Comp., p. 278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731–32; Title VII of Pub. L. 110–229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); Pub. L. 112–54; Pub. L. 115–218.

■ 18. Section 235.6 is amended by revising paragraphs (a)(1)(ii) and (iii) to read as follows:

### § 235.6 Referral.

(a) \* \* \*

(1) \* \* \*

(ii) If an asylum officer determines that an alien in expedited removal proceedings has a credible fear of persecution or torture and refers the case to the immigration judge for consideration of the application for asylum, except that, prior to January 1, 2030, an alien arriving in the Commonwealth of the Northern Mariana Islands is not eligible to apply for asylum but the immigration judge may consider eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

(iii) If the immigration judge determines that an alien in expedited

removal proceedings has a credible fear of persecution or torture and vacates the expedited removal order issued by the asylum officer, except that, prior to January 1, 2030, an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands is not eligible to apply for asylum but an immigration judge may consider eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

\* \* \* \* \*

**PART 274a—CONTROL OF EMPLOYMENT OF ALIENS**

■ 19. The authority citation for part 274a is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1324a; Title VII of Pub. L. 110–229; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599; Pub. L. 115–218.

■ 20. Amend § 274a.2 by revising paragraph (a)(2) to read as follows:

\* \* \* \* \*

**§ 274a.2 Verification of identity and employment authorization.**

(a) \* \* \*

(2) *Verification form.* Form I–9, Employment Eligibility Verification Form, is used in complying with the requirements of this 8 CFR 274a.1–274a.11. Form I–9 can be in paper or electronic format. A fillable electronic Form I–9 as well as a paper format Form I–9 may be obtained and downloaded from <http://www.uscis.gov>. Paper forms may also be ordered at <https://www.uscis.gov/forms/forms-by-mail> or by contacting the USCIS Contact Center at 1–800–375–5283 or 1–800–767–1833 (TTY). Alternatively, Form I–9 can be electronically generated or retained, provided that the resulting form is legible; there is no change to the name, content, or sequence of the data elements and instructions; no additional data elements or language are inserted; and the standards specified under 8 CFR 274a.2(e), (f), (g), (h), and (i), as applicable, are met. When copying or printing the paper Form I–9, the text of the two-sided form may be reproduced

by making either double-sided or single-sided copies.

\* \* \* \* \*

■ 21. Section 274a.12 is amended by revising paragraph (b)(23) and removing and reserving paragraph (b)(24).

The revision reads as follows:

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

\* \* \* \* \*

(b) \* \* \*

(23) *A Commonwealth of the Northern Mariana Islands transitional worker (CW–1) pursuant to 8 CFR 214.2(w).* An alien in this status may be employed only in the CNMI during the transition period, and only by the petitioner through whom the status was obtained, or as otherwise authorized by 8 CFR 214.2(w).

\* \* \* \* \*

**Chad R. Mizelle,**

*Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.*

[FR Doc. 2020–08524 Filed 5–13–20; 8:45 am]

**BILLING CODE 9111–97–P**