characterize the occupational field, including those that require extremely high levels of expertise;

(iii) The rates of pay reasonably and generally required in the public and private sectors for similar positions; and

(iv) The availability of individuals who possess the qualifications to do the work required by the position;

(10) Documentation, with appropriate supporting data, of the agency's experience and, as appropriate, the experience of other organizations, in efforts to recruit or retain exceptionally well-qualified individuals for the position or for a position sufficiently similar with respect to the occupational field, required qualifications, and other pertinent factors, to provide a reliable comparison;

(11) Assessment of why the agency could not, through diligent and comprehensive recruitment efforts and without using the critical position pay authority, fill the position within a reasonable period with an individual who could perform the duties and responsibilities in a manner sufficient to fulfill the agency's mission. This assessment must include a justification as to why the agency could not, as an effective alternative, use other human resources flexibilities and pay authorities, such as recruitment, retention, and relocation incentives under 5 CFR part 575;

(12) An explanation regarding why the position should be designated a critical position and made eligible for a higher rate of pay under this part within its organizational context (*i.e.*, relative to other positions in the organization) and, when applicable, how it compares with other critical positions in the agency. The agency must include an explanation of how it will deal with perceived inequities among agency employees (*e.g.*, situations in which employees in positions designated as critical would receive higher rates of pay than their peers, supervisors, or other employees in positions with higher-level duties and responsibilities);

(13) Documentation of the effect on the successful accomplishment of important agency missions if the position is not designated as a critical position;

(14) Any additional information the agency may deem appropriate to demonstrate that higher pay is needed to recruit or retain an employee for a critical position;

(15) Unless the position is an Executive Schedule position, a copy of the position description and qualification standard for the critical position; and

(16) The desired rate of basic pay for requests to set pay above the rate for level II of the Executive Schedule and justification to show that such a rate is necessary to recruit and retain an individual exceptionally well-qualified for the critical position.

§ 535.105 Setting and adjusting rates of basic pay.

(a) The rate of basic pay for a critical position may not be less than the rate of basic pay, including any locality-based comparability payments established under 5 U.S.C. 5304 (or similar geographic adjustment or supplement under other legal authority) that would otherwise be payable for the position.

(b) If critical position pay authority is granted for a position, the head of an agency may set pay initially at any amount up to the rate of pay for level II or level I of the Executive Schedule, as applicable, without further approval unless a higher maximum rate is approved by the President under § 535.104(c).

(c) The head of an agency may make subsequent adjustments in the rate of pay for a critical position each January at the same time general pay adjustments are authorized for Executive Schedule employees under section 5318 of title 5, United States Code. Such adjustments may not exceed the new rate for Executive Schedule level II or other applicable maximum established for the critical position. However, the employee must have at least a rating of Fully Successful or equivalent, and subsequent adjustments must be based on labor market factors, recruitment and retention needs, and individual accomplishments and contributions to an agency's mission.

(d) Employees receiving critical position pay are not entitled to locality-based comparability payments established under 5 U.S.C. 5304 or similar geographic adjustments or supplements under other provision of law.

(e) If an agency discontinues critical position pay for a given position (on its own initiative or because OPM, in consultation with OMB, terminates the authority under § 535.103(d)), the employee's rate of basic pay will be set at the rate to which the employee would be entitled had he or she not received critical pay, as determined by the head of the agency.

§ 535.106 Treatment as rate of basic pay.

A critical position pay rate is considered a rate of basic pay for all purposes except—

(a) Application of any saved pay or pay retention provisions (*e.g.*, 5 U.S.C. 5363); or

(b) Application of any adverse action provisions (*e.g.*, 5 U.S.C. 7512).

§ 535.107 Annual reporting requirements.

(a) OPM must submit an annual report to Congress on the use of the critical position pay authority. Agencies must submit the following information to OPM by January 31 of each year on their use of critical position pay authority for the previous calendar year:

(1) The name, title, pay plan, and grade/level of each employee receiving a higher rate of basic pay under this subpart;

(2) The annual rate or rates of basic pay paid in the preceding calendar year to each employee in a critical position;

(3) The beginning and ending dates of such rate(s) of basic pay, as applicable;

(4) The rate or rates of basic pay that would have been paid but for the grant of critical position pay. This includes what the rate or rates of basic pay were, or would have been, without critical position pay at the time critical position pay is initially exercised and any subsequent adjustments to basic pay that would have been made if critical position pay authority had not been exercised (estimate rates where a range would apply, such as for Senior Executive Service positions); and

(5) Whether the authority is still needed for the critical position(s).

(b) [Reserved]

[FR Doc. E7–7763 Filed 4–24–07; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 204, 214, and 299

[CIS No. 2302–05; DHS Docket No. USCIS–2005–0030]

RIN 1615–AA16

Special Immigrant and Nonimmigrant Religious Workers

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

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend U.S. Citizenship and Immigration Services (USCIS) regulations regarding the special immigrant and nonimmigrant religious worker visa classifications. This rule addresses concerns about the integrity of the religious worker program by proposing a petition requirement for religious organizations seeking to classify an

alien as an immigrant or nonimmigrant religious worker. This rule also addresses an on-site inspection for religious organizations to ensure the legitimacy of petitioner organizations and employment offers made by such organizations.

This rule also would clarify several substantive and procedural issues that have arisen since the religious worker category was created. This notice proposes new definitions that describe more clearly the regulatory requirements, and the proposed rule would add specific evidentiary requirements for petitioning employers and prospective religious workers.

Finally, this rule also proposes to amend how USCIS regulations reference the sunset date, the statutory deadline by which special immigrant religious workers, other than ministers, must immigrate or adjust status to permanent residence, so that regular updates to the regulations are not required each time Congress extends the sunset date.

DATES: Written comments must be submitted on or before June 25, 2007.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2005–0030, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS–2005–0030 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Irene Hoffman Moffatt, Senior Program Analyst, Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 272–8410.

SUPPLEMENTARY INFORMATION:

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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. The Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) also invite comments that relate to the economic or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to USCIS in evaluating these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–2005–0030. All comments received will be posted without change to *http://www.epa.gov/feddocket*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.* Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To make an appointment please contact the Regulatory Management Division at (202) 272–8377.

II. Background

A. Current Eligibility Requirements for Special Immigrant and Nonimmigrant Religious Workers

Aliens may be classified either as nonimmigrant or special immigrant religious workers under the Immigration and Naturalization Act (INA) and USCIS regulations. *See* sections 101(a)(15)(R) and (27)(C) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101(a)(15)(R) and (27)(C); 8 CFR 204.5(m), 214.2(r). To be eligible for classification as a religious worker, the alien must have been a member of a religious denomination having a bona fide, nonprofit religious organization in the United States for at least two years prior to the application for admission to the United States if seeking the religious worker (R–1) nonimmigrant status, or to the filing of the petition with USCIS if seeking special immigrant status. The alien must seek to enter the United States to work for the organization, or a bona fide organization affiliated with the denomination, as a minister or a worker in a religious vocation or occupation, regardless of whether or not in a professional capacity. Unlike some nonimmigrant categories, the R classification does not require that the alien establish that he or she has a residence in a foreign country which he or she has no intention of abandoning.

Under current USCIS regulations, ''professional capacity'' is defined as ''an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.'' 8 CFR 214.2(r)(2). ''Religious occupation'' is defined as ''an activity which relates to a traditional religious function,'' including, but not limited to, religious instructors, cantors and workers in religious health care facilities. *Id.* The term generally would not include maintenance workers, clerical staff or fund raisers. *Id.* A ''religious vocation'' is a ''calling to religious life evidenced by the demonstration of commitment practices in the religious denomination, such as the taking of vows.'' *Id.* A bachelor's degree or foreign equivalent is only required for aliens working in a professional capacity, assuming the other vocation or occupation requirements are met.

The main substantive difference between the special immigrant religious worker and the nonimmigrant religious worker classification is that the special immigrant religious worker must not only have been a member of the

religious denomination for the two years immediately preceding the application, but must have also been working as a minister or performing the religious vocation or occupation continuously, either abroad or in the United States or both, for at least two years immediately preceding the filing of the application.

The spouse or child of a nonimmigrant granted R–1 status can be admitted to the United States as an R–2 nonimmigrant in order to accompany, or follow to join, the principal R–1 alien. The spouse or child of a special immigrant religious worker is eligible to apply for permanent residence by virtue of the worker's acquisition of permanent residence.

There is a significant procedural difference between the filing processes for special immigrant religious workers and nonimmigrant religious workers. Section 203(e) of the INA, 8 U.S.C. 1153(e), requires that an alien seeking status as a special immigrant religious worker file a petition (Form I–360) with USCIS. The petition must be approved before the alien can obtain special immigrant status. Under current USCIS regulations, there is no requirement that a nonimmigrant living outside of the United States file a petition to obtain a R–1 visa. At present, an R–1 classification can be initiated at a consular office overseas through application for an R–1 visa (without any prior approval of a petition by USCIS) or, for aliens who are visa-exempt, by seeking initial admission into the United States. Organizations seeking to employ a nonimmigrant religious worker already present in the United States, or to extend the stay of a current R–1 nonimmigrant employee in the United States, must file a Form I–129, Petition for a Nonimmigrant Worker, with USCIS, along with the appropriate fee. Filing a Form I–129 with USCIS is not the only way that a religious worker may obtain further periods of lawful stay in the United States. A religious worker may obtain additional approved periods of lawful stay in the United States by using a visa to reenter or, if visa-exempt, by seeking reentry at the border.

Unlike the provision for ministers, which does not contain a sunset provision, section 101(a)(27)(C)(ii)(II) and (III) of the Act, 8 U.S.C. 1101(a)(27)(C)(ii)(II) and (III), as enacted by section 151(a) of the Immigration Act of 1990 (IMMACT '90), Pub. L. No. 101–649, 104 Stat. 4978 (Nov. 29, 1990), provided that professional and other religious workers must ''seek to enter the United States * * * before October 1, 1994.'' *See also* An Act to Amend the Immigration and Nationality Act to Extend for an Additional 5 years the Special Immigrant Religious Worker Program, Pub. L. No. 108–99, 117 Stat. 1176 (Oct. 15, 2003). This sunset provision has been extended four times and now expires on October 1, 2008. Based on the pattern since 1990, further extensions to the sunset date can be anticipated. To immigrate under the special immigrant religious worker category, aliens who are not ministers must have a petition approved on their behalf and either enter the United States as an immigrant or adjust their status to permanent residence while in the United States by no later than September 30, 2008. This rule proposes to simply reference the statutory deadline contained in section 101(a)(27)(C) of the Act, rather than mention a specific date, so that regular updates to the regulations are not required each time Congress extends the sunset date provision. The sunset provision only applies to special immigrant workers in a religious vocation or occupation; it does not apply to the nonimmigrant religious worker category or to special immigrant ministers.

B. Rationale for the Proposed Rule

The former Immigration and Naturalization Service (INS) published a proposed rule in 1995. 60 FR 29771 (June 5, 1995). While USCIS reviewed this earlier proposed rule, the Department determined that further changes to the regulations governing the religious worker program were needed. This was particularly evident given the passage of time, recent indications of fraud in the religious worker program and a renewed focus on eradicating such fraud, and the need to update current regulations to reflect recent statutory amendments.

In March 1999, the Governmental Accountability Office (GAO) identified incidents of fraud in the religious worker program. GAO, Issues Concerning the Religious Worker Visa Program, Report GAO/NSIAD–99–67 (March 26, 1999). The report stated that the fraud often involved false statements by petitioners about the length of time that the applicant was a member of the religious organization, the qualifying work experience, and the position being filled. The report also noted problems with the applicants making false statements about their qualifications and exact plans in the United States.

USCIS has since continued to assess the potential for fraud in the religious worker program. USCIS developed and implemented a benefit fraud assessment to measure the integrity of specific nonimmigrant and immigrant applications and petitions by conducting administrative inquiries on randomly selected cases. The review is referred to as an ''assessment'' because the 220 cases reviewed were not attached to any suspicions of fraud; rather, they were a statistically valid combination of pending and completed cases filed over a six month period that were reviewed to determine the extent of fraud occurring within the sample. This assessment by the USCIS Office of Fraud Detection and National Security (FDNS) confirmed that there was a 33% rate of fraud in the religious worker program. The assessment also indicated patterns of potential fraud and weaknesses that created vulnerabilities for fraud. Through this sample of religious worker cases, FDNS established that a significant number of petitions filed on behalf of religious workers were filed by nonexistent organizations (44% of fraudulent cases) and/or contained material misrepresentations in the documentation submitted to establish eligibility (54% of fraudulent cases). There exists a compelling need to eliminate this fraud. A summary of the USCIS FDNS Religious Worker Benefit Fraud Assessment can be found on the docket at *http://www.regulations.gov* or at *http://www.uscis.gov* under the ''about USCIS'' tab, then under ''Freedom of Information and Privacy Act (FOIA).''

In keeping with the DHS anti-fraud strategy, cases identified with preliminary findings of fraud are referred to the Bureau of Immigration and Customs Enforcement (ICE) for further investigation, possible removal proceedings, or referral for criminal prosecution.

The changes proposed in this rule, if implemented, would decrease the opportunity for fraud in the religious worker program.

III. Analysis of Proposed Rule

This rule proposes changes to the current religious worker process to address concerns about the integrity of the religious worker program. Those changes include expanding the petition requirement for all religious organizations seeking to classify an alien as an immigrant or nonimmigrant religious worker and the possibility of an on-site inspection for religious organizations to ensure the legitimacy of petitioner organizations and employment offers made by such organizations.

USCIS also is proposing new and amended definitions to describe more clearly the regulatory requirements, as well as add specific evidentiary

requirements for petitioning employers and prospective religious workers. This rule also proposes to amend how USCIS regulations reference the sunset date, the statutory deadline by which special immigrant religious workers, other than ministers, must immigrate or adjust status to permanent residence, so that regular updates to the regulations are not required each time Congress extends the sunset date.

USCIS does not believe that the requirements proposed under this rule (as discussed below) would substantially burden the free exercise of religion and therefore this rule should not raise any concerns under the Religious Freedom Restoration Act of 1993. *See* Pub. L. No. 103–141, 107 Stat. 1488, found as amended at 42 U.S.C. 2000bb *et seq.* The regulation of the process that organizations must follow to petition for foreign workers and of foreign workers seeking to enter or remain in the United States exists independently of whether the employing organization is classified as ''religious'' in nature. The existing regulation of the religious worker program is only being continued by the present rule—it is not a new form of regulation or a regulation that otherwise intrudes upon the existing expectations of religious freedom under the First Amendment. USCIS has carefully crafted the additional requirements proposed in an attempt to eradicate fraud in the religious worker program.

The proposed rule applies to the religious organizations who petition for an immigrant or non-immigrant religious worker to perform religious work in the United States. The proposed rule does not make any distinction that is known to be based on the substance of an individual's religious beliefs; it only sets qualifications for the organization seeking to employ an individual, and the qualifications of that individual. USCIS, however, is interested in public comment on this issue and will consider comments received in the development of the final rule.

A. Proposed Changes to Definitions

The applicable definitions for applicants and petitioners for religious worker classification are set forth in 8 CFR 204.5(m) and 214.2(r)(2). This proposed rule adds several definitions, and expands or clarifies others as described below. Because each of the defined terms are repeated in both 204.5 and 214.2, the amendments and additions proposed below apply to both sections as indicated in the regulation text at the end of this rule.

Bona Fide Organizations

USCIS proposes to clarify the existing definition of ''bona fide nonprofit religious organization in the United States'' to mean a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(3), or subsequent amendment, as a religious organization *and* possessing a currently valid determination letter from the IRS confirming such exemption. A church must petition as a bona fide nonprofit religious organization and may not petition as a bona fide organization which is affiliated with a religious organization as a means to avoid the evidentiary requirements applicable to churches. USCIS has determined that this letter is the best means for a petitioner to provide immediate and certain documentation at the time of the initial application that the religious organization is exempt from taxation under section 501(c)(3). The agency welcomes public comments on alternative means for the initial petition to include such documentation.

USCIS also proposes to add to the existing definition of ''bona fide organization which is affiliated with the religious organization in the United States,'' to include entities such as educational institutions, hospitals, or private foundations. See 8 CFR 204.5(m)(2), 214.2(r)(2). Such entities may qualify as a petitioning employer organization for immigration purposes, even if their purpose is not exclusively religious, if documentation is provided to establish the organization's religious purpose and the religious nature of its activities. The eligibility of each organization will be determined on a case-by-case basis. An organization granted section 501(c)(3) status by the IRS as something other than a religious organization must submit the Religious Denomination Certification contained in the Forms I–360 and I–129, signed by the attesting religious organization in the denomination to confirm the petitioning organization's affiliation with the religious denomination. Additionally, the bona fide nonprofit religious organization attesting to the petitioning organization's affiliation with the denomination must be exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 and as evidenced by a currently valid determination letter from the IRS confirming the bona fide nonprofit religious organization's exemption. A church may not present itself as a bona fide organization affiliated with a religious denomination as a means of avoiding the requirement that churches present an IRS tax-exempt letter as a religious organization.

Denominational Membership

USCIS proposes to add a definition of ''denominational membership'' to clarify that, during at least the two-year period immediately preceding the filing of the petition, the alien must have been a member of the same religious denomination as the United States employer that seeks to employ him or her. The definition is premised on the shared faith and worship practices of the institution, rather than on their formal affiliation. The purpose of this definition is to avoid the immigration of religious workers (1) into institutions that are not truly practicing a religion, and (2) based on the alien's recent ''conversion'' to a religious commitment in the interest of immigration status rather than a sincere intention to perform service to one's longstanding faith.

Ministers

A ''minister'' is currently defined as an individual duly authorized by a religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. USCIS proposes to amend this definition to require that an individual also be ''fully trained according to the denomination's standard.'' The revised definition focuses on the denomination's traditional requirements for ordination or its equivalent, because some denominations do not require a particular level of formal academic training or experience.

Religious Denomination

USCIS is modifying the definitions of ''religious denomination'' to clarify that it applies to a religious group or community of believers governed or administered under some form of common ecclesiastical government. See 8 CFR 204.5(m)(2), 214.2(r)(2). The denomination must share a common creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. The proposed definition does not require a hierarchical governing structure because some legitimate denominations officially shun such structures; instead, the focus is on the commonality of the faith and internal organization of the participating organizations.

Religious Occupation

''Religious occupation'' is now defined as habitual employment in an occupation the duties of which primarily relate to a traditional religious function and that is recognized as a religious occupation within the denomination. USCIS proposes to amend the definition to clarify that the duties of the position must be ''primarily, directly, and substantially related to the religious beliefs or creed of the denomination.'' Examples of religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, missionaries, religious translators, religious broadcasters, youth ministers, religious choir directors or music ministers, or ritual slaughter supervisors. ''Religious occupation'' does not include positions whose duties are primarily administrative or supportive in nature, and any administrative duties must be incident to the substantive, traditionally religious functions. Examples of non-qualifying administrative and support positions include, but are not limited to: janitors; maintenance workers; clerks; secretaries; fund raisers; secular musicians; secular translators; those who sell literature, volunteer as ushers during worship services, serve in the choir, volunteer part-time to assist the clergy, or lead a weekly study group; or similar persons engaged in primarily secular, administrative or support duties. These examples are primarily drawn from the legislative history of IMMACT '90. *Family Unity and Employment Opportunity Immigration Act of 1990,* H. Rept. 101–723(I), 101st Cong., 2nd Sess. (Sept. 19, 1990).

Religious Vocation

USCIS is proposing to revise the definition of ''religious vocation'' to clarify that it refers to a formal lifetime commitment to a religious way of life. The opportunity to immigrate as a religious worker in a vocation should be reserved for those individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion.

Religious Workers

USCIS proposes to add a new definition of ''religious workers'' and to define the term, in part, as individuals engaged in a religious occupation or vocation either in a professional or non-professional capacity. Religious workers in a vocation are those individuals who have made a formal lifetime commitment to a religious way of life. USCIS is proposing to require evidence that the religious denomination has a traditional established class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Such evidence may include, but is not limited to, the taking of vows, or other investitures or ceremonies. USCIS requests comments with regard to other types of available evidence and alternative criteria for establishing the required level of commitment to a religious way of life applicable to diverse religious denominations.

Religious workers in a religious occupation are those seeking to be employed by a religious organization in a religious occupation, the duties of which involve traditional religious functions. The new definition of religious occupation seeks to distinguish more clearly between non-qualifying lay or administrative work, and the kind of committed religious work justifying immigration status. The definition and evidentiary requirement for religious workers in a religious occupation use the bright lines of: (1) compensation by the employer, and (2) either 20 hours per week for nonimmigrants or 35 hours per week (full-time) for special immigrants.

The revised requirements for immigrant petitions and nonimmigrant status require that the alien's work be compensated by the employer because that provides an objective means of confirming the legitimacy of and commitment to the religious work, as opposed to lay work, and of the employment relationship. Unless the alien has taken a vow of poverty or similarly made a formal lifetime commitment to a religious way of life, this rule requires that the alien be compensated in the form of a salary or in the form of a stipend, room and board, or other support so long as it can be reflected in a W–2, wage transmittal statements, income tax returns, or other verifiable IRS documents. USCIS recognizes that legitimate religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R–1 nonimmigrant visa or special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program. In this rule, USCIS is proposing to implement bright lines that will ease the verification of petitioner's claims in the instances where documentary evidence is required. It should be noted that this rule greatly reduces the burden on petitioners for submission of evidence. For example, petitioners are currently required to submit evidence of the beneficiary's education and training whereas under this proposed rule they need only attest to the beneficiary's eligibility. Documentary evidence is generally only required when it is in the form of an official government document or similarly provides added reliability. This change to the evidentiary requirements, in favor of an attestation scheme, can only successfully insure against fraud and abuse where petitioner's claims can be verified. In accordance with 8 CFR 214.2(b)(1), members of a religious denomination coming temporarily and solely to do missionary work on behalf of a religious denomination may do so by obtaining a B–1 visa and may be granted extensions in increments of up to one year (provided such work does not involve the selling of articles or the solicitation or acceptance of donations).

The issue of training is also clarified. The rules do not require a specific set of training, but a religious worker must be minimally competent to do the work and must intend to do it. Religious study or training for religious work in the United States does not justify special immigrant status, though an R–1 religious worker may pursue study or training incident to status, as is appropriate in several other nonimmigrant classifications. Aliens seeking to pursue religious study in the United States not incident to R–1 status may pursue options such as F–1 or J–1 classifications. All of these definitions recognize that some administrative duties are incidental to many religious functions, but require that the religious functions predominate.

B. Proposed Petitioning Requirements

USCIS is proposing to impose a new petition requirement on employers or organizations seeking to classify an alien as a religious worker, whether as an immigrant (Form I–360) or nonimmigrant (Form I–129). A petition requirement already exists for special immigrants and for organizations that seek to extend the stay or change status of a nonimmigrant religious worker already in the United States. The addition of the petition requirement for nonimmigrants seeking an R–1 visa or R–1 visa-exempt entry is needed in order to facilitate current and future on-site inspections and to further ensure the integrity of the program. Only the employing, United States organization will be allowed to complete and submit the Form I–129 or Form I–360 on behalf of the beneficiary. Allowing petitions to be filed by the aliens themselves or by third parties does not support the

integrity of the process. Given that there always must be an employing United States organization; this requirement should not pose any undue hardship on filers.

USCIS also is proposing to require that the petitioning employer complete and submit an attestation along with the Form I–129 or the Form I–360, for non-immigrants and special immigrants, respectively. The attestation will serve to establish that the alien will be entering the United States solely to carry on the vocation of a minister or to work in a religious vocation or occupation, that the alien is qualified for such position, and that the job offer is legitimate. These attestations must be executed by an authorized official of the organization. This requirement is designed to ensure that the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

C. On-Site Inspections

This rule proposes that USCIS may conduct on-site inspections of petitioning organizations seeking to employ either an R–1 nonimmigrant or special immigrant religious worker. Pursuant to its general authority under section 103 of the INA and 8 CFR part 103, USCIS may conduct audits, on-site inspections, reviews or investigations, to ensure that an alien is entitled to the benefit sought and that all laws have been complied with before and after approval of such benefits. DHS has determined that the option to conduct such on-site inspections is vital to the integrity of the religious worker program and petitioning process. A recent assessment by the FDNS confirmed that there was a high percentage of fraud (33%) in the religious worker program. Through the statistically valid sample of Form I–360 religious worker petitions, FDNS established that a significant number of petitions filed on behalf of religious workers were filed by nonexistent organizations and/or contained material misrepresentations in the documentation submitted to establish eligibility. By promulgating the option to conduct on-site inspections as proposed in this rule, USCIS is emphasizing this tool, with other program enhancements, as a deterrent to fraud and an aid in the detection of fraudulent petitions in the R–1 nonimmigrant and special immigrant religious worker categories. This rule will also allow DHS to monitor religious workers and ensure they maintain lawful status while in the United States. The purpose of this activity is to eliminate the inappropriate award of immigration benefits to unqualified individuals.

D. Evidentiary Requirements for Petitioning Organizations

USCIS also proposes to change the evidentiary requirements for petitioning employer organizations seeking a religious worker. Existing regulations require that the organization submit documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. USCIS is proposing to specifically require that petitioning organizations submit a currently valid determination letter from the Internal Revenue Service (IRS). Likewise, a group of religious organizations, that are recognized as tax exempt under a group tax exemption, must provide the most current determination letter from the IRS that establishes that the group is an organization as described in section 509(a)(1) of the Internal Revenue Code of 1986, 26 U.S.C. 509(a)(1), and that the group's tax exemption is in accordance with section 501(c)(3) of the Internal Revenue Code of 1986. USCIS recognizes that in some cases such a determination letter will require the payment of a user fee to the IRS. See IRS Form 8718 (rev. June 2006).

Although churches may not be required to obtain a section 501(c)(3) exemption for tax purposes, such an exemption is required when requesting immigration benefits on behalf of an alien. *See* Internal Revenue Service, *Tax Guide for Churches and Religious Organizations: Benefits and responsibilities under the Federal Tax Law* (IRS pub. no. 1828, Rev. Sept. 2006); *compare*, section 101(a)(27)(C)(ii)(III) of the INA, 8 U.S.C. 1101(a)(27)(C)(ii)(III). Entities seeking to employ alien religious workers should be willing to request IRS recognition of their tax-exempt status, and their certifications to IRS under applicable tax rules will help ensure the integrity of their participation in the immigration process. In addition, the proposed regulation would modify the current regulatory text by replacing the ''it'' with ''organization'' in order to clarify that the organization must be exempt from taxation. USCIS requests comments regarding how to document bona fide tax exempt status, including the availability of other government agencies that may certify the bona fide tax exempt status of organizations located in United States territories that may be outside the jurisdiction of the IRS.

E. Changes Unique to the Special Immigrant Religious Worker Classification

Current regulations describing various categories of religious workers have led to much confusion. USCIS is now proposing to reorganize 8 CFR 204.5(m) in its entirety and simplify the religious worker classification by dividing it into three distinct categories: ministers, individuals engaged in a religious vocation, and individuals engaged in a religious occupation. Individuals within the latter two categories may be either professionals or non-professionals.

The proposed rule recognizes that the prior religious work need not correspond precisely to the type of work to be performed; for instance, a former minister may immigrate to work as a missionary, and a former missionary, now ordained, may immigrate to work as a minister. The rule codifies longstanding recognition that a break in the continuity of religious work during the two years immediately preceding the filing of the petition will not affect eligibility if the alien has performed as a religious worker on a compensated, full-time basis, the break did not exceed two years, and the nature of the break was for further religious training or for sabbatical and did not involve unauthorized work in the United States.

The proposed rule also clarifies that qualifying prior experience (that is, during the two years immediately preceding the petition or preceding any acceptable interruption of religious work) acquired in the United States must have been authorized under United States immigration law and in conformity with all other laws of the United States such as the Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.*, 52 Stat 1060, as amended. If the alien was employed in the United States during the two years immediately preceding the filing of the application, the petitioner must submit the alien's W–2 wage statements, the employer's wage transmittal statements, and the transcripts of the alien's processed income tax returns (IRS Form 4506T) for the preceding two years reflecting such work. Additionally, the alien must have belonged to the same denomination as the petitioner organization throughout the two years of qualifying employment. The evidentiary requirements in the rule also will ensure that the tax laws have been generally observed. Allowing periods of unauthorized, unreported employment to qualify an alien toward

permanent immigration undermines the integrity of the United States immigration system.

USCIS proposes to remove existing 8 CFR 204.5(m)(3)(iv), which currently states that the director may request appropriate additional evidence relating to the eligibility under section 203(b)(4) of the Act, 8 U.S.C. 1153(b)(4), of the religious organization, the affiliated organization, or the alien. This paragraph is unnecessary, since it merely repeats general adjudicative procedures found in 8 CFR 103.2. A similar provision has been stricken from the nonimmigrant religious worker regulations.

F. Changes Unique to the Nonimmigrant Religious Worker Classification

To maintain consistency in the adjudication of the nonimmigrant and special immigrant religious worker classifications, DHS has made conforming changes to the nonimmigrant religious worker classification (R visa category), where appropriate, to reflect the changes proposed in the definitions and filing requirements for special immigrant religious workers.

Some proposed requirements, such as the period of authorized stay, are applicable only to the R visa category. Under current regulations, the standard period of stay is three years (with one potential extension of two years). USCIS proposes to change the standard period of stay to one year (with two potential extensions of two years each). An alien may apply for a one-year period of stay by filing the Form I–129 and the R Classification Supplement with the required attestation section completed and supporting documentation. This one-year admission runs from the date of initial admission in order to provide the alien the benefit of the full year and also to accommodate for any delay in consular processing. An alien may apply for additional periods of stay by filing the Form I–129 with USCIS and through demonstration of the alien's compensation by the approved employer in a manner that assures compliance with tax policies and provides better assurance to USCIS that the required employment relationship truly exists. Any request for R–1 status, admission beyond the first year of R–1 status, or any period of extension of stay, must include initial evidence of the previous R–1 employment in the form of the alien's W–2 wage statements, the employer's wage transmittal statements, and transcripts of the alien's processed income tax returns (IRS Form 4506T) for any preceding period spent in the United States in R–1 status. For any period of such employment not yet reflected in documents, such as W–2s, wage transmittal statements or income tax returns, required to be completed or filed at the time of filing the petition, then pay stubs relating to payment for such employment shall also be presented for work not yet reflected in such documents. Aliens who have taken a vow of poverty or similar formal lifetime commitment to a religious way of life may submit evidence of such commitment in lieu of the above documentary requirements, but must also submit evidence of all financial support (including stipends, room and board, or other forms of support) received while in R–1 status.

The proposed rule will require that every petition for R–1 classification must be initiated by filing a Form I–129 with USCIS. Beneficiaries will no longer be able to obtain an R–1 visa or status at a United States Consulate abroad or at a port-of-entry without the prior approval of the Form I–129 by USCIS. Visa-exempt aliens will present the USCIS approval of the Form I–129 at the port-of-entry when applying for admission in R–1 status. Only a prospective or existing employer can complete and file the Form I–129, and the employer must notify USCIS when the individual on an R–1 visa has been released from his or her employment or is no longer working the minimally required hours.

DHS is proposing to exempt from the five-year maximum stay certain aliens whose work in the United States is intermittent or seasonal. DHS requests comments on the need for this exemption in the religious worker context. Lastly, the existing rule is clarified to allow R–2 spouses and children to remain in the United States for the same time limits as the principal alien. Nevertheless, as with any dependent nonimmigrant status, the primary purpose of the spouse or child must be to join or accompany the principal R–1 alien in the United States. USCIS may limit, deny or revoke on notice any stay for an R–2 that is not primarily intended for that purpose or is intended to evade the normal requirements of the nonimmigrant classification that otherwise would apply when the principal alien is absent from the United States. An R–1 alien may not use occasional work visits to the United States in order to ''park'' the R–2 family members in the United States for extended periods while the principal alien is absent.

IV. Regulatory Requirements

A. Regulatory Flexibility Act

USCIS has reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)). USCIS is not able at this time to certify this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule amends existing regulations pertaining to the special immigrant and nonimmigrant religious worker classifications and also is designed to address fraud in, and ensure the integrity of, the religious worker program. This rule affects only those religious organizations and bona fide organizations affiliated with a religious denomination (which may include educational institutions, hospitals, and private foundations) that are seeking to classify an alien as a nonimmigrant religious worker or special immigrant religious worker. DHS estimates that USCIS likely will receive approximately 22,338 petitions filed annually from such organizations and that in most instances, such organizations would be considered ''small entities'' as that term is defined under 5 U.S.C. 601. The 22,338 figure is derived from the total number of Forms I–360 and I–129 religious worker petition filings in the prior fiscal year (4,617 Form I–360s and 5,939 Form I–129s filed for change of status or extension of stay of R–1 nonimmigrants), plus 11,782 visas issued by the Department of State for initial R–1 nonimmigrant visas, which USCIS projected will be the number of new petitions it will see for the R–1 nonimmigrant category in light of the new petition requirement for that classification. The 22,338 figure, however, does not take into account petitioning organizations that file petitions for several potential religious workers. Further, there are no available statistics on the total number of religious organizations and affiliated bona fide organizations that may exist in the United States and of that the number the percentage of organizations that ultimately may seek to hire a foreign national to perform work in a religious occupation or vocation. The Department, therefore, seeks comments on the extent of any potential economic impact of this rule on small entities.

USCIS recognizes that there will be certain additional costs and burdens on the religious organizations and bona fide organizations affiliated with a religious denomination due to the new petitioning requirement for R–1 nonimmigrants. The estimated costs and benefits are described in detail in the Executive Order 12866 section below.

Even assuming that the number of petition filings remains constant annually and projecting that approximately 15,637 (70% of the 22,338 petitions) individual organizations will seek religious workers, USCIS has determined that the total costs to a religious or affiliated bona fide organization of for a religious worker petition ($190) would represent a small percentage of the organization's total annual wage cost for the beneficiary of the religious worker petition (depending on the type of worker sought and assuming, for purposes of this analysis, that the position is salaried). USCIS also projects that the petition cost would be an even smaller percentage of the petitioning organization's overall operating budget. These percentages were calculated based on Bureau of Labor Statistics indicating national average wages for the private sector ($17.25/hour), religious workers ($11.41/hour), Directors of Religious Activities/ Education ($16.41/hour), and clergy ($19.23/hour) and based on the standard 35 hours per week for a full-time worker for a full year. Finally, petitioning organizations will have an additional burden in terms of time needed to complete attestation and certification requirements related to the organization's tax exempt status and the potential religious worker's qualifications and to collect and submit additional information related to the employer's tax exempt status and an attestation regarding the potential religious worker's qualifications and duties, etc. USCIS anticipates, however, that most of this information will be readily available to the organization. Thus, any impact on religious or affiliated organizations or individuals to comply with these requirements should be minimal.

Additionally, USCIS recognizes that many religious organizations will be required to pay a user fee to the IRS to acquire a currently valid determination letter of their IRC section 501(c)(3) status. IRS Forms 1023 and 8718 (rev. June 2006). Very small organizations with gross revenues of not more than $10,000 may be charged a fee of $300 by the IRS to determine their current 501(c)(3) status. Organizations with gross receipts in excess of $10,000 during the previous four years or anticipating gross receipts averaging more than $10,000 during the first four years, may be charged a fee of $750 by the IRS to determine their current 501(c)(3) status. USCIS does not currently possess sufficient information to determine which organizations would fall into each category or otherwise not be required to pay such a fee. Accordingly, DHS invites comments on the scope of these costs and more accurate means for defining these costs. Again, DHS invites comments on ways that a religious organization could demonstrate that they meet the requirements without providing a 501(c)(3) letter, but without USCIS being required to analyze sizeable paperwork to verify the status. USCIS is also pursuing alternative avenues of verification directly with the IRS.

Considering the importance of preventing fraud in the religious worker program and of ensuring that only legitimate religious organizations and bona fide affiliated organizations participate in the process, DHS believes that this proposed rule will have a positive impact overall. USCIS anticipates a net reduction of many of the adjudicative resources that might be expended in determining whether a religious worker petition involves potential fraud or misrepresentations. USCIS, however, specifically invites public comment on the estimated cost to petitioning religious organizations and bona fide organizations affiliated with a religious denomination to comply with the new religious worker petition requirements and prepare for the on-site inspections.

B. Unfunded Mandates Reform Act of 1995

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

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Order 12866 (Regulatory Planning and Review)

This rule is considered by the Department of Homeland Security to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Assessment of the Costs

This proposed rule amends existing regulations pertaining to the special immigrant and nonimmigrant religious worker classifications. For fiscal year 2005, 3,230 individual organizations filed 4,617 petitions with USCIS seeking special immigrant religious workers. Also, 5,939 petitions were filed with USCIS for extensions and changes of status for R–1 nonimmigrant religious workers. Not all of these R–1 petitions represent filings by a single religious organization or bona fide organization affiliated with a religious denomination. These figures also do not account for instances where a single religious organization or affiliated bona fide organization filed petitions for several potential religious workers.

Currently, there is no petition requirement for religious organizations or bona fide affiliated organizations initially seeking a nonimmigrant religious worker. To estimate the number of organizations that may be affected by the new petition requirement for the nonimmigrant religious worker classification (R–1), USCIS looked at the number of nonimmigrant visas that were issued by the Department of State for religious workers in 2004. Department of State issued 11,782 visas for 2004; however, this number does not exclude those aliens who potentially have multiple visas or those aliens who were previously in R–1 nonimmigrant status and received extension of their status by obtaining a new visa and reentering the United States (rather than seeking an extension while in the United States).

Assuming the number of religious worker petitions filed annually and the number of religious or affiliated organizations seeking workers remain constant, DHS projects that approximately 15,637 individual organizations will seek religious workers each fiscal year. This projection is based on the percentage of religious organizations and bona fide affiliated organizations that sought special immigrant religious workers in FY 2005 (70%) applied against the total population of projected annual petition filings of 22,338. In order to differentiate the amount attributed to each form associated with the Religious Worker program (Form I–129 and I–360) the following figures will be used to estimate costs and burden hours for

each form. Based on the percentage of religious organizations and bona fide affiliated organizations that sought special immigrant religious workers in FY 2005 (70%) applied against the population of projected annual petition filings for the Form I–129, DHS estimates that there will be approximately 12,407 (17,721 × 70%) Form I–129 filings for the nonimmigrant religious worker, and 3,230 (4,617 × 70%) for the Form I–360 which comprises the total 15,637 (22,338 × 70%) total projected filings for both forms.

The current fees for the Form I–129, Petition for Nonimmigrant Worker, and the Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant are $190. USCIS is proposing to modify these fees in a separate rule. USCIS already has an approved information collection for the Form I–129, OMB 1615–0009, and Form I–360, OMB 1615–0020. Petitioning organizations are required to submit additional initial evidence related to their tax-exempt status and an attestation regarding the potential religious worker's qualifications and duties, etc. Information collection costs, therefore, are increased by these requirements, which would increase the existing information collection burden by roughly 15 minutes per respondent for the new attestation for both the Form I–129 and the Form I–360. If there are 15,637 respondents, this increases the information collection burden by approximately 3,908 hours, which at $16 per hour increases public costs by $62,528. DHS estimates that the Form I–129 will have 12,407 of the 15,637 estimates filings which would be an increase in information collection burden by approximately 3,101 hours for the attestation which at $16 per hour increases the public costs for the Form I–129 by $49,616. DHS estimates that the Form I–360 will have 3,230 of the 15,637 estimates filings (based on the FY05 filings stated earlier) which would be an increase in information collection burden by approximately 807 hours which at $16 per hour increases the public costs for the Form I–360 by $12,912. The total cost of petitioning under this proposed rule is estimated to be $6,510,103. ($5,165,373 for the Form I–129 and $1,344,730 for the Form I–360). In addition, changes in filing requirements will increase the frequency of filings for extensions or changes of status over a five-year period, increasing the total costs to the public to $6,665,503.

In addition, several respondents are expected to pay the fee required under Internal Revenue Regulations of ($750) for obtaining a section 501(c)(3) status determination letter from that agency. Since this is a new requirement, USCIS has no data on which to base an estimate of how many will be required to resort to this course of action. The agency has anecdotal stories from adjudications and other programs indicating that these letters are regularly lost or destroyed, and the existence of the IRS form points to its eventuality. Nonetheless, even assuming that all 15,637 religious worker petitions expected to be received per year are required to pay this fee, the total cost of such requests would be under $12 million. USCIS feels that the actual number will be much less and welcomes comments on this impact.

Together the total cost of these proposed changes are estimated to be $18,393,253, which remains well below the threshold of an economically significant rule as provided by the Executive Order.

Assessment of Benefits

The cost of the proposed rule's increased information collection is outweighed by the overall benefit to the public of an improved system for processing religious workers.

The proposed rule is a vital tool in furthering the protection of the public by (1) more clearly defining the requirements and process by which religious workers may gain admission to the United States, and (2) increasing the ability of DHS to deter or detect fraudulent petitions and to investigate and refer matters for prosecution. A recent assessment by the USCIS Office of Fraud Detection and National Security confirmed that there was a high percentage of fraud in the religious worker program. Through this statistically valid sample of I–360 religious worker petitions, FDNS established that a significant number of petitions filed on behalf of religious workers were filed by nonexistent organizations and/or contained material misrepresentations in the documentation submitted to establish eligibility. The benefits of decreased fraud and increased national security tend to be intangible, thus, the benefits of such reduction in the high level of fraud in this program are difficult to quantify. On the other hand, the lack of such protections become quite tangible as soon as the lack of protections such as those proposed in this rule are manifested in the tangible economic or societal damage caused by a recipient of a fraudulent religious worker visa. The changes to the petition requirements for all religious workers as well as other program enhancements, such as a possible on-site inspection, are intended to increase detection of fraudulent petitions in this category and increase the ability of DHS to monitor that the eligible alien maintains status during their stay as valued guests in this country.

This rule amends requirements for the special immigrant and nonimmigrant religious worker visa classifications. It will not significantly change the number of persons who immigrate to the United States based on employment-based petitions or temporarily visit based on a nonimmigrant visa petition. This rule is intended to benefit the public by clarifying definitions associated with the religious worker classifications, acceptable evidence, and specific religious worker qualification requirements. Balanced against the costs and the requirements to collect information, the burden imposed by the proposed rule appears to USCIS to be justified by the benefits.

E. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

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

G. Paperwork Reduction Act

Any prospective employer must file a Form I–129, Petition for Nonimmigrant Worker, or Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant seeking to classify an alien as a religious worker under sections 101(a)(15)(R) and (27)(C) of the Act. The Forms I–129 and I–360 are considered information collections under the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) has previously approved both the Forms I–129 and I–360 for use. The OMB control numbers for these collections for the Form I–129 is OMB 1615–0009 and for the Form I–360 is OMB 1615–0020.

This proposed rule extends the number of respondents for Form I–129 and adds new information collections with respect to evidentiary attestations

for both the Form I–129 and Form I–360. These requirements are considered information collections subject to review by OMB under the Paperwork Reduction Act of 1995. Written comments are encouraged and will be accepted until June 25, 2007. When submitting comments on the information collection, your comments should address one or more of the following four points.

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

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

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

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

Overview of Information Collection for Attestation in the Form I–129

(1) *Type of information collection:* Revision of currently approved collections.

(2) *Title of Form/Collection:* I–129, Petition for a Nonimmigrant Worker/ Evidentiary requirements; religious worker.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals. The information collection is necessary in order for USCIS to make a determination whether the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination, that the job offer is legitimate, that the beneficiary qualifies for the classification sought, and that the employer is providing compensation in compliance with the Internal Revenue Code.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond to the new requirements:* 381,355 respondents at 3 hours per response. In addition, the on-site inspection is estimated to be an additional 65 minutes for each religious organization (12,407 respondents).

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Total reporting burden hours is 1,157,501.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529; Attention: Richard A. Sloan, Director, 202–272–8377.

Overview of Information Collection for Attestation in the Form I–360

(1) *Type of information collection:* Revision of currently approved collections.

(2) *Title of Form/Collection:* Form I–360 Petition for Amerasian, Widow(er), or Special Immigrant /Evidentiary requirements; religious worker.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–360, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals. The information collection is necessary in order for USCIS to make a determination whether the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination, that the job offer is legitimate, that the beneficiary qualifies for the classification sought, and that the employer is providing compensation in compliance with the Internal Revenue Code.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond to the new requirements:* 16,914 respondents at 2.25 hours per response.

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Total reporting burden hours is 41,554.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529; Attention: Richard A. Sloan, Director, 202–272–8377.

List of Subjects

8 CFR Part 204

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

8 CFR Part 214

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

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 204—IMMIGRANT PETITIONS

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

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

2. Section 204.5 is amended by revising paragraph (m) to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(m) *Religious workers.* (1) Any prospective employer may file a Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant visa petition, on behalf of an alien for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) of the Act special immigrant religious worker. Such a petition may be filed for an alien who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination that has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of working, on a compensated, full-time basis, in one of the following capacities:

(i) The vocation of a minister of that religious denomination; or

(ii) A religious vocation; or

(iii) A religious occupation.

(2) The alien also must be coming to work for a bona fide nonprofit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 or subsequent amendment, at the request of the organization to fulfill a reasonable need of the

organization. All three types of religious workers must have been performing, on a compensated, full-time but not necessarily exclusive basis, as a minister or in a religious vocation or occupation in the denomination continuously for at least the two-year period immediately preceding the filing of the petition. A full-time position is considered to be 35 hours per week. The prior religious work may be either abroad or in lawful immigration status in the United States, and must have occurred after the age of 14 years. The prior religious work need not correspond precisely to the type of work to be performed; for instance, a former minister may immigrate to work as a missionary, and a former missionary, now ordained, may immigrate to work as a minister.

(3) A break in the continuity of the required religious work during the two years immediately preceding the filing of the petition will not affect eligibility so long as:

(i) The alien was still employed as a religious worker on a compensated, full-time basis,

(ii) The break did not exceed two years, and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

(4) *Definitions.* As used in this paragraph (m) the term:

Bona fide nonprofit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization and possessing a currently valid determination letter from the IRS confirming such exemption. A church must petition as a bona fide nonprofit religious organization and may not petition as a bona fide organization that is affiliated with an organization as a means to avoid the evidentiary requirements applicable to churches.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with and routinely and substantially acts to further the religious goals of the religious denomination, as attested to by a bona fide nonprofit religious organization in the United States within the denomination. The bona fide nonprofit religious organization attesting to the petitioning organization's affiliation must be exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, and as evidenced by a currently valid determination letter from the IRS confirming the bona fide nonprofit religious organization's exemption. ''Affiliation'' for this particular purpose does not require legal relationship in the form of ownership or control by the denomination or by religious organizations within the denomination, but it does require a solid and public commitment by the affiliated organization to the tenets of the religious denomination.

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will be employed. Membership in religious denominations, including interdenominational organizations, sharing forms of government and worship, creeds, and disciplinary practices may be sufficient to show denominational membership. The denominational membership requirement shall be interpreted in a manner to allow qualification of persons who have demonstrated a sincere commitment to the religious faith of the United States organization of employment, and to prevent qualification by persons who may have taken on the faith of the United States organization for purposes of facilitating eligibility for United States immigrant or nonimmigrant status.

Minister means an individual duly authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that denomination. The term does not include a lay preacher or a person not authorized to perform such duties. In all cases, there must be a rational relationship between the activities performed and the religious calling of the minister. The minister must also intend to work solely as a minister in the United States, but the performance of administrative duties incident to the predominant, essentially religious duties does not exclude one from the definition of minister.

Religious denomination means a religious group or community of believers governed or administered under a common type of ecclesiastical government. Members of a denomination must share a recognized common creed or statement of faith, a common form of worship, a common formal code of doctrine and discipline, religious services and ceremonies, common established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, religious organizations that are recognized as tax exempt under a group tax exemption issued pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization will be presumed to belong to the same religious denomination, but such official affiliation is not necessary for denominational membership.

Religious occupation means habitual employment in an occupation the duties of which primarily relate to a traditional religious function and which is recognized as a compensated religious occupation within the denomination. The duties of the position must be primarily, directly and substantively related to, and must clearly involve inculcating or carrying out the religious creed and/or beliefs of the denomination. The position must be traditionally recognized by the religious organization or similar organizations as a compensated occupation within the denomination. A religious occupation, in contrast to a vocation, must be salaried, or otherwise compensated by stipend, room and board, or other support that is reflected in an alien's W–2, wage transmittal statements, or income tax returns. Examples of occupations that can qualify as a religious occupation include liturgical workers, religious instructors, religious counselors, cantors, catechists, missionaries, religious translators, religious broadcasters, youth ministers, religious choir directors or music ministers, or ritual slaughter supervisors. ''Religious occupation'' does not include positions whose duties are primarily administrative or supportive in nature, and any administrative duties must be incident to the substantive, traditionally religious functions. Examples of non-qualifying administrative and support positions include, but are not limited to: janitors; maintenance workers; clerks; secretaries; fund raisers; secular musicians; secular translators; those who sell literature, volunteer as ushers during worship services, serve in the choir, volunteer part-time to assist the clergy or teach religion classes; or similar persons engaged in primarily secular, administrative or support duties. It is expected that members of religious organizations volunteer their time even in traditionally religious functions, and immigration status will not be conferred to lay persons who have arranged to be paid for

traditionally volunteer work in order to obtain immigration status. Religious study or training for religious work does not constitute religious work, but a religious worker may pursue study or training incident to status. For nonimmigrant purposes, prior experience or training is not required, the petition must demonstrate that the alien truly intends to take up the described religious occupation, and the position must require at least 20 hours per week of compensated service. For immigrant petitions only, the position offered must be permanent and full-time, and the alien's experience in the preceding years must have been full-time. Full-time is considered to be 35 hours per week.

Religious vocation means a formal lifetime commitment to a religious way of life. There must be evidence that the religious denomination has a traditional established class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. It requires that the individual make a formal lifetime commitment through vows, or other investitures or ceremonies, to this class of individuals and religious way of life. Examples of individuals with a religious vocation include, but are not limited to nuns, monks, and religious brothers and sisters.

Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity. Such individuals may work in a religious vocation if they have made a formal lifetime commitment to a religious way of life and in a religious occupation if the duties predominantly involve traditional religious functions.

(5) *Form and filing requirements.* The Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, along with the fee specified in 8 CFR 103.7(b)(1), and supporting evidence must be filed at the appropriate USCIS service center. Such a petition must be filed by the prospective United States employer on behalf of an alien who is either abroad or in the United States. After the date stated in section 101(a)(27)(C) of the Act (as amended), immigration or adjustment of status on the basis of this section is limited solely to ministers of religion.

(6) *Attestation.* The Form I–360 contains an attestation section which an authorized official of the prospective employer must complete, sign and date. The term ''prospective employer'' refers to the organization or institution where the alien will be performing the proffered duties. The attestation includes a statement which certifies under penalty of perjury that the contents of the attestation are true and correct to the best of his or her knowledge. This attestation must be submitted by the prospective employer along with the petition. In the Form I–360, the prospective employer must specifically attest to the following:

(i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) The number of members of the prospective employer's organization, the number and positions (with brief descriptions) of employees in the prospective employer's organization, the number of aliens holding R visa status currently employed or employed within the past five years by the prospective employer's organization, and the number of special immigrant religious worker and R visa petitions and applications filed by or on behalf of any aliens to be employed as ministers or religious workers for the prospective employer in the past five years;

(iii) The title of the position offered to the alien, the complete package of compensation being offered and a detailed description of the alien's proposed daily duties;

(iv) That the alien will be employed at least 35 hours per week and such services are needed on a full-time basis;

(v) The specific location(s) of the proposed employment;

(vi) That the alien has worked as a compensated, full-time religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered;

(vii) That the alien has been a member of the denomination for at least two years immediately preceding the filing of the application;

(viii) That the alien will not be engaged in secular employment, and any compensation for religious work will be paid to the alien by the attesting employer;

(ix) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become a public charge, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization, and that the petitioner will notify USCIS of any changes to the alien's employment; and

(7) *Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the Internal Revenue Service (IRS) showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization; or

(ii) For religious organizations that are recognized as tax exempt under a group tax exemption, a currently valid determination letter from the IRS establishing that the group is an organization as described in sections 509(a)(1) of the Internal Revenue Code of 1986, and that the group's tax exemption is in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization; or

(iii) For a bona fide organization which is affiliated with the religious denomination, if the organization was granted a section 501(c)(3) exemption as something other than a religious organization:

(A) A currently valid determination letter from the IRS showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, not necessarily as a religious organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization;

(D) A Religious Denomination Certification. The Form I–360 contains a ''Religious Denomination Certification'' section which the petitioner must have the attesting religious organization complete, sign and date. The ''Religious Denomination Certification'' includes a statement certifying under penalty of perjury that the petitioning organization is affiliated with the religious denomination. The certification must be submitted by the petitioner along with the petition and attestation; and

(E) A currently valid determination letter from the IRS evidencing that the attesting organization is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization.

(8) *Evidence relating to the qualifications of a minister.* If the alien is a minister, the petitioner must submit

as initial evidence a copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination. For denominations that do not require a prescribed theological education, the petitioner must submit evidence of the denomination's requirements for ordination to minister, evidence of the duties allowed to be performed by virtue of ordination, evidence of the denomination's gradations of ordination, if any, and evidence of the alien's completion of the denomination's requirements for ordination.

(9) *Evidence relating to the alien's prior employment.* Initial evidence must include evidence of the alien's prior religious employment. If the alien was employed in the United States during the two years immediately preceding the filing of the application, the petitioner must submit the alien's W–2 wage statements, the employer's wage transmittal statements, and the transcripts of the alien's processed income tax returns for the preceding two years reflecting such work. If more than six months of such employment is not yet reflected in the documents such as W–2s, wage transmittal statements or income tax returns required to be completed or filed at the time of filing the petition, then pay stubs relating to payment for such employment shall also be presented for work not yet reflected in such documents. If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of compensation and religious work. Aliens who have taken a vow of poverty or similar formal lifetime commitment to a religious way of life may submit evidence of such commitment in lieu of the above documentary requirements, but must also submit evidence of all financial support (including stipends, room and board, or other support) received in the preceding two years. Qualifying prior experience (that is, during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work) must have occurred after the age of 14, and, if acquired in the United States, must have been authorized under United States immigration law.

(10) *Audits, inspections, assessment, verification, spot checks, and site visits.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

* * * * *

PART 214—NONIMMIGRANT CLASSES

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

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1372, 1379, 1731–32; section 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively, 8 CFR part 2.

4. Section 214.2 is amended by revising paragraph (r) to read as follows:

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

* * * * *

(r) *Religious workers*—(1) *General.* Under section 101(a)(15)(R) of the Act, an alien who, for at least the two years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit religious organization in the United States, may be admitted temporarily to the United States to carry on the activities of a religious worker for a period not to exceed five years. The alien must be coming to or remaining in the United States solely for one of the following purposes:

(i) As an employee of a religious organization within the denomination, or of a bona fide organization which is affiliated with the religious denomination, at the request of the organization;

(ii) To carry on the vocation of a minister of the religious denomination; or

(iii) To work in a religious vocation or occupation.

(2) An alien may work for more than one qualifying employer as long as each qualifying employer submits the Form I–129 and R Classification Supplement, and, where applicable, accompanying documentation, submitted either in a single petition or through an additional petition.

(3) *Definitions.* As used in this paragraph (r), as applicable to the proposed employment and to the membership in the two years preceding the filing of the petition, the definitions of terms set forth at 8 CFR 204.5(m)(1), concerning immigrant religious workers, shall apply to nonimmigrant religious workers.

(4) *Requirements for admission/change of status; time limits*—(i) *Principal applicant.* If otherwise admissible, an alien who meets the requirements of section 101(a)(15)(R) of the Act may be admitted as an R–1 alien or changed to R–1 status for an initial period of up to one year from date of initial admission. If visa-exempt, the alien must present the original Notice of Action, Form I–797 approval notice (not a copy), at the port of entry.

(ii) *Spouse and children.* The spouse and children of an R–1 alien who are accompanying or following to join the principal may be accorded R–2 status and admitted or have their R–2 status extended for the same period of time and subject to the same limits as the principal, regardless of the time such spouse and children may have spent in the United States in R–2 status. Neither the spouse nor children may accept employment while in the United States in R–2 status.

(iii) *Extension of stay or readmission.* An R–1 alien who is maintaining status or is seeking readmission and who satisfies the eligibility requirements of this section may be granted an extension of R–1 stay or readmission in R–1 status for the validity period of the petition, up to 2 years, provided the total period of time spent in R–1 status does not exceed a maximum of five years. A petition for an extension of R–1 status must be filed by the United States employer on Form I–129, Petition for a Nonimmigrant Worker, along with the R Classification Supplement containing the attestation, the fee specified in 8 CFR 103.7(b)(1), and the supporting evidence, at the appropriate USCIS service center.

(iv) *Limitation on total stay.* An alien who has spent five years in the United

States under section 101(a)(15)(R) of the Act may not be readmitted to, or receive extension of stay in, the United States under the R visa classification unless the alien has resided abroad and been physically present outside the United States for the immediate prior year. The limitations in this paragraph shall not apply to R–1 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for such an exception. Such proof shall consist of evidence such as arrival and departure records, transcripts of processed income tax returns, and records of employment abroad. The primary purpose of the spouse or child must be to join or accompany the principal R–1 alien in the United States. USCIS may limit, deny or revoke on notice any stay for an R–2 that is not primarily intended for this purpose or is intended to evade the normal requirements of the nonimmigrant classification that otherwise would apply when the principal alien is absent from the United States.

(5) *Jurisdiction and procedures for obtaining R–1 status.* A petitioner seeking to classify an alien as a religious worker, by initial petition or by change of status, shall file a petition on Form I–129, Petition for a Nonimmigrant Worker, along with the R Classification Supplement containing the attestation, the fee specified in 8 CFR 103.7(b)(1), and supporting evidence, at the appropriate USCIS service center. The Form I–129, Petition for a Nonimmigrant Worker, must be submitted by the employer in the United States seeking to employ the religious worker.

(6) *Attestation.* The Form I–129, Petition for a Nonimmigrant Worker, contains an attestation section in the R Classification Supplement, which the authorized official of the prospective employer must complete, sign and date. The term ''prospective employer'' refers to the organization or institution where the alien will be performing the proffered duties. The attestation includes a statement which certifies under penalty of perjury that the contents of the attestation are true and correct to the best of his or her knowledge. This attestation must be submitted by the prospective employer along with the petition. In the Form I–129 R Classification Supplement, the prospective employer must specifically attest to the following:

(i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) The number of members of the prospective employer's organization, the number and positions (with brief descriptions) of employees in the prospective employer's organization, the number of aliens holding R visa status currently employed or employed within the past five years by the prospective employer's organization, and the number of special immigrant religious worker and R visa petitions and applications filed by or on behalf of any aliens to be employed as ministers or religious workers for the prospective employer in the past five years;

(iii) The title of the position offered to the alien, the complete package of compensation being offered and a detailed description of the alien's proposed daily duties;

(iv) That the position that the alien is being offered requires at least 20 hours per week of compensated service;

(v) The specific location(s) of the proposed employment and that the alien is otherwise qualified for the position offered;

(vi) That the alien has been a member of the denomination for at least 2 years;

(vii) That, if the position is not a religious vocation, the alien will not be engaged in secular employment, and any compensation for religious work will be paid to the alien by the attesting employer,

(viii) That the prospective employer has the ability and intention to compensate and otherwise support (through housing, for example) the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization; and

(ix) That the petitioner will notify USCIS of any changes to the alien's employment and reapply by filing a new Form I–129 on behalf of the alien within 60 days of the occurrence of any change.

(7) *Evidence relating to the petitioning organization.* The petitioner must submit the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the Internal Revenue Service (IRS) showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization; or

(ii) For religious organizations that are recognized as tax exempt under a group tax exemption, a currently valid determination letter from the IRS establishing that the group is an organization as described in sections 509(a)(1) of the Internal Revenue Code of 1986 or subsequent amendment, and that the group's tax exemption is in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization; or

(iii) For a bona fide organization which is affiliated with the religious denomination, if the organization was granted a section 501(c)(3) exemption as something other than a religious organization:

(A) A currently valid determination letter from the IRS showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, (not necessarily as a religious organization),

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization,

(C) Organizational literature, such as brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization, and

(D) A Religious Denomination Certification. The Form I–129 contains a ''Religious Denomination Certification'' section which the petitioner must have the attesting religious organization complete, sign and date. The ''Religious Denomination Certification'' includes a statement certifying under penalty of perjury that the petitioning organization is affiliated with the religious denomination. The certification must be submitted by the petitioner along with the petition and attestation.

(E) A currently valid determination IRS letter evidencing that the attesting organization is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as a religious organization.

(8) *Evidence relating to the qualifications of a minister.* If the alien is a minister, the petitioner must submit as initial evidence a copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological

education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation which establishes that the theological education is accredited by the denomination. For denominations that do not require a prescribed theological education, the petitioner must submit evidence of the denomination's requirements for ordination to minister, evidence of the duties allowed to be performed by virtue of ordination, evidence of the denomination's gradations of ordination, if any, and evidence of the alien's completion of the denomination's requirements for ordination.

(9) *Change or addition of employers; employer obligations.* An alien admitted in the R–1 classification shall engage only in employment that is consistent with the approved petition, the attestation contained in the supplement and supporting documents submitted to USCIS. A different or additional employer seeking to employ the alien must obtain prior approval of such employment through the filing of an additional Form I–129, Petition for a Nonimmigrant Worker, with the R Classification Supplement, supporting documents and the appropriate fee. Any compensated work for an unauthorized religious organization will constitute a failure to maintain status within the meaning of section 237(a)(1)(C)(i) of the Act. When an alien who has obtained R–1 classification is working less than the required number of hours or has been released from or has otherwise terminated employment before the expiration of a period of authorized R–1 stay, the employer through whom R–1 classification has been obtained must notify DHS within 7 days of such release or termination, using reporting procedures set forth in the instructions to Form I–129, Petition for a Nonimmigrant Worker, which can be found on the USCIS Internet Web site at *http://www.uscis.gov.*

(10) *Evidence of previous R–1 employment.* Any request for R–1 status, admission beyond the first year of R–1 status, or any period of extension of stay, must include initial evidence of the previous R–1 employment in the form of the alien's W–2 wage statements, the employer's wage transmittal statements, and transcripts of the alien's processed income tax returns for any preceding period spent in the United States in R–1 status. For any period of such employment not yet reflected in the documents such as W–2s, wage transmittal statements or income tax returns required to be completed or filed at the time of filing the petition, then pay stubs relating to payment for such employment shall be presented for work not yet reflected in such documents. Aliens who have taken a vow of poverty or similar formal lifetime commitment to a religious way of life may submit evidence of such commitment in lieu of the above documentary requirements, but must also submit evidence of all financial support (including stipends, room and board, or other support) received while in R–1 status.

(11) *Nonimmigrant intent.* The filing or approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying an R petition, a request to extend such a petition, or the alien's application for admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as an R nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States.

(12) *Audits, inspections, assessment, verification, spot checks, and site visits.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

* * * * *

PART 299—IMMIGRANT FORMS

5. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103; 8 CFR part 2.

6. Section 299.1 is amended in the table by revising the entries for Forms ''I–129'' and ''I–360'', to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* *	*	* * * * *
I–129	XX–XX–XX	Petition for a Nonimmigrant Worker.
* *	*	* * * * *
I–360	XX–XX–XX	Petition for Amerasian Widow(er) or Special Immigrant.
* *	*	* * * * *

7. Section 299.5 is amended in the table, by revising the entries for Forms ''I–129'' and ''I–360'', to read as follows:

§ 299.5 Display of control numbers.

* * * * *

Form No.	Form title	Currently assigned OMB control No.
* * * * * * *		
I–129	Petition for a Nonimmigrant Worker	1615–0009
* * * * * * *		
I–360	Petition for Amerasian Widow(er) or Special Immigrant	1615–0020
* * * * * * *		

Dated: April 16, 2007.

Michael Chertoff,

Secretary.

[FR Doc. E7–7743 Filed 4–24–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB07

Fee and Expense Disclosures to Participants in Individual Account Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Request for information.

SUMMARY: The Department of Labor is currently reviewing the rules under the Employee Retirement Income Security Act (ERISA) applicable to the disclosure of plan administrative and investment-related fee and expense information to participants and beneficiaries in participant-directed individual account plans (e.g., 401(k) plans). The purpose of this review is to determine to what extent rules should be adopted or modified, or other actions should be taken, to ensure that participants and beneficiaries have the information they need to make informed decisions about the management of their individual accounts and the investment of their retirement savings. The purpose of this notice is to solicit views, suggestions and comments from plan participants, plan sponsors, plan service providers and members of the financial community, as well as the general public, on this important issue.

DATES: Written or electronic responses should be submitted to the Department of Labor on or before July 24, 2007.

ADDRESSES: *Responses:* To facilitate the receipt and processing of responses, EBSA encourages interested persons to submit their responses electronically by e-mail to *e-ORI@dol.gov*, or by using the Federal eRulemaking portal at *http://www.regulations.gov* (follow instructions for submission of comments). Persons submitting responses electronically are encouraged not to submit paper copies. Persons interested in submitting written responses on paper should send or deliver their responses (preferably, at least three copies) to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210, Attention: Fee Disclosure RFI. All written responses will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/ebsa*, and at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Katherine D. Lewis, Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5669, U.S. Department of Labor, Washington, DC 20210, telephone (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

According to the Department's most recent data, an estimated 41 million participants in 401(k) plans are permitted to direct the investment of all or a portion of their plan accounts. While contributions and earnings increase retirement savings in 401(k) and other participant-directed plans, fees and expenses charged to participant accounts can substantially reduce that growth. For this reason, it is important that plan participants, particularly those responsible for making their own investment decisions, consider what and how fees and expenses are charged to their individual accounts.

In general, the purpose of this Request for Information (RFI) is to obtain, from the perspective of plan participants, plan sponsors and plan service providers, information concerning: (1) What administrative and investment-related fee and expense information participants should consider; (2) the manner in which that information should be provided or made available to participants; and, (3) who should be responsible for providing the information. Responses to this RFI will be used to assist the Department in determining to what extent rules should be developed or modified, or other courses of action pursued, to improve the information currently available to participants and beneficiaries relating to administrative and investment-related fees and expenses, recognizing that in many instances participants may have to bear the cost of disclosing such information.

In considering the questions set forth in the RFI, commenters are encouraged to take into consideration the following initiatives.

Section 404(c) Regulation

In 1992, the Department adopted a final regulation under section 404(c) of ERISA.[1] In general, the regulation sets forth the conditions under which participants are considered to be exercising control over the assets in their accounts, thereby relieving fiduciaries from liability for the results of participants' investment decisions. Among other matters, the regulation, at § 2550.404c–1(b)(2)(i)(B), conditions relief upon participants and beneficiaries being provided and having access to specific information concerning their plan and the investment options offered thereunder. In framing the disclosure requirements, the Department attempted to strike a balance between what it believed participants needed to make informed investment decisions and the burdens

[1] See Final Regulation Regarding Participant Directed Individual Account Plans (ERISA Section 404(c) Plans), 57 FR 46,906 (Oct.13, 1992) (codified at 29 CFR § 2550.404c–1). This regulation may be accessed at *www.dol.gov/dol/allcfr/title_29/Part_2550/29CFR2550.404c-1.htm.*