



Decision Memorandum

TO: Sharon Block
Acting Administrator,
Office of Information and Regulatory Affairs,
Office of Management and Budget

THROUGH: Eric Hysen
Chief Information Officer,
Department of Homeland Security

FROM: Samantha L. Deshommnes
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Department of Homeland Security

SUBJECT: Request for Emergency Office of Management and Budget Paperwork Reduction Act Clearance – I-941, Application for Entrepreneur Parole, OMB Control Number 1615-0136

Purpose: USCIS is requesting emergency approval of this revision of an approved collection of information under 5 CFR 1320.13.

Background: Form I-941 is used by entrepreneurs who wish to 1) Make an initial request to U.S. Citizenship and Immigration Services (USCIS) for parole based upon significant public benefit; 2) Make a subsequent request for parole for an additional period; or 3) File an amended application for parole based upon significant public benefit to notify USCIS of a material change. USCIS is adjusting the Entrepreneur Parole investment and revenue amount requirements by the Consumer Price Index for All Urban Consumers (CPI-U) as regulatorily required every three years.

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Discussion: On January 17, 2017, the Department of Homeland Security (DHS) published a final rule with new regulatory provisions guiding the use of parole on a case-by-case basis with respect to entrepreneurs of start-up entities who can demonstrate through evidence of substantial and demonstrated potential for rapid business growth and job creation that they would provide a significant public benefit to the United States.¹ The Final Rule was to be effective July 17, 2017.²

On July 11, 2017, DHS published a rule delaying the effective date to March 14, 2018.³ Two individuals, two businesses, and the National Venture Capital Association sued DHS, challenging the delay rule for violating the Administrative Procedure Act notice and comment requirement. The D.C. Circuit, agreeing with the plaintiffs, vacated the delay rule on December 1, 2017, allowing the rule to go into effect without further delay.⁴

The January 17, 2017 rule provides specific investment and revenue amounts that can support an application for parole and re-parole. The rule also requires, at 8 CFR 212.19(l), that the investment and revenue amounts will be automatically adjusted every 3 years by the Consumer Price Index.⁵ The preamble of the rule explained that investment and revenue amounts adjusted by the CPI-U will apply to all applications filed on or after the beginning of that fiscal year. The Department of Homeland Security is publishing a final rule, consistent with the regulatory requirements, to provide notice to the public of the increased amounts to take effect at the start of Fiscal Year 2022 and also to accurately reflect the investment amounts upon adjustment.

The investment and revenue amount requirements listed on the current Form I-941 reflect the investment amounts that are in effect through the end of Fiscal Year 2021. At the start of Fiscal Year 2022 the investment amounts will be automatically adjusted as mandated by regulation, and the Form I-941 without revision, would not accurately reflect the adjusted amounts as stated in 8 CFR 212.19(a)(5), (b)(2)(ii)(B), and (c)(2)(ii)(B). These changes are essential to the mission of USCIS to efficiently and fairly adjudicate requests for immigration benefits. USCIS cannot

¹ 82 Fed. Reg. 5238 (Jan. 17, 2017).

² *Id.*

³ 82 Fed. Reg. 31887 (July 11, 2017).

⁴ *Nat'l Venture Capital Assoc. v. Duke*, 291 F. Supp. 3d 5 (D.D.C. Dec. 1, 2017).

⁵ 8 CFR 212.19(l). While DHS did not discuss these automatic adjustments in the preamble to the final rule, DHS offered the following explanation in the proposed rule, 81 Fed. Reg. 60129 (Aug. 31, 2016) [footnote omitted]:

DHS proposes that the investment and revenue amounts specified at proposed 8 CFR 212.19(a)(5), (b)(2)(ii) and (c)(2)(ii) will be automatically adjusted every 3 years by the Consumer Price Index for All Urban Consumers (CPI-U). USCIS will provide notice in the **Federal Register** and on its Web site at www.uscis.gov prior to the beginning of the fiscal year in which the change would take effect. Investment and revenue amounts adjusted by the CPI-U will apply to all applications filed on or after the beginning of that fiscal year. DHS believes that automatically adjusting the minimum dollar amounts by the CPI-U every 3 years will maintain investment and revenue requirements at an appropriate level in relation to future economic conditions. DHS believes adjusting the minimum dollar amounts every 3 years will be more manageable operationally for DHS and less burdensome to applicants than adjustments at more frequent intervals. See proposed 8 CFR 212.19(l).

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reasonably comply with the normal clearance procedures as it would take longer than the beginning of Fiscal Year 2022 to implement; the amounts automatically adjust at that time.

Accordingly, USCIS revised the Form I-941 to reflect the adjusted amounts as instructed by regulatory authority. Changes to the form have been thoroughly reviewed and vetted by USCIS.

USCIS seeks emergency processing of the Form I-941 in accordance with 5 CFR 1320.13. USCIS certifies that the requirements of 5 CFR 1320.13(a) are met and that:

- The collection of information is needed immediately and is essential to the mission of the agency.
- The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information.

USCIS greatly appreciates the timely consideration of this request.

Recommendation: Please sign decision memo requesting emergency approval of this collection of information under 5 CFR 1320.13.