

withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate and as permitted by law, on its own motion. The process by which the Commission may terminate relief is set forth in § 30.10(c).¹²

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option regulations and will make necessary adjustments if appropriate.

Issued in Washington, DC, on November 2, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Foreign Futures and Options Transactions—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

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DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 11218]

RIN 1400–AE99

Visas: Visa Bond Pilot Program

AGENCY: Department of State.

ACTION: Temporary final rule.

SUMMARY: This temporary final rule provides for a U.S. Department of State (Department) visa bond pilot program (Pilot Program) with specified parameters. The purpose of the Pilot Program is to assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with the Department of Homeland Security (DHS), to help assess the burden on government agencies and identify any practical challenges related to visa bonds. The Pilot Program does not aim to assess whether issuing visa bonds will be effective in reducing the number of aliens who overstay their temporary business visitor/tourist (B–1/B–2) visa. Visa applicants potentially subject to the Pilot Program include

aliens who: Are applying for visas as temporary visitors for business or pleasure (B–1/B–2); are from countries with high visa overstay rates; and already have been approved by DHS for an inadmissibility waiver. Because this is a visa bond program, aliens traveling under the Visa Waiver Program fall outside the scope of the Pilot Program, as those travelers do not apply for visas. The Pilot Program is designed to apply to nationals of specified countries with high overstay rates to serve as a diplomatic tool to encourage foreign governments to take all appropriate actions to ensure their nationals timely depart the United States after making temporary visits. The Pilot Program will run for six months. During that period, consular officers may require nonimmigrant visa applicants falling within the scope of the Pilot Program to post a bond in the amount of \$5,000, \$10,000, or \$15,000 as a condition of visa issuance. The amount of the bond, should a bond be appropriate, will be determined by the consular officer based on the circumstances of the visa applicant.

DATES:

Effective Date: This temporary final rule is effective from December 24, 2020 through June 24, 2021.

Pilot Program Dates: The Pilot Program will run for six months, from December 24, 2020 through June 24, 2021.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Executive Summary of Pilot Program

This temporary final rule establishes a Pilot Program under section 221(g)(3) of the Immigration and Nationality Act, as amended (INA) (8 U.S.C. 1201(g)(3)), which authorizes consular officers to require the posting of a Maintenance of Status and Departure Bond (visa bond) by an alien applying for, and otherwise eligible to receive, a business visitor/tourist (B–1/B–2) visa, when a visa bond is required “to insure that at the expiration of the time for which such alien has been admitted . . . or upon failure to maintain the status under which [the alien] was admitted, or to maintain any status subsequently acquired under section 1258 of this title (INA section 248), such alien will depart from the United States.” The Pilot Program will begin on December 24, 2020, and end on June 24, 2021.

Historically, Department guidance generally discouraged consular officers from exercising their authority to require visa bonds under INA section 221(g)(3), as reflected in guidance published in Volume 9 of the Foreign Affairs Manual (9 FAM), section 403.9–8(A) *Bonds Should Rarely Be Used*,¹ which states, “[t]he mechanics of posting, processing and discharging a bond are cumbersome,” and notes possible misperception of a bond requirement by the public. The Pilot Program will help the Department assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with DHS, to inform any future decision concerning the possible use of visa bonds to address overstays. The Pilot Program responds to the President’s initiative to lower visa overstay rates, as reflected in the April 22, 2019, *Presidential Memorandum on Combating High Nonimmigrant Overstay Rates*² (the *Presidential Memorandum*), the threat to U.S. interests described in the *Presidential Memorandum*; and the high nonimmigrant overstay rates for nationals of certain countries.

Under the Pilot Program, visa bonds may be required from certain applicants for B–1/B–2 visas who are nationals of listed countries that have overstay rates of ten percent or higher in the combined B–1/B–2 nonimmigrant visa category, as reported in the DHS Fiscal Year 2019 Entry/Exit Overstay Report (DHS FY 2019 Overstay Report), and who have been approved for a waiver of ineligibility by DHS under INA section 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)). Visa bonds will be posted with U.S. Immigration and Customs Enforcement (ICE) via ICE Form I–352, *Immigration Bond*. DHS regulations at 8 CFR 103.6 currently provide for the posting, processing, and cancellation of such visa bonds. DHS/ICE will collect all bonds and retain all fees in the instance that a bond is breached.

II. Purpose of This Rule

The Department is publishing this temporary final rule (TFR) to establish the Pilot Program, including: (1) The criteria for identifying visa applicants who will be required to post visa bonds; (2) three levels for the amount of the bond, with the level to be selected by the consular officer based on an applicant’s individual circumstances; and (3) the duration of the Pilot

¹ <https://fam.state.gov/FAM/09FAM/09FAM040309.html>.

² <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-combating-high-nonimmigrant-overstay-rates/>.

¹² 17 CFR 30.10(c). See 85 FR 15359 (Mar. 18, 2020).

Program. The Pilot Program will help the Department assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with DHS, which will inform any future decision concerning the possible use of visa bonds to address the national security and foreign policy objectives articulated in the *Presidential Memorandum*, which declares the Administration's commitment "to securing the borders of the United States and fostering respect for the laws of our country, both of which are cornerstones of our Republic."³ The *Presidential Memorandum* highlights the fact that visa overstay rates are unacceptably high for nationals of certain countries and concludes that, "individuals who abuse the visa process and decline to abide by the terms and conditions of their visas, including their visa departure dates, undermine the integrity of our immigration system and harm the national interest."⁴

The *Presidential Memorandum* directs the Secretary of State, in consultation with the Attorney General and the Secretary of Homeland Security, to provide the President with recommendations to reduce B-1 and B-2 nonimmigrant visa overstay rates from countries with a total overstay rate greater than ten percent, and further directs the Secretary of State and the Secretary of Homeland Security to take, "appropriate actions that are within the scope of their respective authorities to reduce overstay rates for all classes of nonimmigrant visas."⁵ The Department intends to use the results of the Pilot Program to assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with DHS, which will inform any future decision concerning the possible use of visa bonds to address visa overstay rates, relative to operational considerations. Determining operational feasibility of posting, processing, and discharging visa bonds focuses on assessing the burdens such a program places on government agencies and identifying challenges that might arise from the interagency process for implementing visa bonds. The purpose does not include, and this Pilot Program is not designed for, determining the effectiveness of visa bonds at reducing overstays. This Pilot Program evaluates the operational challenges, rather than the outcome. The Department recognizes that, because of the limited scope of the Pilot Program, it cannot be

used to assess the effectiveness of visa bonds for reducing overstays.

III. Background

A. Foreign Policy Justification

The *Presidential Memorandum* notes that the number of aliens who overstay their period of lawful admission is unacceptably high for nationals of certain countries and concludes that, "individuals who abuse the visa process and decline to abide by the terms and conditions of their visas, including their visa departure dates, undermine the integrity of our immigration system and harm the national interest."⁶ Furthermore, overstays "place significant strain on Department of Justice and Department of Homeland Security resources."⁷ The volume of overstays highlights this concern. DHS reported to Congress in the DHS FY 2019 Overstay Report that, "[a]t the end of FY 2019, there were 574,740 Suspected In-Country Overstays" (i.e., aliens who remained in the country past the end of their authorized stay and had yet to depart the country) among nonimmigrants admitted through air or sea ports of entry.⁸

Studies reviewing data covering periods before DHS began publishing overstay data (the first DHS Overstay Report covered FY 2015) have suggested that the number of overstays has exceeded land border apprehensions for several years and that, over the past decade, unauthorized migration is attributable more to visa overstays than to unauthorized border crossings.⁹ Furthermore, the number of total

overstays annually among foreign nationals admitted to the United States at an air or sea port of entry as nonimmigrant visitors for business or pleasure on a B-1 or B-2 visa, excluding travelers from Mexico, Canada, and Visa Waiver Program (VWP) participating countries¹⁰ has increased in recent years, based on statistics published by DHS. For fiscal years beginning with 2015, DHS has published an "Overstay Report" with a broad range of statistics relating to "overstays," which DHS defines, for purposes of these reports, as "a nonimmigrant who was lawfully admitted to the United States for an authorized period but stayed in the United States beyond his or her authorized admission period."¹¹ As explained in the report, if a nonimmigrant timely applies for an extension of the authorized period of admission or applies to change or adjust status, the authorized period of admission may be extended, thereby avoiding overstay status. The reports for fiscal years 2015 through 2019 include statistics on foreign nationals who entered the United States at an airport or seaport of entry as nonimmigrant visitors for business or pleasure on a B-1 or B-2 visa, excluding travelers from Mexico, Canada, and VWP participating countries. For fiscal year 2015, DHS reported a total of 228,783 overstays among this category of nonimmigrant visitors, including "out-of-country" overstays (i.e., those who departed some time before the end of FY 2015) and in-country overstays (i.e., those who remained in the United States at the end of FY 2015).¹² The number of such overstays grew in each of the consecutive years, to 287,107 for FY 2016,¹³ to 301,716 for FY 2017,¹⁴ to 305,215 for FY 2018,¹⁵ and finally to 320,086 for FY 2019.¹⁶

Section 2 of the *Presidential Memorandum* directed the Secretary of State to engage with the governments of countries with a total overstay rate greater than ten percent in the combined

⁶ *Id.*

⁷ *Presidential Memorandum* at Section 1(a).

⁸ "Fiscal Year 2019 Entry/Exit Overstay Report" prepared by DHS and submitted to Congress pursuant to Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Pub. L. 106-215, 114 Stat. 337, June 15, 2000) (DHS FY 2019 Overstay Report), found at <https://www.dhs.gov/publication/entryexit-overstay-report>. In the Report, DHS further explained that by the end of December 2019, the number of Suspected In-Country Overstays for FY 2019 decreased to 497,272, due to departures and adjustments of status by aliens in that population. The report explains that overstay statistics reported do not take into account diplomats and other representatives, crewmembers, aliens in transit, and section 1367 special-protected classes, because they have "unspecified authorized periods of stay and legal protections." DHS FY 2019 Overstay Report at Section III(C).

⁹ See Blas Nuñez-Neto, "Visa Overstays Outsize Role in Unauthorized Migration," Homeland Security Policy Paper #2, Harvard Kennedy School Belfer Center, at https://www.belfercenter.org/sites/default/files/files/publication/HSP%20Paper%20Series-Visa%20Overstays_0.pdf, citing Robert Warren and Donald Kerwin, "Beyond DAPA and DACA: Revisiting Legislative Reform in Light of Long-Term Trends in Unauthorized Immigration to the United States," *Journal on Migration Human Security* 3, no. 1 (Mar. 2015), 80-108.

¹⁰ The Visa Waiver Program is described in INA 217 (8 U.S.C. 1187).

¹¹ DHS Fiscal Year 2019 Entry/Exit Overstay Report, <https://www.dhs.gov/publication/entryexit-overstay-report> (DHS FY 2019 Overstay Report), at Section III(C).

¹² *Id.* at page 14, Table 2.

¹³ DHS Entry/Exit Overstay Report for Fiscal Year 2016, <https://www.dhs.gov/publication/entryexit-overstay-report>, at page 13, Table 1.

¹⁴ DHS Entry/Exit Overstay Report for Fiscal Year 2017, <https://www.dhs.gov/publication/entryexit-overstay-report>, at page 12, Table 1.

¹⁵ DHS Entry and Exit Overstay Report for Fiscal Year 2018, <https://www.dhs.gov/publication/entryexit-overstay-report>, at page 13, Table 1.

¹⁶ DHS Entry/Exit Overstay Report for Fiscal Year 2019, <https://www.dhs.gov/publication/entryexit-overstay-report>, at page 20, Table 1.

³ *Presidential Memorandum* section 1(a).

⁴ *Id.*

⁵ *Presidential Memorandum* at Section 2.

B-1 and B-2 nonimmigrant visa category, based on the DHS FY 2019 Overstay Report. By focusing the Pilot Program on certain countries identified in the DHS FY 2019 Overstay Report as having overstay rates of ten percent or higher among aliens admitted to the United States for business or pleasure (B-1/B-2) via air and sea ports of entry,¹⁷ the U.S. Government sends a message to all countries that high overstay rates may result in measures that negatively affect broad categories of their nationals, thereby encouraging countries to take action to encourage their nationals to comply with U.S. immigration law. By establishing the Pilot Program, the U.S. Government focuses on travelers who are nationals of: Afghanistan, Angola, Bhutan, Burkina Faso, Burma, Burundi, Cabo Verde, Chad, Democratic Republic of the Congo (Kinshasa), Djibouti, Eritrea, the Gambia, Guinea-Bissau, Iran, Laos, Liberia, Libya, Mauritania, Papua New Guinea, Sao Tome and Principe, Sudan, Syria, and Yemen,¹⁸ thereby sending a message to those countries in particular regarding the relevant overstay rates of their nationals. By its design and intention, the Pilot Program is a tool of diplomacy, intended to encourage foreign governments to take all appropriate actions to reduce the overstay rates of their nationals when traveling to the United States for temporary visits. As such, the rule properly is described as a component of U.S. foreign policy and involving a foreign affairs function.

B. Legal Framework Underlying the Pilot Program

As detailed below, the INA grants, and Department regulations implement, consular officer authority to require bonds in appropriate circumstances; however, historically, as a matter of policy, Department guidance has discouraged consular officers from exercising their authority to require bonds. See 9 FAM 403.9-8(A) *Bonds Should Rarely Be Used*.

¹⁷ This analysis excluded nationals of Canada, Mexico, and countries that participate in the Visa Waiver Program, because, among other reasons, the procedures or requirements for B-1/B-2 status for nationals of those countries differ from nationals of other countries and generally do not involve applying for visas.

¹⁸ Although Palau had an overstay rate of 15%, according to the DHS FY19 Overstay Report, it is excluded from the Pilot Program due to its unique circumstances, which permit its citizens to travel and apply for admission to the United States as nonimmigrants without visas, based on the Compact of Free Association Approval Act (Pub. L. 99-658, 100 Stat. 3672, Nov. 14, 1986).

1. INA Provisions

Section 221(g)(3) of the INA (8 U.S.C. 1201(g)(3)), authorizes consular officers to require the posting of a bond by an alien applying for, and otherwise eligible to receive, a business/tourist (B-1/B-2) visa “to insure that at the expiration of the time for which such alien has been admitted . . . or upon failure to maintain the status under which [the alien] was admitted, or to maintain any status subsequently acquired under section 1258 of this title (INA section 248), such alien will depart from the United States.” INA section 221(g)(3) (8 U.S.C. 1201(g)(3)), implicitly recognizes that there is no guarantee that an alien will depart in a timely fashion, even when an applicant is found otherwise eligible for the visa. Consequently, this INA section contemplates that it may be appropriate to require a bond when an applicant is otherwise eligible for a visa.

2. Department Regulations

Department regulations regarding visa bonds include 22 CFR 41.11(b)(2), which provides that, “[i]n a borderline case in which an alien appears to be otherwise entitled to receive a visa under INA section 101(a)(15)(B) or (F) but the consular officer concludes that the maintenance of the alien’s status or the departure of the alien from the United States as required is not fully assured, a visa may nevertheless be issued upon the posting of a bond with the Secretary of Homeland Security under terms and conditions prescribed by the consular officer.” Additionally, 22 CFR 41.31(a)(1) references consular officer authority to require bonds from applicants for visas for temporary visits for business or pleasure (B-1/B-2) whose departure “does not seem fully assured.” These regulations reinforce the broad scope of the statutory authority of the Department and consular officers to require bonds to help ensure the timely departure from the United States of any visitor on a B-1/B-2 visa, when the alien is otherwise eligible for a visa, because an alien’s departure after entering the United States can never be fully assured at the time of visa issuance or admission to this country.

3. FAM Guidance

Despite the regulatory foundation for consular officers to issue visa bonds, historically, as a matter of policy, the Department has discouraged consular officers from exercising their authority to require bonds, as reflected in volume 9 of the *Foreign Affairs Manual* at section 403.9-8(A), which provides,

“[a]lthough 22 CFR 41.11(b)(2) permits consular officers, in certain cases, to require a maintenance of status and departure bond, it is Department policy that such bonds will rarely, if ever, be used.” The FAM section indicates that this policy relies, in part, on an assessment that “[t]he mechanics of posting, processing and discharging a bond are cumbersome.” The Pilot Program will help the Department assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with the Department of Homeland Security, and inform any future decision concerning the possible use of visa bonds to address overstays. The Pilot Program will constitute an exception to that general guidance with respect to the categories of aliens covered by the Pilot Program, during the six month duration of the Pilot Program.

IV. Parameters of the Pilot Program

The Pilot Program will last six months, beginning on the effective date of this TFR. The program will be limited to aliens who are: (1) Applying for B-1/B-2 nonimmigrant visas; (2) nationals of a listed country with an overstay rate of ten percent or higher per the DHS FY 2019 Overstay Report;¹⁹ and (3) ineligible for a visa, but have been approved for a waiver of ineligibility by DHS under INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A). Covered visa applicants will be required to post a bond in the amount of \$5,000, \$10,000, or \$15,000, unless the bond requirement is waived. These parameters are explained below.

A. Countries With High Overstay Rates

For purposes of the Pilot Program, the countries with visa overstay rates of ten percent or higher were determined based on the DHS FY 2019 Overstay Report, which was published May 13, 2020.²⁰ The Pilot Program focuses only on visa overstays by nonimmigrants of listed nationalities. Those countries of nationality were determined based on DHS published data on overstays by nationals of the country admitted to the United States for business or pleasure (B-1/B-2 nonimmigrant status) via air and sea ports of entry. The data set excluded Canada, Mexico, and countries participating in the VWP.²¹ The countries covered by the Pilot Program are: Afghanistan, Angola, Bhutan,

¹⁹ https://www.dhs.gov/sites/default/files/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf.

²⁰ *Id.*

²¹ Eligibility for the Visa Waiver Program includes strict limits on overstay rates. INA section 217(c)(3) (8 U.S.C. 1187(c)(3)).

Burkina Faso, Burma, Burundi, Cabo Verde, Chad, Democratic Republic of the Congo (Kinshasa), Djibouti, Eritrea, the Gambia, Guinea-Bissau, Iran, Laos, Liberia, Libya, Mauritania, Papua New Guinea, Sao Tome and Principe, Sudan, Syria, and Yemen.²² The DHS FY 2019 Overstay Report report provides data on departures and overstays, by country, for foreign visitors to the United States who were expected to depart in FY 2019 (October 1, 2018–September 30, 2019). For purposes of the DHS FY 2019 Overstay Report and this Pilot Program, a “visa overstay” is an alien who was lawfully admitted to the United States and remains in the United States beyond the period of admission authorized by DHS. The initial authorized admission period is a fixed period determined by DHS at the time B–1/B–2 visa holders apply for admission to the United States, but in some circumstances, admission periods may be extended by application to U.S. Citizenship and Immigration Services (USCIS) for an extension of stay or change or adjustment of status. The threshold of a ten percent overstay rate was based on Section 2 of the *Presidential Memorandum*, which directed the Secretary of State to engage with the governments of countries with a total overstay rate greater than ten percent in the combined B–1 and B–2 nonimmigrant visa category based on the DHS FY 2018 Overstay Report.

Before developing the parameters for this Pilot Program, the Department engaged with the governments of countries with high overstay rates in the combined B–1 and B–2 nonimmigrant visa category to identify conditions contributing to high overstay rates among nationals of those countries and considered methods to address those conditions, as required by the *Presidential Memorandum*. In countries where other tools are not sufficiently effective at reducing overstays, deployment of an additional tool, like a visa bond, may be warranted. In setting the ten percent threshold, the Department also considered the number of countries that would be implicated at the different overstay threshold levels, what impact their inclusion might have on the Pilot Program generally, and what impact alternative thresholds would have on the volume of bonds that would be required. For the Pilot Program, the Department wanted to be certain that, if the visa bond process does prove to be unduly cumbersome,

the Pilot Program would not require a volume of bonds that might cripple consular sections overseas.

B. Applicants Requiring DHS Waivers of Ineligibility

As noted above, the purpose of the Pilot Program is to assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with DHS, to inform any future decision concerning the possible use of visa bonds to address overstays. The Department estimates that the parameters selected for the Pilot Program would result in 200–300 visas being issued following the posting of visa bonds, under normal travel conditions, with the actual number likely to be lower if travel is limited due to executive actions or unusual and unpredictable circumstances. The Department believes the operational feasibility of the visa bond process, as described above, can be assessed on the basis of a relatively small number of cases. Furthermore, the Department believes even if the burden of requiring visa bonds makes doing so operationally nonfeasible, requiring bonds in the relatively small number of cases anticipated under this pilot program will allow the Department and DHS to complete the Pilot Program without causing significant disruption to day-to-day operations. Accordingly, the Department is limiting the Pilot Program to aliens for whom DHS has granted a waiver of inadmissibility, relative to the pending B–1/B–2 visa application, to help ensure the volume of cases covered by the Pilot Program remains relatively small. Furthermore, the applicants covered by the Pilot Program would not be eligible for visas unless a consular officer or the Department exercises discretion to recommend a waiver of inadmissibility and DHS, at its discretion, grants the waiver. Selecting this criterion for the Pilot Program is not arbitrary; the covered applicants (those requiring a DHS waiver of inadmissibility) are distinguishable from other applicants issued visas in accordance with U.S. law, because their actions or particular circumstances rendered them otherwise ineligible for visas.

C. B–1/B–2 Visa Applicants Only

Although INA section 221(g)(3) (8 U.S.C. 1201(g)(3)), authorizes consular officers to require visa bonds from applicants for B–1/B–2 visas and F (student) visas, the Pilot Program is limited to B–1/B–2 visa applicants, because their authorized period of stay after admission to the United States is fixed by DHS Customs and Border

Protection (CBP) officers at the port of entry and typically lasts a matter of months, with a maximum of one year for business visitors pursuant to 8 CFR 214.2(b)(1), and typically six months for tourists, in accordance with 8 CFR 214.2(b)(2). In contrast, F visa applicants generally are admitted for the duration of their status, pursuant to 8 CFR 214.2(f)(5), which commonly is multiple years. Because the Pilot Program will last only six months, F–1 nonimmigrant students, who are in most cases likely to be authorized to remain in the United States for multiple years, would be unlikely to complete the bond cycle (which ends with cancellation or breach of the bond), during the six-month duration of the Pilot Program. To help assess whether the bond process is operationally feasible, the Department needs the results of State and DHS experience at all stages of the bond process. B–1/B–2 visas issued to applicants covered by the Pilot Program will be annotated to reflect the visa bond requirement. That annotation may be taken into account by CBP when considering the appropriate authorized period of admission.

D. Bond Waiver Authority

Section 41.11(c)(3) of the Department’s regulations in title 22 CFR grants the Deputy Assistant Secretary for Visa Services discretionary authority to waive the bond requirement, for an alien or a category of aliens, if the Deputy Assistant Secretary assesses that a waiver would not be contrary to the national interest. Waivers may be recommended by consular officers, if they believe a waiver would advance a humanitarian interest, based on the applicant’s stated purpose of travel, or a national interest, based on the stated purpose of travel and the applicant’s employment. Because all visa applicants will be presumed to want a waiver of the bond requirement, and because the only information that might be provided by an applicant that would be relevant to a waiver decision is the applicant’s purpose of travel and possibly employment, which already is requested from all applicants, there will be no bond waiver application process.

E. Bond Amounts

In accordance with the statutory and regulatory framework described above, the Department, through consular officers, has broad authority to require a visa applicant to post a bond in such sum and with such conditions as would help ensure the alien’s timely departure from the United States. To promote the efficiency of the Pilot Program and avoid arbitrary and inconsistent bond

²² *Id.*, Table 3 at page 23. For reasons explained in footnote 18, above, Palau is excluded from the Pilot Program, despite having an overstay rate of 15 percent.

amounts, the Department is setting guidelines for the bond amount. Because INA section 221(g)(3) (8 U.S.C. 1201(g)(3)), indicates consular officers must consider each visa applicant's personal circumstances in setting the bond amount, by its reference to the consular officer prescribing a bond's sum and conditions to be sufficient to insure "such alien will depart from the United States" in a timely manner, the Department is providing consular officers three options for bond amounts: \$5,000, \$10,000, and \$15,000. The Department believes these three levels will provide consular officers sufficient discretion to require, in each case, a bond in an amount that is sufficiently large to insure the applicant does not overstay, but not so burdensome as to be unpayable, taking into account the visa applicant's circumstances.

Consular officers will be expected to set the bond amount at \$10,000, unless the officer has reason to believe the visa applicant's circumstances would render the applicant unable to pay that amount (but yet remain sufficiently financed to pay all travel expenses through the period of intended stay in the United States), in which case the bond would be set at \$5,000. Alternatively, if the applicant's circumstances, including the nature and extent of the applicant's contacts in the United States, would suggest a \$10,000 bond would not be sufficient to insure the applicant would timely depart the United States, the officer would require a \$15,000 bond as a condition of visa issuance. In making such determinations, consular officers will take into account the totality of the circumstances, including any information provided by the visa applicant on the visa application or in the visa interview regarding the applicant's purpose of travel, current employment, income, skills, and education.

The consular officer's three options for bond amounts were set following consultations with DHS. In setting the amounts, the Department took into consideration costs associated with removal, including the full Immigration Enforcement Lifecycle cost (including mission support costs) ending with removal, as computed by DHS at approximately \$14,000 per alien, and the total cost per alien associated with just the removal process, computed by DHS as \$2,194. The Department viewed these costs as relevant, because an alien who overstays his or her visa and must be removed requires the U.S. government to incur immigration enforcement-related costs that otherwise would not be incurred. For the purposes of the Pilot Program, an alien who

breaches a bond would generally forfeit the obligor's bond amount, which could be used, in part, to reimburse the U.S. government for expenses incurred in the collection of breached bonds and for expenses associated with the detention of illegal aliens, necessitated by the alien overstaying his or her visa.²³ DHS/ICE will collect all bonds and retain the funds, as appropriate, in the instance that a bond is breached.

F. Duration of Pilot Program

The Department will conduct the Pilot Program for six months, beginning on December 24, 2020. The Department determined, in consultation with DHS, that six months is an adequate period to ensure that multiple visa applicants will have completed the full bond cycle, from the visa interview, through travel to the United States, to a final determination of bond cancellation or breach. Experience with each of the steps of the bond cycle is necessary to assess the operational feasibility of posting, processing and discharging a visa bond, in coordination with the Department of Homeland Security. Following the end of the six-month period of the Pilot Program, consular officers no longer will require the posting of bonds based on the guidance set out in this TFR; however, any visa bonds posted as part of the Pilot Program will remain in effect until either breached or cancelled, in accordance with terms and conditions set out on ICE Form I-352, *Immigration Bond*, even after the six-month period has ended.

V. Visa Bond Procedures Under the Pilot Program

Following a visa interview, a consular officer will determine if an applicant is otherwise eligible for a visa following the approval of a waiver of inadmissibility by DHS under INA section 212(d)(3) (8 U.S.C. 1182(d)(3)), and if the applicant falls within the scope of the Pilot Program. If the consular officer does not have reason to believe a waiver of the bond requirement would advance a significant national interest or humanitarian interest, based on the applicant's purpose of travel and employment, as described in the visa application and during the visa interview, then the consular officer will inform the applicant of the bond requirement and the amount of the required bond, whether \$5,000, \$10,000, or \$15,000. The officer will present to the applicant: (1) A notice generally explaining the bond requirement and

procedures for posting a cash bond or arranging for a U.S. Government-approved surety company to post the bond on the applicant's behalf and (2) ICE Form I-352, *Immigration Bond*. DHS regulations at 8 CFR 103.6 currently provide for the posting, processing, and cancellation of such visa bonds.

After advising an applicant that he or she must post a bond, the consular officer will deny the visa under INA section 221(g) (8 U.S.C. 1201(g)), but that denial may be overcome if a bond in the required amount is duly posted with ICE on the visa applicant's behalf. After being informed by DHS that a bond has been posted, the consular section where the visa applicant applied will rely on contact information provided by the applicant to contact the applicant regarding the final process to complete the visa adjudication. If the consular officer subsequently determines the applicant remains otherwise eligible for a visa, taking into account the DHS approval of a waiver of inadmissibility under INA section 212(d)(3) (8 U.S.C. 1182(d)(3)), the officer will issue the visa, valid for a single entry within three months of the date of visa issuance, with an annotation indicating the posting of a visa bond. This limited visa validity period is necessary to increase the likelihood travel is completed within a time frame conducive to data gathering from the Pilot Program. The visa annotation will alert CBP officers at ports of entry that the applicant is covered by the Pilot Program. If, upon further review, the consular officer determines the applicant is not eligible for the requested visa for reasons not covered by the waiver granted by DHS relative to the current visa application, the consular officer will deny the visa and the obligor on the bond will be entitled to cancellation of the visa bond.

Following the timely departure from the United States of a visa holder for whom a bond was posted, the visa holder may pursue cancellation of the bond. A visa bond will be canceled if the visa holder substantially performs with respect to the terms and conditions of the bond as set forth in paragraph G(4) of Form I-352. Conversely, a visa bond will be breached when there has been a substantial violation of the terms and conditions set forth in paragraph G(4) of Form I-352. There are various ways a visa holder may demonstrate substantial performance of the terms and condition of the bond. For example, visa holders who present themselves to consular officials outside of the United States within 30 days of their departure from the United States, confirm their

²³ 8 U.S.C. 1356(r)(3).

identify, and provide information demonstrating that they departed the United States on or before the expiration of their authorized period of stay will have substantially complied with the visa bond requirements, so long as they maintained the conditions of their status while admitted to the United States. Where a visa holder pursues that course, information received by the consular officer will be forwarded to ICE, which is responsible for determinations of whether a bond has been breached pursuant to 8 CFR 103.6(c)(3), based on whether there has been “substantial performance” of all the terms and conditions of the bond.

When presenting themselves to consular officials outside the United States, visa holders may confirm their identity by presenting a passport and responding to such questions as the consular officer deems necessary to confirm identity. There are no particular documents required to demonstrate timely departure from the United States.²⁴ An obligor on a visa bond also may request bond cancellation once the visa expires, if the visa holder did not travel to the United States. Generally, pursuant to 8 CFR 103.6(c)(3), the bond should be canceled when there has been “substantial performance of all conditions imposed by the terms of the bond.” The obligor on any canceled cash bond will be entitled to a full refund, along with any accrued interest. If a visa holder for whom a bond was posted fails to substantially comply with the terms and conditions set forth in paragraph G(4) of Form I-352, the bond will be considered breached, and the amount deposited as security for the bond with ICE will be forfeited. If the bond is breached, the bond obligor will

²⁴ While no particular documents are required to demonstrate timely departure, travelers may present to the consular officer a variety of information, including but not limited to:

1. Original boarding passes used to depart the United States;
2. Photocopies of entry or departure stamps in a passport indicating entry to another country after departure from the United States (the traveler should copy all passport pages that are not completely blank, and include the biographical page containing his or her photograph); and
3. Photocopies of other supporting evidence, such as:
 - a. Dated pay slips or vouchers from an employer to indicate work in another country after departure from the United States,
 - b. Dated bank records showing transactions to indicate presence in another country after departure from the United States,
 - c. School records showing attendance at a school outside the United States after departure from the United States, and
 - d. Dated credit card receipts showing the traveler’s name, with the credit card number deleted, for purchases made after leaving the United States.

still receive the amount of any accrued interest on the cash bond.

Following the end of the six-month period of the Pilot Program, consular officers no longer will require the posting of bonds based on the guidance set out in this TFR; however, any bonds posted under the Pilot Program will remain in effect until either breached or cancelled in accordance with their terms of issuance.

For visa applicants required to post a visa bond, an ICE Form I-352 must be submitted to, and approved by, ICE. All terms and conditions set out on ICE Form I-352 applicable to visa bonds shall apply. The obligor on the bond, whether a person who posts a cash bond on behalf of the visa applicant or a surety company that posts the bond, will be informed if the visa applicant fails to comply with the terms of the visa bond and, consequently, the bond has been breached. The procedures for determining and enforcing a breach are set out on ICE Form I-352 and in DHS regulations, including 8 CFR 103.6.

Appeal of a Bond Breach Determination

The rights relating to the appeal of an ICE determination of a bond breach, including which rights would accrue after ICE issues a breach determination on Form I-323, are detailed in the instructions on ICE Form I-352 and USCIS Form I-290B.

VI. Regulatory Findings

Administrative Procedure Act (APA)

This temporary final rule is exempt from notice and comment under the foreign affairs exception of the Administrative Procedure Act (APA), 5 U.S.C. 553(a). This temporary final rule codifies a necessary change to U.S. foreign policy, including its visa policy. In the *Presidential Memorandum*, President Trump referred to countries with overstay rates greater than ten percent in the combined B-1 and B-2 nonimmigrant visa category, based on the DHS FY 2018 Overstay Report, as having high overstay rates and ordered the Secretary of State to take action to address those high overstay rates, in consultation with the Attorney General and the Secretary of Homeland Security. See *Presidential Memorandum* at Section 2. Reducing the incidence of aliens remaining in the United States beyond their authorized period of stay has, particularly since issuance of the *Presidential Memorandum*, involved worldwide diplomatic engagement between the United States and foreign governments. The subject matter of this temporary final rule directly involves a foreign affairs function of the United

States, directly implicating relationships between the United States and the specific countries whose nationals may be subject to the Pilot Program. The Pilot Program is being studied as a potential diplomatic tool to encourage foreign governments to take all appropriate actions to ensure that their nationals timely depart the United States after making temporary visits. Therefore, this temporary final rule clearly and directly impacts the foreign affairs functions of the United States and “implicat[es] matters of diplomacy directly.” *City of N.Y. v. Permanent Mission of India to the U.N.*, 618 F.3d 172, 202 (2d Cir. 2010).

The foreign-affairs exception covers the temporary final rule, as it is “linked intimately with the Government’s overall political agenda concerning relations with another country.” *Am. Ass’n of Exporters & Importers-Textile & Apparel Grp. v. United States*, 751 F.2d 1239, 1249 (Fed. Cir. 1985).

The Pilot Program is a tool of diplomacy to influence actions by certain foreign governments that are a high priority of the President, as reflected in the *Presidential Memorandum*, and important to the relationship between the United States and those countries. By requiring visa bonds for certain visa applicants from the listed countries with overstay rates for B-1/B-2 visa holders that are ten percent or higher, the Pilot Program aims to encourage those countries to cooperate with the United States in ensuring timely departure of their citizens/nationals from the United States. The Department’s focus on these countries will demonstrate the United States’ intolerance of high overstay rates and encourage the foreign governments to cooperate in addressing overstays by their nationals. Accordingly, this temporary final rule is properly viewed as one that “clearly and directly involve[s] activities or actions characteristic to the conduct of international relations.” *Capital Area Immigrants’ Rights Coal. v. Trump*, No. CV 19-2117, 2020 WL 3542481, *18 (D.D.C. June. 30, 2020).

Additionally, undesirable international consequences would follow if the temporary final rule were subjected to a notice and comment period, because a limited number of countries had an overstay rate of ten percent or higher in FY 2019, so notice and comment would invite those countries to publish views on matters that are sensitive and inherently governmental, and require a public response from the U.S. government to country-specific concerns. Thus, opening the temporary final rule to

notice and comment would likely lead to “the public airing of matters that might enflame or embarrass relations with other countries.” *Zhang v. Slattery*, 55 F.3d 732, 744 (2d Cir. 1995), *superseded on other grounds by statute*, 8 U.S.C. 1101(a)(42).

Regulatory Flexibility Act/Executive Order 13272: Small Business

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to perform an analysis of the potential impact of regulations on small entities when regulations are subject to the notice and comment procedures of the APA. Because this temporary final rule is exempt from notice and comment rulemaking requirements under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Furthermore, this temporary final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act, as amended, is not required.

Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This temporary final rule does not require the Department to prepare a statement because it will not result in any such expenditure, nor will it significantly or directly affect small governments, including State, local, or tribal governments, or the private sector. This temporary final rule involves visas for aliens, and does not directly or substantially affect State, local, or tribal governments, or businesses.

Congressional Review Act of 1996

The Office of Information and Regulatory Affairs has determined that this temporary final rule is not a major rule as defined in 5 U.S.C. 804, for purposes of congressional review of agency rulemaking. This temporary final 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 import markets.

Executive Order 12866

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. This rule allows the Department to set out the scope and procedures for a Pilot Program under which consular officers will require a visa bond in the amount of \$5,000, \$10,000, or \$15,000, as determined appropriate by the consular officer as a condition of visa issuance for certain aliens applying for visas as temporary visitors for business or pleasure (B-1/B-2). The Pilot Program is designed to assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with the Department of Homeland Security (DHS), including the burden it will place on the government and the challenges associated with implementation of a bond program. It is not designed to assess the effectiveness of visa bonds in effectuating timely departure from the United States. The result will inform any future decision on the possible use of visa bonds for combatting high nonimmigrant visa overstays which is a priority announced in the *Presidential Memorandum on Combating High Nonimmigrant Overstay Rates* issued on April 22, 2019.

Based on a review of visa statistics from recent years, the Department has determined that the number of nonimmigrants expected to fall within the scope of the Pilot Program will not be greater than 200 to 300. That estimate is based on normal travel conditions, with the actual number likely to be lower if travel is limited due to executive actions or unusual and unpredictable circumstances. If visa bonds are required for 300 visa applicants, and the average bond is \$10,000 (from options of \$5,000, \$10,000, and \$15,000), the initial cost of bonds will be \$3,000,000. However, assuming all nonimmigrants for whom bonds are posted comply with the terms and conditions of the bond, the actual bond amount is a temporary expenditure that will be fully refunded, with applicable interest, if cash bonds are posted. If surety bonds are posted, then the cost to nonimmigrants for whom bonds must be posted would depend on the contractual arrangements underlying each surety bond. Due to the lack of precedent for this visa bond program, the Department does not have data to substantiate any estimate of the cost to nonimmigrants for whom surety bonds are posted; however, the maximum possible amount likely would be the full amount of the average bond multiplied by the maximum estimated

number of visa applicants subject to the bond, for a total of \$3,000,000, if surety companies were to charge 100 percent of the bond amount and all applicants posted surety bonds, rather than cash bonds.

The estimated amount of time needed for an average respondent to complete ICE Form I-352 is thirty minutes (.50 hours) per response. See 84 FR 44913. The estimated additional time burden associated with this temporary final rule for visa applicants, who will have to complete an ICE Form I-352, arrange for the posting of a bond, and return to a consular section following their departure from the United States, is two hours. Using the average hourly wage for all private, non-farm, payrolls as calculated by the Bureau of Labor Statistics for March 2019, \$27.70, multiplied by a factor of 1.479 (to account for overhead costs) gives a fully-loaded wage of \$40.97. That wage multiplied by the estimated time burden of two hours per visa applicant for 300 applicants yields a total burden on applicants of \$24,582 in time plus up to \$3,000,000 for bond costs, for a total to applicants of \$3,024,582.

During the time that this temporary final rule is in effect, surety companies will need to learn about the Pilot Program and its requirements. The Department consulted DHS representatives to benefit from their experience in this area and, based on that consultation, estimates and assumes that: each Treasury-certified surety company currently issuing immigration bonds will conduct a regulatory review; this task is equally likely to be performed by either an in-house attorney or by a non-attorney at each surety company; it will take eight hours for the regulatory review by either an in-house attorney or a non-attorney, such as an insurance agent (or equivalent), at each surety. To calculate the familiarization costs, the estimated review time of eight hours was multiplied by the average hourly loaded wage rate of an attorney and an insurance agent, \$73.26.²⁵ The

²⁵ This represents an average of an in-house attorney's fully loaded hourly wage rate and an insurance agent's fully loaded hourly wage rate. Bureau of Labor Statistics, Occupational Employment Statistics May 2018, Standard Occupational Code 23-1011 Lawyers, Mean hourly wage \$69.34, <http://www.bls.gov/oes/2018/may/oes231011.htm>. The fully loaded wage rate is calculated using the percentage of wages to total compensation, found in the Bureau of Labor Statistics, Employer Costs for Employee Compensation June 2018, Table 5. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: private industry workers, by major occupational group, Management, Professional, and related Group,

familiarization cost per surety company was calculated to be \$586.08 (8 hours × \$73.26). For FY 2019, nine sureties posted immigration bonds with ICE. The total estimated regulatory familiarization cost for all sureties currently issuing immigration bonds was calculated to be \$5,275 (\$73.26 × 8 hours × 9 sureties).

The total Government cost associated with this rule is \$70,911. That amount includes printing costs, the collection and processing burden for each form, and additional work from consular officers. The total printing costs equates to \$225, which is estimated by multiplying the maximum number of aliens subject to the Pilot Program under the temporary rule (300) by the cost of printing two forms per response for \$0.75. The collection and processing of each Form I-352 takes an average of 6 hours and will be conducted by a government employee with an average hourly wage plus overhead estimated to be \$28.02. The total cost to the government of collecting and processing the ICE Form I-352 for bonds issued under this temporary final rule, including costs associated with appeals, cancellation or bond breach, is estimated to be \$50,436 (\$28.02 × six hours × 300 bonds). The estimated additional time a consular officer with an average hourly wage of \$135 will expend for each case subject to a bond is 30 minutes. The total cost associated with additional work from consular officers is estimated to be \$20,250. If a traveler breaches a surety bond posted pursuant to this temporary final rule, ICE will incur some cost in collecting on the bond. Because ICE has no reliable basis for estimating the number of travelers that will post surety bonds, as opposed to cash bonds, or the percentage of travelers posting bonds who will breach the terms of the bond, ICE is unable to estimate the cost associated with enforcing bond breaches. Each agency will bear the

http://www.bls.gov/news.release/archives/ecec_09182018.pdf. Wages are 68.7 percent of total compensation. \$100.93 = \$69.34/0.687. Bureau of Labor Statistics, Occupational Employment Statistics May 2018, Standard Occupational Code 41-3021 Insurance Sales Agents, Mean hourly wage \$32.64, <http://www.bls.gov/oes/2018/may/oes413021.htm>. The fully loaded wage rate is calculated using the percentage of wages to total compensation, found in the Bureau of Labor Statistics, Employer Costs for Employee Compensation June 2018, Table 5. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: private industry workers, by major occupational group, Sales and Office Occupational Group, http://www.bls.gov/news.release/archives/ecec_09182018.pdf. Wages are 71.6 percent of total compensation. \$45.59 = \$32.64/0.716. \$73.26 = (\$45.59 + \$100.93)/2.

costs associated with the activities of its personnel.

The Office of Management and Budget (OMB) has determined that this is a significant, though not economically significant, regulatory action under Executive Order 12866. As such, OMB has reviewed this regulation accordingly.

Executive Order 13563

Along with Executive Order 12866, Executive Order 13563 directs agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). The Department has reviewed the temporary final rule under Executive Order 13563 and has determined that this rulemaking is consistent with the guidance therein.

Executive Orders 12372 and 13132—Federalism

This temporary final 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. Nor will the temporary final rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Executive Order 12988—Civil Justice Reform

The Department has reviewed the temporary final rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771 directs all agencies to repeal at least two existing regulations for each new regulation issued in FY 2017 and thereafter. It further directs agencies that the “total

incremental costs of all regulations should be no greater than zero” in FY 2017 and, for subsequent years, no greater than a total amount of incremental costs that the director of the Office of Management and Budget (OMB) determines. This temporary final rule is exempt from the Executive Order, however, because it is *de minimis*.

Paperwork Reduction Act

This temporary final rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. The Department of State will rely on form I-352 from the Department of Homeland Security, OMB Control Number 1653-0022, to implement the provisions of this rule. The Department of Homeland Security has accounted for this use of the form in its information collection requests to the Office of Management and Budget.

List of Subjects in 22 CFR Part 41

Administrative practice and procedure, Aliens, Passports and visas.

For the reasons stated in the preamble, the Department amends 22 CFR part 41 as follows:

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1101; 1102; 1104; 1182; 1184; 1185 note (section 7209 of Pub. L. 108-458, as amended by section 546 of Pub. L. 109-295); 1323; 1361; 2651a.

■ 2. Amend § 41.11 by adding paragraph (c) to read as follows:

§ 41.11 Entitlement to nonimmigrant status.

* * * * *

(c) *Visa Bond Pilot Program*—(1) *Summary.* This paragraph (c) establishes a pilot program (Visa Bond Pilot Program) implementing section 221(g)(3) of the Immigration and Nationality Act (INA). Under the Visa Bond Pilot Program, consular officers will require a Maintenance of Status and Departure Bond (Visa Bond) be posted with the U.S. Department of Homeland Security, as a condition of visa issuance, for certain visa applicants.

(2) *Visa Bond Pilot Program parameters.* Under the Visa Bond Pilot Program, consular officers will require Visa Bonds be posted by visa applicants who meet the following three criteria:

(i) Apply for a B-1 and/or B-2 nonimmigrant visa;

(ii) Are nationals of one of the following countries, which had an overstay rate of ten percent or higher in Fiscal Year 2019, according to the DHS FY 2019 Overstay Report, <https://www.dhs.gov/publication/entryexit-overstay-report>, for B-1/B-2 visa applicants: Afghanistan, Angola, Bhutan, Burkina Faso, Burma, Burundi, Cabo Verde, Chad, Democratic Republic of the Congo (Kinshasa), Djibouti, Eritrea, the Gambia, Guinea-Bissau, Iran, Laos, Liberia, Libya, Mauritania, Papua New Guinea, Sao Tome and Principe, Sudan, Syria, and Yemen; and

(iii) Are granted a DHS waiver of inadmissibility under INA section 212(d)(3)(A) prior to visa issuance. Consular officers will set the Visa Bond amount at \$5,000, \$10,000, or \$15,000, based on a consular officer's assessment of which amount is sufficient to ensure the alien will not remain in the United States beyond the end of the alien's authorized period of stay, while not exceeding what the alien can pay. Visas issued under the Visa Bond Pilot Program will be valid for a single entry to the United States within three months of the date of visa issuance.

(3) *Bond waiver authority.* The Deputy Assistant Secretary for Visa Services may waive the bond requirement, for an alien, country, or a category of aliens, if the Deputy Assistant Secretary assesses that such a waiver is not contrary to the national interest. A waiver of the bond requirement may be recommended to the Deputy Assistant Secretary for Visa Services by a consular officer where the consular officer has reason to believe the waiver would advance a national interest or humanitarian interest. There will be no procedure for visa applicants to apply for a waiver of the bond requirement. Consular officers will determine whether a waiver would advance a significant national interest or humanitarian interest based on the applicants purpose of travel and employment, as described in the visa application and during the visa interview.

(4) *Bond procedures.* A Visa Bond required under paragraph (c) of this section must be submitted to and approved by DHS. Upon the posting of such bond, DHS will notify the appropriate consular section overseas. Under this Visa Bond Pilot Program, Visa Bonds will be administered by U.S. Immigration and Customs Enforcement (ICE) in accordance with regulations, procedures, and instructions promulgated by DHS applicable to ICE Form I-352, *Immigration Bond*. A Visa Bond will be canceled when a visa holder substantially performs with respect to the terms and conditions of

the Visa Bond as set forth in paragraph G(4) of Form I-352. Conversely, a Visa Bond will be breached when there has been a substantial violation of the terms and conditions set forth in paragraph G(4) of Form I-352. To demonstrate that they performed within the bond requirements, visa holders may, for example, schedule an appointment at a consular section outside the United States within 30 days of their departure from the United States and, after establishing their identity through personal appearance and presentation of a passport, provide information to a consular officer confirming they departed the United States on or before the expiration of their authorized period of stay. Upon doing so, visa holders will have substantially performed bond requirements, provided they maintained the conditions of their status while admitted to the United States. Visa holders who do not appear at a consular section still may ensure cancellation of the bond if the visa holder substantially complies with the terms and conditions of the Visa Bond as set forth in paragraph G(4) of Form I-352 and provides ICE probative documentation of timely departure, if required. Visa holders who timely file an application for extension of stay or change of status are not deemed to be in breach of bond.

(5) *Appeal of bond breach determination.* A determination of a breach bond may be appealed in accordance with instructions on the applicable DHS forms governing bond breach determinations and appeal rights.

(6) *Effect on other law.* Nothing in this paragraph (c) shall be construed as altering or affecting any other authority, process, or regulation provided by or established under any other provision of Federal law.

Carl C. Risch,

*Assistant Secretary for Consular Affairs,
Department of State.*

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Copyright Royalty Board

37 CFR Part 381

[Docket No. 20-CRB-0011-PBR (2018-2022) COLA (2021)]

Cost of Living Adjustment to Public Broadcasters Compulsory License Royalty Rate

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule; cost of living adjustment.

SUMMARY: The Copyright Royalty Judges announce a cost of living adjustment (COLA) to the royalty rate that noncommercial radio stations at certain colleges, universities, and other educational institutions that are not affiliated with National Public Radio must pay for the use in 2021 of published nondramatic musical compositions in the SESAC repertory pursuant to the statutory license under the Copyright Act for noncommercial broadcasting.

DATES:

Effective date: December 9, 2020.

Applicability dates: These rates are applicable to the period beginning January 1, 2021, and ending December 31, 2021.

FOR FURTHER INFORMATION CONTACT:

Anita Blaine, CRB Program Assistant, by telephone at (202) 707-7658 or by email at crb@loc.gov.

SUPPLEMENTARY INFORMATION: Section 118 of the Copyright Act, title 17 of the United States Code, creates a statutory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting.

On January 19, 2018, the Copyright Royalty Judges (Judges) adopted final regulations governing the rates and terms of copyright royalty payments under section 118 of the Copyright Act for the license period 2018-2022. See 83 FR 2743. Pursuant to these regulations, on or before December 1 of each year, the Judges shall publish in the **Federal Register** notice of the change in the cost of living and a revised schedule of the rates codified at § 381.5(c)(3) relating to compositions in the repertory of SESAC. The adjustment, fixed to the nearest dollar, shall be the greater of (1) the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) ("CPI-U") "during the period from the most recent index published prior to the previous notice to the most recent index published prior to December 1, of that year" or (2) 1.5%. 37 CFR 381.10.

The change in the cost of living as determined by the CPI-U during the period from the most recent index published prior to the previous notice, *i.e.*, before December 1, 2019, to the most recent index published before December 1, 2020, is 1.2%.¹ In

¹ On November 12, 2020, the Bureau of Labor Statistics announced that the CPI-U increased 1.2% over the last 12 months.