

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Parts 103, 212, and 274a

[CIS No. 2572-15; DHS Docket No. USCIS-2015-0006]

RIN 1615-AC04

### Removal of International Entrepreneur Parole Program

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

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Homeland Security (“DHS” or “Department”) is proposing to remove its regulations pertaining to the international entrepreneur program, which guided the adjudication of significant public benefit parole requests made by certain foreign entrepreneurs of start-up entities in the United States. After review of all DHS parole programs in accordance with an Executive Order (E.O.) titled, Border Security and Immigration Enforcement Improvements, issued on January 25, 2017, the DHS is proposing to end the IE parole program, and remove or revise the related regulations, because this program is not the appropriate vehicle for attracting and retaining international entrepreneurs and does not adequately protect U.S. investors and U.S. workers employed by or seeking employment with the start-up.

**DATES:** Written comments must be received on or before June 28, 2018.

**ADDRESSES:** You may submit comments, identified by DHS Docket No. USCIS-2015-0006, by any one of the following methods:

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

- *Mail:* You may submit comments directly to U.S. Citizenship and Immigration Services (USCIS) by mail by sending correspondence to 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. To ensure proper handling, please reference DHS Docket No. USCIS-2015-0006 in your correspondence.

**FOR FURTHER INFORMATION CONTACT:**

Steven Viger, Adjudications Officer, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Suite 1100, Washington, DC 20529-2140; Telephone (202) 272-8377 (not a toll free call).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:**

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#### I. Public Participation

Interested persons are invited to comment on this rulemaking by submitting written data, views, or

arguments on all aspects of the rule. Comments that will most assist DHS will focus on whether or not DHS should remove the IE parole program regulations and also explain the reasoning for each recommendation. Comments should include data, information, and the authority that supports each recommendation to the extent possible. Comments previously submitted to this docket do not need to be submitted again.

*Instructions for filing comments:* All submissions received should include the agency name and DHS docket number USCIS-2015-0006. All comments received (including any personal information provided) will be posted without change to <http://www.regulations.gov>. See **ADDRESSES**, above, for methods to submit comments.

#### II. Background

On January 17, 2017, the Department of Homeland Security (“DHS” or “Department”) published the IE Final Rule, with an effective date of July 17, 2017. *See* 82 FR 5238. The IE Final Rule followed the publication of a notice of proposed rulemaking on August 31, 2016. *See* 81 FR 60130 (“IE NPRM”). The IE Final Rule amended DHS regulations to include criteria that would guide the Secretary’s discretionary parole authority for international entrepreneurs who can demonstrate that their temporary parole into the United States under section 212(d)(5) of the Immigration and Nationality Act (INA) would provide a significant public benefit to the United States. The IE Final Rule’s criteria allows an entrepreneur to make such a demonstration by showing that, among other things, the start-up entity in which he or she is an entrepreneur received significant capital investment from U.S. investors with established records of successful investments or obtained significant awards or grants from certain Federal, State, or local government entities.

In addition to defining criteria that could support a favorable exercise of the Secretary’s discretionary parole authority, the final rule established a period of initial parole for up to 30 months (which could be extended by up to an additional 30 months) to facilitate the applicant’s ability to oversee and grow his or her start-up entity in the United States. The final rule also

provided for employment authorization incident to parole, such that the entrepreneur parolee would be able to engage in employment at his or her start-up entity immediately upon being paroled into the United States. Under the IE Final Rule, the entrepreneur's dependent spouse and children would be able to apply for parole to accompany or follow-to-join the principal entrepreneur. Dependent spouses would also be able to request employment authorization after being paroled into the United States, but not the entrepreneur's dependent children.

On January 25, 2017, the President issued an executive order (E.O.) prescribing improvements to border security and immigration enforcement. See E.O. 13767, Border Security and Immigration Enforcement Improvements, 82 FR 8793 (Jan. 25, 2017). Section 11(d) of the order requires the Secretary of Homeland Security to "take appropriate action to ensure that parole authority under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) is exercised only on a case-by-case basis in accordance with the plain language of the statute, and in all circumstances only when an individual demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole."

On July 11, 2017, DHS published a final rule with request for comments to delay the effective date of the IE Final Rule to March 14, 2018. See 82 FR 31887. On December 1, 2017 the U.S. District Court for the District of Columbia vacated the July 11, 2017 rule. See *Nat'l Venture Capital Ass'n v. Duke*, No. 17-1912, 2017 WL 5990122 (D.D.C. Dec. 1, 2017). In order to ensure compliance with the court order, on December 14, 2017, DHS began accepting applications for foreign entrepreneurs requesting parole under the IE Final Rule. In December 2017, DHS included a proposed rule to remove the IE Final Rule in the fall 2017 Unified Agenda.<sup>1</sup>

### III. Proposed Removal of the IE Parole Program Regulations

After review of the IE parole program regulations in accordance with E.O. Order 13767, DHS believes that the regulations comprising the IE parole program should be removed, and is soliciting public comments on its proposal to do so.<sup>2</sup>

Although DHS continues to support the policy objectives of promoting investment and innovation in the United States, the Department believes that the extraordinary use of the Secretary's discretionary parole authority for this purpose set forth in the IE Final Rule is unwarranted and inadvisable for several reasons. First, this sort of complex and highly-structured program contemplated in the IE Final Rule is best left to the legislative process rather than an unorthodox use of the Secretary's authority to "temporarily" parole, in a categorical way, otherwise inadmissible aliens into the United States for "significant public benefit." INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A). Second, the IE Final Rule constitutes an extraordinary use of the Secretary's parole authority, prescribing specific, detailed eligibility criteria and requiring exceptionally complex adjudications. Third, the IE Final Rule does not provide durable immigration solutions and in turn inadequately promotes the entrepreneur's ability to sustain the required investment and the jobs that depend on them. The Department believes that the Final Rule focused too narrowly on the economic benefits that potential foreign entrepreneurs may bring, without giving sufficient attention to the existing statutory scheme and the absence of a durable immigration status for these individuals, which is not made available through the device of temporary parole. Fourth, while the Department may eventually recover the costs relating to administration of the International Entrepreneur Rule, through fees paid by applicants for parole under the policy, use of the agency's present resources must be prioritized in light of the current Administration's priorities. As such, the Secretary believes that limited agency resources should not continue to be expended on this program, especially given the sort of difficult, complex, resource-intensive adjudications that the IE Final Rule requires, particularly in relation to other parole determinations. Finally, the Secretary is permitted to decide to exercise her discretionary parole authority under section 212(d)(5) more narrowly than her predecessor(s). The Secretary has elected to do so here for the reasons described herein and in the interest of the efficient, effective implementation of the current statutory scheme, which

already prescribes conditions under which certain entrepreneurs and investors may obtain lawful immigration status (such as E-2 treaty investor nonimmigrant status), and in certain instances lawful permanent resident status in the United States (through investment of their own capital either under the employment-based fifth preference (EB-5) immigrant classification or through receipt of a National Interest Waiver of the job offer requirement under the employment-based second preference immigrant classification).

#### A. IE Final Rule

In the IE NPRM, DHS recognized that historically, DHS has exercised its parole authority on an ad hoc basis and with respect to individuals falling within certain classes of aliens identified by regulation or policy. 81 FR at 60134. DHS noted that its statutory parole authority is broad and that Congress did not define "significant public benefit." *Id.* Based on various studies, DHS determined that "allowing certain qualified entrepreneurs to come to the United States as parolees on a case-by-case basis would produce a significant public benefit through substantial and positive contributions to innovation, economic growth, and job creation." *Id.* at 60136. DHS reasoned in the IE proposed rule that establishing a regulation that would guide the process and evaluation of requests for parole being sought by entrepreneurs of start-up entities was important given that such adjudications could be complex. *Id.* at 60131.

#### B. Justification for Removing the IE Parole Program Regulations

DHS stands by its previous findings that foreign entrepreneurs make substantial and positive contributions to innovation, economic growth, and job creation in the United States. DHS, however, has reevaluated the IE parole program and believes that the governing regulation should be removed as inadvisable, impracticable, and an unwarranted use of limited agency resources. The Department believes that parole, which allows for the "temporary" entry of inadmissible aliens into the United States for "urgent humanitarian reasons or significant public benefit," INA 212(d)(5)(A), is not an appropriate legal mechanism to establish and implement a complicated program for entrepreneurs and business startups that requires complex and time-consuming adjudications, both for initial parole and re-parole determinations.

<sup>1</sup> <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AC04>.

<sup>2</sup> This proposed rule would not remove the unrelated revisions to 8 CFR 274a.2(b)(1)(v)(C)(2) promulgated as part of the IE Final Rule which added the Department of State Consular Report of

Birth Abroad (Form FS-240) to the regulatory text and to the "List C" listing of acceptable documents for Form I-9 verification purposes. See 82 FR at 5241 n.3. This regulatory change and accompanying form instructions went into effect on July 17, 2017, as originally provided in the IE Final Rule.

The IE Final Rule's interpretation of significant public benefit, with its myriad and exceptionally detailed eligibility requirements relating to qualifying investments and start-up entities, amounted to an unconventional codification of significant public benefit parole criteria. Multiple commenters responding to the IE proposed rule opposed the rule because it sought to create an administrative program "for highly trained and talented entrepreneurs" without providing for durable immigration status or a concrete pathway to such a status, "when visa and residency pathways already exist" for such individuals. 82 FR at 5267. Upon further review and consideration of the IE Final Rule, DHS agrees with these commenters. The IE Final Rule focused too narrowly on the potential economic benefits that foreign entrepreneurs may bring, without giving sufficient attention to the existing statutory scheme wherein Congress has already provided pathways for certain entrepreneurs to come to the United States to start and grow their business, or to the absence of a durable immigration status for these individuals, which is not made available through the device of temporary parole.

In addition, agency resources are limited, and their use must be prioritized in light of the current Administration's priorities. As such, the Secretary believes that limited agency resources that are needed for other adjudications programs should not continue to be expended on this program, especially given the sort of difficult, complex, resource-intensive adjudications that the IE Final Rule requires, particularly in relation to other parole determinations, and the uncertain status that entrepreneurs would obtain.

These serious concerns motivate the reconsideration of this policy. The Secretary is permitted to decide to exercise her discretionary parole authority under section 212(d)(5) more narrowly than her predecessor(s). As proposed in this rule, the Secretary intends to apply more narrowly her discretionary parole authority for the reasons described herein and in the interest of the efficient, effective implementation of the current statutory scheme, which already prescribes conditions under which certain entrepreneurs and investors may obtain lawful immigration status, and eventually lawful permanent resident status, in the United States. DHS is therefore proposing to remove the regulations comprising the IE parole program.

### 1. Parole Is Not the Proper Vehicle for Implementing and Administering an Entrepreneur Immigration Program

DHS does not believe the framework of the rule adequately promotes the Administration's policy goals of attracting and *retaining* the best and brightest individuals from around the world, and encouraging investment and innovation in the United States. The approval of parole is inherently uncertain because it is wholly discretionary, whereas the approval of certain other types of immigration benefits (e.g. EB-5 immigrant investor petitions under INA 203(b)(5)) are not discretionary; if all applicable statutory and regulatory eligibility requirements are met, then the agency must approve the petition). Consequently, parole provides neither the entrepreneur nor the qualifying source of capital (whether private or public) with certainty or predictability necessary to ensure that a start-up entity is a success and ultimately provides a significant public benefit to the United States. Even if an entrepreneur satisfies the IE Final Rule's criteria, there is no certainty that the request for parole would be approved by USCIS in the exercise of discretion (*see, e.g.,* final 8 CFR 212.19(d)<sup>3</sup>) and, even if the request were approved, U.S. Customs and Border Protection (CBP) may decline to authorize parole at the port of entry.<sup>4</sup> And unlike employment-based immigrant and nonimmigrant programs, parole does not allow for derivative beneficiaries, such that each spouse or child must demonstrate that his or her entry itself would serve a significant public benefit. Furthermore, individuals who are granted parole based on a finding of significant public benefit—which can be terminated, generally on notice, at any time in the Secretary's discretion based on a determination that public benefit no longer warrants the individual's continued presence—are not considered to have been admitted to the United States, and cannot change to a nonimmigrant status. To acquire nonimmigrant status, the parolee would have to depart the United States and, unless exempt, apply for a visa with the Department of State. *See* INA sections 101(a)(13)(B), 212(d)(5)(A), 248(a); 8 U.S.C. 1101(a)(13)(B), 1182(d)(5)(A), 1258(a); *see also* 8 CFR 212.5(e), 248.1. Moreover, parole does not by itself confer lawful permanent resident status or an avenue to obtain such status. To adjust status to that of a lawful permanent resident, individuals

<sup>3</sup> 82 FR at 5287.

<sup>4</sup> *Id.* at 5243.

generally must, among other things, be admissible to the United States, have a family-preference or employment-based immigrant visa immediately available to them, and not be subject to the various bars to adjustment of status. *See* INA section 245(a), (c), (k); 8 U.S.C. 1255(a), (c), (k); 8 CFR 245.1.

To the extent indirect paths for parolees to remain for longer periods already exist, those paths are inherently uncertain. Although parole under the IE Final Rule may be granted for up to 30 months, with possible re-parole for an additional 30 months, it is highly uncertain whether paroled entrepreneurs, including those who successfully start or grow a business in the United States, would qualify for an existing employment-based nonimmigrant or immigrant classification after an approved period of parole ends. The entrepreneur, if unable to qualify for an employment-based nonimmigrant or immigrant classification, most likely would be required to depart the United States and possibly move their operations abroad, eliminating possible further benefit to this country, and possibly creating some negative impacts to U.S. investors. Thus, reliance upon parole adds an additional degree of risk and unpredictability for the U.S. investors who may not be able to achieve the anticipated return on their investment, as well as any U.S. workers employed by or seeking employment with the start-up. This same degree of risk and unpredictability would generally not apply to entities started by U.S. entrepreneurs or even foreign entrepreneurs lawfully relying upon existing nonimmigrant or immigrant visa classifications. While DHS under the former Administration considered some of these risks, having re-evaluated the IE Final Rule consistent with President Trump's Executive Order, DHS now believes that they are significant negative factors supporting its decision to propose removing the IE Final Rule.

### 2. Entrepreneurs Should Consider Using Existing Immigrant and Nonimmigrant Visas or Congress Could Amend an Existing or Establish an Additional Specialized Visa To Facilitate Investment and Innovation

While DHS recognizes that some foreign entrepreneurs may face difficulty establishing eligibility under existing nonimmigrant and immigrant categories, options are still available for some foreign entrepreneurs, and removing the IE Final Rule would be more congruent with the overall statutory scheme.

Facilitating investment and innovation in the United States is of great importance to our country's ability to lead and remain competitive in the global marketplace. As indicated above, the United States has visa classifications that can be used by certain entrepreneurs or investors coming to the United States, e.g., E-2 treaty investor nonimmigrant classification, EB-5 immigrant classification, INA sections 101(a)(15)(E), 203(b)(5). While these classifications do not encompass the entire population of entrepreneurs addressed in the IE Final Rule, Congress could create a new visa classification to provide legal immigration status to foreign nationals seeking to remain and start businesses in the United States using venture capital or other U.S.-sourced funding.<sup>5</sup> DHS believes this would be a more appropriate means for doing so because Congress is uniquely well-positioned to balance the many competing and complex policy priorities in attracting and retaining foreign entrepreneurs and promoting investment and innovation in the United States, including but not limited to incentivizing innovation and competitiveness of American entrepreneurs, job creation and protection of U.S. workers, United States trade objectives and foreign relations with many nations, and whether U.S. citizens and nationals who seek to pursue entrepreneurial endeavors abroad are treated on par with foreign nationals who seek to seed and promote their start-up entities in the United States. Therefore, in removing the IE Final Rule, DHS is proposing to defer to Congress on whether, and if so how to best create a specific immigration pathway that addresses the unique and varied characteristics of foreign entrepreneurs through the legislative process.

### 3. Limited Agency Resources & DHS's Current Priorities

In addition to the considerations discussed above, DHS believes that continuing to administer the IE Final Rule is out of sync with DHS' current policy priorities. The President has tasked DHS with improving existing employment-based immigrant and nonimmigrant visa programs to ensure program integrity and protect the interests of U.S. workers. Given that USCIS already has an established process for assessing a variety of individual parole requests, DHS does not believe that it would be appropriate

to continue to expend limited agency resources to administer a parallel and complex regulatory parole framework. The assessments required for a parole determination under this program—including, among others, to resolve “substantial ownership interest” questions, whether the entity has a “substantial potential for rapid growth and job creation,” whether the applicant is “well-positioned . . . to substantially assist” with the growth and success of the business, whether the start-up entity has received “lawfully derived capital,” whether the entity has received either the requisite investment threshold or qualifying “significant awards or grants for economic development” or both, and whether an investor is “qualified” under the rule and has an established record of successful investments—would be highly challenging and extremely labor intensive. *See* 82 FR at 5286–89. Continuing to administer this parallel framework requires USCIS to expend significant resources to hire and train additional adjudicators with specific technical expertise, modify intake and case management information technology systems, revise application and fee intake contracts, develop guidance for the adjudicators, and communicate with the public about these changes. While the monetary costs associated with continuing to administer the framework to process these applications might be recovered over time, USCIS will not be able to offset the opportunity costs associated with diverting limited agency resources that are needed to meet the current Administration's priorities (for example, reviewing other existing immigration programs, developing new proposed regulatory changes, and carrying out initiatives to better deter and detect fraud and abuse). As such, DHS believes that removal of the IE Final Rule is appropriate to ensure that the agency's limited resources are used in an efficient and effective manner to implement the existing statutory scheme, and to limit the opportunity cost associated with diverting resources (e.g., personnel, training resources) away from other programs in order to continue to administer this parallel framework.

DHS thus proposes, at least in this context, returning to the use of significant public benefit parole as it existed prior to issuance of the IE Final Rule, leaving to Congress whether to establish an entrepreneur immigration program and, in the meantime, encouraging individuals to pursue immigrant and nonimmigrant

opportunities already provided in the immigration laws.

Accordingly, DHS proposes to remove the IE parole regulations. DHS is not removing the unrelated revisions to 8 CFR 274a.2(b)(1)(v)(C)(2) promulgated as part of the IE Final Rule which added the Department of State Consular Report of Birth Abroad (Form FS-240) to the regulatory text and to the “List C” listing of acceptable documents for Form I-9 verification purposes. *See* 82 FR at 5241 n.3. This regulatory change and accompanying form instructions went into effect on July 17, 2017, as originally provided in the IE Final Rule.

### C. Transition From the IE Parole Program Regulations

In proposing to end the IE parole program and remove the related regulations, DHS is actively considering the transition away from the program. To date, USCIS has received 13 IE parole applications. DHS has not yet granted parole under this program. Under the IE final rule, DHS has discretion to, on a case-by-case basis, approve periods of parole for up to 30 months, including shorter durations. In addition, DHS is considering a number of options for transitioning away from the IE parole program and is specifically soliciting public comments on these options. The options discussed below assume that the final rule removing the IE parole program regulations would go into effect 30 days after publication. The following discussion is organized into groupings by the stage of the parole process an individual may be in on the effective date of the rule finalizing the removal of IE parole program regulations.

#### 1. Individuals Paroled Into the United States as International Entrepreneurs

a. *Automatic termination of IE parole on the effective date of the final rule.* DHS believes that terminating IE parole and associated employment authorization on the effective date of the final rule removing the IE parole program regulations is most in line with its proposed policy objectives and reasons for terminating the IE parole program. *See* E.O. 13767, Border Security and Immigration Enforcement Improvements, 82 FR 8793 (Jan. 25, 2017). Therefore, this is DHS's preferred option for this rulemaking. DHS would amend its regulations to include a provision under which on the effective date of the final rule, parole granted under the IE final rule to both individual entrepreneurs, as well as any spouses and children of such entrepreneurs, would end. In addition, the employment authorization for

<sup>5</sup> *See, e.g.,* StartUp Visa Act of 2011, S. 565, 112th Cong., available at <https://www.congress.gov/bill/112th-congress/senate-bill/565/text>.

entrepreneurs and their spouses would be automatically terminated, even if the employment authorization documents for entrepreneur spouses have expiration dates after the effective date of the final rule. Depending on circumstances of the individual whose parole is terminated, including his or her age, the individual may also begin to accrue unlawful presence when IE parole is terminated.

b. *Termination of parole on notice.* Under this option, DHS would amend its regulations governing termination of parole at 8 CFR 212.19(k) to authorize the termination of all parole granted under the IE final rule after notice and an opportunity for the entrepreneur and any spouse and child of such entrepreneur to demonstrate that parole would otherwise be warranted under the existing non-IE final rule parole framework. The issuance of a notice of intent to terminate would create a presumption of termination that the entrepreneur could overcome by demonstrating that he or she has urgent humanitarian reasons or continues to provide a significant public benefit under 8 CFR 212.5 and merits a favorable exercise of discretion. Depending on the evidence provided, DHS could terminate or amend the period of parole as necessary to align the appropriate timeframe to accomplish the purpose of the parole. Under this option, if DHS determines that parole is warranted under 8 CFR 212.5, the individual would be able to remain in the United States as a parolee as evidenced by Form I-94. However, such Form I-94 would no longer be considered concurrent evidence of employment authorization incident to parole for the entrepreneur. While parolees granted parole under 8 CFR 212.5 may receive employment authorization, under current regulations, they do not receive employment authorization incident to parole and, therefore, cannot use their Form I-94 as evidence of employment authorization. Instead, such parolees must file an Application for Employment Authorization (Form I-765) with the required fee with USCIS on the basis of 8 CFR 274.12(c)(11). If granted, employment authorization would be evidenced on Form I-766 (Employment Authorization Document, EAD), rather than Form I-94. Similarly, the EAD of a spouse of an entrepreneur parolee that is based on 8 CFR 274a.12(c)(34) would no longer be evidence of his or her employment authorization. The spouse of the entrepreneur would have to apply for work authorization under 8 CFR

274a.12(c)(11). Given that DHS is proposing to end IE regulation-based parole, DHS does not believe that the regulations should be amended to make an exception for the small group of parolees who may be affected by this rulemaking by providing for continued employment authorization incident to parole for the entrepreneurs or allowing the spouses to continue work on a facially invalid EAD. However, DHS welcomes public comment on this issue. To minimize a potential gap in employment authorization under this option, DHS is considering permitting individuals to submit Forms I-765 with their response to a Notice of Intent to Terminate.

For those cases where DHS decides that termination of parole is warranted, the individual's employment authorization would be terminated on the date of the final notice of termination. There would be no opportunity to appeal a parole termination decision.

c. *Reopening of IE parole determination.* Under this option, DHS would reopen all of the IE parole adjudications on its own motion, without fee to the applicant, consistent with 8 CFR 103.5(a)(5), and provide the entrepreneur and any spouse or child of the entrepreneur with the opportunity to present evidence that he or she is eligible for parole under the existing non-IE final rule parole framework, rather than IE parole program regulations. DHS would consider eligibility for parole de novo under 8 CFR 212.5, including evidence already in the record and any new evidence the entrepreneur may provide. If DHS determines that the individual warrants a favorable exercise of discretion, DHS would issue a final decision. However, to receive employment authorization, the individual would need to make a request by filing an Application for Employment Authorization (Form I-765) with USCIS on the basis of 8 CFR 274a.12(c)(11). As discussed under the previous option involving Notices of Intent to Terminate, if DHS were to grant parole under 8 CFR 212.5, such parole would not include the benefit of employment authorization incident to parole. Therefore, employment authorization would have to be separately requested (with the required fee), granted, and evidenced through issuance of Form I-766 (Employment Authorization Document, EAD). Under this option, DHS could change the original validity period of parole in line with its case-by-case determination and underlying purpose of the parole.

d. *Expiration of initial period of parole.* Under this option, DHS would

allow the parole approved under the IE parole program regulations to naturally expire, along with any associated employment authorization, unless otherwise terminated on other grounds. In this scenario, DHS would provide a later effective date for the removal of the § 212.19(k) termination provisions in order to retain the specific termination grounds for any individuals who remain paroled under the IE parole program. This approach would apply to the entrepreneur and any dependent spouse or child of the entrepreneur.

## 2. Individuals With USCIS-Approved IE Parole Applications Who Have Not Yet Been Paroled Into the United States

a. *Automatic Termination.* DHS believes that automatically terminating the approval of all I-941 parole applications is most in line with its proposed policy objectives and purpose for removing the IE parole program regulations and, therefore, is DHS's preferred option. DHS would amend its regulations at 8 CFR 212.19 to authorize, notwithstanding 8 CFR 212.5(e), automatic termination of approvals of Forms I-941 approved under the IE final rule. Such termination of the approval would prevent the individual from seeking parole pursuant to the approved Form I-941 at the port of entry or from obtaining automatic employment authorization (entrepreneurs) or applying for employment authorization on the basis of parole (spouses of entrepreneurs) *unless* the individual separately applies for and is granted parole under the existing non-IE final rule parole framework. If an individual is paroled into the United States, he or she would need to apply for employment authorization pursuant to 8 CFR 274a.12(c)(11).

b. *Termination of advance parole document on notice.* Under this option, DHS would amend its regulations governing termination of parole to authorize terminating USCIS-approved IE advance parole documents after notice and opportunity to respond is provided to the entrepreneur and any spouse and child of such entrepreneur—including demonstrating that parole would otherwise be warranted under the existing non-IE final rule parole framework. The issuance of a notice of intent to terminate would create a presumption of termination that the entrepreneur could overcome by demonstrating that he or she has urgent humanitarian reasons or continues to provide a significant public benefit under 8 CFR 212.5 and merits a favorable exercise of discretion. Depending on the evidence provided, DHS could terminate or amend the

period of parole as necessary to align the appropriate timeframe to accomplish the purpose of the parole. If the advance parole document remains approved, individuals could then seek to be paroled into the United States at a port of entry. Under this option, employment authorization for an entrepreneur would not be automatic for the entrepreneur; rather, each individual parolee would need to separately apply for employment authorization, with the required fee, pursuant to 8 CFR 274a.12(c)(11) to the extent consistent with the purpose of parole.

*c. Re-opening of IE parole determination.* Under this option, DHS would reopen all approved I-941 parole applications on its own motion, without fee to the applicant, consistent with 8 CFR 103.5(a)(5) and provide the entrepreneur and any spouse or child of the entrepreneur with the opportunity to present evidence that would allow DHS to reconsider the grant of parole under the existing non-IE final rule parole framework, rather than the IE parole program regulations. DHS would consider eligibility for parole de novo under 8 CFR 212.5, including evidence already in the record and any new evidence the entrepreneur may provide. If DHS determines that the individual warrants a favorable exercise of discretion, DHS would issue a final decision and the individual could then seek to be paroled into the United States. Under this option, and to the extent applicable, each parolee would need to apply for employment authorization, with the required fee, pursuant to 8 CFR 274a.12(c)(11) to the extent consistent with the purpose of parole.

### 3. Individuals Whose Parole Applications Are Pending With USCIS on the Effective Date of the Final Rule

*a. Rejection of pending parole applications.* Under this option, DHS would amend its regulations to allow for the rejecting of all pending I-941 applications for IE parole, and the return or refund of associated fees. This approach would be most consistent with DHS's proposed policy objectives and purpose for withdrawing the IE parole program regulations and, therefore, is DHS's preferred option.

*b. Withdrawal of pending applications for parole or conversion to adjudication under the existing non-IE final rule parole framework.* Under this option, DHS would amend its regulations to allow applicants to request to withdraw pending parole applications and request refund of all application fees or would issue a

request for evidence (RFE) to allow applicants to demonstrate that they warrant the favorable exercise of discretion under the existing non-IE final rule parole framework. DHS is considering providing a period of 60 days after the effective date of the rule during which individuals may request withdrawal and full refund of application fees. If during that period an application is not withdrawn, DHS would proceed to adjudicate the application by issuing an RFE. Where the applicant does not respond to the RFE or is not able to demonstrate that he or she merits the favorable exercise of discretion under the existing non-IE final rule parole framework, DHS would deny the application and retain the application fee. Note that for those applicants whose applications are granted, and who are later paroled into the United States, the basis for their parole would be under 8 CFR 212.5 rather than 8 CFR 212.19. Therefore, employment would not be authorized incident to parole, and evidence of parole on Form I-94 could not also serve as evidence of employment authorization. Instead, those parolees seeking employment authorization in the United States would need to file an Application for Employment Authorization, with the required fee, with USCIS under 8 CFR 274a.12(c)(11). Because spouses and children of the entrepreneur would be applying for parole separately under the 8 CFR 212.5 criteria, spouses and children (otherwise eligible to work based on their age) could also submit Applications for Employment Authorization under 8 CFR 274a.12(c)(11).

*c. Adjudication of pending parole applications under the IE final rule criteria.* Under this option, DHS would continue to adjudicate all pending applications that were received prior to the effective date of the rescission under the IE final rule criteria at 8 CFR 212.19 until all such applications are either approved or denied. Where an application is approved, the individual could seek to be paroled into the United States at a port of entry. Entrepreneurs approved under the IE final rule would also benefit from employment authorization incident to their parole and their spouses whose parole is approved could apply for employment authorization in line with IE final rule requirements. Under this option, children of entrepreneurs would continue to be ineligible for employment authorization as specified in the IE final rule. In addition, DHS would retain the discretion to approve

parole for an initial period of up to 30 months, which may be less than 30 months. In this scenario, DHS would provide a later effective date for the removal of the § 212.19(k) termination provisions in order to retain the specific termination grounds for any individuals who remain paroled under the IE parole program. DHS is also considering a variation on this proposal, in which it would amend its regulations to truncate the initial period of parole to a shorter duration, *e.g.*, 12 months for all pending requests that are approved.

### 4. Individuals Seeking Re-Parole After the Effective Date of the Final Rule Removing IE Parole Program Regulations

Upon the termination of the IE parole program, individuals would not be able to seek re-parole under 8 CFR 212.19.

DHS is soliciting public comments on all of the options proposed for transitioning away from the IE parole program.

## IV. Statutory and Regulatory Reviews

### A. Administrative Procedure Act

DHS is publishing this proposed rule to remove the IE parole program regulations with a 30-day comment period in the **Federal Register** in accordance with the Administrative Procedure Act, 5 U.S.C. 553. DHS separately published a final rule on July 11, 2017, with a request for comments to extend the effective date of the IE Final Rule to March 14, 2018. On December 1, 2017, the U.S. District Court for the District of Columbia vacated that rule. *See Nat'l Venture Capital Ass'n v. Duke*, No. 17-1912, 2017 WL 5990122 (D.D.C. Dec. 1, 2017).

### B. Executive Order 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

As was described fully in Part IV, Statutory and Regulatory Requirements of the IE Final Rule,<sup>6</sup> the costs of that rule consisted of the filing costs of principal applicants applying for parole and from the associated filing costs of dependents of principal applicants. Therefore, this proposal to remove the IE parole program regulations would result in a loss of these filing costs for those entrepreneurs and their dependents who apply for parole that would later be terminated. DHS stands by its previous findings that foreign entrepreneurs have made substantial and positive contributions to innovation, economic growth, and job creation in the United States, and that therefore the removal of the rule could cause potential loss of some of these economic benefits. However, for reasons explained previously, DHS is proposing to remove the IE parole program regulations after determining that the program is not a good use of DHS resources. While the monetary costs associated with developing and implementing the framework to process and adjudicate the applications might be recovered by the fees USCIS charges for applications, USCIS would not be able to offset the opportunity costs associated with diverting limited agency resources that are needed to meet other current priorities.

In the IE Final Rule, DHS cited studies that provided general support for the positive effects of entrepreneurs, but did not attempt to estimate the total number of new jobs that might be produced or quantify any new economic activity that might take place. Here, DHS has not attempted to estimate the total number of jobs that might not be produced or to quantify any new economic activity that might not take place with the removal of this rule. This discussion regarding the net impact on economic activity, for which we specifically request comment, also depends critically on the extent to which entrepreneurs would avail themselves of other immigration programs. The costs of this rule would also depend on the costs of the other programs to which entrepreneurs might avail themselves. However, DHS is not able to predict which other programs these entrepreneurs would be eligible for since it would be specific to the circumstances of the entrepreneur. Therefore, these costs are not quantified in this proposed rule and DHS requests any data or comments on such costs. DHS had previously estimated that 2,940 foreign nationals annually could be eligible to apply for parole under the

IE Final Rule, but also stated “DHS has no way of predicting with certainty the actual number of foreign nationals who will seek parole under [the IE rule] rule over time.” 82 FR 5277. This remains true as of the publication of this proposal.

The filing costs associated with the IE Final Rule involved the application fees as well as the opportunity costs of time associated with filing. Each principal applicant faces a filing cost of \$1,200 for the Application for Entrepreneur Parole (Form I-941), and additional costs of \$405.32, which covered the costs of submitting biometric information and the time related opportunity costs of filing for parole. This additional monetized cost breakdown includes an \$85 per applicant biometrics filing fee and \$28.75 in costs incurred for travel to an application support center (ASC) to submit the information.<sup>7</sup> The total time burden of filing, biometrics submission, and associated travel is estimated to be 8.37 hours. In order to anticipate the full opportunity cost of time to petitioners, DHS multiplied the average hourly U.S. wage rate by 1.46 to account for the full cost of employee benefits such as paid leave, insurance, and retirement,<sup>8</sup> for a total of \$34.84.<sup>9</sup> Multiplying this benefits-burdened average hourly wage of \$34.84 by 8.37 hours yields \$291.57 in time-related opportunity costs. Adding this \$291.57 opportunity costs, the \$85 biometrics fee and the \$28.75 travel cost yields \$405.32. The total cost per principal applicant for entrepreneur parole was expected to be \$1,605.32.<sup>10</sup> If DHS

<sup>7</sup> The cost of such travel will equal \$28.75 per trip, based on the 50-mile roundtrip distance to an ASC and the General Services Administration's (GSA) travel rate of \$0.575 per mile. Calculation: 50 miles multiplied by \$0.575 per mile equals \$28.75. See 79 FR 78437 (Dec. 30, 2014) for GSA mileage rate.

<sup>8</sup> The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) / (Wages and Salaries per hour). See Economic News Release, U.S. Dep't of Labor, Bureau of Labor Statistics, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (June 2017), available at [https://www.bls.gov/news.release/archives/ecec\\_09082017.pdf](https://www.bls.gov/news.release/archives/ecec_09082017.pdf).

<sup>9</sup> Calculation: \$23.86 (average hourly wage across all occupations) \* 1.46 (benefits multiplier) = \$34.84.

Opportunity costs reported for principal applicants are based on the 2016 average wage rate for all occupations, which were released by the Bureau of Labor Statistics (BLS) in the Occupational Employment Statistics (OES) survey data publicly on March 31, 2017. These figures were updated from the costs in the IE final rule notice that relied on earlier wage rates and are thus slightly higher than the previous cost estimates. The wage data are found at: [https://www.bls.gov/oes/2016/may/oes\\_nat.htm](https://www.bls.gov/oes/2016/may/oes_nat.htm).

<sup>10</sup> Calculation: \$1,200 (filing fee) + \$405.32 = \$1,605.32.

receives as many as 2,940 applications from persons eligible to apply, such applications would result in annual costs of \$4,719,641.<sup>11</sup>

In addition, the spouse of each principal is able to file for employment authorization under the IE Final Rule via an Application for Employment Authorization (Form I-765) with a filing fee of \$410. DHS estimates that the Form I-765 would take 3.42 hours to complete, generating time related opportunity costs of \$36.20. The total costs per applicant would be \$446.20, which for 2,940 spousal applicants would result in total costs of \$1,311,830.<sup>12</sup>

In addition, DHS projected approximately 3,234 dependents could file an Application for Travel Document (Form I-131) and be required to submit biometrics. The fee for the Form I-131 is \$575 and each applicant would face additional costs of \$190.28, yielding a total cost per I-131 applicant of \$765.28, which for the estimated 3,234 applicants would amount to \$2,474,914.<sup>13</sup>

This proposed rule would remove the IE parole program regulations and therefore, the filing costs described above would be sunk costs for those entrepreneurs who have applied for parole since the effective date, but would no longer maintain parole once this rule is finalized. Additionally, DHS assumes that there will be familiarization costs associated with this rule. DHS assumes that each entrepreneur who has applied or been approved for parole would need to review the rule. Similarly, DHS assumes that the start-up entity and its investors also would need to review the rule. Based on the 2,940 IEs referenced as a maximum number of entrepreneurs who may apply, DHS assumes a total of at least 2,940 entrepreneurs would likely need to review the rule. It is also likely that some investors, venture capitalists,

<sup>11</sup> Calculation: 2,940 (projected principals) + \$1,605.32 (total cost per application) = \$4,719,640.80. The total annual cost of \$4,719,641 is rounded from the actual \$4,719,640.80.

<sup>12</sup> DHS made the assumption that spouses would not be in the U.S. labor force and as a result, are not represented in national average wage calculations. DHS recognized even if the spouses were not in the labor force, they had an opportunity cost of time above zero. In order to provide a reasonable proxy of time valuation for spouses, DHS calculated the opportunity costs based on the benefits adjusted minimum wage of \$10.59. The total costs are rounded from \$1,311,830.06.

<sup>13</sup> The additional \$190 cost is based on the biometrics cost of \$85, the expected costs of travel to an ASC of \$28.75, and time related filing costs of 7.23 hours. Multiplying this time burden by the benefits-burdened minimum wage (\$10.59) yields an opportunity cost of \$76.53, which, when added to the other charges yields \$190.28. The final cost figure is rounded from \$2,474,914.06.

<sup>6</sup> See 82 FR at 5238.

angel investors, and others who may be involved in the startup would also review the rule. DHS does not have data on the number of startups or investors who would need to review this rule at this time, and hence, will use 2,940 as a reasonable estimate. DHS assumes that it would take about 2 hours to review and inform any additional parties of the changes in this proposed rule. As mentioned previously, the weighted 2016 mean hourly wage across all occupations is \$34.84. Therefore, the total cost of familiarization would be \$204,859 based on the maximum number of potential IEs.<sup>14</sup>

#### 1. Individuals Paroled Into the United States as International Entrepreneurs—Alternatives

##### a. Automatic Termination

In addition to the filing costs and familiarization of the final rule withdrawing the International Entrepreneur parole program, those entrepreneurs and their dependents who have approved parole and would have already traveled to the United States could incur some additional costs by leaving the United States earlier than expected. Such costs could be associated with the early notice of termination of housing or vehicle leases or with removing dependent children from school among other costs. Additionally, these entrepreneurs would have expended money, time, and/or other resources in their start-up entity. Under the original IE final rule, entrepreneurs have to show ownership in the start-up at the time they apply for IE parole. Even if the IE has to leave the country, they can still remain owners and work for the start-up from outside of the country. The rescission of the IE parole program means that they cannot work for the start-up from within the United States on this basis. It is possible that when the IE leaves, the start-up could lose additional funding from both current and future investors, but it is also possible that current and future investors could be undeterred by the IE's departure and could continue to fund the start-up entity's continued operations and growth. DHS is not able to predict the behavior of these entrepreneurs or their investors at this time. Additionally, DHS notes that it is also possible that the start-up entity may have one or more co-founders/owners, and those co-founders/owners could be U.S. citizens or otherwise authorized to work in the United States. As such, the

IE's temporary or permanent departure from the country would not automatically mean that the start-up would dissolve. Though there is a possibility that the start-up entity could move outside of the United States with the entrepreneur as a result of this rule as well. DHS welcomes any public comments on the costs associated with the automatic termination option.

DHS also recognizes that it may be possible that once this rule is final and becomes effective that some spouses already paroled into the United States would be involuntarily separated from their employers. These employers would then face labor turnover costs as a result. While DHS estimates a total of 2,940 spouses of entrepreneurs who may be eligible to apply for parole, DHS cannot predict how many of these spouses and entrepreneurs will apply before this proposed rule would become finalized or how many entrepreneurs and spouses would qualify under other parole provisions and remain in the country. Therefore, DHS does not estimate the number of spouses who may involuntarily be separated or the number of companies that might incur labor turnover costs.

However, DHS can estimate the cost of labor turnover per spouse to employers. DHS has reviewed recent research and literature concerning turnover costs. While there is not an abundance of recently published peer-reviewed research to draw on, there are several dozen studies available which are cited repeatedly across various reports. These studies focus on specific locations and occupations, and measure turnover costs in different ways. A 2012 report published by the Center for American Progress surveyed several dozen studies that considered both direct and indirect costs and determined that turnover costs per employee ranged from 10 to 30 percent of the salary for most salaried workers, and, on average, an employer paid an average of about 20 percent of the worker's salary in total labor turnover costs.<sup>15</sup> Consistent with wages used for filing costs, if we assume the spouse is making the weighted minimum wage of \$10.59 and assume typical annual work hours of 2,080, the annual salary would be \$22,027 for a spouse. If DHS uses 20 percent of the spouse's salary to estimate labor related turnover costs, each employer that hired

a spouse would incur a labor related turnover cost of \$4,405 per worker.<sup>16</sup>

##### b. Termination on Notice

Entrepreneurs who have been approved for parole and have already traveled to the United States may be considered under the non-IE final rule parole framework. These entrepreneurs would be sent a notice of intent to terminate by USCIS. During this time, entrepreneurs may present information to be considered under the non-IE related parole framework. IEs would incur some additional time burden in gathering and submitting information to show they remain eligible for parole. However, DHS anticipates this time burden to be minimal. There may be some additional costs to the government in reconsidering these applications. However, those costs are anticipated to be minimal and covered by the original filing fees. USCIS would incur some costs associated with the creating and mailing of these notices, though DHS also anticipates these costs to be minimal. DHS would not require the IE or dependents to file an additional parole application and therefore, no fees would be charged. Under this option, however, if IEs are approved under the non-IE related parole framework, the IE and their dependents would be required to submit a Form I-765 with the notice of intent to terminate to minimize gaps in employment authorization. Form I-765 includes a filing fee of \$410 and a total time burden of 3.42 hours to complete and file the application. Using the weighted mean hourly wage previously established of \$34.84, the total cost for entrepreneurs to file Form I-765 is \$529 per application.<sup>17</sup> As previously discussed, the total cost for dependents to file Form I-765 is \$446 per application.<sup>18</sup> DHS does not have an estimate of the numbers of entrepreneurs or dependents that may qualify to apply for employment authorization under another non-IE related parole.

##### c. USCIS Motion To Reopen/Reconsider

Under the option to reopen all IE parole adjudications for those IE with approved parole and already in the United States, DHS anticipates minimal costs to IE associated with the burden of providing evidence for parole under the

<sup>16</sup> Calculation: Weighted minimum wage annual salary (\$22,027) \* 20 percent = \$4,405.44.

<sup>17</sup> Calculation: Filing fee (\$410) + (time burden 3.42 hours \* weighted average hourly wage \$34.84) = \$529 (rounded).

<sup>18</sup> DHS refers to dependents to include the spouses and those children of entrepreneurs who may be eligible to apply for employment authorization.

<sup>14</sup> Weighted mean hourly wage (\$34.84) \* hours to review rule (2) \* maximum number of entrepreneurs (2,940) = \$204,859 total familiarization costs.

<sup>15</sup> See "There Are Significant Business Costs to Replacing Employees," By Heather Boushey and Sarah Jane Glynn (2012), Center for American Progress, at: <https://www.americanprogress.org/issues/economy/reports/2012/11/16/44464/there-are-significant-business-costs-to-replacing-employees/>.

existing non-IE final rule parole framework, rather than IE parole program regulations. DHS does not plan to charge any filing fees for reopening adjudication in these cases because they will be reopened on USCIS's own motion. DHS believes the benefits of being considered under the non-IE final rule parole framework outweighs the minimal burdens added by presenting additional evidence. As with the notice of intent to terminate option, entrepreneurs and dependents would be required to submit a Form I-765 for employment authorization if approved for non-IE related parole. Entrepreneurs and dependents would incur costs of \$529 and \$446 per application, respectively. Again, DHS is not able to estimate the number of applicants who might be eligible for non-IE related parole.

#### d. Expiration of Initial Period of Parole

Finally, the option to allow parole approved under the IE parole program regulations to naturally expire, along with any associated employment authorization, unless otherwise terminated on other grounds would require no additional costs on behalf of the applicant or the government.

### 2. Individuals With USCIS-Approved IE Parole Applications Who Have Not Yet Traveled to the United States

#### a. Automatic Termination

For those individuals who have an approved IE parole application, but have not yet traveled to the United States, automatic termination for these individuals would result in the loss of the costs associated with filing Form I-941 totaling \$1,605 per principal application. If the entrepreneur's dependents filed for Form I-131, additional losses of \$765 per application would be incurred for parole that could never be realized. If these applications are automatically terminated, these individuals would lose any costs if they attempt to seek parole pursuant to the IE parole program at a port of entry after the effectiveness of this termination. DHS cannot predict how many IEs may fall into this group at this time, but welcomes comments from the public.

#### b. Termination on Notice

For the option of termination of the advance parole document on notice, those IEs who would receive notice and the opportunity to respond would incur some costs in terms of burden associated with providing evidence to demonstrate that parole would otherwise be warranted under the existing non-IE final rule parole framework for the entrepreneur and any

dependents of such entrepreneur. Depending on the evidence provided, DHS may terminate or amend the validity period of the advance parole as necessary to align the appropriate timeframe to accomplish the purpose of the parole. If the advance parole document remains approved, individuals could then seek, during the validity of the advance parole document, to be paroled into the United States at a port of entry. Under this option, employment authorization for an entrepreneur would not be automatic; rather, each individual parolee would need to separately apply for employment authorization pursuant to 8 CFR 274a.12(c)(11) to the extent consistent with the purpose of parole. DHS does not know how many entrepreneurs would fall into this category, however, requests comments from the public on any such data or estimate. As previously established, the costs for entrepreneurs and dependents to submit Form I-765 would be \$529 and \$446 per application, respectively.

#### c. USCIS Motion To Reopen/Reconsider

For the option of re-opening IE parole determinations, DHS would reopen all approved Form I-941 parole applications without any additional fees to the applicant. These applicants would lose some of their initial \$1,605 application costs associated with the original Form I-941. Some of this loss would be offset by not being required to reapply under the non-IE final rule parole framework which would have costs associated with Form I-131. Additionally, there may be some time burden to the entrepreneur and dependents of the entrepreneur associated with the opportunity to present evidence that would allow DHS to reconsider the grant of parole under the non-IE final rule parole framework, rather than the IE parole program regulations. There may be some additional costs to the government in reconsidering these applications. However, those costs are anticipated to be minimal and covered by the original filing fees. Similar to the option to terminate the advance parole document on notice, this option would require each parolee to apply for employment authorization if approved for non-IE final rule parole. DHS does not have information to determine how many individuals might fall into this option and therefore cannot estimate the numbers of IEs. However, the costs for entrepreneurs and dependents to submit Form I-765 would be \$529 and \$446 per application, respectively. DHS welcomes any public comment on any

data or costs not considered under this option.

Finally if an IE is denied under the non-IE final rule parole framework, an entrepreneur whose original application was successfully adjudicated would have spent additional time providing evidence to be considered eligible under the non-IE final rule parole framework. This additional time would vary amongst applicants so DHS does not estimate the time or opportunity costs. Additionally and as discussed earlier, entrepreneurs have to show ownership in the start-up at the time they apply for IE parole. Therefore, even if the IE does not come into the country, they can still remain owners and work for the start-up from outside of the country. It is possible that the start-up could lose additional funding if investors follow the entrepreneur elsewhere or decide not to continue to invest in the start-up entity because of the proposed rescission of parole, however DHS cannot predict the behavior of a start-up entity's current or future investors. DHS welcomes any public comments on the costs associated with entrepreneurs who have approved IE parole applications, but have not yet traveled to the United States.

### 3. Individuals Whose Parole Applications Are Pending With USCIS on the Effective Date of the Final Rule

#### a. Reject/Refund

For individuals with pending parole applications on the effective date of the final rule, under the first option DHS would reject all pending Form I-941 applications for IE parole and return or refund associated fees. These IEs would incur only opportunity costs of time to file applications which would include \$405 per application for Form I-941 per entrepreneur, \$36 per application for Form I-765 per dependent, or \$190 per application for Form I-131 per dependent. The filing fees for each application would be returned or refunded. There may be some administrative costs associated with the issuance of refunds to USCIS. USCIS does not have cost estimates indicating the number of hours required to process and issue these refunds. DHS welcomes any public comments on the impacts of this option.

#### b. Withdraw or Convert Adjudication to Non-IE Parole

Under the second option to withdraw pending applications for parole and request a refund for fees, the IE would again incur only costs related to the opportunity costs of time for completing Form I-941, Form I-765, or Form I-131.

For those IE who choose to convert their adjudication to existing non-IE parole, they may incur some additional costs associated with providing evidence to demonstrate that they warrant the favorable exercise of discretion under existing non-IE final rule parole frameworks. Applicants that do not respond to RFEs or are not able to favorably demonstrate that they merit approval under the existing non-IE final rule parole framework, would lose the application filing fees in addition to the opportunity costs of time to complete the application (Form I-941—\$1,605, Form I-765—\$446, or Form I-131—\$765). USCIS would keep Form I-941 fees for applicants that respond to RFEs and are approved for non-IE related parole. Therefore, the costs for the original applications would be incurred as described above. Additionally, applicants would need to apply for employment authorization upon arrival to the United States. Applicants would incur an additional \$529 per entrepreneur and \$466 per dependent to file a Form I-765 upon arrival.

#### c. Continue Adjudications Under IE Parole Criteria

The third option is to adjudicate all pending applications received prior to the effective date of the rescission of the IE final rule criteria until all applications are approved or denied. For approved applications, DHS would provide a later effective date for rescission of the final rule and DHS is considering various timeframes for length of parole. This option does not impose any additional costs to applicants other than the original filing costs.

#### 4. Individuals Seeking Re-Parole After the Effective Date of the Final Rule Removing IE Parole Program Regulations

There would be no additional costs for individuals who would no longer be able to seek re-parole after the effective date of this proposed IE parole program rescission. The IE parole program was originally limited to up to 30 months with a possible extension of an additional 30 months. By no longer allowing re-parole, DHS would shorten this timeframe.

Finally, DHS does not know whether some of the startup entities of these entrepreneurs could be considered small entities and could indirectly be impacted by this proposed rule or if some employers who hire the dependents of these entrepreneurs could be small entities and impacted by this proposed rule. Therefore, DHS has prepared an initial regulatory flexibility

analysis (IRFA) under the Regulatory Flexibility Act (RFA) requesting more information on these impacts.

#### C. Regulatory Flexibility Act

This proposed rule would amend DHS regulations to remove the IE parole program promulgated through the IE Final Rule, 82 FR 5238. In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(6), DHS examined the impact of this rule on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than 50,000 people).

In the IE Final Rule, DHS certified that the rule would not impose a significant impact on a substantial number of small entities. This certification was based on grounds that individual entrepreneurs are not considered small entities under the purview of the RFA. In addition, participation is strictly voluntary for the estimated population of 2,940 annual principal applicants. The IE Final Rule did not require any individuals or businesses, including those created by foreign nationals, to seek parole—either generally or as a specific condition for establishing or operating a business in the United States. While there are numerous costs associated with starting a new business, these various costs would be driven by the business activity that each applicant chooses to endeavor in and not by the rule itself.

Based on public comment feedback to the 2016 proposed rule (81 FR 60130), DHS considered the possibility that a business entity associated with the applicant entrepreneur could pay the parole application fees for these entrepreneurs. However, as DHS explained in the IE Final Rule and reiterates here, while this rule proposes to eliminate the entrepreneur-specific criteria and parole process established by the IE Final Rule, it does not eliminate an *individual's* ability to apply for parole using the standard Form I-131 process. DHS continues to stand by the determinations made in the final rule.

While DHS does not believe that there would be a direct impact to entrepreneurs who are individuals and therefore would not be considered as small entities under the RFA, DHS recognizes that there may be some indirect impacts imposed on small entities that are tied to these entrepreneurs. The RFA does not

require indirect impacts to small entities to be considered, nevertheless, DHS has prepared an initial regulatory flexibility analysis (IRFA) and invites public comment on potential impacts of this proposed removal to small entities.

#### Initial Regulatory Flexibility Analysis

DHS proposes to remove the IE parole program regulations. As was discussed in the IE Final Rule and in the above sections of this notice, entrepreneurs or individuals would be directly impacted by this proposed rule, however, individuals are not small entities and therefore, are not considered for RFA purposes. DHS recognizes that there could be some indirect impacts that this proposed rule may have on small entities that are tied to these entrepreneurs. While DHS does not have to consider indirect impacts for RFA purposes, DHS is including this analysis to determine if the proposed removal would indirectly impact small entities. Additionally, DHS recognizes that some of the options presented could also impact the entities that hire the spouse of entrepreneurs and welcomes public comment on potential impacts of the proposed changes on small entities.

a. A description of the reasons why the action by the agency is being considered.

DHS is proposing to remove the IE parole program regulations because the policy it promulgated is not the appropriate vehicle for attracting and retaining international entrepreneurs and does not adequately protect U.S. investors and U.S. workers. Part III, Section B of the preamble of this proposed rule more fully describes the reasons for why action is being taken by the agency.

b. A succinct statement of the objectives of, and legal basis for, the proposed rule.

DHS objectives and legal authority for this proposed rule are discussed in the preamble of this proposed rule.

c. A description and, where feasible, an estimate of the number of small entities to which the proposed changes would apply.

In the Executive Orders 12866 and 13563 sections of this proposed rule and the IE Final Rule, DHS estimated that about 2,940 principal applicants, or entrepreneurs, could be eligible to apply each year. Again, this proposed rule directly impacts individual entrepreneurs, which are not required to be analyzed under the RFA. However, DHS recognizes that some small entities that are tied to the entrepreneur may be indirectly impacted by this proposed rule and therefore provides this

discussion. Currently, DHS is not able to estimate how many entities may be associated with or started by this group of potential applicants. However, DHS assumes that since these entrepreneurs are involved in startups and startups generally tend to be small, most of the entities tied to these entrepreneurs could be considered small.

Additionally, DHS could assume that these small entities tied to these entrepreneurs could face costs in terms of lost application fees, jobs that might not be produced, or other economic activity that might not take place. However, DHS does not currently have conclusive information to determine how many of these entities would be small entities and what the impact might be.

Additionally, DHS recognizes that the options proposed in the preamble may impact some entities that hire the spouses of entrepreneurs, which could be small entities. However, DHS does not have enough information at this time to estimate the number of small entities that may employ the spouses of these entrepreneurs. DHS welcomes public comments or data on the number of small entities that might be impacted by this proposed rule and what the impact might be to those small entities.

d. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills.

The proposed rule does not directly impose any new or additional "reporting" or "recordkeeping" requirements on filers. The proposed rule does not require any new professional skills for reporting.

e. An identification of all relevant Federal rules, to the extent practical, that may duplicate, overlap, or conflict with the proposed rule.

DHS is unaware of any duplicative, overlapping, or conflicting Federal rules, but invites any comment and information regarding any such rules.

f. Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

The IE Final Rule requires that applicants attain significant investor capital from qualified U.S. investors. A component of this requirement involves a minimum investment threshold of \$250,000. DHS considered several alternatives for this amount, based on public input, in which commenters proposed levels for this minimum

ranging from about \$100,000 to \$1 million. The minimum investment is not itself a size standard to determine whether entities are small. Furthermore, since the rule will involve startups, most would be small by definition, which is a feature of the business startup environment and not specifically the rule itself. Hence, the raising or lowering the minimum from the level established in the IE Final Rule would affect the number of potential applicants that would be eligible at a specific point in time, but DHS does not believe the alternatives would generate a considerable impact to small entities. First, DHS is not aware of evidence that establishes a significant relation between the size of firms over their lifetime and the amount of capital they receive in their seed or startup stage of development. Second, the amount of investment that firms receive at early stages of development reflect perceptions concerning their future success to investors and not their size. Third, DHS does not have evidence to suggest a higher or lower threshold would impact capital costs. DHS determined that changing the level of the threshold still would not address underlying issues over an appropriate vehicle to use in attracting and retaining international entrepreneurs. Therefore, this alternative was not considered any further.

#### *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 the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The value equivalent of \$100 million in 1995 adjusted for inflation to 2016 levels by the Consumer Price Index for All Urban Consumer (CPI-U) is \$157 million.

This rule does not exceed the \$100 million expenditure in any one year when adjusted for inflation (\$157 million in 2016 dollars), and this rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply, and DHS has not prepared a statement under the Act.

#### *E. Small Business Regulatory Enforcement Fairness Act of 1996*

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996, Public Law 104-121, 804, 110 Stat. 847, 872 (1996), 5 U.S.C. 804(2). This proposed rule has not been found to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

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

This 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 43255 (Aug. 4, 1999), this 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)*

DHS Directive (Dir) 023-01 Rev. 01 establishes the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA. 40 CFR parts 1500 through 1508.

DHS analyzed this action and concludes that it is not a NEPA-triggering action. Removing a rule that was determined not to individually or cumulatively have a significant effect on the human environment accordingly has no impact on the human environment. If the rule was believed to have a significant impact an Environmental Impact Statement would have been prepared. If the rule was believed to have significant effects that were to be mitigated to insignificance, an Environmental Assessment would have been conducted and a Finding of No Significant Impact with mitigating measures would have been issued. If the rule had been found to have no significant effects because it is covered

by one or more categorical exclusions from further analysis, its removal again would have no significant effects. Therefore, we conclude that this proposed removal does not significantly affect the quality of the human environment. The IE parole program regulations, which this proposed rule seeks to remove, provide criteria and procedures for applying the Secretary's existing statutory parole authority to entrepreneurs in a manner to ensure consistency in case-by-case adjudications.

Furthermore, unlike the rescission of policy letters or other actions which do not involve rulemaking, public involvement, an important value of NEPA, is fully protected by the rulemaking process.

### I. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all agencies are required to submit any reporting requirements inherent in a rule to the Office of Management and Budget (OMB) for review and approval. This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

DHS is withdrawing all changes to the Form I-131 and Form I-765 approved with the IE Final Rule published at 82 FR 5238 on January 17, 2017. DHS will continue to use the version of Form I-765 approved by OMB on April 13, 2017, and will continue to use the version of Form I-131 approved on December 21, 2016. DHS also is proposing to discontinue the new information collection Form I-941 originally approved as a result of the Final Rule published at 82 FR 5238 on January 17, 2017. Finally, DHS is withdrawing all changes to the Form I-9 that were approved in connection with the IE Final Rule.

### USCIS Forms

#### 1. USCIS Form I-9

##### Overview of This Information Collection

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

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-9; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form was developed to facilitate compliance with section 274A of the Immigration and Nationality Act, which prohibits the knowing

employment of unauthorized aliens. This information collection is necessary for employers, agricultural recruiters and referrers for a fee, and state employment agencies to verify the identity and employment authorization of individuals hired (or recruited or referred for a fee, if applicable) for employment in the United States.

(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 employer and recruiter respondents for the information collection I-9 is 55,400,000 and the estimated hour burden per response is .33 hours. The estimated total number of employee respondents for the information collection I-9 is 55,400,000 and the estimated hour burden per response is .17 hours. The estimated total number of recordkeeping respondents for the information collection I-9 is 20,000,000 and the estimated hour burden per response is .08 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 29,300,000 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 \$0.

#### 2. USCIS Form I-131

##### Overview of This Information Collection

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

(2) *Title of the Form/Collection:* Application for Travel Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-131; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Certain aliens, principally permanent or conditional residents, refugees or asylees, applicants for adjustment of status, aliens in Temporary Protected Status (TPS) and aliens abroad seeking humanitarian parole, in need to apply for a travel document to lawfully enter or reenter the United States. Lawful permanent residents may now file requests for travel permits (transportation letter or boarding foil).

(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-131 is 594,324 and the

estimated hour burden per response is 1.9 hours. The estimated total number of respondents for the biometrics collection is 71,665 and the estimated hour burden per response is 1.17 hours. The estimated total number of respondents for the passport style photographs is 319,727 and the estimated hour burden per response is .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 1,372,928 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 177,928,330.

#### 3. USCIS Form I-765

##### Overview of This Information Collection

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

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-765; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected on this form is used by the USCIS to determine eligibility for the issuance of the employment document.

(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-765 is 2,139,523 and the estimated hour burden per response is 3.42 hours. The estimated total number of respondents for the biometrics collection is 405,067 and the estimated hour burden per response is 1.17 hours. The estimated total number of respondents for the information collection I-765WS (Work Sheet) is 250,000 and the estimated hour burden per response is .5 hours. The estimated total number of respondents for the Passport-style Photographs is 2,136,583 and the estimated hour burden per response is .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 8,985,859 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 650,414,992.

## 4. USCIS Form I-941

DHS is discontinuing the new USCIS Form I-941 (OMB Control Number 1615-0136).

**List of Subjects***8 CFR Part 103*

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements.

*8 CFR Part 212*

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

*8 CFR Part 274a*

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

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

**PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS**

- 1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b; 31 U.S.C. 9701; 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.

**§ 103.7 [Amended]**

- 2. Amend § 103.7 by removing paragraph (b)(1)(i)(KKK).

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

- 3. The authority citation for part 212 continues to read as follows:

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

**§ 212.19 [Removed]**

- 4. Remove § 212.19.

**PART 274a—CONTROL OF EMPLOYMENT OF ALIENS**

- 5. The authority citation for part 274a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1324a; 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.

- 6. Revise § 274a.2(b)(1)(v)(A)(5) to read as follows:

**§ 274a.2 Verification of identity and employment authorization.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) \* \* \*

(A) \* \* \*

(5) In the case of an individual who is authorized to work for a specific employer incident to status, a foreign passport with an Arrival/Departure Record, Form I-94 (as defined in 8 CFR 1.4) or Form I-94A, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the employment is not in conflict with the individual's employment-authorized status and any restrictions or limitations identified on the Form;

\* \* \* \* \*

- 7. Amend § 274a.12 by:

■ a. Revising paragraph (b) introductory text;

■ b. Removing paragraph (b)(37);

■ c. Revising paragraph (c)(11); and

■ d. Removing and reserving paragraph (c)(34).

The revisions read as follows:

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

\* \* \* \* \*

(b) *Aliens authorized for employment with a specific employer incident to status.* The following classes of nonimmigrant aliens are authorized to be employed in the United States by the specific employer and subject to the restrictions described in the section(s) of this chapter indicated as a condition of their admission in, or subsequent change to, such classification. An alien in one of these classes is not issued an employment authorization document by DHS:

\* \* \* \* \*

(c) \* \* \*

(11) An alien paroled into the United States temporarily for urgent humanitarian reasons or significant public benefit pursuant to section 212(d)(5) of the Act.

\* \* \* \* \*

**Kirstjen M. Nielsen,**

*Secretary of Homeland Security.*

[FR Doc. 2018-11348 Filed 5-25-18; 8:45 am]

**BILLING CODE 9111-97-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2018-0454; Product Identifier 2017-NM-056-AD]

RIN 2120-AA64

**Airworthiness Directives; Airbus Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Airbus Model A330-200 Freighter series airplanes, Airbus Model A330-200 and -300 series airplanes, and Airbus Model A340-200 and -300 series airplanes. This proposed AD was prompted by reports of cracked slat tracks at the location of the front stop attachment to the track. This proposed AD would require a detailed inspection, repetitive special detailed inspections, and corrective actions if necessary. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by July 13, 2018.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: [airworthiness.A330-A340@airbus.com](mailto:airworthiness.A330-A340@airbus.com); internet <http://www.airbus.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

**Examining the AD Docket**

You may examine the AD docket on the internet at <http://>