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RIN 1615–AA22

Inadmissibility on Public Charge Grounds; Implementation of Vacatur

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

ACTION: Final rule.

SUMMARY: This final rule removes the regulations resulting from a final rule issued in August 2019, which has since been vacated by a Federal district court.

DATES: This rule is effective on March 9, 2021, as a result of the district court's vacatur.

FOR FURTHER INFORMATION CONTACT: Mark Phillips, Residence and Naturalization Division Chief, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240–721–3000.

SUPPLEMENTARY INFORMATION:

I. Background and Basis for Removal of Regulations

In August 2019, the U.S. Department of Homeland Security (DHS) issued a final rule titled, *Inadmissibility on Public Charge Grounds*.[1] The rule was preliminarily enjoined by courts in the Southern District of New York, District of Maryland, Northern District of California, Eastern District of Washington, and Northern District of Illinois.[2] Following a series of stays of the preliminary injunctions,[3] DHS began applying the rule on February 24, 2020. Since that time, preliminary injunctions against the rule have been affirmed by the Second, Seventh, and Ninth Circuit Courts of Appeals.[4] On November 2, 2020, the U.S. District Court for the Northern District of Illinois issued a Rule 54(b) judgment vacating the rule on the merits.[5] On November 3, 2020, the Seventh Circuit granted an administrative stay of the district court's judgment and, on November 19, 2020, the Seventh Circuit granted a stay pending appeal. On March 9, 2021, DHS moved to dismiss its appeal before the Seventh Circuit, and the Seventh Circuit dismissed the appeal and the Rule 54(b) judgment went into effect. DHS is now implementing the judgment, *i.e.,* the vacatur of the August 2019 rule.

This rule removes from the *Code of Federal Regulations* (CFR) the regulatory text that DHS promulgated in the August 2019 rule and restores the regulatory text to appear as it did prior to the issuance of the August 2019 rule.[6] This rule also removes regulatory text that DHS initially promulgated in 8 CFR part 103 as part of the August 2019 rule, but later moved to 8 CFR part 106 in the August 2020 final rule entitled *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements* (2020 USCIS fee rule).[7] Although the regulatory text was moved as part of the 2020 USCIS fee rule, the content of the regulatory text was first issued in the August 2019 rule that has now been vacated.

Because this rule simply implements the district court's vacatur of the August 2019 rule, as a consequence of which the August 2019 rule no longer has any legal effect, DHS is not required to provide notice and comment or delay the effective date of this rule. Moreover, good cause exists here for bypassing any otherwise applicable requirements of notice and comment and a delayed effective date. Notice and comment and a delayed effective date are unnecessary for implementation of the court's order vacating the rule and would be impracticable and contrary to the public interest in light of the agency's immediate need to implement the now-effective final judgment. *See* 5 U.S.C. 553(b)(B), (d). DHS has concluded that each of those three reasons—that notice and comment and a delayed effective date are unnecessary, impracticable, and contrary to the public interest—independently provides good cause to bypass any otherwise applicable requirements of notice and comment and a delayed effective date.

II. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (''PRA''), DHS is required to submit to the Office of Management and Budget (OMB), for review and approval, collections of information and changes to collections of information.[8] Table 1 below lists all collections of information impacted by the vacatur.

[1] *See* 84 FR 41292 (Aug. 14, 2019); *see also* 84 FR 52357 (Oct. 2, 2019) (making corrections).

[2] *See City and Cnty. of San Francisco* v. *USCIS,* 408 F. Supp. 3d 1057 (N.D. Cal. 2019); *Cook County, Ill.* v. *McAleenan,* 417 F. Supp. 3d 1008 (N.D. Ill. 2019); *Casa de Md.* v. *Trump,* 414 F. Supp. 3d 760 (D. Md. 2019) *Make the Road New York* v. *Cuccinelli,* 419 F. Supp. 3d 647 (S.D.N.Y. 2019); *Wash.* v. *DHS,* 408 F. Supp. 3d 1191 (E.D. Wash. 2019).

[3] *See Wolf* v. *Cook County,* 140 S. Ct. 681 (2020) (staying preliminary injunction from the Northern District of Illinois); *DHS* v. *New York,* 140 S. Ct. 599 (2020) (staying preliminary injunctions from the Southern District of New York); *City and Cnty. of San Francisco* v. *USCIS,* 944 F.3d 773 (9th Cir. 2019) (staying preliminary injunctions from the Eastern District of Washington and Northern District of California); *CASA de Md.* v. *Trump,* No. 19–2222 (4th Cir. Dec. 9, 2019) (staying preliminary injunction from the District of Maryland).

[4] *See New York* v. *DHS,* 969 F.3d 42 (2d Cir. 2020); *Cook County, Ill.* v. *Wolf,* 962 F.3d 208 (7th Cir. 2020); *City and Cnty. of San Francisco* v. *USCIS,* 981 F.3d 742 (9th Cir. 2020); *see also Casa de Md.* v. *Trump,* 981 F.3d 311 (4th Cir. 2020) (granting *en banc* review and vacating a panel opinion that had reversed a preliminary injunction). In July 2020, the Southern District of New York issued a second preliminary injunction against the rule for reasons related to the COVID–19 pandemic, which the Second Circuit later stayed. *See New York* v. *DHS,* 475 F. Supp. 3d 208 (S.D.N.Y. 2020), *injunction stayed,* 974 F.3d 210 (2d Cir. 2020).

[5] *See Cook County, Ill.* v. *Wolf,* No. 19–C–6334, 2020 WL 6393005 (N.D. Ill. Nov. 2, 2020).

[6] DHS notes that it has maintained changes that DHS made to the same regulations via other rulemakings that post-dated the August 2019 rule. For instance, on July 31, 2020, DHS published a rule revising the section heading for 8 CFR 103.6 to read, ''Immigration Bonds.'' *See* 85 FR 45968, 45989 (July 31, 2020). DHS has maintained that section heading here, because it was made by a rule that has not been vacated. Similarly, on May 14, 2020, DHS published an interim final rule that revised the authority citation for 8 CFR part 212. *See* 85 FR 29264, 29311 (May 14, 2020). DHS has maintained that authority citation here.

[7] *See* 85 FR 46788 (Aug. 3, 2020). The 2020 USCIS fee rule is currently the subject of two preliminary injunctions. *See Immigr. Leg. Res. Ctr.* v. *Wolf,* No. 20–cv–05883–JSW, 2020 WL 5798269 (N.D. Cal. Sept. 29, 2020); *Nw. Immigr. Rights Proj.* v. *USCIS,* No. 19–3283, 2020 WL 5995206 (Oct. 8, 2020).

[8] *See* Public Law 104–13, 109 Stat. 163 (May 22, 1995) codified at 44 U.S.C. 3501 *et seq.*

TABLE 1—SUMMARY OF FORMS

Form	Form name	Change	General purpose of form	General categories filing	Nexus to August 2019 rule
I–944	Declaration of Self-Sufficiency.	Discontinue	This form was used to demonstrate that an alien is not likely to become a public charge.	Applicants for adjustment of status who are subject to the public charge ground of inadmissibility.	This form was the primary basis for determining whether an applicant is inadmissible on the public charge ground (8 U.S.C. 1182(a)(4), as it asked questions about the factors considered in a public charge inadmissibility determination under the August 2019 rule. Because of the vacatur and removal of the August 2019 rule, USCIS will no longer use this information collection.
I–356	Request for Cancellation of a Public Charge Bond.	Discontinue	This form was used to request cancellation of the bond that was submitted on Form I–945, Public Charge Bond, on behalf of an alien.	An obligor who posted Form I–945 on the alien's behalf or an alien who posted Form I–945 on his or her own behalf, and who sought to cancel Form I–945 because the alien had permanently departed the United States, naturalized, or died; the obligor or the alien sought cancellation of the bond following the alien's fifth anniversary of admission to the United States as a lawful permanent resident; or the alien, following the initial grant of lawful permanent resident status, obtains an immigration status that was exempt from the public charge ground of inadmissibility.	This form was used to seek cancellation of the Form I–945, Public Charge Bond. Because of the vacatur and removal of the August 2019 rule USCIS will no longer use this information collection.
I–945	Public Charge Bond.	Discontinue	This form was the public charge bond contract between USCIS and the obligor.	For applicants for adjustment of status inadmissible only based on the public charge ground and who were permitted to post a public charge bond. The form was completed by the obligor, who posted the bond on the alien's behalf (or by an alien who posted the bond on his or her own behalf).	If an alien seeking adjustment of status had been found inadmissible under the public charge ground, he or she may have been admitted to the United States upon the posting of a suitable and proper bond at the discretion of DHS. Because of the vacatur and removal of the August 2019 rule USCIS will no longer use this information collection.
I–485	Application to Register Permanent Residence or Adjust Status.	Update—removes questions and instructions that clarified what categories need to file Form I–944.	This form is used by aliens present in the United States to obtain lawful permanent resident status.	For aliens applying for adjustment of status, including: Immediate relatives (spouses, children, and parents of U.S. citizens) Family-based immigrants (principal beneficiaries and their dependents) Employment-based immigrants (principal beneficiaries and their dependents) Those who entered as K nonimmigrants (Fiance(e)s or certain spouses of U.S. citizens, and their children) who are seeking lawful permanent resident status based on the primary beneficiary's marriage to the U.S. citizen petitioner.	Adjustment of status applicants generally must be admissible to the United States, and must demonstrate that they are not inadmissible under any of the grounds in section 212(a), including public charge. However, because of the vacatur and removal of the 2019 rule, and the discontinuation of Form I–944 USCIS will no use these elements of the information collection.
I–864	Affidavit of Support Under Section 213A of the INA.	Update—reference to Form I–864W, which is being reinstated.	Statement/contract provided by a sponsor to show that the sponsor has adequate financial resources to support the alien.	Most family-based immigrants and some employment-based immigrants must have a sponsor submit this form.	Since the Form I–864W is being reinstated, USCIS will include references to that form on the Form I–864.
I–864EZ	Affidavit of Support Under Section 213A of the Act.	Update—reference to Form I–864W, which is being reinstated.	Statement/contract provided by sponsor to show that the sponsor has adequate financial resources to support the alien. This is a simpler version of Form I–864.	The sponsor is the person who filed or is filing Form I–130, Petition for Alien Relative, for a relative being sponsored; the relative the sponsor is sponsoring is the only person listed on Form I–130; and the income the sponsor is using to qualify is based entirely on the sponsor's salary or pension and is shown on one or more Internal Revenue Service (IRS) Form W–2s provided by the sponsor's employers or former employers.	Since the Form I–864W is being reinstated, USCIS needs to include references to that form on the Form I–864EZ.

TABLE 1—SUMMARY OF FORMS—Continued

Form	Form name	Change	General purpose of form	General categories filing	Nexus to August 2019 rule
I–864W	Request for Exemption for Intending Immigrant's Affidavit of Support.	Reinstate	Certain classes of immigrants are exempt from the Form I–864 requirement and therefore must file Form I–864W instead.	Aliens who have earned 40 quarters of SSA coverage. Children who will become U.S. citizens upon entry or adjustment into the United States under INA 320. Self-Petitioning Widow(er) Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant; Self-Petitioning bettered spouse or child.	Because of the vacatur and removal of the 2019 rule and the rollback of the associated changes to Form I–485, Form I–864W is being reinstated.
I–129	Petition for Nonimmigrant Worker.	Update—removes questions and instructions about receipt of public benefits.	This form is issued by an employer to petition USCIS for an alien beneficiary to come temporarily to the United States as a nonimmigrant to perform services or labor, or to receive training. This form is also used by employers to apply for extension of stay and change of status on behalf of nonimmigrants.	• E–2 CNMI—treaty investor exclusively in the Commonwealth of the Northern Mariana Islands (CNMI). • H–1B—specialty occupation worker; an alien coming to perform services of an exceptional nature that relate to a U.S. Department of Defense-administered project; or a fashion model of distinguished merit and ability. • H–2A—temporary agricultural worker. • H–2B—temporary nonagricultural worker. • H–3—trainee ..... • L–1—intracompany transferee ..... • O–1—alien of extraordinary ability in arts, science, education, business, or athletics. • O–2—accompanying alien who is coming to the United States to assist in the artistic or athletic performance of an O–1 artist or athlete. • P–1—major league sports ..... • P–1—internationally recognized athlete/entertainment group. • P–1S—essential support personnel for a P–1. • P–2—artist/entertainer in reciprocal exchange program. • P–2S—essential support personnel for a P–2. • P–3—artist/entertainer coming to the United States to perform, teach, or coach under a program that is culturally unique. • P–3S—essential support personnel for a P–3. • Q–1—alien coming temporarily to participate in an international cultural exchange program. Extension of Status. • E–1—treaty trader ..... • E–2—treaty investor (not including E–2 CNMI treaty investors.). • E–3—Free Trade Agreement professionals from Australia. Free Trade Nonimmigrants—. • H–1B1 specialty occupation workers from Chile or Singapore and TN professionals from Canada or Mexico. • R–1—religious worker	Because of the vacatur and removal of the 2019 rule, USCIS is removing the public benefit condition information collection elements from Form I–129. As a condition of granting extension of stay and change of status, the applicant no longer must show that he or she has not received, since obtaining the nonimmigrant status he or she is seeking to extend or change public benefits, as defined in former 8 CFR 212.21(b), for more than 12 months in the aggregate, within a 36-month period.
I–129CW	Petition for a CNMI-Only Nonimmigrant Transitional Worker.	Update—removes questions and instructions about receipt of public benefits.	This form is used by an employer to request an extension of stay or change of status for a temporary worker in the Commonwealth of the Northern Mariana Islands (CNMI).	This form is used by an employer to request an extension of stay or change of status for an alien in the Commonwealth of the Northern Mariana Islands (CNMI) temporarily to perform services or labor as a CW–1, CNMI-Only Transitional Worker.	Because of the vacatur and removal of the 2019 rule, USCIS is removing the public benefit condition information collection elements from Form I–129CW. As a condition of granting extension of stay and change of status, the applicant no longer must show that he or she has not received, since obtaining the nonimmigrant status he or she is seeking to extend or change public benefits, as defined in former 8 CFR 212.21(b), for more than 12 months in the aggregate within a 36-month period.

TABLE 1—SUMMARY OF FORMS—Continued

Form	Form name	Change	General purpose of form	General categories filing	Nexus to August 2019 rule
I–539	Application to Extend/Change Nonimmigrant Status.	Update—removes questions and instructions about receipt of public benefits for principal aliens.	This form is used by certain nonimmigrants (principal filers) to apply for an extension of stay or change of status. In certain circumstances, this form may be used as an initial nonimmigrant status, or reinstatement of F–1 or M–1 status (students).	CNMI residents applying for an initial grant of status; Student (F) and vocational students (M) applying for reinstatement; and Persons seeking V nonimmigrant status or an extension of stay as a V nonimmigrant (spouse or child of a lawful permanent resident who filed a petition on or before December 21, 2000).	Because of the vacatur and removal of the 2019 rule, USCIS is removing the public benefit condition information collection elements from Form I–539. As a condition of granting extension of stay and change of status, the applicant no longer must show that he or she has not received since obtaining the nonimmigrant status he or she is seeking to extend or from which he or she is seeking to change public benefits, as defined in former 8 CFR 212.21(b), for more than 12 months in the aggregate within a 36-month period
I–539A	.....	Update—removes questions and instructions about receipt of public benefits by co-applicants of I–539 applicants.	This form is used by certain nonimmigrants (co-applicants of the primary I–539 applicants) to apply for an extension of stay or change of status.	Co-Applicants of I–539 principal filers	Because of the vacatur and removal of the 2019 rule, USCIS is removing the public benefit condition information collection elements from Form I–539. As a condition of granting extension of stay and change of status, the co-applicant no longer must show that he or she has not received, since obtaining the nonimmigrant status he or she is seeking to extend or from which he or she is seeking to change, public benefits, as defined in former 8 CFR 212.21(b), for more than 12 months in the aggregate within a 36-month period.
I–912	Request for Fee Waiver.	Update—removes a notice that a request for a fee waiver may be a factor in the public charge determination.	This form may be filed with certain USCIS benefit requests in order to request a fee waiver.	Certain Form I–485 applicants, generally those who are not subject to the public charge ground of inadmissibility and those applying under certain humanitarian programs, may request a fee waiver on Form I–912. Applicants for E–2 CNMI investor nonimmigrant status under 8 CFR 214.2(e)(23) filing Form I–129 or Form I–539 may request a fee waiver.	Because of the vacatur and removal of the 2019 rule, USCIS is removing the notice from the Form I–912 instructions because a request of a fee waiver is no longer a factor in the determination of public charge inadmissibility.

To conform with the requirements set forth by the PRA, USCIS requested and received emergency approval from OMB to take the following actions on certain collections on information as required by the vacatur of the August 2019 rule.

USCIS Form I–944

(1) *Type of Information Collection Request:* Discontinuation of a currently approved form.

(2) *Title of the Form/Collection:* Declaration of Self-Sufficiency.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–944; USCIS.

(4) *Affected public who were asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–944 would have been used by an individual to demonstrate that he or she is not inadmissible based on the public charge ground.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* With the discontinuation of this information collection, there will be no respondents or hour burden per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There will be no public hour burden.

(7) *An estimate of the total public burden (in cost) associated with the collection:* There will be no public cost burden.

USCIS Form I–356

(1) *Type of Information Collection Request:* Discontinuation of a currently approved form.

(2) *Title of the Form/Collection:* Request for Cancellation of Public Charge Bond.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–356; USCIS.

(4) *Affected public who were asked or required to respond, as well as a brief abstract: Primary:* Individuals or household, business or other for profits. Respondents would have use this form to request cancellation of the public charge bond that was submitted on Form I–945 on behalf of someone who is not a citizen of the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* With the discontinuation of this information collection, there will be no respondents or hour burden per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There will be no public hour burden.

(7) *An estimate of the total public burden (in cost) associated with the collection:* There will be no public cost burden.

USCIS Form I–945

(1) *Type of Information Collection Request:* Discontinuation of a currently approved form.

(2) *Title of the Form/Collection:* Public Charge Bond.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–945; USCIS.

(4) *Affected public were asked or required to respond, as well as a brief abstract: Primary:* Individuals or households, business or other for profit. This public charge bond would have been posted as security for performance and fulfillment of the financial obligations of a bonded individual, who is not a U.S. citizen, to the U.S. Government.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* With the discontinuation of this information collection, there will be no respondents or hour burden per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There will be no public hour burden.

(7) *An estimate of the total public burden (in cost) associated with the collection:* There will be no public cost burden.

USCIS Form I–485

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

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–485; Supplement A; and Supplement J; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected is used to determine eligibility to adjust status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–485 is 578,708 and the estimated hour burden per response is 6.254 hours. The estimated total number of respondents for the information collection Supplement A is 29,213 and the estimated hour burden per response is 1.25 hours. The estimated total number of respondents for the information collection Supplement J is 37,358 and the estimated hour burden per response is one hour. The estimated total number of respondents for the information collection of Biometrics is 578,708 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 4,370,202 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $198,496,844.

USCIS Forms I–864; I–864A; I–864EZ; I–864W

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

(2) *Title of the Form/Collection:* Affidavit of Support Under Section 213A of the INA; Contract Between Sponsor and Household Member; Affidavit of Support under Section 213 of the Act.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–864; Form I–864A; Form I–864EZ; and I–864W USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–864. USCIS uses the data collected on Form I–864 to determine whether the sponsor has the ability to support the sponsored alien under section 213A of the Immigration and Nationality Act. This form standardizes evaluation of a sponsor's ability to support the sponsored alien and ensures that basic information required to assess eligibility is provided by petitioners. Form I–864A. Form I–864A is a contract between the sponsor and the sponsor's household members. It is only required if the sponsor used income of his or her household member(s) to reach the required 125 percent of the Federal poverty guidelines. The contract holds these household members jointly and severally liable for the support of the sponsored immigrant. The information collection required on Form I–864A is necessary for public benefit agencies to enforce the Affidavit of Support in the event the sponsor used income of his or her household members to reach the required income level and the public benefit agencies are requesting reimbursement from the sponsor. Form I–864EZ. USCIS uses Form I–864EZ in exactly the same way as Form I–864; however, USCIS collects less information from the sponsors as less information is needed from those who qualify in order to make a thorough adjudication. Form I–864W. USCIS uses Form I–864W to determine whether the intending immigrant meets the criteria for exemption from INA section 213A requirements. This form collects the immigrant's basic information, such as name and address, the reason for the exemption, and accompanying documentation in support of the immigrant's claim that they are not subject to INA section 213A.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–864 is 453,345 and the estimated hour burden per response is 6 hours. The estimated total number of respondents for the information collection I–864A is 215,800 and the estimated hour burden per response is 1.75 hours. The estimated total number of respondents for the information collection I–864EZ is 100,000 and the estimated hour burden per response is 2.5 hours. The estimated total number of respondents for the information collection I–864W is 98,119 and the estimated hour burden per response is 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,445,839 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $159,608,680.

USCIS Form I–129

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

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

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

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer (or agent, where applicable) uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant. An employer (or agent, where applicable) also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for nonimmigrant workers and ensuring that basic information required for

assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under certain nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–129 is 294,751 and the estimated hour burden per response is 2.34 hours. The estimated total number of respondents for the information collection I–129, E–1/E–2 Classification Supplement is 4,760 and the estimated hour burden per response is 0.67 hours. The estimated total number of respondents for the information collection I–129, Trade Agreement Supplement is 3,057 and the estimated hour burden per response is 0.67 hours. The estimated total number of respondents for the information collection I–129, H Classification Supplement is 96,291 and the estimated hour burden per response is two hours. The estimated total number of respondents for the information collection I–129, H–1B and H–1B1 Data Collection and Filing Fee Exemption Supplement is 96,291 and the estimated hour burden per response is one hour. The estimated total number of respondents for the information collection I–129, L Classification Supplement is 37,831 and the estimated hour burden per response is 1.34 hours. The estimated total number of respondents for the information collection I–129, O and P Classifications Supplement is 22,710 and the estimated hour burden per response is one hour. The estimated total number of respondents for the information collection I–129, Q–1 Classification Supplement is 155 and the estimated hour burden per response is 0.34 hours. The estimated total number of respondents for the information collection I–129, R–1 Classification is 6,635 and the estimated hour burden per response is 2.34 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,072,810 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $70,681,290.

USCIS Form I–129CW

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

(2) *Title of the Form/Collection:* Petition for a CNMI-Only Nonimmigrant Transitional Worker.

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

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for profit. USCIS uses the data collected on this form to determine eligibility for the requested immigration benefits. An employer uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant into the CNMI to perform services or labor as a CNMI-Only Transitional Worker (CW–1). An employer also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for these benefits and ensuring that the basic information required to determine eligibility, is provided by the petitioners. USCIS collects biometrics from aliens present in the CNMI at the time of requesting initial grant of CW–1 status. The information is used to verify the alien's identity, background information and ultimately adjudicate their request for CW–1 status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–129CW is 5,975 and the estimated hour burden per response is 3.5 hours. The estimated total number of respondents for the information collection I–129CW is 5,975 and the estimated hour burden per response is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 35,850 hours.

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

USCIS Form I–539 and Form I–539A

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

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–539 and I–539A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form will be used for nonimmigrants to apply for an extension of stay, for a change to another nonimmigrant classification, or for obtaining V nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–539 (paper filing) is 174,289 and the estimated hour burden per response is 2 hours. The estimated total number of respondents for the information collection Form I–539 (e-filing) is 74,696 and the estimated hour burden per response is 1.08 hours. The estimated total number of respondents for the information collection I–539A is 54,375 and the estimated hour burden per response is 0.5 hour. The estimated total number of respondents for the information collection of Biometrics is 373,477 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 893,630 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $56,121,219.

USCIS Form I–912

Implementation of the vacatur will result in non-substantive edits to USCIS Form I–912, Request for Fee Waiver. These edits will remove the language that stated that the submission of a fee waiver request and approval of a fee waiver could negatively impact eligibility for an immigration benefit that is subject to the public charge inadmissibility determination. Accordingly, USCIS has submitted a PRA Change Worksheet, Form OMB 83–C, and amended information collection instrument to OMB for review and approval in accordance with the PRA.

List of Subjects

8 CFR 103

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

8 CFR Part 106

Fees, Immigration.

8 CFR Part 212

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

8 CFR Part 213

Immigration, Surety bonds.

8 CFR Part 214

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

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

Accordingly, DHS amends chapter I of title 8 of the Code of Federal Regulations as follows:

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

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

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112–54; 125 Stat. 550; 31 CFR part 223.

■ 2. Section 103.6 is amended by:
■ a. Revising paragraphs (a)(1), (a)(2)(i), and (c)(1);
■ b. Removing paragraph (d)(3); and
■ c. Revising paragraph (e).

The revisions read as follows:

§ 103.6 Immigration bonds.

(a) * * *

(1) *Extension agreements; consent of surety; collateral security.* All surety bonds posted in immigration cases shall be executed on Form I–352, Immigration Bond, a copy of which, and any rider attached thereto, shall be furnished the obligor. A district director is authorized to approve a bond, a formal agreement to extension of liability of surety, a request for delivery of collateral security to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor, and a power of attorney executed on Form I–312, Designation of Attorney in Fact. All other matters relating to bonds, including a power of attorney not executed on Form I–312 and a request for delivery of collateral security to other than the depositor or his or her approved attorney in fact, shall be forwarded to the regional director for approval.

(2) * * *

(i) *General.* Bond riders shall be prepared on Form I–351, Bond Riders, and attached to Form I–352. If a condition to be included in a bond is not on Form I–351, a rider containing the condition shall be executed.

* * * * *

(c) * * *

(1) *Public charge bonds.* A public charge bond posted for an immigrant shall be cancelled when the alien dies, departs permanently from the United States or is naturalized, provided the immigrant did not become a public charge prior to death, departure, or naturalization. The district director may cancel a public charge bond at any time if he/she finds that the immigrant is not likely to become a public charge. A bond may also be cancelled in order to allow substitution of another bond. A public charge bond shall be cancelled by the district director upon review following the fifth anniversary of the admission of the immigrant, provided that the alien has filed Form I–356, Request for Cancellation of Public Charge Bond, and the district director finds that the immigrant did not become a public charge prior to the fifth anniversary. If Form I–356 is not filed, the bond shall remain in effect until the form is filed and the district director reviews the evidence supporting the form and renders a decision to breach or cancel the bond.

* * * * *

(e) *Breach of bond.* A bond is breached when there has been a substantial violation of the stipulated conditions. A final determination that a bond has been breached creates a claim in favor of the United States which may not be released or discharged by a Service officer. The district director having custody of the file containing the immigration bond executed on Form I–352 shall determine whether the bond shall be declared breached or cancelled, and shall notify the obligor on Form I–323 or Form I–391 of the decision, and, if declared breached, of the reasons therefor, and of the right to appeal in accordance with the provisions of this part.

* * * * *

PART 106—USCIS FEE SCHEDULE

■ 3. The authority citation for part 106 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1254a, 1254b, 1304, 1356; Pub. L. 107–609; 48 U.S.C. 1806; Pub. L. 115–218.

§ 106.2 [Amended]

■ 4. Section 106.2 is amended by removing and reserving paragraph (a)(15) and removing paragraph (a)(51).

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

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

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

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

■ 6. Section 212.18 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 212.18 Applications for waivers of inadmissibility in connection with an application for adjustment of status by T nonimmigrant status holders.

* * * * *

(b) * * *

(2) If an applicant is inadmissible under sections 212(a)(1) or (4) of the Act, USCIS may waive such inadmissibility if it determines that granting a waiver is in the national interest.

(3) If any other provision of section 212(a) renders the applicant inadmissible, USCIS may grant a waiver of inadmissibility if the activities rendering the alien inadmissible were caused by or were incident to the victimization and USCIS determines that it is in the national interest to waive the applicable ground or grounds of inadmissibility.

* * * * *

§§ 212.20 through 212.23 [Removed]

■ 7. Remove §§ 212.20 through 212.23.

PART 213—ADMISSION OF ALIENS ON GIVING BOND OR CASH DEPOSIT

■ 8. The authority citation for part 213 is revised to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

■ 9. Revise the heading for part 213 to read as set forth above.
■ 10. Revise § 213.1 to read as follows:

§ 213.1 Admission under bond or cash deposit.

The district director having jurisdiction over the intended place of

residence of an alien may accept a public charge bond prior to the issuance of an immigrant visa to the alien upon receipt of a request directly from a United States consular officer or upon presentation by an interested person of a notification from the consular officer requiring such a bond. Upon acceptance of such a bond, the district director shall notify the U.S. consular officer who requested the bond, giving the date and place of acceptance and the amount of the bond. The district director having jurisdiction over the place where the examination for admission is being conducted or the special inquiry officer to whom the case is referred may exercise the authority contained in section 213 of the Act. All bonds and agreements covering cash deposits given as a condition of admission of an alien under section 213 of the Act shall be executed on Form I–352 and shall be in the sum of not less than $1,000. The officer accepting such deposit shall give his receipt therefor on Form I–305. For procedures relating to bond riders, acceptable sureties, cancellation or breaching of bonds, see § 103.6 of this chapter.

PART 214—NONIMMIGRANT CLASSES

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

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

§ 214.1 [Amended]

■ 12. Section 214.1 is amended by removing paragraph (a)(3)(iv) and by adding the word ''and'' at the end of paragraph (c)(4)(iii).

§ 214.2 [Amended]

■ 13. Section 214.2 is amended by removing ''8 CFR 248.1(c)'' from the end of paragraph (h)(20) and adding in its place ''8 CFR 248.1(b)''.

PART 245—ADJUSTMENT OF STATUS TO THAT OF A PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 14. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105–100, section 202, 111 Stat. 2160, 2193; Pub. L. 105–277, section 902, 112 Stat. 2681; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

§ 245.4 [Amended]

■ 15. Section 245.4 is amended by removing the paragraph (a) designation and removing paragraph (b).

■ 16. Section 245.23 is amended by revising paragraph (c)(3) to read as follows:

§ 245.23 Adjustment of aliens in T nonimmigrant classification.

* * * * *

(c) * * *

(3) The alien is inadmissible under any other provisions of section 212(a) of the Act and has not obtained a waiver of inadmissibility in accordance with 8 CFR 212.18 or 214.11(j). Where the applicant establishes that the victimization was a central reason for the applicant's unlawful presence in the United States, section 212(a)(9)(B)(iii) of the Act is not applicable, and the applicant need not obtain a waiver of that ground of inadmissibility. The applicant, however, must submit with the Form I–485 evidence sufficient to demonstrate that the victimization suffered was a central reason for the unlawful presence in the United States. To qualify for this exception, the victimization need not be the sole reason for the unlawful presence but the nexus between the victimization and the unlawful presence must be more than tangential, incidental, or superficial.

* * * * *

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

■ 17. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

■ 18. Revise § 248.1 to read as follows:

§ 248.1 Eligibility.

(a) *General.* Except for those classes enumerated in § 248.2, any alien lawfully admitted to the United States as a nonimmigrant, including an alien who acquired such status pursuant to section 247 of the Act, 8 U.S.C. 1257, who is continuing to maintain his or her nonimmigrant status, may apply to have his or her nonimmigrant classification changed to any nonimmigrant classification other than that of a spouse or fianc(e), or the child of such alien, under section 101(a)(15)(K) of the Act, 8 U.S.C. 1101(a)(15)(K), or as an alien in transit under section 101(a)(15)(C) of the Act, 8 U.S.C. 1101(a)(15)(C). An alien defined by section 101(a)(15)(V), or 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(V) or 8 U.S.C. 1101(a)(15)(U), may be accorded nonimmigrant status in the United States by following the procedures set forth respectively in § 214.15(f) or § 214.14 of this chapter.

(b) Except in the case of an alien applying to obtain V nonimmigrant status in the United States under § 214.15(f) of this chapter, a change of status may not be approved for an alien who failed to maintain the previously accorded status or whose status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of USCIS, and without separate application, where it is demonstrated at the time of filing that:

(1) The failure to file a timely application was due to extraordinary circumstances beyond the control of the applicant or petitioner, and USCIS finds the delay commensurate with the circumstances;

(2) The alien has not otherwise violated his or her nonimmigrant status;

(3) The alien remains a bona fide nonimmigrant; and

(4) The alien is not the subject of removal proceedings under 8 CFR part 240.

(c) *Change of nonimmigrant classification to that of a nonimmigrant student.* (1) Except as provided in paragraph (c)(3) of this section, a nonimmigrant applying for a change of classification as an F–1 or M–1 student is not considered ineligible for such a change solely because the applicant may have started attendance at school before the application was submitted. USCIS will deny an application for a change to classification as an M–1 student if the applicant intends to pursue the course of study solely in order to qualify for a subsequent change of nonimmigrant classification to that of an alien temporary worker under section 101(a)(15)(H) of the Act. Furthermore, an alien may not change from classification as an M–1 student to that of an F–1 student.

(2) [Reserved]

(3) A nonimmigrant who is admitted as, or changes status to, a B–1 or B–2 nonimmigrant on or after April 12, 2002, or who files a request to extend the period of authorized stay as a B–1 or B–2 nonimmigrant on or after such date, may not pursue a course of study at an approved school unless the Service has approved his or her application for change of status to a classification as an F–1 or M–1 student. USCIS will deny the change of status if the B–1 or B–2 nonimmigrant enrolled in a course of study before filing the application for change of status or while the application is pending.

(d) *Application for change of nonimmigrant classification from that of a student under section 101(a)(15)(M)(i) to that described in section 101(a)(15)(H).* A district director shall deny an application for change of nonimmigrant classification from that of an M–1 student to that of an alien temporary worker under section 101(a)(15)(H) of the Act if the education or training which the student received while an M–1 student enables the student to meet the qualifications for temporary worker classification under section 101(a)(15)(H) of the Act.

(e) *Change of nonimmigrant classification to that as described in section 101(a)(15)(N).* An application for change to N status shall not be denied on the grounds the applicant is an intending immigrant. Change of status shall be granted for three years not to exceed termination of eligibility under section 101(a)(15)(N) of the Act. Employment authorization pursuant to section 274(A) of the Act may be granted to an alien accorded nonimmigrant status under section 101(a)(15)(N) of the Act. Employment authorization is automatically terminated when the alien changes status or is no longer eligible for classification under section 101(a)(15)(N) of the Act.

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2021–05357 Filed 3–11–21; 4:15 pm]

BILLING CODE 9111–97–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–1055; Special Conditions No. 25–778–SC]

Special Conditions: Boeing Commercial Airplanes Model 777–9 Airplanes; Structure-Mounted Airbags

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Commercial Airplanes (Boeing) Model 777–9 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is structure-mounted airbags designed to limit occupant forward excursion in the event of an emergency landing. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective April 14, 2021.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, Airframe and Cabin Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email *shannon.lennon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2013, Boeing applied for a change to Type Certificate No. T00001SE for structure-mounted airbags installed in the Boeing Model 777–9 airplane. The application date was extended to March 30, 2016, based on Boeing's request. The Boeing Model 777–9 airplane, which is a derivative of the Boeing Model 777 airplane currently approved under Type Certificate No. T00001SE, is a twin-engine, transport-category airplane with seating for 495 passengers and a maximum takeoff weight of 775,000 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 777–9 airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. T00001SE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–9 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777–9 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 777–9 airplane will incorporate the following novel or unusual design features:

Airbags mounted to structure to prevent head injury.

Discussion

Boeing will install structure-mounted airbags instead of inflatable lap belts as a means to protect each occupant from serious injury in the event of an emergency landing, as required by § 25.562(c)(5), on 777–9 airplanes.

Such use of airbags to provide injury protection for the occupant is a novel or unusual feature for this airplane model, and the applicable airworthiness regulations do not contain adequate or appropriate airworthiness standards for these design features. Therefore, special conditions are needed to address requirements particular to installation of airbags in this manner.

Special conditions exist for airbags installed on seat belts, known as inflatable lap belts, which have been installed on Boeing airplane passenger seats. Structure-mounted airbags, although a novel design, were first introduced on Jetstream Aircraft Limited Model 4100 series airplanes, which resulted in issuance of Special Conditions 25–ANM–127 on May 14, 1997. These special conditions supplemented 14 CFR part 25 and, more specifically, §§ 25.562 and 25.785.

The structure-mounted airbag, similar to the inflatable lap belt, is designed to limit occupant forward excursion in the event of an emergency landing. These airbags will reduce the potential for serious injury, including reducing the head-injury criterion measurement defined in part 25. However, structure-mounted airbags function similarly as automotive airbags, where the airbag deploys from furniture located in front of the passenger, relative to the airplane's direction of flight, forming a barrier between the structure and