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The Code of Federal Regulations is sold by the Superintendent of Documents.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 30, 32, 33, 34, 35, 70, 71, 75, and 150

[NRC–2024–0032]

Regulatory Guide: Basis for Withdrawal of Regulatory Guides in Division 6, ''Products,'' and Division 10, ''General''

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guides (RGs) in Division 6, ''Products,'' (RGs 6.1, 6.2, 6.4, 6.5, and 6.9), and Division 10, ''General,'' (RGs 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 10.8, and 10.9). These RGs are being withdrawn because there is more up-to-date guidance in the NUREG–1556 Series, ''Consolidated Guidance About Materials Licenses,'' making these RGs obsolete.

DATES: The withdrawal of the RGs listed in this document takes effect on January 31, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0032 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0032. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.*

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FOR FURTHER INFORMATION CONTACT: Leira Cuadrado, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–0324; email: *Leira.Cadrado@nrc.gov,* or Harriet Karagiannis, Office of Nuclear Regulatory Research, telephone: 301–415–2493; email: *Harriet.Karagiannis@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is withdrawing RGs in Division 6, ''Products,'' (RGs 6.1, 6.2, 6.4, 6.5, and 6.9), and in Division 10, ''General,'' (RGs 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 10.8, and 10.9). The titles of these RGs are as follows:

(1) RG 6.1, Leak Testing Radioactive Brachytherapy Sources;
(2) RG 6.2, Integrity and Test Specifications for Selected Brachytherapy Sources;
(3) RG 6.4, Verification of Containment Properties of Sealed Radioactive Sources;
(4) RG 6.5, General Safety Standard for Installations Using Nonmedical Sealed Gamma-Ray Sources;
(5) RG 6.9, Establishing Quality Assurance Programs for the Manufacture and Distribution of Sealed Sources and Devices Containing Byproduct Material;
(6) RG 10.2, Guidance to Academic Institutions Applying for Specific Byproduct Material Licenses of Limited Scope;
(7) RG 10.3, Guide for the Preparation of Applications for Special Nuclear Material Licenses for Less than Critical Mass Quantities;
(8) RG 10.4, Guide for the Preparation of Applications for Licenses to Process Source Material;
(9) RG 10.5, Applications for a Type A License of Broad Scope;
(10) RG 10.6, Guide for the Preparation of Applications for an Industrial Radiography License;
(11) RG 10.7, Guide for the Preparation of Applications for Licenses for Laboratory and Industrial Use of Small Quantities of Byproduct Material;
(12) RG 10.8, Guide for the Preparation of Applications for Medical Use Programs; and
(13) RG 10.9, Guide for the Preparation of Applications for Licenses for the Use of Self-Contained Dry Source-Storage Gamma Irradiators.

The NRC staff issued these RGs in the 1970s and 1980s to comply with the regulations in title 10 of the *Code of Federal Regulations* (10 CFR), 10 CFR part 30, ''Rules of General Applicability to Domestic Licensing of Byproduct Material,'' 10 CFR part 33, ''Specific Domestic Licenses of Broad Scope for Byproduct Material,'' 10 CFR part 32, ''Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material,'' 10 CFR part 34, ''Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations,'' 10 CFR part 35, ''Medical Use of Byproduct Material,'' 10 CFR part 70 ''Domestic Licensing of Special Nuclear Material,'' 10 CFR part 150 ''Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters under Section 274,'' 10 CFR part 20, ''Standards for Protection Against Radiation,'' 10 CFR part 71, ''Packaging and Transportation of Radioactive Material,'' and 10 CFR part 75, ''Safeguards on Nuclear Material—Implementation of Safeguards Agreements Between the United States and the International Atomic Energy Agency.''

Since the staff has consolidated and follows the latest guidance pertinent to materials licensees found in the NUREG–1556 Series, ''Consolidated Guidance About Materials Licenses,'' these RGs became outdated. Because NUREG–1556 provides up-to-date guidance to NRC byproduct material licensees, the staff determined that these RGs needed to be withdrawn. The basis for the withdrawal is available under ADAMS Accession No. ML23333A446.

Because these RGs are no longer needed, the NRC is withdrawing them. Withdrawal of an RG means that the guide no longer provides useful information or has been superseded by other guidance, technological innovations, congressional actions, or other events. The withdrawal of these RGs does not alter any prior or existing

NRC licensing approval or the acceptability of licensee commitments to these RGs. Although these RGs are withdrawn, current licensees may continue to use them, and withdrawal does not affect any existing licenses or agreements. However, these RGs should not be used in future requests or applications for NRC licensing actions.

II. Additional Information

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Rules'' section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

III. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: January 25, 2024.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2024–01872 Filed 1–30–24; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0034; Project Identifier AD–2023–01154–Q; Amendment 39–22662; AD 2024–01–11]

RIN 2120–AA64

Airworthiness Directives; Various Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all helicopters with certain Pacific Scientific Company rotary buckle assemblies (buckles) installed. This AD was prompted by a report of a manufacturing defect in the screws used inside the buckle. This AD requires inspecting the buckle screws and, depending on the results, reidentifying the buckle, replacing the screws and reidentifying the buckle, or replacing the buckle. This AD also prohibits installing certain buckles. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 15, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 15, 2024.

The FAA must receive comments on this AD by March 18, 2024.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0034; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Parker Meggitt Services, 1785 Voyager Avenue, Simi Valley, CA 93063; phone: 877–666–0712; email: *TechnicalSupport@meggitt.com;* website: *meggitt.com/services_and_support/customer_experience/update-on-buckle-assembly-service-bulletins.*
- You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2024–0034.

FOR FURTHER INFORMATION CONTACT: David Kim, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5274; email: *david.kim@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0034; Project Identifier AD–2023–01154–Q'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to David Kim, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5274; email: *david.kim@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report of a manufacturing defect in the screws used inside Pacific Scientific Company buckle part number (P/N) 1111475 (all dash numbers) and P/N 1111548–01. The screws used to fasten the load plate to the body of the buckle were found to be susceptible to hydrogen embrittlement due to improper baking

during the electroplating process. This condition leads the screwhead to separate from the body of the screw when under load, which could result in the buckle failing to restrain the occupant to the seat. This issue was originally identified from a suspected lot of screws, Lot 348994–A. Since then, a buckle failed in an accident, calling into question Lot 348601–A. Lots 348601–A and 348994–A were the first two lots of screws received by Pacific Scientific Company from a new supplier and are the only suspected lots. The suspected buckles were manufactured between January 2012 and September 2012. The FAA is issuing this AD to address the unsafe condition on these products.

The rotary buckle may be included as a component of a different part-numbered restraint system assembly. Table 1 of Parker Meggitt Service Bulletin (SB) 1111475–25–001–2023, Revision 001, dated December 1, 2023, and Parker Meggitt SB 1111548–25–001–2023, Revision 001, dated December 1, 2023 (SB 1111475–25–001–2023 Rev 001 and SB 1111548–25–001–2023 Rev 001), includes a list of these restraint system assembly P/Ns.

This AD applies to all helicopters with a Pacific Scientific Company buckle P/N 1111475 (all dash numbers) or P/N 1111548–01 installed, if the buckle was manufactured between January 2012 and September 2012, or if the date of manufacture of the buckle is unknown. These same part-numbered buckles may also be installed in airplanes; however, the FAA determined that a longer compliance time to accomplish the required actions is allowable for buckles installed in airplanes. Accordingly, the FAA plans to publish a separate notice of proposed rulemaking to address all airplanes with a Pacific Scientific Company buckle P/N 1111475 (all dash numbers) or P/N 1111548–01 installed.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop on other helicopters with a restraint system with a buckle as part of their type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed SB 1111475–25–001–2023 Rev 001 for buckle P/N 1111475 and SB 1111548–25–001–2023 Rev 001 for buckle P/N 1111548–01. This service information specifies procedures for inspecting the buckle for any missing or loose screw heads and, depending on the results, replacing the buckle and sending the removed buckle to Parker Meggitt for repair or replacement. If after that first inspection, all of the screw heads are intact, this service information specifies procedures for inspecting the buckle for any Torx head screws (alloy steel) and, depending on the results, allowing the buckle assembly to remain in-service temporarily, replacing any Torx head screws (alloy steel) with new hex head screws (stainless steel), and checking the functionality of the buckle. This service information also specifies procedures for removing a buckle from a restraint system, installing a buckle on a restraint system, and returning buckles to Parker Meggitt. If the buckle passes the specified inspections or is modified by replacing Torx head screws (alloy steel) with new hex head screws (stainless steel) screws, this service information specifies procedures for reidentifying the back of the buckle. This service information also identifies known affected restraint systems.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

AD Requirements

This AD requires accomplishing the actions specified in the service information already described, except as discussed under ''Differences Between this AD and the Service Information.''

Differences Between This AD and the Service Information

The service information does not specify any compliance times, whereas this AD requires accomplishing the required actions within three months. This AD also prohibits installing an affected buckle on any helicopter as of the effective date of this AD.

The service information specifies sending any damaged buckles to Parker Meggitt for repair or replacement, and this AD does not. Instead, this AD requires replacing the buckle with an airworthy buckle.

The service information allows buckles with a Torx head (alloy steel) screw to remain in service temporarily and be replaced at a time convenient to the operator, and this AD does not. If a buckle has any number of Torx head (alloy steel) screws installed, this AD requires replacing all four screws with hex head screws before further flight.

If a screw head breaks off during disassembly of a buckle or if reassembly of a buckle is not possible, the service information specifies returning the buckle to Parker Meggitt, whereas this AD does not. If a screw head breaks off during disassembly, this AD requires replacing the buckle with an airworthy buckle. If reassembly of a buckle is not possible, then the buckle is not airworthy.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because in an otherwise survivable accident, hard landing, or severe turbulence, the buckle may fail to restrain the occupant. Based on the rotorcraft accident rate, coupled with not knowing the propagation rate of this unsafe condition into failure, the FAA determined that the compliance time to inspect affected buckles installed in helicopters must be within three months. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects approximately 11,714 buckles installed on restraint systems in aircraft worldwide. The FAA has no way of knowing the number of helicopters of

U.S. Registry that may have a restraint system with an affected buckle installed. The estimated costs on U.S. operators reflects the maximum possible costs based on affected buckles installed on restraint systems in aircraft worldwide. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this AD.

Inspecting a buckle will take approximately 0.1 work-hour for an estimated cost of $9 per buckle and up to $105,426 for the U.S. fleet. If required, replacing a set of screws (four) will take approximately 0.5 work-hour and parts will cost a nominal amount for an estimated cost of $43 per buckle. Replacing a buckle will take approximately 0.5 work-hour and parts will cost approximately $740 for an estimated cost of $783 per buckle. The FAA estimates a nominal cost for reidentifying a buckle.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2024–01–11 Various Helicopters: Amendment 39–22662; Docket No. FAA–2024–0034; Project Identifier AD–2023–01154–Q.

(a) Effective Date

This airworthiness directive (AD) is effective February 15, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all helicopters, certified in any category, with a restraint system with a Pacific Scientific Company rotary buckle assembly (buckle) part number (P/N) 1111475 (all dash numbers) or P/N 1111548–01 installed having a date of manufacture between January 2012 and September 2012 inclusive or an unknown date of manufacture. These buckles may be installed on, but not limited to, Airbus Helicopters model helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 2500, Cabin Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a report of a manufacturing defect in the screws used inside the buckle. The FAA is issuing this AD to prevent cracking and missing screw heads when under load. The unsafe condition, if not addressed, could result in a failure of the buckle to restrain the occupant.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

(1) For helicopters with buckle P/N 1111475 (all dash numbers), within 3 months after the effective date of this AD, inspect each buckle screw for cracked, loose, and missing screw heads by following the Accomplishment Instructions, paragraphs B.(1) and (2), of Parker Meggitt Service Bulletin (SB) 1111475–25–001–2023, Revision 001, dated December 1, 2023 (SB 1111475–25–001–2023 Rev 001).

(i) If any screw has a cracked, loose, or missing screw head, before further flight, replace the buckle with an airworthy buckle.

(ii) If none of the four screw heads are cracked, loose, or missing, before further flight, inspect each screw to determine if any screw has a Torx head by using one of the following methods in the Accomplishment Instructions of SB 1111475–25–001–2023 Rev 001: paragraph B.(4)(a) (Magnet Test); paragraph B.(4)(b) (Inspection); or paragraphs C.(2) through (4) (removing the buckle from the restraint system) and paragraphs D.(1)(a) through (d) (disassembling the buckle).

Note 1 to paragraph (g)(1): SB 1111475–25–001–2023 Rev 001 refers to a magnifying glass as an ''eye loupe.''

(A) If none of the four screws have a Torx head, before further flight, reassemble the buckle (if necessary) by following the Accomplishment Instructions, paragraphs D.(1)(f) through (l), of SB 1111475–25–001–2023 Rev 001, and reidentify the buckle with ''INS. A'' by following the Accomplishment Instructions, paragraph B.(6), of SB 1111475–25–001–2023 Rev 001.

(B) If at least one of the four screws has a Torx head, before further flight, with the buckle removed, replace each Torx head screw with a hex head screw, reassemble the buckle, and reidentify the buckle with ''MOD. A'' by following the Accomplishment Instructions, paragraphs D.(1)(e) through (m), of SB 1111475–25–001–2023 Rev 001, except you are not required to return any parts to Parker Meggitt. If a screw head breaks off during disassembly, before further flight, replace the buckle with an airworthy buckle.

(2) For helicopters with buckle P/N 1111548–01, within 3 months after the effective date of this AD, inspect each buckle screw for cracked, loose, and missing screw heads by following the Accomplishment Instructions, paragraph B.(1), of Parker Meggitt SB 1111548–25–001–2023, Revision 001, dated December 1, 2023 (SB 1111548–25–001–2023 Rev 001).

(i) If any screw has a cracked, loose, or missing screw head, before further flight, replace the buckle with an airworthy buckle.

(ii) If none of the four screw heads are cracked, loose, or missing, before further flight, inspect each screw to determine which screws have a Torx head by using one of the following methods in the Accomplishment Instructions of SB 1111548–25–001–2023 Rev 001: paragraph B.(3)(a) (except use Figure 6 for placement of the shim tool and use Figure 5 to distinguish the screw head types) (Inspection); or paragraph C. (removing the buckle from the restraint system) and paragraphs D.(1)(a) through (c) (disassembling the buckle). Before further flight, with the buckle removed, replace each Torx head screw with a hex head screw,

reassemble the buckle, and reidentify the buckle with ''MOD. A'' by following the Accomplishment Instructions, paragraphs D.(1)(d) through (m), of SB 1111548–25–001–2023 Rev 001, except you are not required to return any parts to Parker Meggitt. If a screw head breaks off during disassembly, before further flight, replace the buckle with an airworthy buckle.

Note 2 to paragraph (g)(2): SB 1111548–25–001–2023 Rev 001 refers to a magnifying glass as an ''eye loupe.''

(3) As of the effective date of this AD, do not install a buckle identified in paragraph (c) of this AD on any helicopter unless the buckle is marked with ''MOD. A'' or ''INS. A''.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, West Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the West Certification Branch, send it to the attention of the person identified in paragraph (i) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(i) Additional Information

For more information about this AD, contact David Kim, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5274; email: *david.kim@faa.gov.*

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Parker Meggitt Service Bulletin 1111475–25–001–2023, Revision 001, dated December 1, 2023.

(ii) Parker Meggitt Service Bulletin 1111548–25–001–2023, Revision 001, dated December 1, 2023.

(3) For service information identified in this AD, contact Parker Meggitt Services, 1785 Voyager Avenue, Simi Valley, CA 93063; phone: 877–666–0712; email: *TechnicalSupport@meggitt.com;* website: *meggitt.com/services_and_support/customer_experience/update-on-buckle-assembly-service-bulletins.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on January 18, 2024.

Victor Wicklund,

Deputy Director, Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024–01932 Filed 1–26–24; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 356

[Docket No. 231127–0278]

RIN 0625–AB20

Procedures and Rules for Article 10.12 of the United States-Mexico-Canada Agreement

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (Commerce) publishes this action to update and make final an interim final rule that amended its regulations pertaining to the procedures and rules related to Article 1904 of the North American Free Trade Agreement (NAFTA) with appropriate references to the United States-Mexico-Canada Agreement (USMCA), which went into effect on July 1, 2020. Article 10.12 of the USMCA, like NAFTA Article 1904, provides a dispute settlement mechanism for purposes of reviewing antidumping and countervailing duty determinations issued by the United States, Canada, and Mexico. Commerce is amending its regulations to replace references to Article 1904 of NAFTA with references to Article 10.12 of the USMCA; to update outdated cross-references to Commerce's antidumping and countervailing duty regulations; update outdated notice, filing, service, and protective order procedures; and adopt other minor corrections and updates.

DATES: This final rule is effective 30 days after January 31, 2024. This final rule does not apply to any binational panel review under NAFTA, or any extraordinary challenge arising out of any such review, that was commenced before July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Nikki Kalbing, Assistant Chief Counsel, at (202) 482–4343, Spencer Neff, Attorney, at (202) 482–8184, or Scott McBride, Associate Deputy Chief Counsel, at (202) 482–6292.

SUPPLEMENTARY INFORMATION:

USCMA Background

As background, on November 30, 2018, the ''Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada'' (the Protocol) was signed to replace the North American Free Trade Agreement (NAFTA). The Agreement Between the United States of America, the United Mexican States (Mexico), and Canada (the USMCA)[1] is attached as an annex to the Protocol and was subsequently amended to reflect certain modifications and technical corrections in the ''Protocol of Amendment to the Agreement Between the United States of America, the United Mexican States, and Canada'' (the Amended Protocol), which the Office of the United States Trade Representative (USTR) signed on December 10, 2019. The USMCA entered into force on July 1, 2020.[2]

Article 10.12 of the USMCA, like NAFTA Article 1904, provides a dispute settlement mechanism for purposes of reviewing antidumping and countervailing duty determinations issued by the United States, Canada, and Mexico. The procedures and rules for binational panel review of antidumping and countervailing duty administrative determinations under Article 10.12 of the USMCA are virtually unchanged from Article 1904 of NAFTA.

Sections 421–433 and 504 of the USMCA Implementation Act provide

[1] The Agreement Between the United States of America, the United Mexican States, and Canada is the official name of the USMCA treaty. Please be aware that, in other contexts, the same document is also referred to as the United States-Mexico-Canada Agreement.

[2] Mexico, Canada, and the United States certified their preparedness to implement the USMCA on December 12, 2019, March 13, 2020, and April 24, 2020, respectively. Pursuant to section 106 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (19 U.S.C. 4205) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the United States adopted the USMCA through the enactment of the United States—Mexico—Canada Agreement Implementation Act (USMCA Implementation Act), Public Law 116–113, 134 Stat. 11 (19 U.S.C. Chapter 29), on January 29, 2020. Pursuant to paragraph 2 of the Protocol, which provides that the USMCA will take effect on the first day of the third month after the last signatory party provides written notification of the completion of the domestic implementation of the USMCA through the enactment of implementing legislation, the USMCA entered into force on July 1, 2020. On December 27, 2020, subsequent to the USMCA's entry into force date of July 1, 2020, the Consolidated Appropriations Act, 2021 (Appropriations Act), Public Law 116–260, was enacted with Title VI of the Act containing technical corrections to the USMCA Act. All of the changes contained within Title VI of the Appropriations Act are retroactively effective on July 1, 2020.

technical and conforming amendments to the Tariff Act of 1930, as amended (the Act) related to Chapter 10 of the USMCA on antidumping and countervailing duty matters. The Statement of Administrative Action accompanying the USMCA Implementation Act provides that, ''[i]n substance, U.S. laws and regulations are already in conformity with the obligations assumed under [Chapter 10 of the USMCA,]'' and, therefore, ''no changes in administrative regulations, practices, or procedures are required to implement the. . .antidumping and countervailing duty related provisions of Chapter 10.'' [3]

Pursuant to Article 10.12.14 of the USMCA, the United States, Mexico, and Canada trilaterally negotiated and agreed to rules of procedure for binational panel review modifying and updating the previous rules of procedure for Article 1904 of NAFTA. Effective May 18, 2021, Decision No. 2 of the USMCA Free Trade Commission adopted the rules of procedure applicable to all binational panel reviews under the USMCA. The rules of procedure are contained in Annex II to that decision and are cited as the Article 10.12 Binational Panel Rules.[4]

The Interim Final Rule

On December 9, 2021, at 86 FR 70045, the Department published an interim final rule implementing the following changes and soliciting comments on those revisions. Commerce's regulations, 19 CFR part 356 (procedures and rules for the implementation of NAFTA Article 1904) were first promulgated in 1994 and have not undergone any updates since that time. Although not required by the USMCA Implementation Act, Commerce is amending its regulations pertaining to the procedures and rules governing the binational panel dispute settlement mechanism to review antidumping duty and countervailing duty determinations issued by the United States as set forth in the USMCA. Because the dispute settlement mechanism in USMCA Article 10.12 is substantively identical to that in NAFTA Article 1904, Commerce adopted non-substantive amendments to ensure that its rules appropriately reference the USMCA. Commerce also adopted additional non-substantive amendments, including updating outdated cross-references to Commerce's antidumping and countervailing duty regulations (19 CFR part 351), updating outdated notice, filing, service, and protective order procedures, and adopting other minor corrections and updates. These changes are explained in the preamble of this rule and reflected in the regulatory text below.

Explanation of Regulatory Updates in the Interim Final Rule

1. Updates To Reflect the Enactment of the USMCA

Commerce's regulations in 19 CFR part 356 implement procedures for disputes pursuant to Article 1904 of NAFTA. Because NAFTA was replaced pursuant to the enactment of the USMCA, Commerce's regulations in this section require updates to reflect the name of the new agreement and the relevant chapter contained in the new Agreement. Therefore, Commerce adopted several changes throughout part 356 to replace references to NAFTA with references to the USMCA. Commerce also adopted several changes throughout part 356 to replace references to section 402(g) of the North American Free Trade Agreement Implementation Act of 1993 with reference to section 412(g) of the United States-Mexico-Canada Agreement Implementation Act of 2020, which authorized Commerce to promulgate such regulations as necessary or appropriate to implement its responsibilities under chapter 10 of the USMCA.[5]

These changes are reflected in the title of part 356 and §§ 356.1, 356.2(d), 356.2(f), and 356.2(kk) (replacing references to North American Free Trade Agreement or NAFTA with United States-Mexico-Canada Agreement or USMCA); §§ 356.1, 356.2(f), (o), (p), and (cc)(3), 356.10(b)(1)(ii)(B), and 356.11(a)(1)(i) and (b)(2)(ii) (replacing references to Article 1904 of NAFTA with Article 10.12 of USMCA); §§ 356.2, 356.3, 356.4, 356.10(b)(4)(i), 356.11(a)(5) and (6) (replacing references to Article 1904 Panel Rules with Article 10.12 Binational Panel Rules); § 356.1 (replacing references to section 402(g) of the North American Free Trade Agreement Implementation Act of 1993 with section 412(g) of the United States-Mexico-Canada Implementation Act of 2020); § 356.2 (replacing the signing date of NAFTA, December 17, 1992 with the signing date of the amended USMCA, November 30, 2018); § 356.2(h), (p), and (w) (replacing references to Chapter Nineteen with Chapter Ten); § 356.2(h) (replacing references to Annex 1901.2 with Annex 10–B.1); in § 356.2(p) (replacing references to Annex 1904.13 with Annex 10–B.3); § 356.2(q) (replacing references to Article 1911 with Article 10.8); § 356.2(ff) (replacing references to Article 2002 with Article 30.6); and § 356.2(r) (replacing references to section 516A(f)(9) of the Act with section 516A(f)(10) of the Act).

Commerce also removed several references to the United States-Canada Free Trade Agreement, which was superseded by NAFTA. Commerce's regulations contained provisions governing dispute resolution pursuant to the United States-Canada Free Trade Agreement. Because there are no active disputes pursuant to that agreement, Commerce removed reference to the United States-Canada Free Trade Agreement throughout its regulations. These changes are reflected in the revised §§ 356.2(d), 356.10(c)(1)(ii), and 356.11(c)(1)(ii).

2. Updates To Address Obsolete Regulatory Cross-References

Commerce also updated outdated regulatory cross-references in 19 CFR part 356 to 19 CFR part 353 (addressing antidumping duty rules and procedures) and 355 (addressing countervailing duty rules and procedures) which became obsolete when Commerce consolidated parts 353 and 355 into a single part 351 in 1997.[6] Despite the 1997 consolidation, references to obsolete parts 353 and 355 remain in part 356. Therefore, Commerce removed obsolete cross-references to parts 353 and 355 and replaced them with updated references to 19 CFR part 351 to reflect the 1997 consolidation of the AD/CVD regulations and any relevant subsequent

[3] Statement of Administrative Action accompanying the USMCA Implementation Act at 26.

[4] *Available at: https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/free-trade-commission-decisions/usmca-free-trade-commission-decision-no-2.* The Secretariat of the USMCA, comprised of a Canadian section, a United States section and a Mexican section, is responsible for the administration of the binational panel review process.

[5] *See* United States-Mexico-Canada Agreement Implementation Act of 2020, Public Law 116–113, 134 Stat. 74 (Jan. 29, 2020); 19 U.S.C. 4582 (2020). *See also* North American Free Trade Agreement Act of 1993, Public Law 103–182, 107 Stat. 2135 (Dec. 8, 1993) (section 402(g) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3432(g)).

[6] *See* 62 FR 27296, 27297 (May 19, 1997) (final rulemaking to eliminate Parts 353 and 355 and promulgate a single Part 351, 19 CFR 351, in their place); *see also* 61 FR 7308, 7310 (Feb. 27, 1996) (''[I]n response to the President's Regulatory Reform Initiative, to reduce the amount of duplicative material in the regulations, the Department has consolidated the antidumping and countervailing duty regulations into a new Part 351, and is removing Parts 353 and 355.'').

regulatory changes Commerce made to part 351 thereafter.[7]

These changes are reflected in § 356.2(u) (replacing cross-references to 19 CFR 353.31(e)(2)(i) through (v) or 355.31(e)(2)(i) through (v) with 19 CFR 351.303(d)(2), which outlines Commerce's current requirements for document submissions with respect to specifications and first page ''letter of transmittal'' markings); §§ 356.7(b) and 356.8(d) (replacing cross-references to 19 CFR 353.31(d) and (e)(2) and 19 CFR 355.31(d) and (e)(2) with references to 19 CFR 351.303(b) and (d)(2), which outline Commerce's current format and filing requirements for document submissions); §§ 356.7(c) and 356.8(d) (replacing cross-references to 19 CFR 353.31(g) and 19 CFR 355.31(g) with reference to current 19 CFR 351.303(f) which outlines Commerce's current service requirements).

3. Updates To Address Outdated Notice, Filing, Service, and Protective Order Procedures

Commerce also updated its regulations relating to certain outdated notice procedures. Specifically, current §§ 356.6 and 356.7 provide that Commerce will notify governments of Free Trade Agreement (FTA) Countries of scope determinations and contemplate that such determinations not be published in the **Federal Register**.[8] Under current § 356.6, when Commerce makes a scope determination, notice of such scope determination shall be deemed received by the Government of an FTA country when a certified copy of the determination is delivered to the chancery of the Embassy of the FTA.

Under Commerce's current procedures, scope rulings under 19 CFR 351.225 are a type of ''class or kind determination,'' a term that also encompasses circumvention determinations under section 781 of the Act. In some instances, a class or kind determination may be published in the **Federal Register**. Otherwise, interested parties will be notified of a determination through other means, including through mailing or electronic means. Section 516A(g)(10) of the Act, as amended by the USMCA Implementation Act, provides that Commerce, upon request, shall inform any interested person of the date on which the Government of the relevant FTA country received notice of the determination. However, the statute is silent as to the method of notice to the government of an FTA country, and, therefore, it is left to the discretion of Commerce.[9]

Accordingly, Commerce revised § 356.6 to state that notice shall be deemed received either on the date on which the class or kind determination is published in the **Federal Register**, or, if the determination is not published, on the date on which Commerce conveys a copy of the determination by electronic notification to the government. Further, in instances in which Commerce does not publish the determination, these changes will require that Commerce: (1) confirm the appropriate Embassy electronic mail address, and (2) directly convey to the Embassy an electronic copy of the determination during the Embassy's normal business hours. Commerce also adopted changes to reflect that ''class or kind determination'' is a more accurate term than ''scope determination'' for these types of determinations. Similar edits are reflected in § 356.7. In addition, for ease of reference, the definition for scope determination in § 356.2(ee) has been expanded to include reference to class or kind of merchandise determination.

Commerce also amended §§ 356.10 and 356.11 regarding the procedures for access to proprietary and privileged information during a USMCA binational panel dispute. Current § 356.10 requires a party seeking access to proprietary information to do so by submitting an application for a protective order. Such applications are to be filed with the U.S. section of the USMCA Secretariat, which in turn provides the applications to Commerce. Upon approving the application, Commerce will then issue the protective order to the Secretariat, which in turn will issue the protective order to the original applicant along with other participating parties to the dispute. The procedures in § 356.10(b)(3) have been updated to remove the requirement for manual filing.

Additionally, current § 356.10(b)(4)(ii) provides the method of service by which a protective order may be served. Because this provision does not currently account for service by electronic means, which is now permitted by the U.S. section of the Secretariat under the Article 10.12 Binational Panel Rules, Commerce added language to § 356.10(b)(4)(ii)(B) to allow for electronic means as a method of service for protective orders. Further, Commerce added an additional provision (§ 356.10(b)(4)(ii)(D)) to reflect that the U.S. section of the Secretariat allows for the filing of documents using an electronic filing platform to satisfy service requirements under the Article 10.12 Binational Panel Rules. Commerce is also adding corresponding language to § 356.10(b)(4)(iii) regarding the date of service if a document is served by electronic means or filed using the electronic filing platform.

Commerce is also revising §§ 356.7(b); 356.8(d)(1); 356.10(b)(3) through (5), (c)(1)(i), (c)(2)(i) and (v), (c)(3), (c)(4)(i), and (d)(2), 356.11(a)(2) and (3), (a)(5)(i) and (ii), (c)(1)(i), (c)(2) and (3), and (d)(2) to remove language requiring originals and multiple copies, as such a requirement has been made obsolete. Moreover, Commerce is also revising §§ 356.10(b)(1)(ii)(C), 356.11(b)(2)(iii), 356.12(a)(5), 356.14(d)(2) and (4), and 356.18(c)(4) to remove language requiring parties to return documents released under protective order and to log the use of proprietary documents, as such requirements have become obsolete, and to instead require parties to destroy and certify to the destruction of documents released under protective order.

4. Other Minor Corrections and Updates

Commerce also adopted minor corrections and updates to part 356 in §§ 356.10(b)(1)(i) and 356.11(b)(1) (updating the address and the room number of the Central Records Unit); §§ 356.7(b) and 356.8(d)(1) (updating the address and the room number of the APO/Dockets Unit); §§ 356.2(ee) and 356.27(d) (correcting punctuation); § 356.2(kk) (correcting the address of the Commerce Department); § 356.2(bb)(2) (updating the name of Mexico's Secretaria de Comercio y Fomento Industrial to the Secretariat of Economy); and § 356.11(c)(3) (adding a missing word in the title of the paragraph). In addition, Commerce updated the definition of the term

[7] *See, e.g.,* 62 FR 27296 (May 19, 1997); 73 FR 3627 (Jan. 22, 2008); 76 FR 39275 (July 6, 2011); 80 FR 36473 (June 25, 2015); and 85 FR 17007 (March 26, 2020).

[8] This language originated in the 1988 interim final rule for the United States-Canada Free Trade Agreement. *See Panel Review Under Article 1904 of the U.S.-Canada Free-Trade Agreement,* 53 FR 53232, 53233 (Dec. 30, 1988) (interim final rule).

[9] Similarly, the relevant language in USMCA Article 10.12.4 does not specify the method by which the importing Party must notify the other involved Party of determinations not published in the official journal: ''In the case of final determinations that are not published in the official journal of the importing Party, the importing Party shall immediately notify the other involved Party of such final determination where it involves goods from the other involved Party, and the other involved Party may request a panel within 30 days of receipt of such notice.'' Nor do the Article 10.12 Binational Panel Rules, which state at Article 39(2)(c) that a Request for Panel Review must contain ''the date on which the notice of the final determination was received by the other Party if the final determination was not published in an official publication.'' There are no specific requirements on the method of notification.

''director'' as specified in § 356.2(n) to correspond with the current definition in 19 CFR part 354, revised by Commerce in 1998.[10] Finally, we are making a minor addition to the interim final rule to revise § 356.9 (g) to reflect modern practices and procedures in USCMA hearings and meetings. Commerce added individuals employed to provide audiovisual services at hearings, meetings or other events as needed to the list of persons authorized to receive proprietary information to that provision, as such persons were not included in the past regulation, but normally require access to such information to provide their services.

Responses to Comments on the Interim Final Rule

On January 10, 2022, Commerce received comments from the government of Canada (Canada) on the interim final rule. We have made some clarifying edits to the interim final rule in response to those comments.

Suspension of Liquidation Pending Binational Panel Review

Canada requests that Commerce amend 19 CFR 356.8 to clarify that Commerce will order continued suspension of liquidation pending binational panel review upon request by a foreign government interested party that satisfies the criteria set out in 19 U.S.C 1516a(g)(5)(C)(i). Canada argues that in 19 U.S.C 1516a(g)(5)(C)(i) (which generally covers parties to a proceeding), Congress did not intend to further limit the scope of suspension requests by foreign government interested parties. Canada further argues that 19 U.S.C 1516a(g)(5)(C)(iii) (which lists the parties who can request continued suspension of liquidation) ''does not, in any way, limit the types of interested parties that may request continued suspension of liquidation . . . the eligibility criteria for suspension requests are instead set out in {19 U.S.C. 1516a(g)(5)(C)(i)}, which requires that Commerce order continued suspension of liquidation upon the request of an interested party, including a foreign government interested party, that satisfies those criteria.'' Canada then argues that, because ''liquidation moots a party's claim pertaining to liquidated entries,'' [11] a foreign government interested party's right to review would be hollow in situations where parties have not requested suspension. Therefore, Canada requests that Commerce amend 19 CFR 356.8 to conform with its interpretation of the statute, and to list foreign government interested parties as parties that may request suspension.

Canada argues that amending the *Interim Rules* would eliminate confusion caused by inconsistencies in the wording of the statute and the regulation. Canada identified the 2005 Administrative Review of Certain Softwood Lumber Products from Canada, where Commerce granted Canada's request for continued suspension of liquidation pending binational review,[12] and the 2021 Administrative Review of Certain Softwood Lumber Products from Canada, where Commerce did not grant Canada's request, as inconsistent in this respect.[13] Canada argues that the inconsistent treatment amplifies confusion caused by the wording of 19 CFR 356.8, which does not directly address whether foreign government interested parties can request suspension of liquidation.

Canada also argues that amending the *Interim Rules* would spare Commerce from the burden of addressing hundreds of unnecessary individual requests.

Response:

We disagree with Canada's interpretation of the statute. Section 19 U.S.C. 1516a(g)(5)(C)(iii) does not provide for suspension of liquidation requests by foreign government interested parties. Commerce most recently expressed this view in the context of *Canadian Lumber 2021,* in which Commerce found that there was ''no basis in U.S. law'' for Canada to request suspension of liquidation.[14] Specifically, because 19 U.S.C. 1516a(g)(5)(C)(iii) does not include foreign government interested parties (as defined in 19 U.S.C. 1677(9)(B)) as parties to whom suspension of liquidation may apply, the statute does not allow for foreign government interested parties to request the suspension of liquidation.

We do agree, however, with Canada that an amendment to the *Interim Rules* would resolve confusion regarding this issue. Therefore, we have amended 19 CFR 356.8(b)(2) to provide that ''{f}oreign governments are not listed as interested parties who may request the continuation of suspension under 19 U.S.C. 1516a(g)(5)(C)(iii).''

Finally, we find that Canada's comments regarding the administrative burden of addressing suspension requests from interested parties do not supersede the correct interpretation of the statute. Even if the language proposed by Canada were to relieve Commerce of an administrative burden, that proposed language would conflict with the statute, and therefore the change proposed by Canada should not be adopted by Commerce's regulations.

Definition of ''Class or Kind Determinations''

Canada requests that Commerce amend 19 CFR 356.2(ee) to clarify that the definition of ''scope determination or class or kind of merchandise determination'' is inclusive of circumvention inquiries and covered merchandise referral determinations, in addition to scope rulings.[15] Canada argues that retaining ''scope determination'' as part of the term defined would be inconsistent with Commerce's stated objective and the language of the Tariff Act, in a way that risks unnecessary confusion. Therefore, Canada requests that Commerce excise the words ''scope determination or'' from 19 CFR 356.2(ee), and specify in 19 CFR 356.2(ee) that all determinations issued under § 351.225 (scope determinations), § 351.226 (circumvention determinations), or § 351.227 (covered merchandise determinations) fall within the definition of ''class or kind of merchandise determination.''

Response:

We agree with Canada. Commerce has previously found that circumvention inquiries constitute ''class or kind determinations.'' [16] Moreover, we agree that it is appropriate to construe covered merchandise determinations as class or kind determinations as defined by 19 U.S.C. 1516a(a)(2)(B)(vi). Finally, we

[10] *See Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order,* 85 FR 24391, 24400, 24403 (May 4, 1998) (final rule) (revising the definition of the term ''director'' in 19 CFR 354.2 to include ''Senior APO Specialist'' and to conform with changes in office director positions following an internal reorganization).

[11] *Agro Dutch Indus.* v. *United States,* 589 F.3d 1187, 1190 (Fed. Cir. 2009) (discussing *Zenith Radio Corp.* v. *United States,* 710 F.2d 806 (Fed. Cir. 1983)).

[12] *See Certain Softwood Lumber Products from Canada,* 69 FR 75917 (Dec. 20, 2004); *see also* GOC's Comments at Attachment A.

[13] *See Certain Softwood Lumber Products from Canada,* 85 FR 77163 (Dec. 1, 2020) (*Canadian Lumber 2021*); *see also* GOC's Comments at Attachment B (ACCESS barcode: 4075213–01) (*Canadian Lumber 2021 Memo*).

[14] *See Canadian Lumber 2021 Memo* at 1.

[15] The *Interim Rule* also revised 19 CFR 356.6 and 356.7 to use the term ''class or kind determination'' instead of ''scope determination.'' *Procedures and Rules for Article 10.12 of the United States-Mexico-Canada Agreement,* 86 FR 70045, 70047 (Dec. 9, 2021) (*Interim Rule*).

[16] *Regulations To Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300, 52302 (Sep. 20, 2021).

agree that the inclusion of the words ''scope determination or'' in 19 CFR 356.2(ee) is confusing and inappropriate, because circumvention and covered merchandise determinations are distinct from scope determinations, but are nonetheless considered class or kind determinations. Therefore, we adopt the amendments proposed by Canada with respect to 19 CFR 356.2(ee).

APO Application Deadlines

Canada requests that Commerce amend 19 CFR 356.10(c)(2)(i) to conform deadlines for considering administrative protective order (APO) applications to those deadlines not covered by the USMCA. Canada argues that that § 356.10(c) of the *interim rules* provides too long a period for parties to object to APO applications and is inconsistent with Commerce's procedures for APO applications outside of binational panel reviews. Specifically, interim rule § 356.10(c)(2) precludes Commerce from ruling on the person described in 19 CFR 356.9(b) ''until at least ten days after the request is filed, unless there is compelling need to rule more expeditiously.'' This section further provides that any person may file an objection to an application within seven days of its filing.

Canada urges Commerce to shorten the period for parties to object, noting that there is no comparable provision in Commerce's non-USMCA regulations. Canada notes that 19 CFR 351.305(c) works well in general and would also work well in USMCA proceedings. Moreover, there is nothing in either the Rules of Procedure for Article 10.12, or the Court of International Trade procedures that would require this disparate treatment.

Response:

Commerce disagrees with Canada and is making no changes to its interim rule in this regard. Canada acknowledges that Commerce did not make substantive changes to 19 CFR 356.10(c)(2), and Commerce only updated its APO rules in 19 CFR 351.310(c) to remove the need for manual filing of APO applications. A change in the deadline for parties to object to APO applications was not included in Article 10.12 of the USMCA and was not contemplated by Commerce in the *Interim Rule.* Moreover, Canada does not provide a compelling reason for its proposed change. We disagree with Canada that we should conform our APO deadlines to the comparable provision in regulations outside of those governing binational panel reviews. The regulations and procedures for binational panel reviews, housed in 19 CFR part 356, are distinct from regulations governing Commerce's standard antidumping and countervailing duty proceedings, and therefore do not necessarily need to be conformed with those regulations. It has been Commerce's practice since the promulgation of the original 19 CFR 356.10(c)(2) to allow ten days before ruling on an APO application in a binational panel review. Therefore, the change proposed by Canada, pertaining to the length of time parties have to object to APO applications, is not necessary or appropriate here.

Classifications

Administrative Procedure Act

Under section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed regulatory amendments, consider public comments in deciding on the content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. The APA (5 U.S.C. 553(b)) provides a statutory exemption to notice-and-comment rulemaking for rules of agency organization, procedure, or practice and when the agency finds for good cause that such procedures are impracticable, unnecessary, or contrary to the public interest. Commerce's amendments to the regulation, 19 CFR part 356, fall within this exemption. Nevertheless, on December 9, 2021, Commerce published an interim final rule implementing the above changes and soliciting comments on those revisions. On January 10, 2022, Commerce received comments from the government of Canada. The changes made in this final rule pursuant to Canada's comments will be effective 30 days after the publication of this rule in the **Federal Register**, pursuant to 5 U.S.C. 553(d).

Executive Order 12866

OMB has not found this rule to be a significant rulemaking under Executive Order 12866, as amended by Executive Order 14094.

Executive Order 13132

This proposed rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Paperwork Reduction Act

This rule does not contain a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 (PRA).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes whether a rule will have a significant effect on a substantial number of small entities when the agency is required to publish a general notice of proposed rulemaking. Because a notice of proposed rulemaking is not necessary for this rule, Commerce is not required to prepare a regulatory flexibility analysis for this rule, and none has been prepared.

List of Subjects in 19 CFR Part 356

Administrative practice and procedure, Antidumping, Business and industry, Confidential business information, Countervailing duties, Imports.

Dated: January 22, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

For the reasons stated in the preamble, the Department of Commerce is adopting the interim rule amending 19 CFR part 356 published December 9, 2021, at 86 FR 70045, as final with the following changes:

PART 356—PROCEDURES AND RULES FOR ARTICLE 10.12 OF THE UNITED STATES-MEXICO-CANADA AGREEMENT

■ 1. The authority citation for part 356 continues to read as follows:

Authority: 19 U.S.C. 1516a and 1677f(f), unless otherwise noted.

■ 2. In § 356.2, revise paragraph (ee) to read as follows:

§ 356.2 Definitions.

* * * * *

(ee) *Class or kind of merchandise determination* means a determination by the Department, reviewable under section 516A(a)(2)(B)(vi) of the Act (19 U.S.C. 1516a(a)(2)(B)(vi)), as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or an antidumping or countervailing duty order covering free trade area country merchandise. This includes Department rulings and determinations issued under §§ 351.225, 351.226, and 351.227.

* * * * *

■ 3. In § 356.8, revise paragraph (b)(2) to read as follows:

§ 356.8 Continued suspension of liquidation.

* * * * *

(b) * * *

(2) A participant in a binational panel review that was a domestic party to the proceeding, as described in section 771(9)(C), (D), (E), (F), or (G) of the Act (19 U.S.C. 1677(9)(C), (D), (E), (F) and (G)), may request continued suspension of liquidation of entries of merchandise covered by the administrative determination under review by the panel and that would be affected by the panel review. Foreign governments are not listed as interested parties who may request the continuation of suspension under 19 U.S.C. 1516a(g)(5)(C)(iii).

* * * * *

■ 4. In § 356.9, revise paragraph (g) to read as follows:

§ 356.9 Persons authorized to receive proprietary information

* * * * *

(g) Every court report, interpreter, and translator employed in a panel or extraordinary challenge committee review, as well as individuals employed to provide audiovisual services at hearings, meetings, or other events as needed.

[FR Doc. 2024–01475 Filed 1–30–24; 8:45 am]

BILLING CODE 3510–DS–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2023–0225; FRL–10919–02–OCSPP]

O-Benzyl-P-Chlorophenol (OBPCP); Exemption From the Requirement of a Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of ortho-benzyl-para-chlorophenol, potassium 2-benzyl-4-chlorophenate, and sodium 2-benzyl-4-chlorophenate on food contact surfaces when applied/used in public eating places, dairy processing equipment, and/or food processing equipment and utensils. These tolerance exemptions are established on the Agency's own initiative under the Federal Food, Drug, and Cosmetic Act (FFDCA), in order to implement the tolerance actions EPA identified during its review of these chemicals as part of the Agency's registration review program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: This regulation is effective January 31, 2024. Objections and requests for hearings must be received on or before April 1, 2024, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2023–0225, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Anita Pease, Antimicrobials Division (7510M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–0736; email address: *ADFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2023–0255 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk in the Office of the Administrative Law Judges on or before April 1, 2024. Notwithstanding the procedural requirements of 40 CFR 178.25(b), the Office of the Administrative Law Judges has issued an order urging parties to file and serve documents with the Tribunal by electronic means only. *See Revised Order Urging Electronic Filing and Service* (dated June 22, 2023), *https://www.epa.gov/system/files/documents/2023-06/2023-06-22%20-%20revised%20order%20urging%20electronic%20filing%20and%20service.pdf.*

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2023–0225, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Background

A. Proposed Rule

In the **Federal Register** of May 5, 2023 (88 FR 29010) (FRL–10919–01–OCSPP), EPA proposed to establish exemptions from the requirement of a tolerance for residues of the antimicrobial pesticides ortho-benzyl-para-chlorophenol, potassium 2-benzyl-4-chlorophenate, and sodium 2-benzyl-4-chlorophenate in food resulting from application to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils. The Agency had identified the need for the exemptions as part of the registration review process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136a(g), and published a proposed rulemaking under its authority to initiate tolerance rulemakings under the FFDCA section 408(e), 21 U.S.C. 346a(e). That proposal noted that the new exemptions would supersede the current exemption for ortho-benzyl-para-chlorophenol under 40 CFR 180.940(c) (listed as phenol, 4-chloro-2-(phenylmethyl)-, an alternative name for ortho-benzyl-para-chlorophenol), which would be removed from the regulations as unnecessary and redundant.

As noted in the proposal, the O-Benzyl-p-Chlorophenol (OBPCP) Interim Registration Review Decision (OBPCP ID) identified the need for these exemptions based on existing registered pesticide uses, and the underlying risk assessment concluded that there were no risks of concern associated with these uses. Consequently, EPA concluded that the exemptions from the requirement of a tolerance for residues of ortho-benzyl-para-chlorophenol, sodium 2-benzyl-4-chlorophenate, and potassium 2-benzyl-4-chlorophenate, when used in antimicrobial formulations applied to food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils when used at concentrations not to exceed 2,080 ppm in end-use formulations, would be safe. Electronic copies of the OBPCP ID and other documents are available in EPA docket number EPA–HQ–OPP–2011–0423, which can be found at *https://www.regulations.gov.*

B. What is the Agency's authority for taking this action?

Under section 408(e) of the FFDCA, EPA can establish an exemption from the requirement of a tolerance for residues of a pesticide chemical after publishing a proposed rule and providing 60-day period for public comment. 21 U.S.C. 346a(e). EPA published the proposed rule on May 5, 2023, and provided 60 days for public comment (until July 5, 2023).

III. Final Rule

A. Comments

No substantive comments were submitted in response to the proposed rule.

B. Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . ."

As noted in the proposed rule, EPA reviewed the available scientific data and other relevant information as part of registration review and in support of this action. Based on that review, EPA's proposed rule concluded that the exemptions would be safe.

Since no comments were filed, EPA's assessment of the potential for risks from exposure to these pesticide chemicals and conclusions about the safety of these exemptions remains unchanged. Therefore, based on the lack of any aggregate risks of concern, EPA concludes that these exemptions from the requirement of a tolerance for residues of ortho-benzyl-para-chlorophenol, sodium 2-benzyl-4-chlorophenate, and potassium 2-benzyl-4-chlorophenate, including the limitation for the end-use formulation concentration of each of these pesticides to not exceed 2,080 ppm, are safe, *i.e.,* there is a reasonable certainty that no harm will result from aggregate exposures to ortho-benzyl-para-chlorophenol, sodium 2-benzyl-4-chlorophenate, or potassium 2-benzyl-4-chlorophenate, when used in accordance with the terms of the respective exemptions. In addition, EPA has determined that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residues, in accordance with FFDCA section 408(b)(2)(C).

IV. Conclusion

Therefore, exemptions from the requirement of a tolerance are established for residues of ortho-benzyl-para-chlorophenol, potassium 2-benzyl-4-chlorophenate, and sodium 2-benzyl-4-chlorophenate, when used on or applied to food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils, with a limitation in concentration of 2,080 ppm in end-use formulations. In addition, EPA is removing the existing exemption in 40 CFR 180.940(c) for residues of phenol, 4-chloro-2-(phenylmethyl)-, as it is unnecessary and redundant upon the establishment of these new exemptions.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders#influence.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action is exempt from review by the Office of Management and Budget (OMB) under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011) because it establishes tolerance exemptions under FFDCA section 408.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, 44 U.S.C. 3501 *et seq.,* because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and

that the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on small entities subject to the rule. As discussed in the proposed rule, this takes into account the EPA analysis for the establishment and modification of tolerances. Furthermore, the Agency did not receive any comments on these conclusions as presented in the proposed rule.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132, August 10, 1999 (64 FR 43255). It 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.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175, November 9, 2000 (65 FR 67249), because it will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) directs Federal agencies to include an evaluation of health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potential effective and reasonably feasible alternatives. This action is also not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866 (*See* Unit V.A.) and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. However, EPA's *Policy on Children's Health* applies to this action.

This rule finalizes tolerance actions under the FFDCA, which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . .'' (FFDCA 408(b)(2)(C)). Consistent with FFDCA section 408(b)(2)(D), and the factors specified therein, EPA has reviewed the available scientific and other data and other relevant information in support of these final tolerance actions. The Agency's consideration is documented in the pesticide specific registration review decision documents. See the discussion in Unit III. and access the chemical specific registration review documents in each chemical docket at *https://www.regulations.gov*.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act (NTTAA)

This action does not involve technical standards under NTTAA section 12(d), 15 U.S.C. 272.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or indigenous peoples) and low-income populations. As discussed in more detail in the pesticide specific risk assessments conducted as part of the registration review for the pesticides identified in Unit II., EPA has considered the safety risks for the pesticides subject to this rulemaking and in the context of the tolerance actions set out in this rulemaking. EPA believes that the human health and environmental conditions that exist prior to this action do not result in disproportionate and adverse effects on people of color, low-income populations, and/or indigenous peoples. Furthermore, EPA believes that this action is not likely to result in new disproportionate and adverse effects on people of color, low-income populations, and/or indigenous peoples.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 25, 2024.

Anita Pease,

Director, Antimicrobials Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA amends 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 180.940 by:

■ a. Adding in alphabetical order the entries ''Ortho-benzyl-para-chlorophenol'', ''Potassium 2-benzyl-4-chlorophenate'', and ''Sodium 2-benzyl-4-chlorophenate'' to table 1 to paragraph (a).

■ b. Removing the entry ''Phenol, 4-chloro-2-(phenylmethyl)-'' from the table in paragraph (c).

The additions read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Pesticide chemical	CAS reg. No.	Limits
* * * * * * *		
Ortho-benzyl-para-chlorophenol	120–32–1	When ready for use, the end-use concentration is not to exceed 2080 ppm.
* * * * * * *		
Potassium 2-benzyl-4-chlorophenate	35471–49–9	When ready for use, the end-use concentration is not to exceed 2080 ppm.
* * * * * * *		
Sodium 2-benzyl-4-chlorophenate	3184–65–4	When ready for use, the end-use concentration is not to exceed 2080 ppm.
* * * * * * *		

* * * * *

[FR Doc. 2024–01869 Filed 1–30–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 410, 414, 424, 484, 488, and 489

[CMS–1780–CN]

RIN 0938–AV03

Medicare Program; Calendar Year (CY) 2024 Home Health (HH) Prospective Payment System Rate Update; HH Quality Reporting Program Requirements; HH Value-Based Purchasing Expanded Model Requirements; Home Intravenous Immune Globulin Items and Services; Hospice Informal Dispute Resolution and Special Focus Program Requirements, Certain Requirements for Durable Medical Equipment Prosthetics and Orthotics Supplies; and Provider and Supplier Enrollment Requirements; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors in the final rule that appeared in the November 13, 2023 **Federal Register** titled ''Medicare Program; Calendar Year (CY) 2024 Home Health (HH) Prospective Payment System Rate Update; HH Quality Reporting Program Requirements; HH Value-Based Purchasing Expanded Model Requirements; Home Intravenous Immune Globulin Items and Services; Hospice Informal Dispute Resolution and Special Focus Program Requirements, Certain Requirements for Durable Medical Equipment Prosthetics and Orthotics Supplies; and Provider and Supplier Enrollment Requirements'' (referred to hereafter as the ''CY 2024 HH PPS final rule'').

DATES: *Effective date:* This correcting document is effective January 31, 2024.

FOR FURTHER INFORMATION CONTACT: For questions about the Home Health Quality Reporting Program (HH QRP), send your inquiry via email to *HHQRPquestions@cms.hhs.gov.*

For questions about the expanded Home Health Value-Based Purchasing Model, please visit the Expanded HHVBP Model web page at *https://innovation.cms.gov/innovation-models/expanded-home-health-value-based-purchasing-model;* send your inquiry via email to *HHVBPquestions@cms.hhs.gov;* or call Marcie O'Reilly at (410) 786–9764.

For questions about the hospice informal dispute resolution send inquiries to *QSOG_Hospice@cms.hhs.gov,* and for the special focus program, send your inquiry to *CMS_HospiceSFP@cms.hhs.gov,* or call Thomas Pryor at (410) 786–1332.

SUPPLEMENTARY INFORMATION:

I. Background

This correcting document identifies and corrects errors in FR Doc. 2023–24455 of November 13, 2023 (88 FR 77676). The corrections in this correcting document are effective January 1, 2024, as if they had been included in the document that appeared in the November 13, 2023, **Federal Register**.

II. Summary of Errors

On pages 77680, 77761, 77767, and 77851 in our discussion of the Home Health Quality Reporting Program (HH QRP), we made several typographical errors.

On pages 77778 and 77779, in a table regarding the proposed measures for the Home Health Value-Based Purchasing Model (HHVBP), we made typographical and technical errors.

On pages 77801, 77802, and 77807, in our discussion of the Hospice Informal Dispute Resolution and Special Focus Program, we made several typographical and technical errors.

We are correcting these errors in section IV. of this correcting document.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rulemaking in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Social Security Act (the Act) requires the Secretary to provide for notice of the proposed rulemaking in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the

APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this final rule correction does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This document corrects technical errors in the preamble of the CY 2024 HH PPS final rule but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this final rule correction is intended to ensure that the information in the CY 2024 HH PPS final rule accurately reflects the policies adopted in that document.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive information regarding the relevant Medicare payment policy in as timely a manner as possible, and to ensure that the CY 2024 HH PPS final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering our payment methodologies or policies, but rather, we are simply implementing correctly the methodologies and policies that we previously proposed, requested comment on, and subsequently finalized. This final rule correction is intended solely to ensure that the CY 2024 HH PPS final rule accurately reflects these payment methodologies and policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements. Moreover, even if these corrections were considered to be retroactive rulemaking, they would be authorized under section 1871(e)(1)(A)(ii) of the Act, which permits the Secretary to issue a rule for the Medicare program with retroactive effect if the failure to do so would be contrary to the public interest. As we have explained previously, we believe it would be contrary to the public interest not to implement the corrections in this final rule correction for changes effective on January 1, 2024, because it is in the public's interest for providers to receive information regarding the relevant Medicare payment policy in as timely a manner as possible, and to ensure that the CY 2024 HH PPS final rule accurately reflects our policies.

IV. Correction of Errors

In FR Doc. 2023–24455 of November 13, 2023 (88 FR 77676), make the following corrections:

1. On page 77680, top of the page, the table titled ''Table Al: Summary of Costs, Transfers, and Benefits'', second row (HH QRP), third column (Transfers), line 6, the phrase ''M2220—Therapy Needs'' is corrected to read ''M2200—Therapy Need''.

2. On page 77761, first column, second full paragraph, line 6, the date ''April 1, 2024'' is corrected to read ''April 1, 2023''.

3. On page 77767, in the third column,

a. First partial paragraph, line 7, the date ''April 1, 2024'' is corrected to read ''April 1, 2023''.

b. First full paragraph, line 6, the date ''April 1, 2024'' is corrected to read ''April 1, 2023''.

4. On page 77778, in the table titled ''TABLE D2: PROPOSED MEASURE SET FOR THE EXPANDED HHVBP MODEL'', columns 3 (Numerator) and 4 (Denominator) for the listed entries are corrected to read as follows:

BILLING CODE 4120–01–P

TABLE D2: PROPOSED MEASURE SET FOR THE EXPANDED HHVBP MODEL

Measure Full Title/Short Form Name (if applicable)	Measure Type	Data Source	Numerator	Denominator	Current	Proposed
* * * * * * *						
Home Health Within-Stay Potentially Preventable Hospitalization/PPH[3]	Outcome	CCW (Claims)	The risk-adjusted prediction of the number of HH stays with at least one potentially preventable hospitalization (that is, in an ACH/LTCH) or observation stay. For PPH, an HH stay is a sequence of HH payment episodes separated by 2 or fewer days. A separation between HH payment episodes greater than 2 days results in separate HH stays.	The risk-adjusted expected number of hospitalizations or observation stays. This estimate includes risk adjustment for patient characteristics with the HHA effect removed. The "expected" number of hospitalizations or observation stays is the projected number of risk-adjusted hospitalizations or observation stays if the same patients were treated at the average HHA appropriate to the measure. Numerator over denominator times the national observed PPH rate equals the reported risk-standardized rate.		X
Discharge to Community/DTC-PAC[4]	Outcome	CCW (Claims)	The risk-adjusted estimate of the number of HH stays resulting in a discharge to the community (Patient Discharge Status codes equal to 01 or 81), without an unplanned admission to an ACH/LTCH or death in the 31-day post-discharge observation window. For DTC-PAC, an HH stay is a sequence of HH payment episodes separated by 2 or fewer days. A separation between HH payment episodes greater than 2 days results in separate HH stays.	The risk-adjusted expected number of discharges to community. This estimate includes risk adjustment for patient characteristics with the HHA effect removed. The "expected" number of discharges to community is the predicted number of risk-adjusted discharges to community if the same patients were treated at the average HHA appropriate to the measure. Numerator over denominator times the national observed DTC-PAC rate equals the reported risk-standardized rate.		X
* * * * * * *						

Notes:
[3] https://www.cms.gov/files/document/hh-qrp-specificationspotentiallypreventablehospitalizations.pdf
[4] https://www.cms.gov/files/document/home-health-outcome-measures-table-oasis-e2023.pdf

5. On page 77779, following the table titled ''Table D2: Proposed Measure Set for the Expanded HHVBP Model'', table note 3 '' [3] *https://www.cms.gov/files/document/hh-qrp-specifications potentiallypreventablehospitalizations.pdf*'' is corrected to read '' [3] *https://www.cms.gov/files/document/home-health-outcome-measures-table-oasis-e2023.pdf*''.

6. On page 77801, first column, first partial paragraph, line 4, the phrase ''the iQIES).'' is corrected to read ''the iQIES.''.

7. On page 77802,

a. First column, first full paragraph, line 32, the phrase '' 'Sometimes';'' is corrected to read '' 'Sometimes'.''.

b. Second column, first full paragraph, line 11, the phrase ''top-box option: 9–10)'' is corrected to read ''top-box options: 9–10)''.

8. On page 77807, second column, second full paragraph, line 5, the term ''BBVs'' is corrected to read ''bottom-box scores''.

9. On page 77851, top half of the page, first column, sixth full paragraph, lines 6 and 7, the date ''April 1, 2024'' is corrected to read ''April 1, 2023,''.

Elizabeth J. Gramling,

Executive Secretary, Department of Health and Human Services.

[FR Doc. 2024–01094 Filed 1–30–24; 8:45 am]

BILLING CODE 4120–01–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90; FCC 23–118; FR ID 198698]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) defers the commencement of the next five-year deployment obligation term for legacy rate-of-return carriers receiving Connect America Fund Broadband Loop Support (CAF BLS) in 2024 until January 1, 2025, while it considers general program reforms.

DATES: The Commission defers the commencement of the next five-year deployment obligation term for legacy rate-of-return carriers receiving CAF BLS in 2024 effective January 31, 2024.

FOR FURTHER INFORMATION CONTACT: For further information, please contact, William Layton, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, at *William.Layton@fcc.gov* or 202–418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order (Order) in WC Docket No. 10–90; adopted on December 26, 2023, and released on December 27,

2023. The full text of this document is available at the following internet address: *https://www.fcc.gov/document/fcc-defers-next-deployment-term-legacy-high-cost-carriers.*

I. Introduction

1. The Commission hereby defers the commencement of the next five-year deployment obligation term for legacy rate-of-return carriers receiving CAF BLS in 2024 until January 1, 2025, while it considers general program reforms in the ongoing *Notice of Proposed Rulemaking (NPRM),* 88 FR 56579, August 18, 2023, proceeding. Legacy carriers will remain subject to the Commission's rules, requiring the offering of broadband service at actual speeds of at least 25 Mbps downstream/3 Mbps upstream to the previously determined number of unserved locations under the current five-year term that ends on December 31, 2023. Deferring the commencement of the next term will maintain the *status quo* as the Commission considers whether to modify deployment obligations for CAF BLS recipients going forward, allowing the Commission to take into account the effect of awards for broadband deployment pursuant to the Broadband Equity, Access, and Deployment Program (BEAD Program) or other Federal programs.

II. Discussion

2. The Commission defers the commencement of the next deployment obligation term for CAF BLS recipients by one year, until January 1, 2025, as described in the *NPRM.* The deferral will allow the Commission to address the future budget and deployment obligations for CAF BLS carriers and give the Commission additional time to evaluate the impact of BEAD Program and other Federal and state broadband program commitments made by eligible providers. This action by no means releases legacy carriers from their deployment commitments by the end of 2023 under the Commission's rules.

3. The Commission agrees with those commenters supporting the deferral of the next deployment obligation term until January 1, 2025. As NTCA—The Rural Broadband Association (NTCA) states, ''[t]his should afford time to determine with greater precision where BEAD and other programs impose enforceable commitments of their own, leaving it clear what remaining locations could then be served at higher levels leveraging [CAF BLS] resources.'' Because the ''size, characteristics, and broadband needs of the rural service areas . . . will not be determinable for some time,'' the Commission should ''monitor broadband deployment in the remaining [CAF BLS/high-cost loop support] areas for at least one year before embarking upon the consideration of potential changes . . . deployment obligations.'' Given the additional time needed to ''issue the necessary legacy program revision orders, the next five-year term for CAF BLS support should begin no later than January 1, 2025.''

4. The sole commenter objecting to a deferment, the Nebraska Public Service Commission, states it will delay ''the deployment of broadband infrastructure improvement in these areas.'' The Commission agrees with NTCA, however, that the ''benefits of greater coordination and potential relief for the future [Universal Service Fund] budget outweigh'' such concerns. Although the Commission previously has imposed specific broadband deployment obligations on CAF BLS support recipients, it concludes that such requirements are not in the public interest during the deferral period. In particular, broadband deployment obligations for CAF BLS support recipients have reflected a carefully-calibrated balancing of measurable broadband deployment objectives coupled with appropriate carrier flexibility, and the record does not reveal a viable way of similarly accommodating those interests in a deferral period. The Commission has recognized that carriers need to plan their broadband deployments. Forging ahead with the next deployment obligation term under the current rules, or applying other deployment obligations specific to a deferral term, even as the Commission considers significant changes, would undermine the viability of that planning given that both the support levels and ultimate deployment obligations would be uncertain over the relevant time horizon. The Commission also has recognized rate-of-return CAF BLS support recipients' need for flexibility in implementing the associated broadband deployment obligations, reflected, for example, in our decision to give those carriers flexibility in how they spread their deployment efforts out over the course of a deployment term, and in our actions to ensure those carriers have a full five-year deployment term to fulfill those deployment obligations. The record does not reveal a way to similarly achieve those objectives as part of deployment obligations for CAF BLS support recipients in 2024, while the Commission considers future reforms in that regard. Such near-term deployment obligations for CAF BLS support recipients also could lead to the inefficient allocation of resources in the event that broadband deployment obligations would require them to deploy facilities that could not be used efficiently—or at all—to achieve any revised broadband deployment obligations that the Commission might adopt. Accordingly, the Commission finds the better course is to maintain the *status quo* pending the outcome of the rulemaking proceeding.

5. The Commission emphasizes, notwithstanding this action, CAF BLS recipients, including those that were not authorized for Enhanced Alternative Connect America Cost Model (Enhanced A–CAM), remain subject to the current December 31, 2023, term deadline and must satisfy their broadband service location coverage requirements by that date. Further, CAF BLS recipients not authorized for Enhanced A–CAM remain subject to the Commission's reporting and certification requirements, including the reporting of newly served locations in the High Cost Universal Broadband portal, and the Commission's broadband network performance testing and certification requirements. Legacy carriers remain eligible to receive high-cost support during the deferral period to cover their ongoing eligible costs subject to the Commission's monthly per-line cap support amount. Carriers are also permitted, but not required, to expand their broadband service coverage to unserved locations during the deferral period and are expected to at least maintain their coverage footprint as of December 31, 2023, as the Commission considers future deployment obligations.

III. Procedural Matters

A. Paperwork Reduction Act

6. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

B. Congressional Review Act

7. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this final action is ''non-major'' under the Congressional Review

Act, 5 U.S.C. 804(2). The Commission will send a copy of the Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

8. *Effective Date.* The Commission concludes that good cause exists to make the Order effective immediately upon publication in the **Federal Register**, pursuant to section 553(d)(3) of the Administrative Procedure Act. Agencies determining whether there is good cause to make effective an order less than 30 days after **Federal Register** publication ''should balance the necessity for immediate implementation against principles of fundamental fairness, which require that all affected persons be afforded reasonable time to prepare for the effective date of is ruling.'' In this action, the Commission is deferring the commencement of the next deployment obligation term, which would commence on January 1, 2024, but for the action taken here. The Order therefore does not impose new rule obligations that would require preparation by legacy rate-of-return carriers but instead delays the commencement of existing requirements while the Commission considers rule changes in the ongoing rulemaking proceeding. Accordingly, given the timing of the next deployment obligation term and that deferment will not require advanced preparation by carriers, the Commission finds good cause exists to make the Order effective upon publication of a summary in the **Federal Register**.

9. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires an agency to prepare a regulatory flexibility analysis for notice-and-comment rulemakings, unless the agency certifies the proposed or final rule(s) ''will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concerns'' under the Small Business Act. A ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

10. As required by the RFA, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *NPRM,* released in July 2023. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IFRA. No comments were filed addressing the IRFA. The two statutorily-mandated criteria to be applied in determining the need for RFA analysis are (1) whether the proposed rules, if adopted, would have a significant economic effect, and (2) if so, whether the economic effect would directly affect a substantial number of small entities. For the reasons discussed below, the Commission has determined that the rules and policy changes adopted in the Second Report and Order will not have a significant economic impact on a substantial number of small entities and has prepared this Final Regulatory Flexibility Certification (FRFC).

11. The Order defers the commencement of the next five-year deployment obligation term, until January 1, 2025, for those cost-based rate-of-return carriers receiving CAF BLS. Legacy carriers will remain subject to the Commission's rules, requiring the offering of broadband service at actual speeds of at least 25 Mbps downstream/3 Mbps upstream to the previously determined number of unserved locations under the current five-year term that ends on December 31, 2023. This will maintain the *status quo* as the Commission considers general program reforms in the *NPRM* proceeding, including whether to modify deployment obligations for CAF BLS recipients going forward. Because this action delays the commencement of deployment obligations already provided for under the Commission's rules, it will not cause any significant economic impact on providers, including those which are small entities.

12. Accordingly, based on the Commission's application of the two statutorily-mandated criteria to the rules adopted in the Order, it concludes that the adopted rules and policy changes will not have a significant economic impact on a substantial number of small entities. The Commission therefore certifies that the rules and policy changes adopted in the Order will not have a significant economic impact on a substantial number of small entities.

13. The Commission will send a copy of the Order, including a copy of the FRFC, in a report to Congress pursuant to the Congressional Review Act. In addition, the Order and the FRFC will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the **Federal Register**.

IV. Ordering Clauses

14. Accordingly, *it is ordered,* pursuant to the authority contained in sections 4(i), 214, 218–220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 218–220, and 254, and §§ 1.1, 1.3, and 1.425 of the Commission's rules, 47 CFR 1.1, 1.3, and 1.425 the Order *is adopted.* The Order *shall be effective* upon publication of the text or summary in the **Federal Register**.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–01634 Filed 1–30–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–336; RM–11967; DA 24–70; FR ID 199273]

Television Broadcasting Services Wittenberg and Shawano, Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Video Division, Media Bureau (Bureau), has before it a notice of proposed rulemaking issued in response to a petition for rulemaking filed by TV 49, Inc. (TV–49 or Petitioner), the permittee of an unbuilt television station on channel 31 allotted to Wittenberg, Wisconsin. The Petitioner has requested that the Commission delete channel 31 from Wittenberg and allot it to Shawano, Wisconsin in the Table of TV Allotments and modify its construction permit to specify Shawano as its community of license. TV–49 filed comments in support of the petition, as required by the rules, reaffirming its commitment to file for channel 31 at Shawano.

DATES: Effective March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov*.

SUPPLEMENTARY INFORMATION: The proposed rule was published at 88 FR 72417 on October 20, 2023. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel 31. No other comments were filed.

The Bureau believes the public interest would be served by reallotting channel 31 from Wittenberg to Shawano in the Table of TV Allotments consistent with the technical parameters set forth in the Amended Petition. The Technical Exhibit submitted with TV–49's Amended Petition demonstrates that the

proposed allotment of channel 31 at Shawano is short-spaced to the current allotment at Wittenberg and thus, is mutually exclusive. We also conclude that the reallotment of channel 31 from Wittenberg to Shawano will result in a preferential arrangement of allotments in accordance with the Commission's second television allotment priority—to provide each community with at least one television broadcast station. Shawano is the seat of Shawano County, in which both communities are located, and is nine times larger than Wittenberg. As TV–49 has demonstrated, Shawano has the population and public services indicative of a community deserving of its own television station. For example, the Shawano school district operates five public schools and Northeast Wisconsin Technical College operates a Regional Learning Campus in Shawano. Shawano is governed by a mayor and six alderpersons, who collectively comprise its Common Council. Shawano also provides a number of municipal services, including but not limited to those provided through the Shawano-Bonduel Municipal Court, the Shawano Department of Public Works, the Shawano Police Department, and the Shawano Municipal Utilities.

While based on the facts above we find that TV–49's proposal represents a preferential arrangement of allotments pursuant to the Commission's second allotment priority, grant of the proposed reallotment will remove Wittenberg's only local service, which the Commission generally prohibits. After reviewing the record, we find on balance that the public would benefit from grant of a waiver of our general prohibition on the removal of a community's first local service. Not only is Shawano a significantly more populated community, but the channel 31 facility has not yet been constructed, and thus no viewers have come to rely on any existing service, a factor the Commission has found to be mitigating in the context of whether it would remove the sole channel allotted to a community. Of equal significance is the fact that six licensed full power television stations currently provide noise-limited service to all of Wittenberg and TV–49 demonstrates that once the Station commences operations it will also provide noise-limited service to Wittenberg. In addition, the proposed allotment at Shawano is otherwise in compliance with all of our technical rules. As proposed, channel 31 can be allotted to Shawano in compliance with the principal community coverage requirements of § 73.625(a) of the rules, at coordinates 44°46′56.0″ N and 88°36′32.0″ N. Furthermore, we find that the proposed change in community of license meets the technical requirements set forth in §§ 73.616 and 73.623 of the rules.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 23–336; RM–11967; DA 24–70, adopted January 24, 2024, and released January 24, 2024. The full text of the document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of TV Allotments, under Wisconsin, by:

■ a. Adding an entry in alphabetical order for ''Shawano''; and

■ b. Removing the entry for ''Wittenberg''.

The addition reads as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
Wisconsin	
* * * * *	
Shawano	31
* * * * *	

[FR Doc. 2024–01928 Filed 1–30–24; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 89, No. 21

Wednesday, January 31, 2024

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

DEPARTMENT OF ENERGY

10 CFR Part 710

[EHSS–RM–20–PACNM]

RIN 1992–AA64

Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

AGENCY: Office of Health, Safety, and Security. Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend its regulations, which set forth the policies and procedures for resolving questions concerning eligibility for DOE access authorizations. The proposed revisions would: expand the scope of the current rule to include individuals applying for or in positions requiring eligibility to hold a sensitive position; update and add clarity, including by deleting obsolete references, throughout the rule for consistency with national policies and DOE practices; and update references to DOE officials and offices.

DATES: Written comments on this proposed rule must be received on or before March 1, 2024.

ADDRESSES: You may submit comments, identified by ''Determining Eligibility for Access and RIN 1992–AA64,'' by any of the following methods (comments by email are encouraged):

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email* to: *OfficeofDepartmentalPersonnelSecurity@hq.doe.gov.* Include Determining Eligibility for Access and RIN 1992–AA64 in the subject line of the message.
- *Mail* to: U.S. Department of Energy, Office of Departmental Personnel Security, EHSS–53, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Tracy L. Kindle, U.S. Department of Energy, Office of Departmental Personnel Security, (202) 586–3249, *officeofdepartmentalpersonnelsecurity@hq.doe.gov,* or Christina Pak, Office of the General Counsel, (202) 586–4114, *christina.pak@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Summary
II. Section-by-Section Description of Proposed Changes
III. Regulatory Review

I. Background and Summary

DOE is publishing this notice of proposed rulemaking in order to update and clarify DOE's policies and procedures for determining eligibility for access authorizations. The current rule implements the requirement in Executive Order (E.O.) 12968, *Access to Classified Information,* that agencies promulgate regulations to provide review proceedings to individuals whose eligibility for access to classified information is denied or revoked.

The current rule has not been substantively updated since 2016 (81 FR 71331, Oct. 17, 2016). Since then, as various national policies were issued and amended and DOE has gained additional implementation experience under the current rule, so proposed revisions to update and clarify provisions in the rule are appropriate. The proposed revisions would: (1) expand the scope of the current rule to include individuals applying for or in positions requiring eligibility to hold a sensitive position; (2) incorporate requirements of Security Executive Agent Directive (SEAD) 9, *Appellate Review of Retaliation Regarding Security Clearances and Access Determinations,* which provides appeal rights to both federal and contractor employees; (3) update hearing procedures to more accurately reflect current practices; (4) update references to DOE offices and officials to reflect new titles and organizational names; (5) remove appendix A, SEAD 4, *National Security Adjudicative Guidelines* (June 8, 2017); (6) revise and add definitions for certain terms; and (7) make minor updates to improve clarity and delete obsolete references.

II. Section-by-Section Description of Proposed Changes

DOE proposes to amend title 10 Code of Federal Regulation (CFR) part 710 as follows:

1. The title of this part would be amended to add, ''OR ELIGIBILITY TO HOLD A SENSITIVE POSITION'' at the end to reflect the proposed expansion of the scope of the rule, as explained in paragraph 4.

2. The authority section of this part would be amended to add a reference to E.O. 13467. Context for this proposed change is explained in paragraph 4.

3. In proposed § 710.1, ''Purpose,'' § 710.1(a) would be amended to add at the end ''or eligibility to hold a sensitive position pursuant to Executive Order 13467 (Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information),'' to reflect the proposed change to the scope of the rule, as explained below in paragraph 4. Section 710.1(b) would be amended to add after the citation for E.O. 10865, ''Executive Order 13467, 73 FR 38103 (June 30, 2008) as amended'' and to add ''or successor directive'' after the reference to SEAD 4.

4. In proposed § 710.2 ''Scope,'' a new paragraph would be added to make the provisions of the rule applicable to an individual's eligibility to hold a sensitive position. This proposed change would clarify that, except when specifically noted, any provision that applies to determinations of eligibility for access to classified information or special nuclear matter would also apply to determinations of eligibility to hold a sensitive position. Conforming changes are also proposed to be made in § 710.2.

In 2017, E.O. 13467, Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information, was amended by E.O. 13764 to make the provisions of E.O. 12968 that apply to eligibility for access to classified information to also apply to eligibility to hold a sensitive position regardless of whether or not that sensitive position requires access to classified information.

The term ''sensitive position'' is defined in E.O. 13467, as amended, to mean any position within or in support of a Federal department or agency, the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on national security regardless of whether the occupant has access to classified information and regardless of whether

the occupant is an employee, military service member, or contractor.

The current scope of 10 CFR part 710 applies only to individuals who require eligibility for access to classified information and special nuclear materials and does not address individuals who require eligibility to hold a sensitive position where an access authorization is not a requirement of the position.

Expanding the applicability of this rule to individuals applying for or in positions requiring eligibility to hold a sensitive position, who do not require an access authorization, would bring DOE into compliance with E.O. 13467, as amended.

5. Existing § 710.3, ''Reference,'' would be deleted in its entirety because appendix A, SEAD 4, *National Security Adjudicative Guidelines* (June 8, 2017), is proposed for removal as explained below in paragraph 22.

6. In § 710.4, ''Policy,'' § 710.4(a) would be amended to add at the end ''or eligibility to hold a sensitive position,'' and § 710.4(b) would be amended to add ''or eligibility to hold a sensitive position'' after ''access authorization'' to reflect the proposed change to § 710.2 ''Scope.''

7. In § 710.5, ''Definitions,'' a number of new or amended definitions are proposed.

The term ''Continuous Vetting'' would be added to reflect recent national policies under Trusted Workforce (TW) 2.0, as explained in paragraph 8.

The term ''Local Director of Security'' would be amended by removing the references to ''Chicago'' and ''Oak Ridge,'' and adding ''for the Office of Science (SC), the individual designated in writing by the Deputy Director for Operations,'' removing the references to Richland and Savannah River and adding ''for the Office of Environmental Management (EM), the individual(s) designated in writing by the Senior Advisor, or delegee, adding an ''s'' after ''individual'' in the reference to the National Nuclear Security Administration, and adding ''Security'' in the title of the Naval Nuclear Propulsion Program. These changes would reflect new titles and organization name changes since the last changes to this rule.

The term ''Manager'' would be amended by removing the references to the Chicago Operations Office, the Oak Ridge Operations Office, and the ''Director, Office of Headquarters Security Operations''. ''Manager'' would be changed by adding ''(to include the Office of River Protection)'' in the reference to ''Richland,'' adding ''for the Office of Environmental Management (EM), the individuals(s) designated in writing by the Senior Advisor, or delegee, adding ''for the Office of Science (SC), the individual designated in writing by the Deputy Director for Operations,'' adding ''Security'' in the title of the Naval Nuclear Propulsion Program, and adding ''Director, Office of Headquarters Security Vetting'' in place of ''Director, Office of Headquarters Security Operations''. These proposed changes would reflect new titles and organization name changes since the last change to this rule.

The term ''Sensitive Position'' would be added to reflect the expansion of the scope of the rule to apply to individuals applying for or in sensitive positions, consistent with E.O. 13467, as amended, as explained in paragraph 4.

8. In § 710.6, ''Cooperation by the individual,'' § 710.6(a)(1) would be amended to add ''continuous vetting'' after ''reinvestigation.'' The Director of National Intelligence and the Director of the Office of Personnel Management, pursuant to their responsibilities as Executive Agents under E.O. 13467, as amended, launched the ''Trusted Workforce 2.0'' initiative to transform Federal personnel vetting programs. One of the changes included a transition from traditional periodic reinvestigations to government-wide continuous vetting. Paragraph (a)(1) would also delete ''interviews'' and add in its place ''consultations'' for consistency with current DOE terminology. It would also delete ''investigative activities'' and add in its place ''actions'' for consistency with current DOE terminology. The last sentence of paragraph (a)(1) would also be amended to add the language ''for incumbents'' before ''any access authorization then in effect may be administratively withdrawn'' to clarify that the term ''administratively withdrawn'' applies to incumbents while ''administratively terminated'' applies to applicants. Paragraph (c) would be amended to delete the words ''his/her'' and add in their place the word ''their'' for consistency with other DOE policies.

9. Section 710.7(d) would be amended to delete ''reports of investigation'' and add in its place ''investigative results report'' for consistency with DOE and other Federal agency practices.

10. Section 710.8(a) would be amended by removing references to an ''interview'' wherever it occurs and adding, in their place references to a ''consultation'' for consistency with current DOE terminology.

11. Section 710.9(e) would be amended to reflect the requirements in SEAD 9, *Appellate Review of Retaliation Regarding Security Clearances and Access Determinations.* In 2022, the Director of National Intelligence issued SEAD 9, which established an appellate review process for employees who seek to appeal an adverse final agency determination with respect to alleged retaliatory action(s) taken by an employing agency affecting the employees' security clearance or access determination as a result of protected disclosures. SEAD 9 clarified that the agency review and appeal rights were available to both federal and contractor employees. Therefore, paragraph (e) would be amended to remove the words, ''if the individual is a Federal employee,'' and add language to address the appeal rights under SEAD 9. Paragraphs (e) and (f) would be amended to delete the words, ''his/her,'' and add in their place the word ''their'' for consistency with other DOE policies.

12. Section 710.20 would be amended to remove the word ''interview'' and add in its place the word ''consultation'' for consistency with current DOE terminology.

13. Section 710.21 would be amended to delete from it the words ''his/her'' and add in their place the word ''their'' for consistency with other DOE policies. Paragraph (c)(1) would be amended to add a requirement for the Manager to provide a copy of SEAD 4 or successor directive as part of the notification letter. Since Appendix A, which currently contains SEAD 4, is proposed for removal, this proposed amendment would ensure that an individual going through administrative review under this part will receive a copy of the applicable adjudicative standards. Paragraph (c)(2) would be amended to remove the words, ''For Federal employees only'', and add language to reflect the requirements in SEAD 9, *Appellate Review of Retaliation Regarding Security Clearances and Access Determinations,* which extended appeal rights beyond Federal employees to include Federal contractors, as detailed in the explanation of proposed changes to § 710.9(e), in paragraph 11.

14. Proposed § 710.22(c)(4) would be amended to clarify that the 30 days provided to the individual for requesting review of the Manager's initial decision is subject to any extensions granted by the Director under paragraph (c)(3).

15. Proposed § 710.25(c) would be amended to delete the words ''his/her'' and add in their place the words ''their'' for consistency with other DOE policies. Paragraph (e) would be amended to delete language stating that hearings will normally be held at or near a DOE

facility unless determined otherwise by the Administrative Judge and also to delete that the hearing location will be selected for all the participants' convenience. Paragraph (f) would be amended to add language to clarify that conferences may be conducted by telephone, video teleconference, or other means as directed by the Administrative Judge. These changes to paragraphs (e) and (f) are proposed in order to conform to current agency practice.

16. Proposed § 710.26(a) would be amended to delete the words ''his/her'' and add in their place the words ''their'' for consistency with other DOE policies. Paragraph (d) would be amended to delete language that requires the proponent of a witness to conduct the direct examination of their witness. This change is proposed because if an individual is represented by counsel, the individual's counsel will often conduct the direct examination of the individual's witnesses. However, when the individual is not represented by counsel, the individual may choose to allow DOE counsel to conduct the direct examination of the individual's witnesses. This proposed change would align the regulation with current DOE practices, which provides the individual with flexibility in the conduct of direct examinations. In addition, the language currently in § 710.26(d), ''[w]henever reasonably possible, testimony shall be given in person,'' would be deleted to reflect the current practice that testimony is normally given live via video teleconference and not in-person.

17. Proposed § 710.27(b) would be amended to delete the word ''handicapped'' and add in its place the word ''prejudiced'' to reflect updated terminology.

18. Proposed § 710.28(a)(4) would be amended to delete the words ''his/her'' and add in their place the words ''their'' for consistency with other DOE policies.

19. Proposed § 710.29(c) would be amended to delete the words ''his/her'' and add in their place the word ''their'' to reflect updated terminology for consistency with other DOE policies.

20. In § 710.31, paragraphs (b)(4), (b)(5), and (b)(6) would be amended to correct typographical errors made in the last substantive revision to this regulation. Specifically, paragraphs (b)(4) and (b)(5) would be amended to delete the language ''provisions of § 710.31(2)'' and add, in their place, ''provisions of § 710.31(b)(2)'' since § 710.31(2) does not exist in the current rule and the correct reference should have been to paragraph (b)(2), which describes the actions to be taken depending on whether a reconsideration request is approved. Paragraph (b)(6) would be amended to delete the language ''paragraphs (f) or (g)'' and add, in their place, ''paragraphs (b)(4) or (b)(5)''. There are no paragraphs (f) and (g) in the current § 710.31 and paragraph (b)(6) should have referenced §§ 710.31(b)(4) and 710.31(b)(5), which describe the actions to be taken based on whether an individual is found to be eligible for access authorization. Paragraph (b)(6) would also be amended to delete the language ''set forth in paragraph (d)'' and add, in its place, ''set forth in paragraph (b)(2)'' for the same reason explained previously. This change is proposed because there is no § 710.31(d) in the current rule. The correct reference should have been § 710.31(b)(2).

21. Appendix A to Part 710—SEAD 4, *National Security Adjudicative Guidelines* (June 8, 2017) would be deleted in its entirety. On October 17, 2016, DOE removed its adjudicative criteria from the regulation in order to rely solely on the national security adjudicative guidelines (81 FR 71331). As part of that rule, DOE added the entire text of the national security adjudicative guidelines to the regulation as appendix A. The intent behind adding appendix A was to provide the maximum transparency and notice to the public as to the applicable adjudicative criteria in determining eligibility for access to classified information. On December 4, 2017, this regulation was updated to include the latest version of the national security adjudicative guidelines, SEAD 4, which was issued by the Director of National Intelligence. Future updates to the National Security Adjudicative Guidelines are likely and DOE believes retaining appendix A, which may not reflect the latest updated version due to the time it takes to amend a regulation, may cause confusion to the public as to which version of the guidelines applies to their eligibility determination. Therefore, DOE proposes to remove appendix A, SEAD 4, National Security Adjudicative Guidelines (June 8, 2017), and require that a copy of the applicable guidelines be provided to individuals as part of the notification letter, as proposed in § 710.21(c)(1).

III. Regulatory Review

A. Executive Orders 12866, 13563, and 14094

This proposed regulatory action has been determined not to be a ''significant regulatory action'' under E.O. 12866, *Regulatory Planning and Review,* 58 FR 51735 (October 4, 1993) as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, ''Modernizing Regulatory Review'', 88 FR 21879 (April 11, 2023). Accordingly, this proposed rule is not subject to review under the E.O. by the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB).

B. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' 61 FR 4729

(February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed regulation meets the relevant standards of E.O. 12988.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' (67 FR 53461, August 16, 2002), DOE published procedures and policies on

February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's website at *www.gc.doe.gov.*

DOE has reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed rule would amend procedures that apply to the determination of eligibility of individuals for access to classified information and access to special nuclear material. The proposed rule applies to individuals, and would not apply to ''small entities,'' as that term is defined in the Regulatory Flexibility Act. In addition, as stated previously, DOE has no discretion in adopting the national policies; it is the national policies themselves that impose any impact on affected individuals. As a result, if adopted, the proposed rule would not have a significant economic impact on a substantial number of small entities.

Accordingly, DOE certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required, and DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

D. Paperwork Reduction Act

This proposed rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. National Environmental Policy Act

DOE has determined that this proposed rule is covered under the Categorial Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A5 of appendix A to subpart D, 10 CFR part 1021, which applies to a rulemaking that amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Executive Order 13132

E.O. 13132, ''Federalism'', 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it does not preempt State law and, if adopted, would not have a substantial direct effect 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. No further action is required by E.O. 13132.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or Tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments. 2 U.S.C. 1534. The proposed rule would expand the scope of the current rule with respect to individuals covered, make updates and clarifications for consistency with national polices and DOE practices, update references to DOE officials and offices, and make minor updates to improve clarity and delete obsolete references. The proposed rule would not result in the expenditure by State, local or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to, OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under E.O. 12866, or any successor order, and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and

DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Approval by the Office of the Secretary of Energy

The Secretary of Energy has approved issuance of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Government employees, Nuclear energy.

Signing Authority

This document of the Department of Energy was signed on January 24, 2024, by Jennifer Granholm, Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC on January 26, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set out in the preamble, DOE proposes to amend part 710 of title 10 of the Code of Federal Regulations as set forth below:

PART 710—PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER AND SPECIAL NUCLEAR MATERIAL OR ELIGIBILTY TO HOLD A SENSITIVE POSITION

■ 1. The authority citation for part 710 is revised to read as follows:

Authority: 42 U.S.C. 2165, 2201, 5815, 7101, *et seq.,* 7383h–l; 50 U.S.C. 2401 *et seq.;* E.O. 10865, 3 CFR 1959–1963 comp., p. 398, as amended, 3 CFR Chap. IV; E.O. 13526, 3 CFR 2010 Comp., pp. 298–327 (or successor orders); E.O. 12968, 3 CFR 1995 Comp., p. 391; E.O. 13467, 3 CFR 2008 Comp., p. 196.

■ 2. Revise the part 710 heading to read as set forth above.

■ 3. Revise § 710.1 to read as follows:

§ 710.1 Purpose.

(a) This part establishes the procedures for determining the eligibility of individuals described in § 710.2 for access to classified matter or special nuclear material, pursuant to the Atomic Energy Act of 1954, or for access to national security information in accordance with E.O. 13526 (Classified National Security Information), or eligibility to hold a sensitive position pursuant to E.O. 13467 (Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information).

(b) This part implements: E.O. 12968, 60 FR 40245 (August 2, 1995), as amended; E.O. 13526, 75 FR 707 (January 5, 2010) as amended; E.O. 10865, 25 FR 1583 (February 24, 1960), as amended; E.O. 13467, 73 FR 38103 (June 30, 2008) as amended; and the National Security Adjudicative Guidelines, issued as SEAD 4, by the Director of National Intelligence on December 10, 2016, or successor directive.

■ 4. Revise § 710.2 to read as follows:

§ 710.2 Scope.

(a) The procedures outlined in this rule apply to determinations of eligibility for access authorization or eligibility to hold a sensitive position for:

(1) Employees (including consultants) of, and applicants for employment with, contractors and agents of the DOE;

(2) Access permittees of the DOE and their employees (including consultants) and applicants for employment;

(3) Employees (including consultants) of, and applicants for employment with, the DOE; and

(4) Other persons designated by the Secretary of Energy.

(b) To the extent the procedures in this rule apply to determinations of eligibility for access to classified information or special nuclear material, they shall also apply to determinations of eligibility to hold a sensitive position, except as specifically noted.

§ 710.3 [Removed and Reserved]

■ 5. Remove and reserve § 710.3.

■ 6. Revise § 710.4 to read as follows:

§ 710.4 Policy.

(a) It is the policy of DOE to provide for the security of its programs in a manner consistent with traditional American concepts of justice and fairness. To this end, the Secretary has established procedures that will afford those individuals described in § 710.2 the opportunity for administrative review of questions concerning their eligibility for access authorization or eligibility to hold a sensitive position.

(b) It is also the policy of DOE that none of the procedures established for determining eligibility for access authorization or eligibility to hold a sensitive position shall be used for an improper purpose, including any attempt to coerce, restrain, threaten, intimidate, or retaliate against individuals for exercising their rights under any statute, regulation or DOE directive. Any DOE officer or employee violating, or causing the violation of this policy, shall be subject to appropriate disciplinary action.

■ 7. Amend § 710.5 by:

■ a. Adding in alphabetical order the definition for ''Continuous vetting'';

■ b. Revising the definitions for ''Local Director of Security'' and ''Manager''; and

■ c. Adding in alphabetical order the definition for ''Sensitive position''.

The additions and revisions read as follows:

§ 710.5 Definitions.

* * * * *

Continuous vetting means reviewing the background of an individual described in § 710.2(a)(1) through (4) of this part at any time to determine whether that individual continues to meet applicable requirements for access authorization or a sensitive position.

* * * * *

Local Director of Security means the individual with primary responsibility for safeguards and security at the Idaho Operations Office; for the Office of Environmental Management (EM), the individual(s) designated in writing by the Senior Advisor, or delegee; for the Office of Science (SC), the individual designated in writing by the Deputy Director for Operations; for Naval Reactors, the individual(s) designated under the authority of the Director, Security Naval Nuclear Propulsion Program; for the National Nuclear Security Administration (NNSA), the individual(s) designated in writing by the Chief, Defense Nuclear Security; and for DOE Headquarters cases the Director, Office of Headquarters Personnel Security Operations.

Manager means the senior Federal official at the Idaho, Richland (to include the Office of River Protection) Operations Offices; for the Office of Environmental Management, the individual(s) designated in writing by the Senior Advisor, or delegee; for the Office of Science (SC), the individual designated in writing by the Deputy Director for Operations; for Naval Reactors, the individual designated

under the authority of the Director, Security Naval Nuclear Propulsion Program; for the NNSA, the individual designated in writing by the NNSA Administrator or Deputy Administrator; and for DOE Headquarters cases, the Director, Office of Headquarters Security Vetting.

* * * * *

Sensitive position means any position within or in support of a department or agency, the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security, regardless of whether the occupant has access to classified information, and regardless of whether the occupant is an employee, a military service member, or a contractor. Sensitive positions for the purpose of this part only include individuals designated by DOE in non-critical sensitive, critical sensitive or special sensitive positions.

* * * * *

■ 8. Amend § 710.6 by:

■ a. Revising paragraph (a)(1); and

■ b. Removing in paragraph (c), in the first sentence the words ''his/her'' and adding in their place the word ''their''.

The revision reads as follows:

§ 710.6 Cooperation by the individual.

(a)(1) It is the responsibility of the individual to provide full, frank, and truthful answers to DOE's relevant and material questions, and when requested, to furnish or authorize others to furnish information that the DOE deems pertinent to the individual's eligibility for access authorization. This obligation to cooperate applies when completing security forms, during the course of a personnel security background investigation, reinvestigation or continuous vetting, and at any stage of DOE's processing of the individual's access authorization request, including but not limited to, personnel security consultations, DOE-sponsored mental health evaluations, and other authorized DOE actions under this part. The individual may elect not to cooperate; however, such refusal may prevent DOE from reaching an affirmative finding required for granting or continuing the access authorization. In this event, for incumbents any access authorization then in effect may be administratively withdrawn or, for applicants, further processing may be administratively terminated.

* * * * *

§ 710.7 [Amended]

■ 9. Amend § 710.7 paragraph (d) by removing the words ''reports of investigation'' and adding, in their place, the words ''investigative results report''.

■ 10. Amend § 710.8 paragraph (a) by revising the first sentence to read as follows:

§ 710.8 Action on derogatory information.

(a) If a question arises as to the individual's access authorization eligibility, the Local Director of Security shall authorize the conduct of a consultation with the individual, or other appropriate actions and, on the basis of the results of such consultation or actions, may authorize the granting of the individual's access authorization. * * *

* * * * *

■ 11. Amend § 710.9 by:

■ a. Revising paragraph (e); and

■ b. Removing in paragraph (f), in the second sentence the words ''his/her'' and adding in their place the word ''their''.

The revision reads as follows:

§ 710.9 Suspension of access authorization.

* * * * *

(e) Written notification to the individual shall include notification that if the individual believes that the action to suspend their access authorization was taken as retaliation against the individual for having made a protected disclosure, as defined in Presidential Policy Directive 19, *Protecting Whistleblowers with Access to Classified Information,* or any successor directive issued under the authority of the President, the individual may submit a request for review of this matter directly to the DOE Office of the Inspector General. Such a request shall have no impact upon the continued processing of the individual's access authorization eligibility under this part. If the individual receives an adverse final agency determination in response to such request, the individual may submit an appeal of that decision to the Director of National Intelligence, in accordance with the Security Executive Agent Directive 9, Appellate Review of Retaliation Regarding Security Clearances and Access Determinations, or to the Inspector General of the Intelligence Community, in accordance with Intelligence Community Directive 120, Intelligence Community Whistleblower Protection.

* * * * *

§ 710.20 [Amended]

■ 12. Amend § 710.20 by removing the word ''interview'' and adding in its place ''consultation''.

■ 13. Amend § 710.21 by:

■ a. Removing in paragraphs (b)(7) and (b)(12)(iii) the words ''his/her'' and adding in their place the word ''their''; and

■ b. Revising paragraphs (c)(1) and (2).

The revisions read as follows:

§ 710.21 Notice to the individual.

* * * * *

(c) * * *

(1) Include a copy of this part and SEAD 4, *National Security Adjudicative Guidelines,* or successor directive; and

(2) Indicate that if the individual believes that the action to process the individual under this part was taken as retaliation against the individual for having made a protected disclosure, as defined in Presidential Policy Directive 19, *Protecting Whistleblowers with Access to Classified Information,* or any successor directive issued under the authority of the President, the individual may submit a request for review of this matter directly to the DOE Office of the Inspector General. Such a request shall have no impact upon the continued processing of the individual's access authorization eligibility under this part. If the individual receives an adverse final agency determination in response to such request, the individual may submit an appeal of that decision to the Director of National Intelligence, in accordance with the SEAD 9, *Appellate Review of Retaliation Regarding Security Clearances and Access Determinations,* or to the Inspector General of the Intelligence Community, in accordance with *Intelligence Community Directive 120,* Intelligence Community Whistleblower Protection.

■ 14. Amend § 710.22 by revising paragraph (c)(4) to reads as follows:

§ 710.22 Initial decision process.

* * * * *

(c) * * *

(4) That if the written request for a review of the Manager's initial decision by the Appeal Panel is not filed within 30 calendar days of the individual's receipt of the Manager's letter, or by the date to which the Director has granted an extension, the Manager's initial decision in the case shall be final and not subject to further review or appeal.

■ 15. Amend § 710.25 by:

■ a. Removing in paragraph (c) the words ''his/her'' and adding in their place the word ''their''; and

■ b. Revising paragraphs (e) and (f).

The revisions read as follows:

§ 710.25 Appointment of Administrative Judge; prehearing conference; commencement of hearings.

* * * * *

(e) The Administrative Judge shall determine the day, time, and place for the hearing and shall decide whether the hearing will be conducted via video teleconferencing. In the event the individual fails to appear at the time and place specified, without good cause shown, the record in the case shall be closed and returned to the Manager, who shall then make an initial determination regarding the eligibility of the individual for DOE access authorization in accordance with § 710.22(a)(3).

(f) At least 7 calendar days prior to the date scheduled for the hearing, the Administrative Judge shall convene a prehearing conference for the purpose of discussing stipulations and exhibits, identifying witnesses, and disposing of other appropriate matters. The conference may be conducted by telephone, video teleconference, or other means as directed by the Administrative Judge.

* * * * *

■ 16. Amend § 710.26 by:

■ a. Removing in paragraph (a) wherever it appears the words ''his/her'' and adding in their place the word ''their''; and

■ b. Revising paragraph (d).

The revision reads as follows:

§ 710.26 Conduct of hearings.

* * * * *

(d) DOE Counsel shall assist the Administrative Judge in establishing a complete administrative hearing record in the proceeding and bringing out a full and true disclosure of all facts, both favorable and unfavorable, having a bearing on the issues before the Administrative Judge. The individual shall be afforded the opportunity of presenting testimonial, documentary, and physical evidence, including testimony by the individual in the individual's own behalf. All witnesses shall be subject to cross-examination, if possible.

* * * * *

§ 710.27 [Amended]

■ 17. Amend § 710.27 paragraph (b), in the second sentence by removing the word ''handicapped'' and adding in its place, the word ''prejudiced''.

§ 710.28 [Amended]

■ 18. Amend § 710.28 in paragraph (a)(4) by removing the words ''his/her'' and adding in their place the word ''their''.

§ 710.29 [Amended]

■ 19. Amend § 710.29 paragraph (c), in the first sentence by removing the words ''his/her'' and adding in their place the word ''their''.

■ 20. Amend § 710.31 by revising paragraphs (b)(4), (5), and (6) to read as follows:

§ 710.31 Reconsideration of access eligibility.

* * * * *

(b) * * *

(4) If, pursuant to the provisions of paragraph (b)(2) of this section, the Manager determines the individual is eligible for access authorization, the Manager shall grant access authorization.

(5) If, pursuant to the provisions of paragraph (b)(2) of this section, the Manager determines the individual remains ineligible for access authorization, the Manager shall so notify the Director in writing. If the Director concurs, the Director shall notify the individual in writing. This decision is final and not subject to review or appeal. If the Director does not concur, the Director shall confer with the Manager on further actions.

(6) Determinations as to eligibility for access authorization pursuant to paragraphs (b)(4) or (5) of this section may be based solely upon the mitigation of derogatory information which was relied upon in a final decision to deny or to revoke access authorization. If, pursuant to the procedures set forth in paragraph (b)(2) of this section, previously unconsidered derogatory information is identified, a determination as to eligibility for access authorization must be subject to a new Administrative Review proceeding.

Appendix A to Part 710 [Removed]

■ 21. Appendix A to part 710 is removed.

[FR Doc. 2024–01874 Filed 1–30–24; 8:45 am]

BILLING CODE 6450–01–P

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1042

[Docket No. CFPB–2024–0003]

RIN 3170–AB16

Fees for Instantaneously Declined Transactions

AGENCY: Consumer Financial Protection Bureau.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is proposing to prohibit covered financial institutions from charging fees, such as nonsufficient funds fees, when consumers initiate payment transactions that are instantaneously declined. Charging such fees would constitute an abusive practice under the Consumer Financial Protection Act's prohibition on unfair, deceptive, or abusive acts or practices.

DATES: Comments must be received on or before March 25, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2024–0003 or RIN 3170–AB16, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. A brief summary of this document will be available at *https://www.regulations.gov/docket/CFPB-2024-0003.*
- *Email: 2024-NPRM-NSF@cfpb.gov.* Include Docket No. CFPB–2024–0003 or RIN 3170–AB16 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—2024 NPRM Fees for Instantaneously Declined Transactions, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The CFPB encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.*

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Pavitra Bacon, Joseph Devlin, Lawrence Lee, or Michael G. Silver, Senior Counsels, Office of Regulations, at 202–435–7700 or *https://reginquiries.consumerfinance.gov/.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Rulemaking Goals

When a consumer's attempted withdrawal, debit, payment, or transfer transaction amount exceeds the available funds in their account, currently, a financial institution might decline the transaction and charge the consumer a fee, often called a nonsufficient funds (NSF) fee. NSF fees might be charged on transactions that the financial institution declines within seconds after the payment request is initiated, as well as on transactions that are rejected hours or days after the initial request to pay is made. As discussed below, many financial institutions in recent years have stopped charging NSF fees. To the extent they continue to be charged currently, however, NSF fees are almost always charged only on check or Automated Clearing House (ACH) transaction declinations, which do not occur instantaneously. In contrast, NSF fees are rarely charged on Automated Teller Machine (ATM) or point-of-sale (POS) debit transaction declinations, which do occur instantaneously. The CFPB is aware of limited instances where such fees might be charged on the latter set of transactions (for example, in connection with prepaid accounts and transactions declined at ATMs that are outside the depository institution's ATM network).[1] To a similarly limited extent, the CFPB has also observed such fees being charged in connection with other types of transactions (such as online transfer and in-person bank teller transactions).[2]

The CFPB is proposing to prohibit covered financial institutions from charging NSF fees on transactions that are declined instantaneously or near-instantaneously.[3] As technological advancements may eventually make instantaneous payments ubiquitous, the CFPB believes that is important to proactively set regulations to protect consumers from abusive practices.

B. High-Level Summary of the Proposed Rule

To prevent abusive practices related to NSF fees on instantaneously declined transactions, as detailed below in part IV (Discussion of Proposed Rule), the CFPB proposes to prohibit covered financial institutions from charging such fees. The CFPB preliminarily concludes that charging NSF fees in these circumstances would constitute an abusive practice under the Consumer Financial Protection Act's prohibition on unfair, deceptive, or abusive acts or practices. The proposal would prohibit financial institutions from engaging in this practice across all instantaneously declined transactions, regardless of transaction method (*e.g.,* debit card, ATM, person-to-person).

C. NSF Fees in the Market

Today, the combined costs of overdraft and NSF fees constitute a higher cost to consumers than the combined costs of periodic maintenance fees and ATM fees.[4] Although overdraft and NSF fees are distinct, many publications discuss them together,[5] and, in recent decades, a financial institution's NSF fee has typically been the same amount as any per-transaction overdraft fee it may charge.[6] The amount of an NSF fee is typically not pegged to the transaction's processing cost [7] or the transaction's amount; [8] institutions generally charge a fixed amount per declined transaction.[9] The CFPB's research found that in 2012, the median NSF fee among 33 large institutions sampled was $34.[10] While many institutions have opted to stop charging NSF fees within the last two years,[11] the CFPB recently found

[1] *See* Trevor Bakker et al., Consumer Fin. Prot. Bureau, *Data Point: Checking account overdraft,* at 20 tbl. 8 (July 2014), *https://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf* (CFPB 2014 Data Point).

[2] *Id.*

[3] As explained below, covered transactions would include transactions that are declined ''instantaneously'' or ''near-instantaneously.'' The discussion below describes the difference in terminology. For ease of reference, the proposal sometimes refers jointly to these two terms as ''instantaneously.''

[4] *See, e.g.,* Consumer Fin. Prot. Bureau, *Data Point: Overdraft/NSF Fee Reliance Since 2015—Evidence from Bank Call Reports,* at 2–3 (Dec. 2021), *https://files.consumerfinance.gov/f/documents/cfpb_overdraft-call_report_2021-12.pdf* (CFPB December 2021 Data Point); *see generally* Fed. Fin. Insts. Examination Council, *Central Data Repository's Public Data Distribution, https://cdr.ffiec.gov/public/ManageFacsimiles.aspx* (last visited Jan. 17, 2024).

[5] Generally, an overdraft fee is charged when a transaction (debit, payment, transfer, or withdrawal) that exceeds the consumer's account balance is paid (covered) by the accounting-holding financial institution. An NSF fee is charged when a transaction (debit, payment, transfer, or withdrawal) that would exceed the account balance if it were paid is instead returned *unpaid* by the account-holding financial institution. Despite this distinction, the CFPB believes that surveys, reports, and studies often group these two types of fees together. This is in part because banks with over $1 billion in assets report overdraft and NSF fees together within the ''consumer overdraft-related service charges'' category (*see* Fed. Fin. Insts. Examination Council, FFIEC 031 and 041, *Instructions for Preparation of Consolidated Reports of Condition and Income,* at RI 36, *https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_202303_i.pdf* (last updated Mar. 2023)). In addition, either of these fees can be charged when a consumer's available balance is insufficient to cover a transaction, and there is substantial overlap in the population of consumers who incur overdraft and NSF fees. *See* Consumer Fin. Prot. Bureau, *A Closer Look: Overdraft and the Impact of Opting-In* (Jan. 19, 2017), *https://files.consumerfinance.gov/f/documents/201701_cfpb_Overdraft-and-Impact-of-Opting-In.pdf* (CFPB Closer Look); Consumer Fin. Prot. Bureau, *Overdraft and NSF Practices at Very Large Financial Institutions* (Jan. 2024), *https://files.consumerfinance.gov/f/documents/cfpb_overdraft-nsf-practices-very-large-financial-institutions_2024-01.pdf* (Overdraft and NSF Report).

[6] *See,* Consumer Fin. Prot. Bureau, *CFPB Study of Overdraft Programs: A white paper of initial data findings,* at 11 n.f, 52 (June 2013), *https://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf* (CFPB White Paper).

[7] For example, the median cost of issuing a business check is $2.01–$4.00 and the cost to receive a business check is $1.01–$2.00. *See* Ass'n for Fin. Profs. (underwritten by Corpay), *2022 AFP Payments Cost Benchmarking Survey,* at 16 (Jan. 2022), *https://www.afponline.org/publications-data-tools/reports/survey-research-economic-data/Details/paymentscost* (available for download at *https://www.corpay.com/resources/whitepapers/2022-afp-payments-cost-benchmarking-survey/gated*). The CFPB expects that the costs for consumer checks to be within similar ranges. The median total processing cost across issuers for all types of debit card transactions was 11 cents per transaction in 2011 (*see* 76 FR 43394, 43397 (July 20, 2011)) and the average per-transaction authorization, clearing, and settlement costs, excluding issuer fraud losses, among issuers covered by the Board's debit card interchange fee rule was 3.9 cents in 2021 (Bd. of Governors of the Fed. Rsrv. Sys., *2021 Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions,* at 24 (Oct. 2023), *https://www.federalreserve.gov/paymentsystems/files/debitfees_costs_2021.pdf* (FRB 2021 Interchange)).

[8] The average value of a check payment in 2021 was $2,430. Bd. of Governors of the Fed. Rsrv. Sys., *The Federal Reserve Payments Study: 2022 Triennial Initial Data Release, https://www.federalreserve.gov/paymentsystems/fr-payments-study.htm* (last updated July 27, 2023) (FRB 2022 Payments Study). In 2022, the average value of a debit card transaction was $46.84. Bd. of Governors of the Fed. Rsrv. Sys., *Regulation II (Debit Card Interchange Fees and Routing)—Average Debit Card Interchange Fee by Payment Card Network, https://www.federalreserve.gov/paymentsystems/regii-average-interchange-fee.htm* (last updated Sept. 23, 2022) (FRB Regulation II).

[9] CFPB White Paper at 11.

[10] *Id.* at 52.

[11] *See* Consumer Fin. Prot. Bureau, *Data spotlight: Vast majority of NSF fees have been eliminated, saving consumers nearly $2 billion annually* (Oct. 11, 2023), *https://www.consumerfinance.gov/data-research/research-reports/vast-majority-of-nsf-fees-have-been-eliminated-saving-consumers-nearly-2-billion-annually/* (CFPB October 2023 Data Spotlight); Consumer Fin. Prot. Bureau, *Non-sufficient fund (NSF) fee practices of the 25 banks reporting the most overdraft/NSF revenue in 2021, https://files.consumerfinance.gov/f/documents/cfpb_nsf-fee-banks-chart_2023-05.jpg* (last visited Jan. 17, 2024). *See also* Meghan Greene et al., Fin. Health Network, *FinHealth Spend Report 2023: U.S. Household Spending on Financial Services Amid Historic Inflation and an Uncertain Economy,* at 5 (June 2023), *https://finhealthnetwork.org/wp-content/uploads/2023/06/FinHealth-Spend-Report-2023.pdf* (FinHealth Spend Report 2023) (documenting a continued decrease in spending on overdraft and NSF fees, from $10.6 billion in 2021 to $9.9 billion in 2022); Oz Shy & Joanna Stavins, *Who Is Paying All These Fees? An Empirical Analysis of Bank Account and Credit Card Fees,* at 6 (Fed. Rsrv. Bank of Bos., Working Paper No. 22–

through its market monitoring that, among institutions above $10 billion in assets still charging such fees, the median fee is $32.

1. NSF Fee Impacts on Certain Consumer Populations

Overdraft and NSF fees tend to be incurred by consumers with higher financial vulnerability (including those with lower incomes [12] and lower credit scores [13]). The CFPB has previously found that individuals with more overdraft and NSF fees in the prior year tend to have lower account balances and tend to be more credit-constrained than other consumers, as they have lower average credit scores, are less likely to possess a general-purpose credit card, have less available credit when they do have such cards, and more often possess thin credit files.[14] Researchers also found that only 4 percent of ''Financially Healthy'' [15] households with checking accounts reported paying an overdraft or NSF fee in 2022, compared with 46 percent of ''Financially Vulnerable'' [16] households.[17] According to a CFPB study, 9 percent of all accounts at the studied banks paid nearly 80 percent of combined overdraft and NSF fees.[18]

Beyond the impact of having insufficient funds, incurring NSF fees can negatively affect a consumer's overall perceptions of whether the banking system is fair, transparent, and competitive.[19] The Federal Deposit Insurance Corporation (FDIC) has found that among unbanked households in 2021, almost three in ten (29.2 percent) cited as a main reason for not having an account concerns related to fees or minimum balance requirements—''Bank account fees are too high,'' ''Bank account fees are too unpredictable,'' or ''Don't have enough money to meet minimum balance requirements.'' [20]

2. The Rise of Noncash Payments

When NSF fees are charged, they are almost always charged exclusively in connection with noncash payments (that is, ACH, cards, mobile application payments, and checks), the use of which has grown rapidly due in large part to technological and regulatory changes. In a recent study, the Federal Reserve Bank of San Francisco (FRBSF) found that generally, consumers are shifting away from cash and increasingly making card payments.[21] The FRBSF attributed this shift in large part to consumers making a greater share of purchases remotely when compared to before the COVID–19 pandemic [22] and to increased preference for card payments.[23] In addition, consumers are increasingly adopting newer noncash payment methods, such as those initiated through digital applications.[24] This shift away from cash by banks also coincided with certain regulatory developments—such as the enactment of the Check Clearing for the 21st Century Act (Check 21), a Federal law that took effect in 2004.[25] Check 21 provided that a properly prepared paper reproduction of an original check (a ''substitute check'') is the legal equivalent of an original paper check [26] and allowed banks to avoid the ''inefficient and costly'' [27] transportation of paper checks.

3. Government Regulation of Noncash Payments and NSF Fees

The rise in noncash payments also prompted regulatory interventions necessary to protect consumers. For example, in 2009, the Board of Governors of the Federal Reserve System (Board) amended Regulation E, which was subsequently recodified by the CFPB, to require financial institutions to obtain account holders' affirmative consent (*i.e.,* their ''opt-in'') for overdraft coverage of ATM and one-time (non-recurring) POS debit card transactions before the financial institution could charge a fee for paying such overdraft transactions (2009 Opt-in Rule).[28] Following implementation of that rule, the CFPB found that consumers who opted in pay significantly more fees than consumers who do not opt in (*i.e.,* opted-in consumers paid on average $22 per month in overdraft and NSF fees while non-opted-in consumers paid on average $3 per month).[29] The CFPB also found that if a consumer has not opted in, depository institutions typically will not authorize any ATM or one-time debit card transactions if there are insufficient funds at the time the transaction is attempted.[30] These institutions rarely charge an NSF fee when declining an ATM transaction or a debit card authorization inquiry at a merchant POS,[31] likely for two reasons. First, the cost of declining such transactions has always been trivial.[32]

18, 2022), *https://www.bostonfed.org/-/media/Documents/Workingpapers/PDF/2022/wp2218.pdf* (Boston Fed Working Paper) (finding that ''[a] 'bounced'-check fee—assessed when the amount on a check exceeds the account balance—was [ ] rare, with only 1.0 percent of all consumers having paid such a fee in 2021'').

[12] One study found that consumers making under $30,000 a year are nearly twice as likely to incur an overdraft fee as those making over $30,000 (20 percent vs. 10 percent). Pew Ctr. on the States, *Overdraft America: Confusion and Concerns about Bank Practices,* at 6 (May 2012), *https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2012/sciboverdraft20america1pdf.pdf* (Pew 2012 Survey). *See also* Boston Fed Working Paper at 6.

[13] *See, e.g.,* David Low et al., Consumer Fin. Prot. Bureau, *Data Point: Frequent Overdrafters,* at 16 tbl. 2 (Aug. 2017), *https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf* (CFPB 2017 Data Point).

[14] CFPB 2017 Data Point at 5; Boston Fed Working Paper at 6, 16 (finding that individuals with FICO scores of less than 600 were more likely to have paid NSF fees in 2021 (3.5 percent) than the average consumer; that individuals with scores above 800 were significantly less likely to have done so (0.1 percent); and that this disparity also applied to overdraft fees although to a starker extent (32.0 percent versus 2.3 percent)).

[15] FinHealth Spend Report 2023 at 12 (describing ''Financially Healthy'' individuals as ''able to manage their day-to-day expenses, absorb financial shocks, and progress toward meeting their long-term financial goals'').

[16] *Id.* (describing ''Financially Vulnerable'' individuals as ''struggling with almost all aspects of their financial lives'').

[17] FinHealth Spend Report 2023 at 7.

[18] CFPB 2017 Data Point at 13.

[19] Joe Valenti, *Overdraft fees can price people out of banking,* Consumer Fin. Prot. Bureau (Mar. 30, 2022), *https://www.consumerfinance.gov/about-us/blog/overdraft-fees-can-price-people-out-of-banking/.*

[20] Fed. Deposit Ins. Corp., *2021 FDIC National Survey of Unbanked and Underbanked Households,* at 2 (Oct. 2022), *https://www.fdic.gov/analysis/household-survey/2021report.pdf* (FDIC 2021 Survey).

[21] Emily Cubides & Shaun O'Brien, Fed. Rsrv. Bank of S.F., *2023 Findings from the Diary of Consumer Payment Choice,* at 4, 6 (May 2023), *https://www.frbsf.org/cash/wp-content/uploads/sites/7/2023-Findings-from-the-Diary-of-Consumer-Payment-Choice.pdf.*

[22] *Id.* at 7–8 (20 percent of purchases and person-to-person (P2P) payments were made remotely or online in 2020 and 2021 versus 13 percent of such payments in 2019).

[23] *Id.* at 8 (''Consumers prefer credit cards because of the perceived convenience, lower rates of cash acceptance, and the ease of record keeping as compared to cash.'').

[24] *See* Kevin Foster et al., *The 2021 Survey and Diary of Consumer Payment Choice: Summary Results,* at 7 (Sept. 2022), *https://www.atlantafed.org/-/media/documents/banking/consumer-payments/survey-diary-consumer-payment-choice/2021/sdcpc_2021_report.pdf* (finding that 66.4 percent of all consumers had adopted one or more payment applications in the previous 12 months—a share that was nearly 20 percent higher than five years earlier).

[25] Check Clearing for the 21st Century Act, Public Law. 108–100, 117 Stat. 1177 (2003).

[26] Fed. Fin. Insts. Examination Council, *Check Clearing for the 21st Century Act Foundation for Check 21 Compliance Training, https://www.ffiec.gov/exam/check21/check21foundationdoc.htm* (last visited Jan. 17, 2024).

[27] Bd. of Governors of the Fed. Rsrv. Sys., *Frequently Asked Questions about Check 21, https://www.federalreserve.gov/paymentsystems/regcc-faq-check21.htm* (last visited Jan. 17, 2024).

[28] *See* Regulation E, 12 CFR 1005.17(b)(2).

[29] CFPB Closer Look at 4.

[30] *Id.* at 2.

[31] *Id.* at 1; *see also* Pew 2012 Survey at 1.

[32] In 2010, card issuers reported that their median per-transaction cost of nonsufficient funds handling was one cent. 76 FR 43394, 43398 (July 20, 2011). Since then, the transacted weighted average cost of nonsufficient funds handling has fallen to $0.005. FRB 2021 Interchange at 39 tbl. 14A. Nonsufficient funds handling costs were described in the survey as ''[c]osts of handling of events in which an

Continued

Second, in its preamble to the 2009 Opt-In Rule, the Board wrote that such fees ''could raise significant fairness issues'' under the Federal Trade Commission (FTC) Act because ''the institution bears little, if any, risk or cost to decline authorization of an ATM or one-time debit card transaction.'' [33] The CFPB understands that many financial institutions interpret that language to suggest that charging NSF fees in these circumstances would violate the FTC Act's unfairness prohibition, and have oriented their practices to charge fees generally only when overdraft coverage is provided on ATM and one-time debit card transactions and to not charge fees when those transactions are declined.[34]

Another impactful change in the noncash market came in 2011 when the debit card interchange fee standard in Regulation II [35] first went into effect, capping the interchange fee that a larger debit card issuer may charge or receive.[36] In response to this rule, some financial institutions initially sought to replace the lost revenue with debit usage fees, but then quickly abandoned such efforts, largely due to public displeasure and pressure.[37]

More recently, there has been an effort across the Federal Government to eliminate fees that are not subject to the competitive processes to ensure fair pricing. In January 2022, the CFPB launched an initiative to reduce certain fees charged by banks and other companies under its jurisdiction.[38] Soon after, the CFPB issued a Request for Information (RFI) regarding anti-competitive fees in banking,[39] took action to constrain ''pay-to-pay'' fees,[40] and announced a proposed rulemaking on credit card late fees.[41] The CFPB also published several research reports on overdraft/NSF fees,[42] an analysis of fees on college banking products,[43] and a report on credit cards.[44] Most recently, the CFPB issued guidance to stop large banks from charging illegal fees for basic customer service [45] and proposed to supervise larger nonbank companies that offer services like digital wallets and payment applications.[46]

The CFPB's recent supervisory and enforcement activity has also focused, in part, on certain types of NSF fees. In its supervisory work, the CFPB has cited financial institutions for engaging in several problematic practices related to deposit account fees, including assessing certain types of NSF fees. For example, the CFPB previously found that some institutions engaged in unfair acts or practices by assessing multiple NSF fees for the same transaction.[47] The CFPB also took concurrent action with the Office of the Comptroller of the Currency (OCC) addressing this practice, among others.[48] Most recently, the CFPB discussed its supervisory findings related to the charging of multiple NSF fees for the same transaction and of returned deposit item fees.[49]

Other Federal agencies have also taken actions to address certain practices related to NSF fees.[50] In September 2023, the Board issued a supervisory statement noting it had cited NSF representment fees as unfair.[51] In April 2023, the OCC issued a bulletin that found, among other things, that the practice of assessing an additional NSF fee on a representment transaction was, in some instances, unfair and deceptive.[52] In August 2022, the FDIC issued supervisory guidance stating that practices involving the charging of multiple NSF fees arising

account does not have enough funds to settle an authorized debit card transaction between the time of authorization of that transaction and the settlement of that transaction.'' *Id.* at 28 n.25. Based on this description, the cost of handling events in which the debit card transaction was not authorized is likely even lower.

[33] *See* 74 FR 59033, 59041 (Nov. 17, 2009).

[34] Through its enforcement work, the CFPB recently found that one bank had violated the Consumer Financial Protection Act's prohibition on deceptive practices by, among other things, misleading deposit account holders into thinking that they would incur NSF fees on one-time debit card and ATM transactions if they chose not to exercise their rights to opt into overdraft coverage under Regulation E. *See* Atlantic Union Bank, File No. 2023–CFPB–0017, at 11 ¶ 26 (Dec. 7, 2023).

[35] This rule implemented the provisions of section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which amended the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) by adding a new section 920 regarding interchange transaction fees and rules for payment card transactions.

[36] Bd. of Governors of the Fed. Rsrv. Sys., *2011 Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions,* at 2 (Mar. 5, 2013), *https://www.federalreserve.gov/paymentsystems/files/debitfees_costs_2011.pdf.* More recently, the Board requested comment on a proposal to lower the maximum interchange fee that a large debit card issuer can receive for a debit card transaction and to establish a regular process for updating the maximum amount every other year going forward. *See* 88 FR 78100 (Nov. 14, 2023).

[37] *See* FRB Regulation II; Rick Rothacker, *Under pressure, Bank of America drops $5 debit card fee* (Nov. 1, 2011), *https://www.reuters.com/article/us-bankofamerica-debit/under-pressure-bank-of-america-drops-5-debit-card-fee-idUSTRE7A04E120111101/;* Samantha Cornell, *BofA to Impose Debit Card Fee: Will Competitors and Consumers Stay on Board of Jump Ship?,* Fordham J. Corp. & Fin. L. (Oct. 31, 2011), *https://news.law.fordham.edu/jcfl/2011/10/31/bofa-to-impose-debit-card-feed-will-competitors-and-consumers-stay-on-board-of-jump-ship/;* Press Release, The Fin. Brand, *BofA's $5 Monthly Debit Fee: The Backlash, The Fallout and What It All Means* (Oct. 4, 2011), *https://thefinancialbrand.com/news/checking-accounts/bank-of-america-debit-card-fee-fallout-19989/.*

[38] Press Release, Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees* (Jan. 26, 2022), *https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-initiative-to-save-americans-billions-in-junk-fees/.*

[39] 87 FR 5801 (Feb. 2, 2022).

[40] Press Release, Consumer Fin. Prot. Bureau, *CFPB Moves to Reduce Junk Fees Charged by Debt Collectors* (June 29, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-moves-to-reduce-junk-fees-charged-by-debt-collectors/.*

[41] 88 FR 18906 (Mar. 29, 2023).

[42] *See, e.g.,* CFPB December 2021 Data Point; CFPB October 2023 Data Spotlight; Consumer Fin. Prot. Bureau, *Data spotlight: Overdraft/NSF revenue down nearly 50% versus pre-pandemic levels* (May 24, 2023), *https://content.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-q4-2022-down-nearly-50-versus-pre-pandemic-levels/full-report/. See also* Consumer Fin. Prot. Bureau, *Trends in overdraft/non-sufficient fund (NSF) fee revenue and practices, https://www.consumerfinance.gov/data-research/research-reports/trends-in-overdraftnon-sufficient-fund-nsf-fee-revenue-and-practices/* (last updated May 24, 2023) (CFPB Overdraft/NSF Trends).

[43] Consumer Fin. Prot. Bureau, *College Banking and Credit Card Agreements* (Oct. 2022), *https://files.consumerfinance.gov/f/documents/cfpb_college-banking-report_2022.pdf.*

[44] Consumer Fin. Prot. Bureau, *The Consumer Credit Card Market,* at 52 (Sept. 2021), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf.*

[45] 88 FR 71279 (Oct. 16, 2023).

[46] 88 FR 80197 (Nov. 17, 2023).

[47] Consumer Fin. Prot. Bureau, *Supervisory Highlights: Junk Fees Special Edition, Issue 29, Winter 2023,* at 5–6 (Mar. 2023), *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights-junk-fees-special-edition_2023-03.pdf.*

[48] Press Release, Consumer Fin. Prot. Bureau, *CFPB Takes Action Against Bank of America for Illegally Charging Junk Fees, Withholding Credit Card Rewards, and Opening Fake Accounts* (July 11, 2023), *https://www.consumerfinance.gov/about-us/newsroom/bank-of-america-for-illegally-charging-junk-fees-withholding-credit-card-rewards-opening-fake-accounts/.*

[49] Consumer Fin. Prot. Bureau, *Supervisory Highlights Junk Fees Update Special Edition, Issue 31, Fall 2023,* at 4–6, 10, 17 (Oct. 2023), *https://files.consumerfinance.gov/f/documents/cfpb_supervisory_highlights_junk_fees-update-special-ed_2023-09.pdf.*

[50] As noted above, Federal agencies have also taken recent actions to address fees that are not subject to competitive processes. For example, in October 2023, the FTC issued a proposed rule that would prohibit businesses across the economy from charging hidden and misleading fees, require the full price up front, and provide for monetary penalties and consumer refunds when violated. Press Release, Fed. Fin. Insts. Examination Council, *FTC Proposes Rule to Ban Junk Fees* (Oct. 11, 2023), *https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-proposes-rule-ban-junk-fees.*

[51] *See* Bd. of Governors of the Fed. Rsrv. Sys., *Compliance Spotlight—Supervisory Observations on Representment Fees,* Consumer Compliance Outlook (Second Issue 2023), *https://www.consumercomplianceoutlook.org/2023/second-issue/compliance-spotlight/* (last visited Jan. 17, 2024).

[52] Off. of the Comptroller of the Currency, *OCC Bulletin 2023–12: Overdraft Protection Programs: Risk Management Practices* (Apr. 26, 2023), *https://www.occ.treas.gov/news-issuances/bulletins/2023/bulletin-2023-12.html.*

from the same unpaid transaction results in heightened unfairness and other risks.[53] In 2019, the National Credit Union Administration (NCUA) issued a rule prohibiting Federal credit unions from charging overdraft or NSF fees related to certain types of loan payments drawn against a borrower's account.[54]

The CFPB has observed recent significant reductions in NSF fees, at least in part due to these actions. The CFPB has found that banks' overdraft/NSF fee revenue declined significantly compared to pre-pandemic levels (predominantly due to changes in bank policies),[55] and nearly two-thirds (65 percent) of banks with over $10 billion in assets have eliminated NSF fees, representing an estimated 97 percent of annual NSF fee revenue earned by those institutions.[56] However, 80 percent of credit unions with over $10 billion in assets still charge NSF fees.[57]

II. Stakeholder Outreach and Consultation

The CFPB has engaged in outreach and research related to overdraft and NSF fees since soon after the CFPB's inception. In 2012, the CFPB initiated a broad inquiry into overdraft programs for consumer checking accounts.[58] This inquiry included issuance of an RFI on the impacts of overdraft-related fees, including NSF fees, on consumers[59] and collection and analysis of overdraft-related data from several large banks over $10 billion in assets that provided a significant portion of all U.S. consumer checking accounts.[60] The CFPB published analyses of these data in a series of reports from 2013–2017, which examined institution-level policies and data, as well as account- and transaction-level data.[61] These studies assessed, among other things, overdraft and NSF fee size, incidence, and related account closure; overdraft-related policies and practices across institutions; the distribution of overdraft and NSF fee incurrence across accounts; and the characteristics of account holders across distributions of overdraft frequency. The CFPB also collected anonymized institution-level information from several core processors, which provide operations and accounting systems to financial institutions. This data collection informed the CFPB's 2021 report assessing overdraft and NSF policies and practices among a large sample of financial institutions using core processors.[62]

In 2021, the CFPB examined financial institutions' reliance on overdraft/NSF fees from 2015 to 2019, finding that it was persistent.[63] Since then, the CFPB has continued tracking overdraft and NSF trends in the marketplace[64] and evaluating some banks' key overdraft-related metrics through the CFPB's supervision work.[65] From April 2023 to August 2023, the CFPB reviewed the publicly available overdraft and NSF practices of financial institutions with assets over $10 billion.[66] In addition, the CFPB has recently collected information from several financial institutions under the CFPB's supervision regarding their overdraft-related practices.[67]

In 2022, CFPB issued an RFI regarding fees that are not subject to competitive processes that ensure fair pricing, which received over 80,000 comments.[68] Overdraft-related fees were by far the most common issue raised in the comments. Many consumers expressed concerns that the fees were charged for reasons that were unclear, disproportionate compared to the incidents resulting in the fees, and difficult or impossible to avoid. Consumers also reported that they were being charged fees that they believed were excessive, they appeared surprised by the fees, and they evidenced confusion about whether they were being charged an overdraft or NSF fee.

Through market monitoring engagement with credit union and State bank associations, the CFPB has received feedback pertaining to NSF and overdraft practices. Some banks and credit unions stated that many consumers place value on the short-term liquidity provided by overdraft services, while other institutions claimed that these types of fees are important for funding other services and programs offered to customers, such as financial literacy programs. Federal and State depository trade associations also have critiqued the characterization of their members' fees as so-called "junk fees" and urged the CFPB to study consumer preferences before taking further action.

The CFPB also gathers information on NSF and other bank fees from its Consumer Complaint Database. Consumers who submit complaints sometimes do not appear to understand the difference between NSF and overdraft fees. The complaints strongly suggest that consumers are often confused about why they were charged NSF fees when they declined overdraft protection and some consumers complain that their bank's transaction posting order led to fees that should not have been charged. Consumers also expressed frustration at not being able to track their account balance accurately. For example, consumer complainants frequently express the belief that deposited funds would be available, but an extended hold placed on the deposit led to overdraft or NSF fees.[69]

As discussed in connection with section 1022(b)(2) of the Consumer Financial Protection Act (CFPA) below, the CFPB's outreach included consultation with other Federal consumer protection and prudential regulators. The CFPB has provided other regulators with information about the proposal, and received feedback that has assisted the CFPB in preparing this proposal. The CFPB's outreach also included State Attorneys General, Tribal

[53] Fed. Deposit Ins. Corp., FIL–40–2022, *Supervisory Guidance on Multiple Re-Presentment NSF Fees* (Aug. 2023), *https://www.fdic.gov/news/financial-institution-letters/2022/fil22040.html.*

[54] 84 FR 51942 (Oct. 1, 2019).

[55] *See* Consumer Fin. Prot. Bureau, *Data Spotlight: Banks' overdraft/NSF fee revenue declines significantly compared to pre-pandemic levels* (Feb. 7, 2023), *https://www.consumerfinance.gov/data-research/research-reports/banks-overdraft-nsf-fee-revenue-declines-significantly-compared-to-pre-pandemic-levels/.*

[56] *See* CFPB October 2023 Data Spotlight.

[57] *Id.*

[58] Press Release, Consumer Fin. Prot. Bureau, *CFPB Launches Inquiry into Overdraft Practices* (Feb. 22, 2012), *https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-inquiry-into-overdraft-practices/.*

[59] 77 FR 12031 (Feb. 28, 2012). The RFI specifically defined overdraft fees to include, among other things, fees for returned checks, which the RFI termed NSF fees. *See id.* at 12033 ("[W]e use the terms 'overdraft' and 'overdraft fee' broadly to refer to practices followed and fees charged when a consumer initiates a transaction for which there are insufficient funds in the consumer's checking account. Specifically, the term overdraft fee includes fees charged for a returned check (*e.g.,* an NSF fee), fees charged when an overdraft item is paid (*i.e.,* an overdraft coverage fee), and fees charged if an overdraft is not repaid within a specified period of time.").

[60] *See* CFPB White Paper at 8; CFPB 2014 Data Point at 6–7.

[61] *See* CFPB White Paper; CFPB 2014 Data Point; CFPB 2017 Data Point.

[62] Nicole Kelly & Éva Nagypál, Ph.D., Consumer Fin. Prot. Bureau, *Data Point: Checking Account Overdraft at Financial Institutions Served by Core Processors* (Dec. 2021), *https://files.consumerfinance.gov/f/documents/cfpb_overdraft-core-processors_report_2021-12.pdf.*

[63] *Id.*

[64] *See* CFPB Overdraft/NSF Trends (reflecting data and analysis published periodically from Dec. 1, 2021 to present).

[65] Patrick Gibson & Lisa Rosenthal, *Measuring the impact of financial institution overdraft programs on consumers,* Consumer Fin. Prot. Bureau (June 16, 2022), *https://www.consumerfinance.gov/about-us/blog/measuring-the-impact-of-financial-institution-overdraft-programs-on-consumers/.*

[66] *See* CFPB October 2023 Data Spotlight.

[67] *See generally* Overdraft and NSF Report.

[68] 87 FR 5801 (Feb. 2, 2022).

[69] *See, e.g.,* Consumer Fin. Prot. Bureau, Consumer Complaint 3745300, *https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3745300.*

Attorneys General, State financial regulators, and organizations representing the officials charged with enforcing applicable Federal, State, and local laws.

III. Legal Authority

Consumer Financial Protection Act Section 1031

Section 1031(b) of the CFPA provides the CFPB with the authority to ''prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.'' [70] CFPA section 1031(b) further provides that rules under section 1031 may include requirements for the purpose of preventing such acts or practices.[71]

Under CFPA section 1031(d), the CFPB ''shall have no authority . . . to declare an act or practice abusive in connection with the provision of a consumer financial product or service'' unless the act or practice meets at least one of several enumerated conditions.[72] CFPA section 1031(d)(2) provides, in pertinent part, that an act or practice is abusive when it takes unreasonable advantage of a consumer's lack of understanding of the material risks, costs, or conditions of the product or service.

Congress intended the statutory phrase ''abusive acts or practices'' to encompass conduct by covered persons that is beyond what would be prohibited as unfair or deceptive acts or practices.[73] Unlike unfairness, but similar to deception, a finding of abusive conduct requires no showing of substantial injury to establish liability. Rather, it is focused on conduct that Congress presumed to be harmful or distortionary to the proper functioning of the market. An act or practice need fall into only one of the enumerated conditions under CFPA section 1031(d) to be abusive, but an act or practice could satisfy more than one condition.[74]

Consumer Financial Protection Act Section 1022(b)(1)

Section 1022(b)(1) of the CFPA provides that the CFPB's Director ''may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the CFPB to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' [75] The term ''Federal consumer financial law'' includes rules prescribed under title X of the CFPA, which include rules prescribed under section 1031.[76]

Section 1022(b)(2) of the CFPA prescribes certain standards for rulemaking that the CFPB must follow in exercising its authority under CFPA section 1022(b)(1).[77] See part VI for a discussion of the CFPB's standards for rulemaking under CFPA section 1022(b)(2).

IV. Discussion of the Proposed Rule

Definitions (§ 1042.2)

2(a) Account

Proposed § 1042.2(a) provides that ''account'' has the same meaning as the term in Regulation E, 12 CFR 1005.2(b). Pursuant to that definition, an account would include the following: (1) a checking, savings, or other consumer asset account held by a financial institution (directly or indirectly), including certain club accounts, established primarily for personal, family, or household purposes,[78] and (2) a prepaid account, as defined in 12 CFR 1005.2(b)(3).[79] An account would not include, for example: (1) an account held by a financial institution under a bona fide trust agreement; [80] (2) an occasional or incidental credit balance in a credit plan; [81] (3) profit-sharing and pension accounts established under a bona fide trust agreement; [82] (4) escrow accounts such as for payments of real estate taxes, insurance premiums, or completion of repairs or improvements; [83] or (5) accounts for purchasing U.S. savings bonds.[84]

The CFPB preliminarily concludes that referencing this existing definition of account for purposes of this proposal would help to foster consistency with Regulation E and would provide a familiar regulatory definition that has already been successfully implemented by many covered financial institutions. This definition would also capture a broad range of consumer account types to maximize the number of consumers protected from the preliminarily identified abusive practice. The CFPB seeks comment on its proposed approach to this definition.

2(b) Covered Financial Institution

Proposed § 1042.2(b) provides that ''covered financial institution'' means a ''financial institution'' as defined in Regulation E, 12 CFR 1005.2(i). Applying that definition, a ''covered financial institution'' would mean a bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer, or that issues an access device and agrees with a consumer to provide electronic fund transfer services. A covered financial institution would not include a motor vehicle dealer, as defined in CFPA section 1029(f)(2), that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[85] Adopting this definition would also incorporate related definitions and commentary, such as those for ''access device'' [86] and ''electronic funds transfer.'' [87]

The CFPB preliminarily concludes that referencing this existing definition of account for purposes of this proposal would help to foster consistency with Regulation E and would provide a familiar regulatory definition that has already been successfully implemented by many covered financial institutions. This definition would also capture a broad range of financial institutions to ensure an equal playing field. The CFPB seeks comment on its proposed approach to this definition.

2(c) Covered Transaction

Proposed § 1042.2(c) provides that ''covered transaction'' means an attempt by a consumer to withdraw, debit, pay,

[70] CFPA section 1031(b), 124 Stat. 2005–2006 (12 U.S.C. 5531(b)).

[71] *Id.*

[72] 12 U.S.C. 5531(d). For a more detailed discussion of the CFPB's authority under the abusive conduct prohibition, *see Statement of Policy Regarding Prohibition on Abusive Acts or Practices,* 88 FR 21883 (Apr. 12, 2023) (Abusive Policy Statement).

[73] *See, e.g.,* S. Rept. No. 111–176, at 172 (2010) (''Current law prohibits unfair or deceptive acts or practices. The addition of 'abusive' will ensure that the [CFPB] is empowered to cover practices where providers unreasonably take advantage of consumers.''); Public Law 111–203 pmbl. (listing, in the preamble to the CFPA, one of the purposes of the CFPA as ''protect[ing] consumers from abusive financial services practices'').

[74] The conduct that underlies an abusive conduct determination may also be found to be unfair or deceptive, depending on the circumstances.

[75] 12 U.S.C. 5512(b)(1).

[76] 12 U.S.C. 5481(14).

[77] 12 U.S.C. 5512(b)(2).

[78] 12 CFR 1005.2(b)(1).

[79] 12 CFR 1005.2(b)(3).

[80] 12 CFR 1005.2(b)(2).

[81] 12 CFR 1005.2(b)(1).

[82] *See* Comment 2(b)(2)–2; Comment 2(b)–2.i.

[83] Comment 2(b)–2.ii.

[84] Comment 2(b)–2.iii; for a general discussion of the ''account'' definition, *see* Consumer Fin. Prot. Bureau, *Interagency Consumer Laws and Regulations—Electronic Fund Transfer Act,* at 5 (Mar. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_efta-exam-procedures-incl-remittances_2019-03.pdf.*

[85] 12 CFR 1005.2(i); 12 U.S.C. 5519; Public Law 111–203, 124 Stat. 1376, 2005 (2010).

[86] 12 CFR 1005.2(a).

[87] 12 CFR 1005.2(g), 1005.3.

or transfer funds from their account that is declined instantaneously or near-instantaneously by a covered financial institution due to insufficient funds. A declination occurs instantaneously or near-instantaneously when the transaction is processed in real time and there is no significant perceptible delay to the consumer when attempting the transaction. While consumers may attempt to withdraw, debit, pay, or transfer funds from their account in a variety of different ways, including by check, ACH, person-to-person (P2P) transaction, or debit card, this proposed definition would only cover transactions that are instantaneously or near-instantaneously declined due to insufficient funds. Transactions declined or rejected due to insufficient funds hours or days after the consumer's attempt would not be covered by the proposal. Transactions authorized in the first instance, even if they are later rejected or fail to settle due to insufficient funds, also would not be covered by the proposal.

Based on this proposed definition, checks and ACH transactions would not be covered, assuming these payment mechanisms do not evolve in such a way that they are able to be declined instantaneously or near-instantaneously. Generally, a check is physically accepted by the merchant or payee, without payment authorization or guarantee, and is deposited in its bank and sent through the check clearing process to the payor's bank.[88] Checks usually clear within one or two business days.[89] Similarly, ACH transactions generally are not processed in real time—they are typically processed in batches several times a day when the applicable ACH operator (the Federal Reserve Bank or the Electronic Payments Network) is open for business.[90]

Based on this proposed definition, one-time debit card transactions that are not pre-authorized, ATM transactions, and certain P2P transactions would be covered by the proposal, assuming these payment mechanisms continue to be declined instantaneously or near-instantaneously. ATM and one-time debit card transactions that are subject to the requirements of Regulation E's opt-in requirements[91] are authorized instantaneously or near-instantaneously, and in the event of insufficient funds, are declined instantaneously or near-instantaneously.[92] Some debit card transactions are not authorized in real time—for example, decoupled debit card transactions are typically processed as ACH debits,[93] and most recurring debit card transactions are authorized in advance. Some P2P transactions are authorized in real time and may be declined instantaneously or near-instantaneously, whereas others are processed as ACH debits.[94] The applicability of the proposal to P2P transactions may also depend in part on whether the P2P provider offers a stored value account for funds or links to a deposit account, and on the evolution of P2P transaction mechanisms more generally.[95]

The CFPB solicits comment on the proposed definition of covered transaction, including whether: (1) the timing component is sufficiently clear to determine coverage; (2) the proposed definition appropriately accounts for emerging payment networks and technology innovations; and (3) the proposed definition captures the scope of relevant transactions where potential abusive practices are occurring in the market or are at risk of occurring in the future.

2(d) Insufficient Funds

Proposed § 1042.2(d) provides that ''insufficient funds'' refers to the status of an account that does not have enough money to cover a withdrawal, debit, payment, or transfer transaction. The CFPB preliminarily concludes that including this definition would streamline the rule by avoiding circular definitions. The CFPB seeks comment on its proposed approach to this definition.

2(e) Nonsufficient Funds Fee or NSF Fee

Proposed § 1042.2(e) provides that ''nonsufficient funds fee or NSF fee'' means a charge that is assessed by a covered financial institution for declining an attempt by a consumer to withdraw, debit, pay, or transfer funds from their account due to insufficient funds. This proposed definition also would clarify that the name used by the financial institution for a fee is not determinative of whether it is considered a ''nonsufficient funds fee.''

Unlike overdraft fees, which can also be charged in the event of insufficient funds, NSF fees as defined herein are only charged after a declined transaction. As a result, such fees may sometimes be referred to as ''declination'' fees or ''bounced check'' fees. The CFPB has also observed such fees labeled as, for example, ''returned item fees,''[96] ''returned payment fees,'' ''uncollected funds fees,'' ''overdraft—unpaid fees,'' and ''shortage of funds

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[88] 76 FR 43394, 43400 (July 20, 2011).

[89] Off. of the Comptroller of the Currency, *I deposited a check. When will my funds be available/released from the hold?, HelpWithMyBank.gov, https://www.helpwithmybank.gov/help-topics/bank-accounts/funds-availability/funds-availability-check.html* (last visited Jan. 17, 2024).

[90] Nacha, *The ABCs of ACH, https://www.nacha.org/content/abcs-ach* (last visited Jan. 17, 2024).

[91] *See* 12 CFR 1005.17(b).

[92] This instantaneous (or near-instantaneous) authorization or declination occurs with debit card transactions that are ''single message'' (where the authorization request and the settlement request are sent in the same transmission at the same time) as well as ''dual message'' (where the first transmission requests authorization and the second transmission requests settlement)—in both cases, the authorization request is processed in real time.

[93] 76 FR 43394, 43408 (July 20, 2011).

[94] When a P2P transaction is processed as an ACH debit, the funds are often made immediately available to the recipient, but the sender may not instantly see the funds withdrawn from their linked account, as the sender's account-holding institution may take several days to settle the payment. In contrast, when a P2P transaction is processed as a credit card or debit card transaction, the funds are often made immediately available to the recipient and the sender may instantly see the funds withdrawn from their linked account, as the sender's account-holding institution authorizes and settles the transaction instantaneously or near-instantaneously.

[95] While some P2P providers merely facilitate transactions between linked deposit accounts, others allow users to hold funds within their P2P provider account. These providers automatically place funds received into the stored value account, and the consumer can transfer the funds into a linked deposit account or send the funds in a future P2P transaction. Attempts to send funds to another person from a stored value account may be declined instantaneously or near-instantaneously. In contrast, transfers from a stored value account to a linked deposit account that does not involve a debit card are typically ACH transactions taking between one and three business days, although some providers may offer an instantaneous or near-instantaneous transfer on those transactions (often for a fee). *See* Kate Rooney, *PayPal users can now transfer funds instantly to their bank accounts,* CNBC (Mar. 12, 2019), *https://www.cnbc.com/2019/03/12/venmo-users-can-now-transfer-funds-instantly-to-their-bank-accounts.html.* P2P transactions are continuing to increase in speed due to technology and payment network infrastructure advances, including, recently, the launch of the FedNow Service. *See* U.S. Dep't of Treas., *The Future of Money and Payments,* at 30–31 (Sept. 2022), *https://home.treasury.gov/system/files/136/Future-of-Money-and-Payments.pdf;* Fed Rsrv. Bank Servs., *Instant payments could help financial institutions capture a piece of the P2P pie,* FRBservices.org, *https://www.frbservices.org/financial-services/fednow/instant-payments-education/instant-payments-could-help-fi-capture-p2p.html.*

[96] ''Returned item'' NSF fees are charged to the consumer's account when dishonoring or returning checks or other items that are drawn on the consumer's account due to insufficient funds. These fees are distinct from ''returned deposited item fees'' that are imposed when items deposited by the consumer are returned due to insufficient funds in the *check originator's* account. *See* 12 CFR 1030.11(a)(1); Comment 11(a)(1)–2. This proposal does not address whether returned deposited item fees are an abusive practice. The CFPB's ''Bulletin 2022–06: Unfair Returned Deposited Item Fee Assessment Practices'' addressed potential unfairness concerns with returned deposited item fees. *See* 87 FR 66940 (Nov. 7, 2022).

fees.'' This proposed definition broadly includes the types of fees that, if charged, would in substance constitute an abusive practice, regardless of how the fees are labeled. The CFPB seeks comment on its proposed approach to this definition. The CFPB also solicits comments on its examples of fee labels.

Abusive Conduct/Lack of Understanding (§§ 1042.2 and 1042.3)

The CFPB's preliminary findings regarding covered financial institutions' abusive charging of NSF fees in connection with covered transactions are discussed below. The CFPB is making these preliminary findings based on the evidence discussed in the abusive conduct analysis below and in the section-by-section analysis and Background discussion above.

Under CFPA section 1031(d)(2)(A), the CFPB may declare an act or practice to be abusive in connection with the provision of a consumer financial product or service if the act or practice takes unreasonable advantage of a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service.[97] The CFPB is preliminarily determining that charging an NSF fee in connection with a covered transaction would take unreasonable advantage of consumers' lack understanding of the material risks, costs, or conditions associated with their deposit accounts, and thus would be abusive.

The CFPB understands, based on its market monitoring, that currently covered financial institutions rarely charge NSF fees on covered transactions.[98] The CFPB is proposing this rule primarily as a preventive measure.[99] Financial institutions have ongoing incentives to generate revenue, and NSF fees may become increasingly appealing as a revenue source in the absence of this proposal. For example, if the recently released Overdraft Proposed Rule [100] is finalized and curbs overdraft fee revenue, institutions might have an incentive to impose new fees. This proposal, if finalized, would prevent the imposition of NSF fees in various contexts where they might foreseeably arise, such as declines of ATM, debit card, and P2P transactions.[101] Thus, the CFPB is proposing to preempt imposition of new fees that would harm consumers in the future.

The CFPB considered whether a disclosure remedy to the preliminarily identified abusive practice would be sufficient, and has preliminarily determined that although such a remedy might reduce the incidence of the abusive conduct, it would not eliminate it and would likely be too costly or not feasible in many or most situations. Theoretically, a financial institution could present a disclosure when the transaction is attempted, explaining that the transaction would be declined and a fee would be charged. However, the CFPB is skeptical that such a disclosure would be feasible because the financial institution is often not the party operating the point-of-sale terminal, ATM machine, or P2P application interface. If it were feasible, it would likely be costly to present individual disclosures for each such transaction and implement such disclosures across many different payment channels and consumer interfaces. And a disclosure of that nature would not eliminate the incidence of the abusive practice because there would still be consumers who may not understand even a well-crafted disclosure.[102]

The CFPB seeks comment on whether the practices identified in this proposal are broad enough to address the potential consumer harms and if the description of the preliminarily identified abusive practice should be revised in any way, and requests any relevant additional data that should be considered.

Approaches to Abusive Conduct Prohibition in Prior CFPB Rulemakings

Before describing the reasoning behind the CFPB's preliminary conclusion that it would be an abusive practice for covered financial institutions to charge NSF fees on covered transactions, the CFPB first discusses the approach taken to assess abusive practices in prior rulemakings. Under CFPA section 1031(d)(2)(A), an act or practice can be abusive if covered parties take unreasonable advantage of the ''lack of understanding on the part of consumers of the material costs, risks, or conditions of the product or service.'' The CFPB's 2017 rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans (2017 rule) stated that consumers lack understanding in the context of obtaining certain types of small-dollar loans ''if they fail to understand either their personal likelihood of being exposed to the risks of the product or service in question or the severity of the kinds of costs and harms that may occur.'' [103] This conclusion was part of the 2017 rule's larger set of findings that a lender's failure to determine whether a consumer had the ability to repay a covered loan was abusive and unfair. In a separate 2020 rulemaking, the CFPB rescinded certain provisions of the 2017 rule's UDAAP findings as well as the 2017 rule's mandatory underwriting provisions (2020 rule).[104]

In explaining the rationales for rescission, the 2020 rule's preamble included certain statements about the abusive conduct prohibition. However, these rationales were specific to and inextricably intertwined with the evidentiary record and financial products at issue in the 2017 rule. Accordingly, the 2020 rule's discussion of the abusive conduct prohibition was

[97] 12 U.S.C. 5531(d)(2)(A).

[98] The CFPB and other regulators have taken action in other ways to address harms from NSF fees that are prevalent in today's market. Some of those actions are described elsewhere in this proposal's preamble. Along those lines, the CFPB notes that the CFPB's proposal addressing overdraft fees (Overdraft Proposed Rule), which was released recently, would amend Regulation Z such that, going forward, § 1026.52(b) would apply to open-end covered overdraft credit that can be accessed by a hybrid debit-credit card. In doing so, the Overdraft Proposed Rule would prohibit any fee imposed with respect to most potentially overdrawing transactions that a card issuer declines to authorize, including certain declined debit card transactions and declined ACH transactions. Thus, the Overdraft Proposed Rule, if finalized, would prohibit certain NSF fees charged in today's market under the CFPB's TILA authority, but it generally would not prohibit the NSF fees that this proposal, if finalized, would prohibit.

[99] *See* 12 U.S.C. 5511(b) (CFPB's statutory objective under the CFPA of ''ensuring that . . . consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination''). *See also Nasdaq Stock Mkt. LLC* v. *SEC,* 38 F.4th 1126 (D.C. Cir. 2022) (''[A]n agency has the latitude to 'adopt prophylactic rules to prevent potential problems before they arise'—that is, '[a]n agency need not suffer the flood before building the levee.' '') (quoting *Stilwell* v. *Off. of Thrift Supervision,* 569 F.3d 514, 519 (D.C. Cir. 2009)).

[100] *See* Consumer Fin. Prot. Bureau, *Overdraft Lending: Very Large Financial Institutions, Proposed Rule* (released Jan. 17, 2024), *https://files.consumerfinance.gov/f/documents/cfpb_overdraft-credit-very-large-financial-institutions_proposed-rule_2024-01.pdf.*

[101] As described in the Background discussion above, P2P transaction platforms are a fast-growing segment of the market, and this trend is only expected to accelerate over the next few years, so the CFPB proposes to forestall the imposition of such fees in that market segment.

[102] If covered financial institutions began assessing NSF fees on covered transactions in the future, it is theoretically possible for consumer understanding of the financial institutions' practices to improve due to other factors. For example, some consumers who do not anticipate an initial NSF fee may be less surprised after incurring multiple NSF fees. However, as with a disclosure, such improved understanding would only reduce, and not eliminate, the incidence of the abusive practice. Such a development also would likely only improve understanding of financial institutions' practices, not understanding of the consumer's account balance at the time the covered transaction is initiated (see discussion below regarding ''risks, costs, or conditions'').

[103] 85 FR 44382, 44421 (July 22, 2020) (internal quotations omitted) (citing 82 FR 54472, 54617 (Nov. 17, 2017)).

[104] *Id.* at 44382.

likewise limited and did not address facts and circumstances other than those at issue in the 2020 rule (which, again, was inextricably linked to the 2017 rule's evidentiary record and product coverage).[105] The 2020 rule does not, for example, address factual situations where a lender exploits an information asymmetry between a lender and a consumer about the level of risk posed to the consumer by the product or service.[106]

Thus, as a general matter, the preamble in the 2020 rule does not constrain the CFPB's authority to enforce, supervise, or regulate under the full scope of the CFPA's abusive conduct prohibition in other rules or in individual supervisory or enforcement matters. As the 2020 rule's preamble itself explained, the 2020 rule ''addresses the legal and evidentiary bases for particular rule provisions identified in [the 2020] rule. It does not prevent the [CFPB] from exercising tool choices, such as appropriate exercise of supervision and enforcement tools, consistent with the [CFPA] and other applicable laws and regulations.'' [107] The 2020 rule also explained that it ''does not prevent the [CFPB] from exercising its judgment in light of factual, legal, and policy factors in particular circumstances as to whether an act or practice meets the standards for abusiveness under section 1031 of the [CFPA].'' [108]

Nevertheless, out of an abundance of caution and to correct any possible misimpressions that the 2020 rule's preamble set forth interpretive limits on the CFPB's authority under the abusive conduct prohibition that the agency must follow in other contexts, the CFPB hereby proposes to clarify the interpretation of the abusive conduct prohibition in the context of the 2020 rule, consistent with the analysis below. The CFPB also requests comment on whether there are other aspects of the 2020 rule's discussion of the abusive and unfair conduct prohibitions that warrant clarification.

Conflation of lack-of-understanding and reasonable-avoidability standards. The 2020 rule stated that the 2017 rule's lack-of-understanding standard was ''problematic'' and ''too broad,'' [109] and instead ''should be treated as similar'' to the reasonable-avoidability element of unfairness.[110] The 2020 rule stated that, for purposes of unfairness, consumers could reasonably avoid injury if they ''have an understanding . . . sufficient for them to anticipate [the] harms and understand the necessity of taking reasonable steps to prevent resulting injury.'' [111] It used a nearly identical approach to lack of understanding, stating that consumers have a sufficient understanding under section 1031(d)(2)(A) if their understanding is ''sufficient . . . to anticipate [the] harm and understand the necessity of taking reasonable steps to prevent resulting injury.'' [112]

These preamble statements reflect an overly narrow application of the statutory text for lack of understanding. With respect to the abusive conduct prohibition generally, it is worth noting that, unlike the CFPA's unfairness provision, the statutory text for the abusive conduct prohibition does not require any inquiry into reasonable avoidability.[113] Although the CFPB preliminarily finds that consumers' lack of understanding that they would be charged an NSF fee for covered transactions is generally reasonable, as discussed below, the statute does not require that the lack of understanding was reasonable to demonstrate abusive conduct.[114] The 2020 rule also did not specify why, in spite of the differences between the standards, it was ''appropriate'' to treat reasonable avoidability and lack of understanding as ''similar but distinct.'' [115]

Conflating the two standards in this manner contravenes the context and purpose of the abusive conduct prohibition and the statutory text. Congress passed the prohibition after the 2008 mortgage crisis, recognizing that the unfairness and deception prohibitions were insufficient to prevent predatory mortgage lending.[116] The abusive conduct prohibition was explicitly added as a new standard of fair dealing, and clearly was not intended to simply mirror unfairness.[117] Moreover, although a consumer's lack of understanding might, depending on the facts, contribute to a consumer being unable to reasonably avoid substantial injury, nothing in CFPA section 1031(d)(2)(A)'s text supports interpreting the provision to track the reasonable-avoidability standard. Rather, under the statute the inquiry is whether the consumers at issue lack understanding of the risks, costs, or conditions of a product or service and

[105] For example, both the ''Legal'' and ''Reconsidering the Evidence'' subsections of the 2020 rule's lack-of-understanding analysis rely heavily on the conclusion that a study of payday borrowers' ability to predict future time in debt by Professor Ronald Mann was insufficient to underpin the 2017 rule's lack-of-understanding findings. *See id.* at 44422 (describing how ''[a]lthough the [2017 rule] concluded that a significant population of consumers do not understand the material risks and costs of covered loans, the [2017 rule] extrapolated or inferred this conclusion from the [CFPB]'s interpretation of limited data from the Mann study . . . [t]he limited data from the Mann study does not address whether consumers lack understanding of the material costs, risks, or conditions of covered loans''), and *id.* at 44423 (stating, in reiterating the language from the proposed rule preceding the 2020 rule (2019 proposal), that ''the Mann study was not sufficiently robust and reliable in light of'' the 2017 rule's anticipated impacts on the market and how the Mann study was the ''linchpin'' of the 2017 rule's lack-of-understanding finding).

[106] As the Abusive Policy Statement described, certain ''gaps in understanding'' between a consumer and an entity can ''create circumstances where transactions are exploitative.'' *See* Abusive Policy Statement at 21886–87.

[107] 85 FR 44382, 44415 n.286 (July 22, 2020).

[108] *Id.*

[109] *Id.*

[110] 85 FR 44382, 44422 (July 22, 2020).

[111] *Id.* at 44394.

[112] *Id.* at 44422.

[113] *Compare* 12 U.S.C. 5531(c)(1)(A), *with* 12 U.S.C. 5531(d)(2)(A).

[114] Section 1031(d)(2)(A) refers to ''lack of understanding'' without a qualifier, whereas other UDAAP authority provisions in section 1031 expressly include a reasonableness qualifier. *Compare* 12 U.S.C. 5531(d)(2)(A), *with* 12 U.S.C. 5531(d)(2)(C) (making reference to ''reasonable'' reliance''), *and* 12 U.S.C. 5531(c)(1)(A) (for purposes of the unfairness test, substantial injury must not be ''reasonably'' avoidable). *See also DHS* v. *MacLean,* 574 U.S. 383, 392 (2015) (describing how ''Congress generally acts intentionally when it uses particular language in one section of a statute but omits it in another'' and the ''interpretive canon that Congress acts intentionally when it omits language included elsewhere applies with particular force'' where the phrases being compared are in close proximity).

[115] 85 FR 44382, 44422–23 (July 22, 2020). The 2020 rule merely repeated the 2019 proposal's language that ''unlike the elements of unfairness . . . the elements of [the abusive conduct prohibition] do not have a long history or governing precedents. Rather, the CFPA marked the first time that Congress defined 'abusive acts or practices' as generally unlawful in the consumer financial services sphere.'' *Id.* at 44421–22. The 2020 rule then stated that, ''[f]or the same reasons that . . . there was an insufficient basis to support the 2017 [rule's] finding that substantial injury from the identified practice was not reasonably avoidable . . . there is an insufficient basis to conclude that consumers lack understanding of the material risks, costs or conditions.'' *Id.* at 44422.

[116] *See generally* Abusive Policy Statement (discussing background and legislative history regarding CFPB's authority to address abusive conduct); *see also* 86 FR 14808, 14809 (Mar. 19, 2021) (in rescinding an earlier policy statement issued by the CFPB in 2020 on the abusive conduct prohibition, CFPB reasoned, in part, that ''[d]eclining to apply the full scope of the statutory standard pursuant to the policy has a negative effect on the [CFPB's] ability to achieve its statutory objective of protecting consumers from abusive practices'').

[117] As the Abusive Policy Statement noted, in 2007, then-FDIC Chairwoman Sheila Bair explained in congressional testimony that unfairness ''can be a restrictive legal standard'' and proposed that Congress consider ''adding the term 'abusive,' '' which she noted existed in the Home Ownership and Equity Protection Act, and which ''is a more flexible standard to address some of the practices that make us all uncomfortable.'' *Improving Federal Consumer Protection in Financial Services: Hearing Before the H. Comm. on Fin. Servs.,* 110th Cong. 40 (2007) (statement of Hon. Sheila C. Bair, Chairman of the Federal Deposit Insurance Corporation), *https://www.govinfo.gov/content/pkg/CHRG-110hhrg37556/html/CHRG-110hhrg37556.htm.*

whether the company took unreasonable advantage of that lack of understanding—not whether, as noted above, the lack of understanding was reasonable.[118] Lastly, the 2020 rule itself in various passages acknowledged these textual differences and recognized how they lead to different contours of authority, which undermines the 2020 rule's attempt to tether the two standards.[119] Accordingly, the CFPB proposes to clarify that lack of understanding under CFPA section 1031(d)(2)(A) is not synonymous with reasonable avoidability under the unfairness standard.

Magnitude and likelihood of risk of harm. The 2020 rule stated that consumers have ''sufficient understanding'' of the material costs, risks, or conditions of small-dollar loans if they understand ''the magnitude and likelihood of risk of harm associated with the [product or service], as well as the necessity of taking reasonable steps to prevent resulting injury.'' [120] ''Magnitude and likelihood of risk of harm'' is a reasonable articulation of the standard for understanding certain ''risks'' that implicate prediction of future outcomes, especially in relation to loan underwriting. However, that is not the full scope of the potential risks under CFPA section 1031(d)(2)(A). As the CFPB's Statement of Policy Regarding Prohibition on Abusive Acts or Practices (Abusive Policy Statement) noted, the risks of which a consumer lacks understanding ''encompass a wide range of potential consumer harms.'' [121]

The CFPB proposes to clarify that the 2020 rule's focus on ''magnitude'' and ''likelihood'' of risk of harm was an application of what it means under the statute to understand ''risks,'' not necessarily ''costs'' or ''conditions.'' The statutory references to ''costs'' and ''conditions'' are textually disjunctive and can be conceptually distinct from ''risks'' and from each other. Where consumers lack understanding of the relevant costs or conditions, the notion of ''likelihood and magnitude of harm'' may have no bearing on the lack-of-understanding analysis. For example, it is enough to show that a company takes unreasonable advantage of the fact that consumers do not know a fee (''cost'') will be charged in a particular circumstance, even if consumers have some understanding of the ''risk'' that a fee might sometimes be charged. See below for a discussion of what risks, costs, and conditions mean in the particular context of this proposal.

Specific vs. general understanding. The 2020 rule took issue with the conclusion in the 2017 rule that consumers in the small-dollar lending market lack understanding or cannot reasonably avoid harm under the unfairness standard if they do not have a ''specific understanding of their personal risks such that they can accurately predict how long they will be in debt after taking out'' a covered loan.[122] The 2020 rule stated, rather, that ''consumers need not have a specific understanding of their individualized likelihood and magnitude of harm such that they could accurately predict how long they would be in debt after taking out'' a payday loan and that the appropriate analysis was whether consumers ''have an understanding of the likelihood and magnitude of risks of harm associated with payday loans sufficient for them to anticipate those harms.'' [123] According to the 2020 rule, this means that ''consumers need only understand that a significant portion of payday borrowers experience difficulty repaying,'' which the 2020 rule described as a ''generalized'' or ''general'' understanding.[124] The 2020 rule applied this distinction between ''specific'' and ''general'' consumer understanding both to the lack-of-understanding element of the abusive conduct prohibition, and to the reasonable-avoidability element of unfairness. Because the 2020 rule linked the unfair and abusive conduct prohibitions, the following discussion applies to the interpretation of both prohibitions.

The CFPB preliminarily declines to characterize consumers' lack of understanding in this proposal as either ''specific'' or ''general'' because that binary framework is unhelpful for determining whether consumers understand the material risks, costs, or conditions of a consumer financial product or service, which is the statutory requirement. A consumer's lack of understanding can be based on one or the other, or a mixture of both, and each can inform one another. Indeed, a person's understanding of their personal risk may be intertwined with their understanding of the general risk to all consumers—if one knows that many are harmed, they are more likely to understand that they are likely to be harmed.

Furthermore, to the extent that the 2020 rule could be misconstrued to suggest that analysis of the abusive conduct prohibition *requires* an inquiry into a consumer's so-called general understanding of risk, the CFPB is clarifying that is a misimpression for the reasons described below. Consumers' understanding of risk, and specifically, their anticipation of harm can be informed by a variety of factors, including personal circumstances. As noted above, those factors sometimes include general perception of risk in the market: if one knows that many are harmed or that the magnitude of harm is high, they are more likely to understand that they are likely to be harmed. But, in many circumstances, consumers would not have an accurate general understanding of risk in the market because, for example, either (1) they cannot observe harm to other consumers, or (2) even if they could, they would have no way of knowing whether those consumers are similarly situated to them. For example, in the deposit market, consumers cannot observe the frequency with which similarly situated consumers incur NSF fees. A consumer's understanding of the

[118] The Abusive Policy Statement noted that although establishing that a reasonable consumer would lack understanding of the material risks, costs, or conditions of a product or service is not a prerequisite to establishing liability under CFPA section 1031(d)(2)(A), government enforcers or supervisory agencies may rely on the fact that a reasonable consumer would lack such understanding to establish that consumers did not have such understanding. *See* Abusive Policy Statement at 21887 n.55.

[119] For example, as noted above the 2020 rule acknowledged that the reasonable-avoidability and lack-of-understanding standards were ''similar but distinct.'' 85 FR 44382, 44423 (July 22, 2020). It also acknowledged that the reasonable-avoidability standard ''has a 'means to avoid' requirement that is absent from the abusiveness standard,'' and ''abusiveness could prohibit some conduct that unfairness would permit.'' *Id.* And it stated that ''[t]he [CFPB] believes that Congress intended for the statutory phrase 'abusive acts or practices' to encompass conduct by covered persons that is beyond what would be prohibited as unfair or deceptive . . . although such conduct could overlap and thus satisfy the elements for more than one of the standards.'' *Id.* at 44416.

[120] *Id.* at 44422. The 2020 rule went on to explain that ''sufficient understanding'' as applied in the context of the 2017 rule meant that consumers need only ''understand that a significant portion of payday borrowers experience difficulty repaying and that if such borrowers do not make other reasonable arrangements they may either end up in extended loan sequences, default, or struggle to pay other bills after repaying their payday loan.'' *Id.* at 44395. The 2020 rule elaborated that, ''if consumers understand that a significant portion of payday borrowers experience adverse outcomes, they grasp the likelihood of risk,'' and that if consumers ''understand the potential outcomes arising from difficulty repaying, they appreciate the magnitude of those risks.'' *Id.*

[121] *See* Abusive Policy Statement at 21887.

[122] 85 FR 44382, 44422 (July 22, 2020). *See also id.* at 44390 (in context of the reasonable-avoidability analysis, which the 2020 rule relied on for the lack-of-understanding analysis, describing the 2017 rule as requiring that consumers have a ''*specific* understanding of their *individualized* risk, as determined by their ability to accurately predict how long they would be in debt after taking out a covered short-term or longer-term balloon-payment loan'').

[123] 85 FR 44382, 44390–91 (July 22, 2020).

[124] *Id.* at 44391.

experience of their peers or general risk in the market may sometimes not accurately inform their understanding of the likelihood of incurring NSF fees generally or in connection with a particular transaction.[125] A consumer's lack of awareness of general risk in the market also may not mean that the consumer necessarily lacks understanding of the risk of using a product or service.

A consumer's general understanding of risk may not always be the sole relevant inquiry for purposes of ascertaining consumer understanding of risk of the likelihood or magnitude of harm. As stated earlier, a consumer's lack of understanding can be based on specific understanding or general understanding, or a mixture of both, and each can inform one another. Congress enacted the abusive conduct prohibition largely in response to the circumstances leading up to the 2008 financial crisis, where consumers may have *generally* understood the possibility of loan default and its consequences but lacked understanding of the specific, *individualized* risks set-up-to-fail mortgages posed to themselves.

Regarding unfairness, long-existing precedent in part frames the reasonable-avoidability analysis through the lens of a consumer's understanding of their own circumstances. For example, the D.C. Circuit described the reasonable-avoidability analysis in the FTC's Credit Practices Rule, in part, in the following manner: ''Since consumers do not expect to default, the invocation of particular credit remedies seems remote and speculative at the time of contracting and thus is not a material element in the consumer's decision. Instead, consumers quite reasonably focus their attention on the more immediate terms such as interest rates and payments.'' [126] This discussion of the conditions relevant to how consumers comprehend contract terms relates to consumers' understanding of their own risk of default. Similarly, in addressing an FTC action against a website operator that allowed users to create unverified checks drawn from unauthorized accounts, the Ninth Circuit discussed individual consumer circumstances that were relevant to the reasonable-avoidability analysis, including how it is ''likely that some consumers never noticed the unauthorized withdrawals.'' [127] While this precedent relates to the prohibition on unfair rather than abusive conduct, the long history and precedent regarding the standards of fair dealing in part inform how the CFPB interprets the abusive conduct prohibition.

Material Risks, Costs or Conditions of the Product or Service

As stated above and explained more fully below, the CFPB has preliminarily determined that consumers charged NSF fees on covered transactions would lack understanding of the material risks, costs, or conditions of their account at the time they are initiating covered transactions. As explained in the preamble discussing proposed § 1042.2(c), a covered transaction means a request by a consumer to withdraw, debit, pay, or transfer funds from their account that is declined instantaneously or near-instantaneously by a covered financial institution due to insufficient funds. The CFPB considers the account that is associated with a covered transaction to be a ''product or service,'' under CFPA section 1031(d)(2)(A).[128]

In view of CFPA section 1031(d)(2)(A)'s disjunctive formulation of ''material risks, costs, or conditions,'' an act or practice is abusive if it takes unreasonable advantage of the consumer's lack of understanding of at least one material risk, cost, or condition. In the circumstances addressed by this proposal, a lack of understanding of all three elements would be present for at least some consumers, and consumers would generally lack understanding of at least one element, as explained in the next subsection.[129]

As used in section 1031(d)(2)(A), ''risks'' is an expansive term.[130] At the time a consumer considers initiating a request to withdraw, debit, pay, or transfer funds from their account, the relevant risks to the consumer would include the possibility the transaction will be declined and result in an NSF fee. Furthermore, once a consumer actually initiates a covered transaction, it is certain that the transaction will be instantaneously declined and they will be charged a fee; therefore, the likelihood of harm at that time is 100 percent. This is because no chance occurrence, consumer choice, or other intervening event can happen between the transaction's initiation and the instantaneous decline that could change the harmful outcome (*i.e.,* the assessment of the fee). In other words, for covered transactions that are initiated, the risk of harm is a certainty. Therefore, a consumer who initiates such a transaction believing the transaction nevertheless might go through would lack understanding of the likelihood of harm. Given the tangible and negative consequences of both a transaction decline and the imposition of a fee, the CFPB interprets this risk, if and when present, to be material.

The ''costs'' associated with a covered transaction that would result in an NSF fee would primarily be the amount of the fee itself.[131] NSF fees that are charged in today's market are usually approximately $32 and typically are assessed on a per-transaction basis.[132] Even if NSF fees assessed on covered transactions were significantly lower than $32, they would still be material because they would be non-trivial to the consumer and would be paid without any service being received. The personal magnitude of this cost might be exacerbated by the fact that it could occur when the consumer's bank

[125] In theory, financial institutions could provide these types of disclosures at deposit account opening or before consumers initiate a transaction. However, account opening disclosures of this sort would likely have limited salience because at that moment in time, consumers are not focused on the possibility that they will incur a funds insufficiency in the future and on the consequences of doing so. *See Am. Fin. Servs. Ass'n* v. *FTC,* 767 F.2d 957, 978 (D.C. Cir. 1985) (*AFSA*). Moreover, as discussed above, providing a disclosure prior to the transaction might reduce the incidence of abusive conduct but would not eliminate it, and would likely be too costly or infeasible in most instances.

[126] *AFSA,* 767 F.2d at 978.

[127] *FTC* v. *Neovi, Inc.,* 604 F.3d 1150, 1158 (9th Cir. 2010) (internal citation omitted).

[128] *See* 12 U.S.C. 5531(d)(2)(A).

[129] As the Abusive Policy Statement explains, ''The inquiry under section 1031(d)(2)(A) is whether some consumers in question have a lack of understanding, not all consumers or even most consumers.'' Abusive Policy Statement at 21888. Because the CFPB does not believe that any consumer would knowingly incur a fee for no service, the lack of understanding would be general in regard to NSF fees charged for covered transactions, though the specific elements that are not understood—risks, costs, or conditions—may differ from consumer to consumer.

[130] As noted in the Abusive Policy Statement, risks can encompass a wide range of potential consumer harms. *See id.* at 21887. Merriam-Webster Dictionary Online defines ''risk'' as the ''possibility of loss or injury.'' *See Risk, Merriam-Webster.com* Dictionary, *https://www.merriam-webster.com/dictionary/risk* (last visited Jan. 17, 2024).

[131] As the CFPB explained in the Abusive Policy Statement, ''costs'' can include any monetary charge to a person as well as non-monetary costs such as lost time, loss of use, or reputational harm. *See* Abusive Policy Statement at 21886; *see also, e.g., Fort Knox Nat'l Co.,* File No. 2015–CFPB–0008, at 8 (Apr. 20, 2015) (entities took unreasonable advantage of consumers' lack of understanding by charging fees that they ''did not adequately disclose''); Consumer Fin. Prot. Bureau, *Supervisory Highlights, Issue 28, Fall 2022,* at 22 (Nov. 2022), *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-28_2022-11.pdf* (CFPB Fall 2022 Highlights) (mortgage servicers took unreasonable advantage of consumers' lack of understanding when they profited from insufficiently disclosed phone-payment fees that were materially greater than the cost of other payment options).

[132] As discussed in part I (Background discussion), the CFPB recently found that the median fee among institutions above $10 billion in assets that still charge the fee is $32.

account would be empty or close to empty.

The amount of funds in the account and whether they are sufficient for a given transaction at the time the consumer is initiating that transaction are relevant ''conditions'' of the consumer's deposit account.[133] Given how the conditions of the account would relate to the financial institution's imposition of NSF fees (whether, when, and how much), the CFPB would interpret these conditions as material.

The following subsection explains more fully the CFPB's preliminary finding that a consumer would lack understanding of the material risks, costs, or conditions of the account if a covered transaction were to take place.

Lack of Understanding on the Part of the Consumer

As the CFPB's Abusive Policy Statement explains, the prohibition in CFPA section 1031(d)(2)(A) turns on a consumer's lack of understanding, regardless of how that lack of understanding arose.[134] Although consumers' lack of understanding that they will be charged an NSF fee in the circumstances addressed in this proposal is generally reasonable, the statutory text of the prohibition does not require a finding that the consumer's lack of understanding was reasonable to demonstrate abusive conduct.[135] In addition, as the Abusive Policy Statement notes, the statutory text does not require that the covered financial institution caused the person's lack of understanding through untruthful statements or other actions or omissions.[136]

The CFPB preliminarily finds that a consumer who would be charged an NSF fee on a covered transaction would lack understanding of their account's material risks, costs or conditions at the time they initiated that transaction. Drawing on its experience and expertise regarding consumer behavior, the CFPB believes that if a transaction entails material risks or costs and consumers derive minimal or no benefit from the transaction, it is generally reasonable to conclude that consumers who nonetheless went ahead with the transaction did not understand the material risks, costs or the conditions giving rise to those risks or costs.[137] In this instance, such a transaction would provide no benefit to consumers, but consumers would incur a material cost or risk. Consequently, consumers would be paying something or taking a risk but receiving nothing in return. Therefore, the CFPB preliminarily concludes that consumers initiating covered transactions that incur NSF fees would generally lack awareness of their available account balance or other information about the material risks, costs, or conditions regarding their account. Indeed, if a consumer knew at the time of initiating a specific payment, debit, transfer, or withdrawal that they did not have enough funds to cover the transaction and an NSF fee would be charged, that consumer would likely either use a different payment method that would not result in such a fee or would postpone or forgo the transaction.

As explained further below, the CFPB also preliminarily concludes that there are a variety of specific reasons why consumers generally, or certain consumers individually, would lack understanding of the material risks, costs, or conditions when initiating a covered transaction. First, consumers' usage of deposit accounts has changed due to the advent and increased importance of debit cards during the past several decades.[138] The rise in debit card usage for small transactions resulted in increased transaction activity on the account for consumers' individual purchases.[139] These more frequent transactions might make it harder for some consumers to track their available funds. Although most consumers can now see a version of their account balance electronically through a mobile application, older consumers are far less likely to access their accounts through mobile apps,[140] and approximately 15 percent of Americans do not own a smartphone.[141] Even if consumers can access their account balance, the number displayed

[133] The Abusive Policy Statement explains that ''[g]aps in understanding with respect to 'conditions' include any circumstance, context, or attribute of a product or service, whether express or implicit. For example, 'conditions' could include the length of time it would take a person to realize the benefits of a financial product or service, the relationship between the entity and the consumer's creditors, the fact a debt is not legally enforceable, or the processes that determine when fees will be assessed.'' *See* Abusive Policy Statement at 21887.

[134] *See id.*

[135] As noted above in the discussion of the CFPB's approach to the abusive conduct prohibition in prior rulemakings, CFPA section 1031(d)(2)(A) refers to ''lack of understanding'' without a qualifier, whereas other UDAAP authority provisions in CFPA section 1031 expressly include a reasonableness qualifier.

[136] *See* Abusive Policy Statement at 21887 (''While acts or omissions by an entity can be relevant in determining whether people lack understanding, the prohibition in section 1031(d)(2)(A) does not require that the entity caused the person's lack of understanding through untruthful statements or other actions or omissions. Under the text of section 1031(d)(2)(A), the consumer's lack of understanding, regardless of how it arose, is sufficient.'').

[137] *See id.* at 21888.

[138] From cashiers physically imprinting card details on paper to internet-connected swipe terminals, the way consumers pay for goods and services has evolved significantly over the last half-century, and in turn, computing and telecommunication technologies have enabled the use of modern payment cards by consumers. In 1970, 16 percent of American families had a credit card; by 1983, that figure increased to 43 percent. By 2020, 72 percent of Americans had a credit card and 83 percent of Americans had a debit card. *See* Consumer Fin. Prot. Bureau, *Issue Spotlight: Big Tech's Role in Contactless Payments: Analysis of Mobile Device Operating Systems and Tap-to-Pay Practices* (Sept. 7, 2023), *https://www.consumerfinance.gov/data-research/research-reports/big-techs-role-in-contactless-payments-analysis-of-mobile-device-operating-systems-and-tap-to-pay-practices/full-report/.* The 2020 Survey of Consumer Payment Choice states: ''In a typical month in 2020, consumers on average made 23 debit card payments (33 percent of all payments), 18 credit or charge payments (27 percent), and 14 cash payments (21 percent). Consumers made three check payments per month on average in 2020, and eight [non-debit card] payments directly from a bank account . . . Checks were 4 percent of all payments, and electronic payments were 11 percent.'' Kevin Foster et al., Fed. Rsrv. Bank of Atlanta, *The 2020 Survey of Consumer Payment Choice: Summary Results,* at 15 (2021), *https://www.atlantafed.org/-/media/documents/banking/consumer-payments/survey-of-consumer-payment-choice/2020/2020-survey-of-consumer-payment-choice.pdf* (internal citation omitted). *While all types of card payments have increased,* it is the increased usage of debit cards that primarily affects consumer deposit accounts because credit or charge card payments do not directly or instantaneously debit these accounts.

[139] *See id. See also* Bd. of Governors of the Fed. Rsrv. Sys., *The 2013 Federal Reserve Payments Study Recent and Long-Term Trends in the United States: 2000–2012 (2012 Summary Report and Initial Data Release),* at 9 ex. 2 (July 2014), *https://www.frbservices.org/assets/news/research/2013-fed-res-paymt-study-summary-rpt.pdf* (showing the average debit card transaction ranged from $37 to $40 from 2003–2012, while the average check transaction ranged from $1,103 to $1,410), *https://www.frbservices.org/binaries/content/assets/crsocms/news/research/2013-fed-res-paymt-study-summary-rpt.pdf;* Bd. of Governors of the Fed. Rsrv. Sys., *Trends in the Use of Payment Instruments in the United States,* Fed. Rsrv. Bull., at 183–4, 187 tbl. 3, 196–97 (Spring 2005), *https://www.federalreserve.gov/pubs/bulletin/2005/spring05_payment.pdf (discussing and demonstrating the growth in debit card payments, which accounted for more than half the growth in electronic payments over the review period);* Maria LaMagna, *Debit Cards Gaining on Cash for Smallest Purchases,* MarketWatch (Mar. 23, 2016), *https://www.marketwatch.com/story/more-people-are-using-debit-cards-to-buy-a-pack-of-gum-2016-03-23* (describing industry analyst's take that, ''[A]s more locations accept credit and debit cards, more consumers are viewing plastic as a more convenient option than refilling their wallets with cash from an ATM''). *See generally* Bd. of Governors of the Fed. Rsrv. Sys., *Federal Reserve Payments Study (FRPS): Previous Studies, https://www.federalreserve.gov/paymentsystems/frps_previous.htm* (last updated Apr. 21, 2023) (The Federal Reserve Payments Studies from 2004 to 2013 (Exhibit 1 in each study) show that from 2000 to 2012, annual debit card transactions increased from 8.3 billion to 47 billion, while annual check transactions decreased from 41.9 billion to billion to 18.3 billion.).

[140] *FDIC 2021 Survey* at 26.

[141] Pew Rsrch. Ctr., *Mobile Fact Sheet* (Apr. 7, 2021), *https://www.pewresearch.org/internet/fact-sheet/mobile/.*

may not reflect what is available when the transaction takes place.[142] Furthermore, some consumers with smartphones might forgo checking their balance before initiating a covered transaction for a variety of reasons, including the rapidity of these transactions (see below) and discomfort with pulling up account information in a public location or using public Wi-Fi. And while ATM users can check their balance on the screen, some consumers may want to avoid incurring a fee to do so (particularly at an out-of-network ATM).

Second, certain account features and settlement practices that are unknown, complex, or counterintuitive make it challenging for consumers to understand whether they have the funds available for a transaction at a given time, or how that transaction would be handled. These complications make it difficult for consumers to understand the material risks, costs, or conditions when initiating a covered transaction. One example would be when a consumer has opted into overdraft coverage on ATM or one-time debit card transactions and expects the financial institution to pay a transaction into overdraft, but the institution instead denies overdraft coverage and charges an NSF fee, possibly because the consumer unknowingly exceeded the overdraft coverage limit that the financial institution had set for that particular customer.[143] An analysis of supervisory data on NSF practices at eight very large financial institutions suggests that 84.3 percent of NSF fees were assessed on accounts with overdraft coverage in 2022.[144] Other examples that could cause a lack of understanding of the material risks, costs or conditions of a consumer's account would be if the consumer were unaware of whether scheduled transactions, checks, or other non-instantaneous withdrawals had settled, or whether or not recent deposits had become fully available.[145]

Third, some consumers would not understand that it is even possible to overdraw their accounts with ATM or debit cards, or with a P2P transaction—in contrast to other payment methods such as checks and ACH transactions. As the Board explained in the 2009 Opt-in Rule, ''many consumers may not be aware that they are able to overdraft at an ATM or [point of sale]'' and ''[d]ebit cards have been promoted as budgeting tools, and a means for consumers to pay for goods and services without incurring additional debt.'' [146] Even following implementation of the 2009 Opt-in Rule, consumers have experienced confusion about whether their cards could overdraw their accounts.[147] Furthermore, consumers who did not elect to opt into overdraft coverage on ATM and one-time debit card transactions may be especially likely to lack understanding in this context, since they may believe that it is not possible to incur a fee (whether called an overdraft or an NSF fee) on these covered transactions.

Fourth, for many covered transactions under this proposal, the decision-making environment and rapidity of the consumer's required choices at the merchant POS, ATM, or online may contribute to consumers' lack of understanding of the material costs, risks, or conditions of these transactions, particularly in conjunction with the reasons discussed above. Although, as noted above, many consumers can now check their account balances on a smartphone, when a consumer purchases a good or service at a merchant POS terminal, makes an online purchase, or uses an ATM, the transaction typically occurs very rapidly and the consumer may not have time (or may perceive that they do not have time) to check the account balance, which may itself be a moving target if there are transactions that have not settled (see earlier discussion). Moreover, the burden of checking a balance immediately prior to a purchase is likely to be higher for economically vulnerable consumers, who are less likely to have internet or smartphone access to their depository accounts. This increased expected burden of getting information on an account balance, which may sometimes entail a fee when a vulnerable consumer has limited access to a bank branch with an in-network ATM, would make information acquisition about balances less likely and could make covered transactions more likely.[148]

The decision-making environment and rapidity of the consumer's choices may also contribute to consumers' lack of understanding of the material costs, risks, or conditions of many P2P covered transactions. Per the 2021 FDIC Survey, consumer households use nonbank online payment services to send or receive money (58.2 percent), make purchases in person (30.4 percent), and make purchases online (63.9 percent).[149] When a consumer purchases a good or service in person using a debit card, makes an online purchase, or sends money to a friend, the transaction occurs very rapidly and misremembering their account balance is possible. Although the speed and convenience can generally be viewed as positive features of such transactions for consumers, the CFPB preliminarily believes that these features, in conjunction with other issues, may make it more challenging for consumers to understand those transactions' material costs, risks, or conditions.

Unreasonable Advantage-Taking

Under CFPA section 1031(d)(2)(A), a practice is abusive if it takes unreasonable advantage of consumers'

[142] *See, e.g.,* Lauren Debter, *Why You Can't Trust Your Online Bank Account Balance in the Smartphone Era,* Forbes (July 13, 2016), *https://www.forbes.com/sites/laurengensler/2016/07/13/online-bank-account-balance-overdraft-fees* (Debter 2016).

[143] Financial institutions typically assign each account an overdraft coverage limit, which represents the maximum amount of overdraft coverage the financial institution is willing to extend on the account. Once an account reaches its overdraft coverage limit, the financial institution will no longer pay items into overdraft, but will return those items unpaid. Financial institutions often do not communicate overdraft coverage limits to consumers. *See* CFPB White Paper at 48–52.

[144] Overdraft and NSF Report at 16, 17 tbl. 6.

[145] *See, e.g.,* Debter 2016.

[146] 74 FR 59033, 59038 (Nov. 17, 2009).

[147] Pew Charitable Tr., *Overdrawn: Persistent Confusion and Concern about Bank Overdraft Practices,* at 5 (June 2014), *https://www.pewtrusts.org/-/media/assets/2014/06/26/safe_checking_overdraft_survey_report.pdf* (describing how more than half of those who incurred a debit card overdraft penalty fee do not believe that they opted in to overdraft coverage).

[148] *See generally* Press Release, Consumer Fin. Prot. Bureau, *CFPB Releases Reports on Banking Access and Consumer Finance in Southern States* (June 21, 2023), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-reports-on-banking-access-and-consumer-finance-in-southern-states/* (describing the CFPB's work on the Rural South); Fed. Rsrv. Bank of St. Louis, *Banking Deserts Become a Concern as Branches Dry Up* (July 25, 2017), *https://www.stlouisfed.org/publications/regional-economist/second-quarter-2017/banking-deserts-become-a-concern-as-branches-dry-up* (''The closing of thousands of bank branches in the aftermath of the 2007–09 recession has served to intensify societal concerns about access to financial services among low[-]income and minority populations . . . .''); Donald P. Morgan et al., *Banking Deserts, Branch Closings, and Soft Information,* Liberty St. Econ. (Mar. 7, 2016), *https://libertystreeteconomics.newyorkfed.org/2016/03/banking-deserts-branch-closings-and-soft-information/* (''U.S. banks have shuttered nearly 5,000 branches since the financial crisis, raising concerns that more low-income and minority neighborhoods may be devolving into 'banking deserts' with inadequate, or no, mainstream financial services.''); Hoai-Luu Q. Nguyen, *Are Credit Markets Still Local? Evidence from Bank Branch Closings,* 11(1) Am. Econ. J.: Econ. Pol'y 1 (2019), *https://www.aeaweb.org/articles?id=10.1257/app.20170543* (showing that distance to bank branches affects credit access for small businesses); Jung Sakong & Alexander K. Zentefis, *Bank Access Across America,* Fed. Rsrv. Bank of Chi. (Feb. 15, 2022), *https://www.chicagofed.org/publications/working-papers/2023/2023-15* (showing how distance to a bank branch affects bank branch use and banking access).

[149] *FDIC 2021 Survey* at 34 tbl. 6.6.

lack of understanding of the material risks, costs, or conditions of a consumer financial product or service. The CFPB preliminarily concludes that the practice of charging NSF fees on covered transactions takes unreasonable advantage of consumers' lack of understanding of the above-referenced material risks, costs, or conditions of their accounts when they initiate those transactions.[150]

A determination of unreasonable advantage-taking, as the Abusive Policy Statement explains, involves an evaluation of the facts and circumstances that may affect the nature of the advantage and the question of whether the advantage-taking was unreasonable under the circumstances.[151] The Abusive Policy Statement also explains that such an evaluation does not require an inquiry into whether the advantage-taking is typical or not—that even a relatively small advantage may be abusive if it is unreasonable, and that one may rely on qualitative assessment rather than an investigative accounting of costs and benefits to determine whether a covered financial institution takes an unreasonable advantage.[152]

There is a point at which a covered financial institution's conduct in leveraging its superior information becomes unreasonable advantage-taking and thus is abusive. A number of analytical methods, including but not limited to those described in the Abusive Policy Statement, can be used to evaluate unreasonable advantage-taking.[153] The identified practice in this proposal preliminarily constitutes unreasonable advantage-taking under multiple of those analytical methods.

First, NSF fees are not fees for a service. Profiting from transactions where the consumer receives no service in return raises threshold concerns that a covered financial institution may be engaging in unreasonable advantage-taking. If a covered financial institution were to assess an NSF fee on a covered transaction, the practice would impose a cost (approximately $32 based on current NSF fees) with no benefit to the consumer, while at the same time imposing only an apparently de minimis cost on the covered financial institution ($0.005 at most, according to a 2021 Board survey)[154] that presumably could easily be recovered via fees collected on successful transactions. As noted above, charging an NSF fee in connection with a covered transaction would result in the consumer paying something for receiving nothing. This effectively turns the fee into a penalty fee. The CFPB notes that a consumer may already suffer disruption in the first instance by the decline of the covered transaction itself, whether through non-receipt of an expected good or service, embarrassment, or other adverse consequences. The NSF fee would compound that disruption by imposing a material cost.

Although the data noted above indicates that the cost to covered financial institutions of declining covered transactions appears to be de minimis, the CFPB requests submission of further data on these costs, as well as comment on the possibility of limiting the determination of unreasonable advantage-taking and the corresponding prohibition to allow for cost recovery.

Second, covered financial institutions would have no reason for imposing such fees other than reaping a windfall, because they could simply refuse to authorize the transaction instantaneously, which, as discussed above, would impose negligible cost on them.[155] The CFPB notes that in consumer litigation about banks' charging of fees on debit card transactions prior to the 2009 Opt-in Rule, one court held, for purposes of opining on a motion to dismiss, that charging such fees was an unconscionable practice under State law in part because the banks' ability to make an instantaneous decision about whether to process or decline a debit card transaction means there is less risk to the banks of the account having insufficient funds to cover the transaction.[156]

Third, covered financial institutions that charge NSF fees on covered transactions would be benefiting from negative consumer outcomes that result from one of the enumerated factors identified in CFPA section 1031(d)(2),[157] *i.e.,* a consumer's lack of understanding. As the Abusive Policy Statement explains, Congress, partly in response to the financial crisis, prohibited certain abusive business models and other acts or practices that—contrary to standard consumer finance relationships where the company benefits from consumer success—misalign incentives and generate benefit for a company when people are harmed.[158] The CFPB generally considers it unreasonable for a financial institution to benefit from, or be indifferent to, negative consumer outcomes resulting from a consumer's lack of understanding.[159]

Finally, in assessing whether the practice at issue here involves unreasonable advantage-taking, a relevant factor is the vulnerability of many of the consumers who would incur such NSF fees if they were imposed.[160] Although consumers of all

[150] The CFPB notes that the fee charged in this situation would involve unreasonable advantage-taking no matter what specific situation creates the lack of understanding that is taken advantage of and whether it relates to lack of understanding of a material cost, risk, or condition or more than one of those factors.

[151] *See* Abusive Policy Statement at 21886. *Cf., e.g., Swift & Co.* v. *Wallace,* 105 F.2d 848, 854–55 (7th Cir. 1939) ('' '[U]nreasonable' is not a word of fixed content and whether preferences or advantages are unreasonable must be determined by an evaluation of all cognizable factors which determine the scope and nature of the preference or advantage.'').

[152] Abusive Policy Statement at 21886.

[153] *See id.*

[154] *See* footnote 32.

[155] As the CFPB explained in the Abusive Policy Statement, ''One may also assess whether entities are obtaining an unreasonable advantage by considering whether they are reaping more benefits as a consequence of the statutorily identified circumstances, or whether the benefit to the entity would have existed if the circumstance did not exist,'' meaning that, ''[i]n other words, entities should not get a windfall due to'' one or more of the enumerated conditions under CFPA section 1031(d)(2). *See* Abusive Policy Statement at 21886. *See also JPay, LLC,* File No. 2021–CFPB–0006 (Oct. 19, 2021) (consent order describing an abusive practice where a firm leveraged an exclusive contract to charge fees on prepaid cards used to provide money to individuals being released from prison or jail and where the prepaid cards replaced the feeless option of receiving such money as cash or by check that previously had been offered by prisons and jails); CFPB Fall 2022 Highlights at 22 (describing how mortgage servicers took unreasonable advantage of consumers' lack of understanding when they profited from insufficiently disclosed phone-payment fees that were materially greater than the cost of other payment options).

[156] *See In re Checking Acct. Overdraft Litig.,* 694 F. Supp. 2d 1302, 1320–21 (S.D. Fla. 2010).

[157] As the Abusive Policy Statement noted, ''Congress prohibited certain . . . acts or practices that—contrary to many consumer finance relationships where the company benefits from consumer success—generate benefit for a company when people are harmed.'' Abusive Policy Statement at 21886.

[158] As the CFPB's Abusive Policy Statement explained, ''The financial crisis was set in motion by a set of avoidable interlocking forces—but at its core were mortgage lenders profiting (by immediately selling on the secondary market) on loans that set people up to fail because they could not repay.'' *See* Abusive Policy Statement at 21884; *see also* S. Rep. No. 111–176, at 11 (2010), *https://www.congress.gov/congressional-report/111th-congress/senate-report/176/1* (''Th[e] financial crisis was precipitated by the proliferation of poorly underwritten mortgages with abusive terms, followed by a broad fall in housing prices as those mortgages went into default and led to increasing foreclosures.'').

[159] *See* Abusive Policy Statement at 21886.

[160] *See* 85 FR 44382, 44420 (July 22, 2020) (''As a preliminary matter, the [CFPB] declines to use this rulemaking to articulate general standards addressing whether the conduct of lenders or other financial services providers take unreasonable advantage of consumers. Instead, the [CFPB] will articulate and apply such standards, including the 2017 [rule's] four-factor analysis, to the extent necessary to decide the specific issue in this rulemaking, namely, whether lenders take

income levels overdraw their checking accounts,[161] more affluent consumers are more likely to be able to maintain a cushion to help avoid doing so. As research shows, less well-off, more economically vulnerable consumers are more likely to be struggling to meet their regular expenses.[162] For these vulnerable consumers, maintaining such a cushion often is not possible.[163] As a result, NSF fees function as a penalty imposed on these consumers *because* they do not have enough money in their account, whether that deficiency is due to chronic income shortfalls, timing mismatches regarding inflows and outflows over which they have no control, or other reasons.[164] The harm inflicted on economically vulnerable consumers from such fees, if they were to be charged, would likely be greater than that which more affluent consumers would suffer. Because much of the windfall from charging NSF fees on covered transactions would be gained from vulnerable consumers in exchange for providing no benefit to them, a covered financial institution would be taking unreasonable advantage of such consumers in doing so. As with consumers in general, the profit accrued from imposing NSF fees in this circumstance would be derived directly from vulnerable consumers' lack of understanding. This practice would constitute unreasonable advantage-taking because covered financial institutions are profiting directly from consumer hardship rather than from providing useful services to avoid or alleviate it.

unreasonable advantage of consumers if the lenders make covered loans without determining whether borrowers have the ability to repay them.'').

[161] CFPB 2017 Data Point at 25 tbl. 3 (showing that consumers with high balances may also be heavy overdrafters).

[162] *See, e.g.,* Bd. of Governors of the Fed. Rsrv. Sys., *Economic Well-Being of U.S. Households in 2022,* at 29 (May 2023), *https://www.federalreserve.gov/publications/files/2022-report-economic-well-being-us-households-202305.pdf.*

[163] *See* Rob Levy & Joshua Sledge, *Complex Portrait: An Examination of Small-Dollar Credit Consumers,* Ctr. for Fin. Servs. Innovation (2012), *https://s3.amazonaws.com/cfsi-innovation-files/wp-content/uploads/2017/01/31163518/A-Complex-Portrait-An-Examination-of-Small-Dollar-Credit-Consumers.pdf* (discussing how financial shortfalls may be due to mismatched timing between income and expenses, misaligned cash flows, income volatility, unexpected expenses or income shocks, or expenses that simply exceed income, and noting that 32 percent of users of small-dollar credit products reported misaligned cash flow as the precipitating factor for their borrowing, while 30 percent reported chronic income shortfalls).

[164] Through its supervisory work, the CFPB has learned that at seven very large financial institutions in 2022 consumer accounts with an average balance below $500 had more than 20 times as many NSF transactions and more than 11 times as many NSF fees as consumer accounts with an average balance above $1,500. Overdraft and NSF Report at 17 tbl. 6.

V. Proposed Effective Date

The CFPB is proposing that this rule have an effective date of 30 days after publication of a final rule in the **Federal Register**. The CFPB is proposing this expedited effective date because the practice that would be prohibited based on the CFPB's preliminary abusive conduct determination is not thought to be prevalent today, and therefore any burdens associated with implementation of this proposal, if finalized, should be minimal. However, since the CFPB understands that a limited number of providers may currently charge fees that would be subject to the prohibition, the CFPB seeks comment on whether the proposed effective date should be modified to provide additional time for implementation.

VI. CFPA Section 1022(b) Analysis

A. Overview

In developing the proposed rule, the CFPB has considered the proposed rule's potential benefits, costs, and impacts in accordance with section 1022(b)(2)(A) of the CFPA. The CFPB requests comment on the preliminary analysis presented below and submissions of additional data that could inform the CFPB's analysis of the benefits, costs, and impacts. In developing the proposed rule, the CFPB has consulted with the appropriate prudential regulators and other Federal agencies, including regarding the consistency of the proposed rule with any prudential, market, or systemic objectives administered by those agencies, in accordance with section 1022(b)(2)(B) of the CFPA.

B. Goals of the Proposed Rule

The CFPB is proposing this rule because of its preliminary determination that consumers would lack understanding of the material risks, costs, or conditions of a covered financial institution's charging of an NSF fee in connection with a covered transaction. In general, if consumers lack understanding of the material risks, costs, or conditions of a particular transaction, their choices may be suboptimal from an economic perspective.

C. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion below relies on information that the CFPB has obtained from industry and publicly available sources, including reports published by the CFPB. These sources form the basis for the CFPB's consideration of the likely impacts of the proposed rule. The CFPB provides estimates, to the extent possible, of the potential benefits and costs to consumers and covered persons of this proposal given available data.

The specific data sources that inform this discussion and the CFPB's existing analysis include public call report data, internal data provided by financial institutions through supervisory information requests, and research published by the CFPB. In addition, the existing academic literature as well as policy work conducted by State regulators, and by the Board were considered.

There remain important data limitations that preclude a more exhaustive determination of the proposed rule's benefits, costs, and impacts. Foremost among them is that the existing data sources and evidence available to the CFPB generally do not separately identify whether NSF transactions or NSF fees were incurred on requests by consumers to withdraw, debit, pay, or transfer funds from their checking, savings, or consumer asset account where the transaction is declined instantaneously or near-instantaneously by the financial institution (henceforth, covered transactions). In part, this reflects the CFPB's understanding of the current prevalence of the practice; based on its market monitoring activities the CFPB believes that covered financial institutions rarely charge NSF fees on covered transactions.

Relatedly, quantifying the benefits, costs, and impacts of the proposed rule requires quantifying future consumer and covered financial institution behavior both with and without the proposed changes, and the CFPB is not aware of available data that could be used to generate reliable predictions about such future behavior. In particular, there is considerable uncertainty around the future frequency with which financial institutions would charge NSF fees on covered transactions in the absence of the proposed rule. This includes uncertainty about how many, and which financial institutions would begin charging NSF fees on covered transactions as well as at what rate and fee amount these fees would be assessed. To reflect this uncertainty, the CFPB considers a range of ways in which market practices might evolve in the absence of the proposed rule when calculating the costs, benefits, and impacts of the proposed rule.

The data, prior research, and existing policy work available to the CFPB or with which the CFPB is familiar provide an important basis for understanding

the potential effects of the proposed rule, albeit without being sufficient to completely quantify the potential effects of the proposal for consumers and covered persons. The deficits in existing data and evidence are due primarily to the proposed rule addressing practices not thought to currently be prevalent in consumer financial markets, to existing data not enabling the identification of covered transactions, to difficulty predicting the evolution of the market, and to the lack of existing evidence on the magnitude or direction of potential behavioral responses by consumers and covered persons to policies like the proposed rule. While the CFPB acknowledges these data limitations, the analysis below provides quantitative estimates where possible alongside qualitative discussions of the proposed rule's benefits, costs, and impacts. General economic principles and the CFPB's expertise, together with the available data, allow the CFPB to provide insight into these benefits, costs, and impacts. The CFPB requests additional data or studies that could help quantify the benefits and costs to consumers and covered persons of the proposed rule including information related to the current or likely future incidence of NSF fees on covered transactions.

D. Baseline for Analysis

In evaluating the proposal's benefits, costs, and impacts, the CFPB considers the impacts of the proposed rule against a baseline in which the proposed rule does not become effective. The baseline the CFPB considers corresponds to current law, wherein NSF fees are not explicitly prohibited for covered transactions. Based on its market monitoring activities, the CFPB understands that covered financial institutions rarely charge NSF fees on covered transactions; however, the CFPB is uncertain about the extent to which such fees are currently charged and the CFPB believes there is a risk that such fees may be charged to a greater degree in the future. The CFPB recognizes that financial institutions have incentives to generate new revenue; assessing NSF fees on covered transactions is one potential source of new revenue. Additionally, if the Overdraft Proposed Rule is finalized and reduces overdraft fee revenue for covered financial institutions, it may lead some institutions to consider imposing new fees. Increasing the prevalence of NSF fees on covered transactions could be one way that covered financial institutions respond, while market forces could lead even non-covered financial institutions to begin charging NSF fees on covered transactions.

Accordingly, for the baseline, the CFPB considers potential NSF market practices that range from financial institutions rarely charging NSF fees on covered transactions to a scenario where some financial institutions charge NSF fees on covered transactions. The CFPB believes that, absent the proposed rule, it is unlikely that NSF fees on covered transactions would be assessed at a rate greater than the rate at which they are currently charged on non-covered transactions.[165] To estimate the share of total NSF transactions [166] that would be covered, the CFPB uses data from the Federal Reserve Payments Study (FRPS) [167] to calculate the percent of total non-cash payments that were non-prepaid debit card payments in 2021: 44.7 percent. As further discussed below, this is informative of an upper bound on how large the impact of the proposed rule might be.[168]

For costs, benefits, and impacts, the CFPB estimates annual values and, absent any evidence to suggest that the values would change over time, the CFPB assumes that the annual values persist indefinitely.

The CFPB requests comment on the approach to evaluating the proposal's benefits, costs, and impacts and, specifically, on the assumptions implicit in providing estimates that correspond to a range of future NSF market practices.

E. Potential Benefits and Costs to Consumers and Covered Persons

1. Potential Benefits and Costs to Consumers

The proposal to prohibit NSF fees on covered transactions would directly benefit consumers who would have been assessed NSF fees on covered transactions by reducing the amount that they pay in NSF fees. In addition to the direct benefits from the absence of NSF fees, a prohibition on NSF fees could have several indirect impacts on consumers who would otherwise have been charged NSF fees. First, for consumers with account balances low enough that an NSF fee brings their balance below zero or farther below zero, NSF fees may lead consumers to have their account closed or to have their account information furnished to a checking account reporting company, which could make getting access to a new depository account more difficult in the future. By prohibiting NSF fees, the proposed rule should reduce (to zero) the likelihood of these indirect impacts of NSF transactions. Second, without the ability to assess NSF fees on transactions that consumers undertake without sufficient funds, financial institutions may opt to allow additional transactions to go through and charge overdraft fees instead. By allowing accounts to go into overdraft this implies more consumers will receive the item(s) they were attempting to purchase, though they may be assessed an overdraft fee. A third possibility is that a prohibition on NSF fees could reduce expected revenue for the consumer segments most likely to incur NSF fees and result in financial institutions being less willing to open depository accounts for those consumers.[169]

As discussed further below, the extent of any of these benefits depends on the extent to which NSF fees would be charged on covered transactions under the baseline. To the extent NSF fees would be charged, the direct effects of the proposed rule should benefit consumers by reducing the amount they pay in NSF fees. Similarly, the first above-mentioned indirect effect—a decreased likelihood of depository account closure and having negative information furnished to a checking account reporting company—should increase consumer welfare. Consumer welfare could increase or decrease from having more transactions go through and being assessed an overdraft fee instead of an NSF fee; whether consumers benefit will depend on the

[165] *See* part I (Background discussion) for a discussion of NSF fees assessed on non-covered transactions.

[166] Throughout this section, ''NSF transactions'' refer to requests by consumers to withdraw, debit, pay, or transfer funds from their checking, savings, or consumer asset account for an amount greater than the available funds in the account and where the transaction is declined by the financial institution.

[167] *See* FRB 2022 Payments Study.

[168] The FRPS data are not informative about the possibility of NSF fees being assessed on person-to-person (P2P) transactions, as P2P transactions are not included in the FRPS data. Whether their inclusion would increase or decrease the estimate of the share total non-cash payments that are covered transactions will depend on whether the ratio of covered to non-covered transactions is higher or lower for P2P transactions than it is for the non-P2P non-cash payments included in the FRPS data. However, the CFPB notes that because P2P transactions currently make up a relatively small share of non-cash payments, their inclusion is unlikely to affect this estimate by much.

[169] An additional possibility is that, to the extent financial institutions would have charged NSF fees on covered transactions under the baseline, those financial institutions could respond to the proposed rule by attempting to offset lost NSF revenue through changes in other account fees or prices. Any increases in these fees would decrease the benefit of the proposed rule for some consumers, with the net change in fee incidence (the decrease in NSF fee incidence and the increase in offsetting fee incidence) determining whether consumers benefit from the proposed rule.

relative size of NSF and overdraft fees as well as how much consumers value the goods or services they were attempting to purchase. Consumer welfare could also decrease if the inability to assess and collect NSF fees makes financial institutions less willing to offer depository accounts to certain consumers.

Direct Effects

As discussed above, the proposed rule will directly benefit consumers to the extent that NSF fees would have been charged on covered transactions, which are estimated to represent 44.7 percent of checking account transactions based on 2021 FRPS data. The CFPB understands that it is currently uncommon for financial institutions to charge NSF fees on covered transactions, but the CFPB does not have reliable data on how frequent the practice might be either now or in the future.

Recent CFPB analysis of Call Report data suggests that even after sharp declines in the number of banks with over $1 billion in assets charging NSF fees, consumers will be paying roughly $250 million annually in NSF fees to banks with more than $1 billion in assets.[170] The CFPB estimates that an additional $73 million in annual NSF fees is being paid to banks with less than $1 billion in assets and to credit unions, for a total of $323 million in annual NSF fees.[171]

Of this total, the CFPB's understanding is that the large majority was paid on non-covered transactions and therefore would be unaffected by the proposed rule, and the CFPB does not have definitive evidence with which to forecast the revenue that might be generated by covered transactions in the future under the baseline. As a starting point to arrive at a range of possible future NSF fee practices for covered transactions, the CFPB begins from our current annual estimate of all NSF fee revenue: $323 million. As a likely lower bound for potential future NSF fee market practices, the CFPB considers the scenario where NSF fees are rarely charged on covered transactions. This would suggest that the $323 million in current annual NSF fee revenue corresponds to $0 in future NSF fee revenue from covered transactions. As a more probable range of potential future NSF fee market practices for covered transactions, if projected annual NSF fee revenue for covered transactions were to correspond to between 5 and 20 percent of current annual NSF fee revenue, it would suggest between $16.2 million and $64.6 million in annual NSF revenue from covered transactions. The proposed rule would therefore indicate a direct benefit to consumers of between $16.2 million and $64.6 million in reduced NSF fees.

The CFPB seeks comment on the extent to which NSF fees are currently charged on covered transactions and the extent to which they might be charged on covered transactions in the future.

Indirect Effects

To the extent covered financial institutions would have charged NSF fees on covered transactions under the baseline, the proposed rule would benefit consumers by reducing to zero the probability that an NSF fee on a covered transaction would bring their account balance below zero and cause their account to be closed or their information to be furnished to a checking account reporting company. The indirect benefits to consumers from these reductions would increase consumer welfare for the consumers that would have experienced these events in the absence of the proposed rule.

The extent of these indirect benefits depends on the prevalence and amount of NSF fees charged on covered transactions under the baseline. At NSF fee market practices between the lower and upper bound projections, the proposed rule would generate indirect benefits to consumers through the same changes, though these benefits would be proportionally smaller in size than under the upper bound projection.

If the prohibition on NSF fees induces some financial institutions to allow additional transactions that they would have declined to go into overdraft, it could also benefit consumers relative to the baseline in instances where a consumer had a transaction declined, and they were assessed an NSF fee of the same amount as the overdraft fee. If the potential NSF fee is less than the potential overdraft fee, whether consumers benefit will depend on the consumers' valuation of the goods they were purchasing or attempting to purchase net of the price of the good(s). Whether this benefit is as large as the benefit the consumer receives if their transaction is declined but they are not assessed an NSF fee will depend on the consumer's valuations and the relative size of the NSF and overdraft fees. These indirect benefits would accrue to consumers only under NSF fee market practice projections that predict a positive number of NSF fees on covered transactions.

Behavioral Effects

To the extent covered financial institutions would have charged NSF fees on covered transactions under the baseline, the proposed rule could generate changes in the behaviors of consumers or covered persons. One possibility is that a prohibition on NSF fees could make consumers less willing to exert effort to get information on their account balance prior to making purchases and therefore could increase

[170] *See* CFPB October 2023 Data Spotlight. The CFPB arrived at this estimate by analyzing NSF fee practices of banks with over $10 billion in assets as of March 31, 2023, and the 75 banks that collected the most overdraft/NSF fee revenue in 2021 (some of which are under $10 billion in total assets). For each of these institutions, NSF revenue based on FFIEC Call Report data is calculated by taking 18.9 percent of reported overdraft/NSF fee revenue (except in cases where the bank did not have an overdraft program). Institutions that no longer charge NSF fees account for 86 percent of the total estimated NSF fee revenue of all banks over $1 billion in total assets. The remaining 14 percent of estimated 2021 NSF fee revenue is equal to approximately $250 million.

[171] Call Report data do not include information on overdraft or NSF fee revenue for credit unions or for banks with $1 billion or less in assets. To account for this, the CFPB uses data collected from core processors for the number of accounts by asset size and the overdraft/NSF revenue per account, and from 2014 call report data for the distribution of institutions by asset size, and then assumes that overdraft/NSF revenue at small institutions saw the same growth from 2014 to 2019 as large banks, to arrive at a 2019 estimate. These extrapolations suggest that banks with over $1 billion in total assets comprise 77.4 percent of marketwide overdraft/NSF revenue. *See* CFPB 2021 Data Point at 7. For the annual projection, the CFPB assumes that banks with assets over $1 billion represent the same relative portion of total marketwide overdraft/NSF revenue as they did in 2019. The CFPB then multiplies the annual NSF fee revenue projection by 1/0.774 to arrive at an estimate of NSF fee revenue from all financial institutions of $323 million. The CFPB also explored using the share of consumer deposits at banks with assets over $1 billion based on FFIEC and NCUA call report data from the fourth quarter of 2022 to extrapolate projected annual NSF revenue for banks with assets over $1 billion to arrive at a projected marketwide estimate for annual NSF revenue. For credit unions, the CFPB sums all possible shares and deposits for consumers. For Banks and Thrifts, the CFPB sums noninterest-bearing and interest-bearing deposits of individuals, partnerships, and corporations held in domestic offices (total deposits). The CFPB additionally sums the value of deposits of any type intended primarily for individuals for personal, household, or family use as reported only by Banks and Thrifts with more than $1 billion in total assets (consumer deposits). The CFPB then calculates the median share of total deposits that are represented by consumer deposits at banks and thrifts with between $1 billion and $10 billion in total assets (0.41). The CFPB multiplies the total deposit amount for Banks and Thrifts with less than $1 billion in total assets by this share, to arrive at an estimate of consumer deposits for each bank or thrift in the fourth quarter of 2022. The CFPB sums consumer deposits or imputed consumer deposits across all financial institutions regardless of size and calculate the ratio of consumer deposits held by banks and thrifts with more than $1 billion in total assets to total consumer deposits: 0.75. If the CFPB were to use this extrapolation factor to arrive at a marketwide estimate, it would multiply the annual NSF fee revenue estimate by 1/0.75 to arrive at a similar estimate of NSF fee revenue from all financial institutions of $333 million.

the likelihood of NSF transactions for some consumers. However, the CFPB can find little evidence to support the existence of a deterrent effect of NSF fees on the prevalence of NSF transactions. Based on data on NSF fees on transactions of all types from seven of the eight financial institutions that submitted data, after controlling for month-specific and financial institution-specific differences in the number of NSF transactions, the number of NSF transactions financial institutions report after decreasing or eliminating NSF fees decreased, on average, for the five financial institutions that made a change during the reporting period. This is consistent with the costs of avoiding NSF fees being sufficiently high for consumers at risk of NSF transactions that a change in NSF fee size does not result in a meaningfully different amount of optimal effort put towards avoiding these fees,[172] or with consumers not being aware of the possibility or size of NSF fees. The CFPB caveats that the NSF fees and transactions observed in the data are likely to have occurred primarily on non-covered transactions and it is possible that the relationship between NSF transactions and NSF fee sizes could be different if we were able to estimate it using only information on covered transactions and fees. Similarly, data that cover a longer period after a reduction in NSF fees would allow for the consideration of medium- and long-term deterrent effects of NSF fees. The data available to the CFPB only permit the consideration of effects that are observable less than twelve months after an NSF fee reduction. Nevertheless, the CFPB seeks comment on the potential deterrent effect of NSF fees on NSF transactions, including data and information that could help inform our understanding of this relationship.

Another possibility is that a prohibition on NSF fees could reduce expected revenue for the consumer segments most likely to incur NSF fees on covered transactions under NSF fee market practice projections above the lower bound, and result in financial institutions being less willing to open depository accounts for those consumers. This would decrease the benefits to the consumer segments that lose access to depository accounts that they would have had under the baseline and those NSF fee market projections.

Last, financial institutions could respond to the proposed rule by offsetting the NSF fee revenue that they would earn under projections above the lower bound with changes in other account fees or prices. These increases in other account fees or prices would decrease the benefits to consumers from the proposed rule.[173] Consumers with accounts that are assessed a greater value of new fees than they would have been assessed in NSF fees will benefit less from the proposed rule.

Distribution of Consumer Impacts

NSF transactions and fees are more likely for consumers with limited resources. Information from the eight financial institutions that responded to the CFPB's supervisory information request suggest that NSF transactions occurred 20 times as often on consumer accounts with low average daily balances (below $500) as for consumer accounts with high average daily balances (above $1,500).[174] NSF fees are 11 times as likely to be assessed on low-balance consumer accounts as on high-balance consumer accounts.

2. Potential Benefits and Costs to Covered Persons

For covered persons, the costs and benefits are, in general, the opposite of the benefits or costs to their customers, as detailed above, and net of offsetting changes. Any decrease in fees paid by consumers will result in an equally sized decrease in revenue for covered persons. Any increase in fees paid by consumers due to offsetting fees assessed by covered financial institutions will result in an equally sized increase in revenue for covered persons.

Additional potential costs to covered persons are the legal and personnel costs of reviewing current policies and pricing strategies to determine whether existing policies are compliant and whether to re-optimize behavior after considering the proposed rule. Given that the CFPB understands that NSF fees today are rarely charged on covered transactions, any such costs should be small, as current policies are generally consistent with the proposed rule's requirements. Some of these costs might be incurred by covered financial institutions due to the Overdraft Proposed Rule, regardless of whether the proposed rule takes effect.

As was the case above for consumers, for the baseline at the lower bound projection for NSF fee market practices, the proposed rule would generate few benefits, costs, or impacts for covered persons.

At levels above the lower bound projection, the proposed rule will have distinct benefits, costs, and impacts on covered persons, depending on whether financial institutions charge NSF fees on covered transactions.

Based on a CFPB analysis of publicly available Call Report data and publicly available information regarding banks' NSF practices, a majority of NSF fees have been eliminated among banks with at least $1 billion in total assets.[175] The CFPB report estimates that nearly three-fourths of the 75 banks with the highest combined NSF and overdraft revenue in 2021 have since stopped charging NSF fees. A similar analysis of NSF fee practices among banks with over $10 billion in assets estimates that two-thirds of those institutions have eliminated NSF fees. These findings suggest that a growing share of covered persons no longer charge NSF fees of any kind. These differences in NSF fee policies across covered persons could persist for covered transactions in the baseline. That is, some covered persons are likely to be charging NSF fees on covered transactions while other covered persons will not be charging NSF fees on covered transactions. To the extent that this behavior follows similar patterns as the currently observed decisions to charge NSF fees on non-covered transactions, the analysis suggests that smaller financial institutions may be less likely to not charge NSF fees on covered transactions than larger financial institutions. However, it is also possible that the

[172] In the context of acquiring information about account balances, this could be the case if consumers incur certain fees for checking balances at ATMs, if ATMs or financial institution branches are sufficiently far from where consumers live, or consumers lack access to their financial accounts online or through mobile applications.

[173] To gauge the size of potential fees that financial institutions would need to assess to fully replace the hypothetical revenue they lose from the proposed prohibition on NSF fees at the upper bound projection for future NSF fee market practices, the CFPB used the data from the eight financial institutions included in the most recent Supervisory Information Request. The CFPB calculated the NSF fee revenue per account that each financial institution reported in 2022, divided this amount by 12 and multiplied by the estimated ratio of covered to non-covered transactions from the 2021 FRPS data to get a monthly account fee that financial institutions would need to assess to replace the revenue they would hypothetically lose under the proposed rule. On average across the 31 checking products in the data, this monthly account fee would need to be $0.20 per account to replace the lost revenue from hypothetical NSF fees on covered transactions at the upper bound projection for NSF fee market practices. Consumers would then benefit less from the proposed rule if they were required to pay additional monthly account fees (or other similar fees). We caution that this is likely to overstate the monthly fee size needed to replace NSF fee revenue because of the five financial institutions that eliminated NSF fees during 2022 that collected a positive amount of NSF fee revenue in 2022. As these financial institutions have already stopped charging NSF fees, they would not need to replace any NSF fee revenue lost under the proposed rule.

[174] Overdraft and NSF Report at 17 tbl. 6.

[175] *See* CFPB October 2023 Data Spotlight.

covered financial institutions that have eliminated NSF fees on non-covered transactions could opt to start charging NSF fees on covered transactions under market scenarios above the lower bound projection.

For covered persons that are not charging NSF fees on covered transactions, the proposed rule would likely generate smaller costs and benefits.

For covered persons that are charging NSF fees on covered transactions or that would charge them under the baseline, the proposed rule would impose costs equal to the loss in NSF revenue due to the prohibition on NSF fees on covered transactions, net of any offsetting revenue increases from new fees. If future annual NSF fees from covered transactions represented between 5 and 20 percent of current total 2022 NSF revenue, the cost borne by covered persons charging NSF fees on covered transactions would be between $16.2 million and $64.6 million.

As mentioned above, the direct benefits, costs, and impacts on covered persons are likely to be the opposite of those discussed for consumers. However, for some of the potential indirect impacts, this may not be the case. For example, consumers may benefit from a reduced probability that an NSF fee would bring their account balance below zero and cause their account to be closed or their information to be furnished to a checking account reporting company. For covered financial institutions, these indirect impacts do not represent costs, and they may represent benefits as they no longer need to incur the costs associated with closing these depository accounts or furnishing information to checking account reporting companies.

Similarly, if the prohibition on NSF fees induces some financial institutions to not offer depository accounts to the consumer segments most likely to incur NSF fees on covered transactions, it could impose a cost on consumers in those segments who may find it more difficult to access a depository account. This would also impose a cost on the covered financial institutions that are no longer willing to offer these accounts, with the cost being equal to the expected revenue on the depository accounts they would have opened for these consumer segments under the baseline and NSF fee market projection, but which they are no longer willing to open under the proposed rule.

Any indirect effects for covered financial institutions from allowing additional transactions to go into overdraft are likely to be small and will depend on the relative size of expected revenue and cost from charging an overdraft fee compared to charging an NSF fee.

3. Benefits and Costs of Potential Alternative of Permitting Fees That Cover Costs of Processing NSF Transactions

The CFPB considered proposing an alternative in which financial institutions would be permitted to charge fees on covered transactions that are limited to the cost of handling NSF transactions. Such an alternative would have little effect on the estimates presented above. Research from the Board suggests the average cost of NSF handling was just $0.005 in 2021 and this has remained relatively stable since 2011.[176] If the CFPB assumes $32 per NSF fee along with our projections for future NSF fee revenue from covered transactions that correspond to between 5 and 20 percent of current annual NSF fee revenue,[177] wherein the proposed rule would result in between $16.2 million and $64.6 million in reductions in NSF revenue, this would represent between 506,250 and 2,018,750 NSF fees. At $0.005 per NSF fee, this would imply between $2,531 and $10,094 in total costs for financial institutions to handle NSF transactions that generated fees. The CFPB can also use the information requested from eight very large financial institutions in a supervisory capacity to adjust this number given that the eight institutions represented in the data assessed NSF fees on 13.4 percent of NSF transactions.[178] To account for the costs of NSF transactions that did not generate fees, the range of $2,531 to $10,094 in NSF handling cost totals can be inflated based on the number of fee-generating transactions by 1/0.134, to estimate that the total allowed cost recovery for financial institutions from their handling of NSF transactions would be between $18,888 and $75,328. The remaining benefit to consumers from reduced NSF fees after accounting for allowed cost recovery for financial institutions at between 5 and 20 percent of the upper bound projection for NSF fee practices would be between $16,181,112 and $64,524,672. As was the case above, these also represent the costs to covered persons after accounting for allowed cost recovery if NSF fees on covered transactions were assumed to be responsible for between 5 and 20 percent of projected annual NSF revenue.

F. Potential Specific Impacts of the Proposed Rule on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, As Described in Section 1026

Existing data do not clearly indicate whether there would be specific impacts of the proposed rule on depository institutions and credit unions with $10 billion or less in total assets that are different from the impacts on other affected financial institutions. As mentioned above, smaller financial institutions were less likely to have eliminated NSF fees as of 2022. If these institutions are more likely to have started charging NSF fees on covered transactions under an NSF fee market projection, they may be more likely to see NSF fee revenue decrease under the proposed rule relative to the baseline. However, whether there are specific impacts on depository institutions and credit unions with $10 billion or less in assets may also depend on interactions with the Overdraft Proposed Rule. The Overdraft Proposed Rule only applies to depository institutions with more than $10 billion in total assets. If financial institutions impacted by the Overdraft Proposed Rule are those most likely to charge NSF fees on covered transactions under the baseline, it would imply that depository institutions and credit unions with $10 billion or less in total assets may be less likely to be impacted by the proposed rule. Thus, whether there are specific impacts on depository institutions and credit unions with less than $10 billion in total assets will depend on which institutions opt to start charging NSF fees on covered transactions and, possibly, on interactions between the proposed rule and the Overdraft Proposed Rule.

G. Potential Specific Impacts of the Proposed Rule on Consumer Access to Credit and on Consumers in Rural Areas

The CFPB does not anticipate that the proposed rule will have any negative effects on consumer access to credit

[176] *See* FRB 2021 Interchange. Furthermore, as this estimate is based on the cost of handling authorized debit card transactions, the CFPB expects that the corresponding estimate for declined transactions would be smaller.

[177] Based on CFPB market monitoring activity conducted between December 2022 and August 2023, the median institution-level NSF fee among banks and credit unions charging NSF fees with more than $10 billion in total assets was $32. Including information from smaller financial institutions would change this estimate, but likely not by much, given that the already-included, larger financial institutions will be the source of most feed NSF transactions. Still, even if between $16.2 million and $64.6 million in NSF fee revenue were charged on covered transactions and if the feed transaction-level median NSF charged were to drop to $25, it would imply there were between 648,000 and 2,584,000 feed, covered NSF transactions in 2022 and the allowed cost recovery would be between $3,240 and $12,920.

[178] *See* Overdraft and NSF Report at 16, 17 tbl. 6.

under the baseline. To the extent that some financial institutions respond to the proposed rule by increasing the likelihood that they allow transactions to go into overdraft, the proposed rule could result in increased credit access for some consumers.

The CFPB does not have depository account-level data with geographic identifiers that would allow us to measure NSF fees assessed on consumers in rural areas. However, existing research suggests that consumers in rural areas are more likely to be unbanked [179] and more likely to live in a bank desert.[180] This lower access to depository accounts could mean consumers in rural areas are less likely than consumers in other areas to pay NSF fees on covered transactions, which could decrease the potential benefits to consumers in rural areas of the proposed rule.

The CFPB has also calculated the share of the unbanked in the lowest fifth of the income distribution in ZIP codes that the U.S. Census Bureau classifies as urban, rural, and mixed.[181] Seventy-four percent of consumers in the lowest income quintile in both urban and rural ZIP codes have a bank account. This would suggest that lower-income consumers in urban and rural areas have similar access to bank accounts and may also see similar benefits from the proposed rule.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The CFPB is also subject to specific additional procedures under the RFA involving convening a panel to consult with small business representatives before proposing a rule for which an IRFA is required. An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

Small institutions, for the purposes of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, are defined by the Small Business Administration. Effective December 19, 2022, depository institutions with less than $850 million in total assets are determined to be small.

As mentioned above, the CFPB understands that covered persons rarely currently charge NSF fees on covered transactions. As a result, under current market practices the proposed rule should not have a significant impact on a substantial number of small entities.

Moreover, even when combined with overdraft fees, total NSF fees generally represent well under 2 percent of total revenue at the smallest financial institutions that regularly report this information, suggesting that any potential reduction in NSF fee revenue would not be likely to have a significant impact on institutions with less than $850 million in total assets.[182] As a result, the proposed rule should not have a significant impact on a substantial number of small entities even if NSF revenue were entirely comprised of NSF fees on covered transactions.

Accordingly, the Director hereby certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel is required for this proposal.

VIII. Paperwork Reduction Act

Under the PRA, the CFPB may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The CFPB has determined that the proposed rule would not impose any new information collections or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.

The CFPB has a continuing interest in the public's opinions regarding this determination. At any time, comments regarding this determination may be sent to: Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, or by email to *CFPB_Public_PRA@cfpb.gov.*

List of Subjects in 12 CFR Part 1042

Banks, banking, Consumer protection, Credit, Credit unions, Electronic funds transfers, National banks, Savings associations, Trade practices.

■ For the reasons set forth in the preamble, the CFPB proposes to add part 1042 to chapter X in title 12 of the Code of Federal Regulations, as follows:

PART 1042—NONSUFFICIENT FUNDS FEES

Sec.

1042.1 Authority and purpose.
1042.2 Definitions.
1042.3 Identification and prohibition of abusive practice.

Authority: 12 U.S.C. 5511, 5512, 5531(b) and (d).

§ 1042.1 Authority and purpose.

(a) *Authority.* The regulation in this part is issued by the Consumer Financial Protection Bureau (CFPB) pursuant to the Consumer Financial Protection Act of 2010 (CFPA), Public Law 111–203, title X, 124 Stat. 1955.

(b) *Purpose.* The purpose of this part is to identify certain abusive acts or practices in connection with certain consumer transactions by covered financial institutions.

§ 1042.2 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Account* means an ''account'' as defined in Regulation E, 12 CFR 1005.2(b).

(b) *Covered financial institution* means a ''financial institution'' as defined in Regulation E, 12 CFR 1005.2(i).

(c) *Covered transaction* means an attempt by a consumer to withdraw, debit, pay, or transfer funds from their account that is declined instantaneously or near-instantaneously by a covered financial institution due to insufficient funds.

(d) *Insufficient funds* refers to the status of an account that does not have

[179] *See* FDIC 2021 Survey.

[180] *See* Consumer Fin. Prot. Bureau, *Data Spotlight: Challenges in Rural Banking Access,* at 7–10 (Apr. 2022), *https://files.consumerfinance.gov/f/documents/cfpb_data-spotlight_challenges-in-rural-banking_2022-04.pdf.*

[181] *See* Natalie Cox et al., *Financial Inclusion Across the United States* (Apr. 24, 2023), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3934498* (identified the unbanked in the universe of tax records as those not listing an account for rebates or payment over a ten-year period, focusing on the 50–59-old population in 2019. The Census links ZCTAs to an urban area (or none)).

[182] Calculations based on publicly available FFIEC Call Report data from 2022 suggest that only 11.9 percent of reporting financial institutions with total assets below $2 billion had combined revenue from overdraft and NSF fees on depository consumer accounts that exceeded two percent of their total revenue. In the past, the CFPB has estimated that NSF fees make up less than 20 percent of combined overdraft and NSF revenue. Since NSF fees on covered transactions are likely to represent less than half of combined overdraft and NSF revenue, this suggests that less than 12 percent of reporting banks would expect a decline in revenue of even 1 percent, suggesting that the rule would not have a significant impact on a substantial number of small entities. The CFPB caveats that this calculation relies on data from reporting financial institutions with between $1 billion and $2 billion in total assets to make projections about financial institutions with below $850 million in total assets.

enough money to cover a withdrawal, debit, payment, or transfer transaction.

(e) *Nonsufficient funds fee* or *NSF fee* means a charge that is assessed by a covered financial institution for declining an attempt by a consumer to withdraw, debit, pay, or transfer funds from their account due to insufficient funds. The label used by the covered financial institution for a fee is not determinative of whether or not it is a *nonsufficient funds fee.*

§ 1042.3 Identification and prohibition of abusive practice.

(a) *Identification.* It is an abusive practice for a covered financial institution to charge a nonsufficient funds fee in connection with a covered transaction.

(b) *Prohibition.* A covered financial institution must not assess a nonsufficient funds fee in connection with any covered transaction.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2024–01688 Filed 1–30–24; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0040; Project Identifier MCAI–2023–01196–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2014–15–09, AD 2020–15–09, and AD 2022–16–07. AD 2014–15–09 applies to all Airbus SAS Model A330–200 Freighter, A330–200 and –300, and A340–200, –300, –500, and –600 series airplanes. AD 2020–15–09 applies to all Airbus SAS Model A330–941 airplanes. AD 2014–15–09 and AD 2020–15–09 require repetitive operational tests of the hydraulic locking function on certain spoiler servo-controls (SSCs) and replacement if necessary. AD 2022–16–07 applies to certain Airbus SAS Model A330–200, A330–200 Freighter, and A330–300 series airplanes. AD 2022–16–07 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2022–16–07, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require certain actions in AD 2014–15–09, AD 2020–15–09, and AD 2022–16–07 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA), which is proposed for incorporation by reference (IBR). This proposed AD also removes Model A340–200, –300, –500, and –600 series airplanes from the applicability. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 18, 2024.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0040; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- For Airbus service information that is proposed for IBR in this NPRM, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* website *airbus.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2024–0040.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3229; email *Vladimir.ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ‘‘Docket No. FAA–2024–0040; Project Identifier MCAI–2023–01196–T’’ at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ‘‘PROPIN.’’ The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI

should be sent to Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3229; email *Vladimir.ulyanov@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2014–15–09, Amendment 39–17911 (79 FR 44663, August 1, 2014) (AD 2014–15–09), for all Airbus SAS Model A330–200 Freighter, A330–200 and –300, and A340–200, –300, –500, and –600 series airplanes. AD 2014–15–09 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2013–0251 dated October 15, 2013; Correction dated October 16, 2013 (EASA AD 2013–0251), to correct an unsafe condition.

AD 2014–15–09 requires repetitive operational tests of the hydraulic locking function on certain SSCs and replacement if necessary. The FAA issued AD 2014–15–09 to address loss of the hydraulic locking function during take-off, which, in combination with one inoperative engine, could result in reduced controllability of the airplane.

The FAA issued AD 2020–15–09, Amendment 39–21172 (85 FR 45767, July 30, 2020) (AD 2020–15–09) for all Airbus SAS Model A330–941 airplanes. AD 2020–15–09 was prompted by an MCAI originated by EASA. EASA issued AD 2020–0054, dated March 11, 2020 (EASA AD 2020–0054) to correct an unsafe condition.

AD 2020–15–09 requires repetitive operational tests of the hydraulic locking function on certain SSCs and replacement if necessary. The FAA issued AD 2020–15–09 to address loss of hydraulic locking function on the SSCs, which in combination with one engine inoperative at takeoff, could result in reduced controllability of the airplane.

The FAA issued AD 2022–16–07, Amendment 39–22136 (87 FR 51585, August 23, 2022) (AD 2022–16–07) for certain Airbus SAS Model A330–200, A330–200 Freighter, and A330–300 series airplanes. AD 2022–16–07 was prompted by an MCAI originated by EASA. EASA issued AD 2021–0248, dated November 15, 2021 (EASA AD 2021–0248) to correct an unsafe condition.

AD 2022–16–07 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2022–16–07 to address a safety-significant latent failure (that is not annunciated) that, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition.

Actions Since AD 2022–16–07 Was Issued

Since the FAA issued AD 2022–16–07, EASA superseded AD 2020–0054 and 2021–0248R1, dated October 12, 2022, and issued EASA AD 2023–0199, dated November 17, 2023 (EASA AD 2023–0199) (referred to after this as the MCAI), for all Airbus SAS Model A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, A330–841 and A330–941 airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after October 2, 2023, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

The FAA is proposing this AD to address a safety-significant latent failure (that is not annunciated) that, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0040.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0199. This service information specifies new or more restrictive airworthiness limitations for airplane structures, including the repetitive operational tests required by EASA AD 2013–0251 and EASA AD 2020–0054 (which correspond to FAA AD 2014–15–09 and FAA AD 2020–15–09).

This proposed AD would also require EASA AD 2021–0248, which the Director of the Federal Register approved for incorporation by reference as of September 27, 2022 (87 FR 51585, August 23, 2022).

This proposed AD would also require EASA AD 2020–0054, which the Director of the Federal Register approved for incorporation by reference as of September 3, 2020 (85 FR 45767, July 30, 2020).

This proposed AD would also require Airbus Service Bulletin A330–27–3195, Revision 01, dated February 6, 2014, which the Director of the Federal Register approved for incorporation by reference as of September 5, 2014 (79 FR 44663, August 1, 2014).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2014–15–09, AD 2020–15–09, and AD 2022–16–07. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2023–0199 already described, as proposed for incorporation by reference. Any differences with EASA AD 2023–0199 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (s)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with

requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to retain the IBR of EASA AD 2020–0054 and EASA AD 2021–0248 and incorporate EASA AD 2023–0199 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0054, EASA AD 2021–0248 and EASA AD 2023–0199 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2020–0054, EASA AD 2021–0248 or EASA AD 2023–0199 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2020–0054, EASA AD 2021–0248, or EASA AD 2023–0199. Service information required by EASA AD 2020–0054, EASA AD 2021–0248, and EASA AD 2023–0199 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2024–0040 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Explanation of Model A340 Airplanes Removed From the Applicability

This proposed AD does not include Model A340 airplanes in the applicability. EASA issued AD 2023–0200, dated November 17, 2023 (EASA AD 2023–0200), which currently addresses the identified unsafe conditions for the Model A340 airplanes that were included in FAA AD 2014–15–09. The FAA has added EASA AD 2023–0200 to the required airworthiness action list (RAAL) for the Model A340 airplanes. There currently are no Model A340 airplanes on the U.S. register. However, if a U.S. operator imports a Model A340 airplane, they will then be required to show compliance with EASA AD 2023–0200 as specified in the RAAL.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 142 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2022–16–07 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

ESTIMATED COSTS FOR OTHER RETAINED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2014–15–09 and AD 2020–15–09.	6 work-hours × $85 per hour = $510	$0	$510	$72,420

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The agency has no way of determining the number of aircraft that might need on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
3 work-hours × $85 per hour = $255	$35,000	$35,255

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA

with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect 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.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive AD 2014–15–09, Amendment 39–17911 (79 FR 44663, August 1, 2014); AD 2020–15–09, Amendment 39–21172 (85 FR 45767, July 30, 2020); and AD 2022–16–07, Amendment 39–22136 (87 FR 51585, August 23, 2022); and

■ b. Adding the following new AD:

Airbus SAS Airplanes: Docket No. FAA–2024–0040; Project Identifier MCAI–2023–01196–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 18, 2024.

(b) Affected ADs

This AD replaces the ADs identified in paragraphs (b)(1) through (3) of this AD.

(1) AD 2014–15–09, Amendment 39–17911 (79 FR 44663, August 1, 2014) (AD 2014–15–09).

(2) AD 2020–15–09, Amendment 39–21172 (85 FR 45767, July 30, 2020) (AD 2020–15–09).

(3) AD 2022–16–07, Amendment 39–22136 (87 FR 51585, August 23, 2022) (AD 2022–16–07).

(c) Applicability

This AD applies to Airbus SAS Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –841, and –941 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before October 2, 2023.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address a safety-significant latent failure (that is not annunciated) that, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Repetitive Operational Tests of Spoiler Servo-Controls (SSCs) for Certain Airplanes, With Removed References to Model A340 Service Information

This paragraph restates the requirements of paragraph (g) of AD 2014–15–09, with removed references to Model A340 service information. For Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes: At the latest of the times specified in paragraphs (g)(1) through (3) of this AD, accomplish an operational test of the hydraulic locking function on each SSC (any type), when fitted on the Blue or Yellow hydraulic circuits, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3195, Revision 01, dated February 6, 2014. Repeat the operational test thereafter at intervals not to exceed 48 months. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (p) of this AD terminates the requirements of this paragraph.

(1) Within 48 months since first flight of the airplane.

(2) Within 48 months since accomplishing the most recent operational test, as specified in Airbus All Operators Telex (AOT) A330–27A3185; dated January 4, 2012.

(3) Within 24 months after September 5, 2014 (the effective date of AD 2014–15–09).

(h) Retained Credit for Previous Actions for Paragraph (g) of This AD, With Removed References to Model A340 Service Information

This paragraph restates the credit provided in paragraph (h) of AD 2014–15–09, with removed references to Model A340 service information. This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before September 5, 2014 (the effective date of AD 2014–15–09) using Airbus Service Bulletin A330–27–3195, dated December 7, 2012.

(i) Retained Replacement of Affected SSCs Found During the Test Required by Paragraph (g) of This AD, With Removed References to Model A340 Service Information

This paragraph restates the replacement required by paragraph (i) of AD 2014–15–09, with removed references to Model A340 service information. If, during any operational test required by paragraph (g) of this AD, the hydraulic locking function of an SSC fails the test, before further flight, replace the affected SSC with a serviceable part, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3195, Revision 01, dated February 6, 2014.

(j) Retained No Terminating Action for Paragraph (g) of This AD, With No Changes

This paragraph restates the no terminating action statement specified in paragraph (j) of AD 2014–15–09, with no changes. Doing the replacement required by paragraph (i) of this AD is not terminating action for the repetitive operational tests required by paragraph (g) of this AD.

(k) Retained Repetitive Operational Tests and Replacement of Affected SSCs for Model A330–941 Airplanes, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2020–15–09, with no changes. For Model A330–941 airplanes: Except as specified in paragraph (l) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0054, dated March 11, 2020 (EASA AD 2020–0054). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (p) of this AD terminates the requirements of this paragraph.

(l) Retained Exceptions to EASA AD 2020–0054, With No Changes

This paragraph restates the exceptions specified in paragraph (h) of AD 2020–15–09, with no changes. The ''Remarks'' section of EASA AD 2020–0054 does not apply to this AD.

(m) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2022–16–07, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or

before July 1, 2021: Except as specified in paragraph (n) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0248, dated November 15, 2021 (EASA AD 2021–0248). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (p) of this AD terminates the requirements of this paragraph.

(n) Retained Exceptions to EASA AD 2021–0248, With No Changes

This paragraph restates the exceptions specified in paragraph (j) of AD 2022–16–07, with no changes.

(1) Where EASA AD 2021–0248 refers to its effective date, this AD requires using September 27, 2022 (the effective date of AD 2022–16–07).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0248 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0248 specifies revising ''the approved AMP [aircraft maintenance program]'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after September 27, 2022 (the effective date of AD 2022–16–07).

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2021–0248 is at the applicable ''associated thresholds,'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0248, or within 90 days after September 27, 2022 (the effective date of AD 2022–16–07), whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0248 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0248 does not apply to this AD.

(o) Retained Provisions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the provisions specified in paragraph (k) of AD 2022–16–07, with a new exception. Except as required by paragraph (p) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (m) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0248.

(p) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (q) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0199, dated November 17, 2023 (EASA AD 2023–0199). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraphs (g), (k), and (m) of this AD.

(q) Exceptions to EASA AD 2023–0199

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0199.

(2) Paragraph (3) of EASA AD 2023–0199 specifies revising ''the AMP,'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0199 is at the applicable ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2023–0199, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2023–0199.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0199.

(r) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (p) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2023–0199.

(s) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (t)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2020–0054 that contains RC procedures and tests: Except as required by paragraph (s)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(t) Additional Information

(1) For more information about this AD, contact Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3229; email *Vladimir.ulyanov@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (u)(8) and (9) of this AD.

(u) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2023–0199, dated November 17, 2023.

(ii) [Reserved]

(4) The following service information was approved for IBR on September 27, 2022 (87 FR 51585, August 23, 2022).

(i) EASA AD 2021–0248, dated November 15, 2021.

(ii) [Reserved]

(5) The following service information was approved for IBR on September 3, 2020 (85 FR 45767, July 30, 2020).

(i) EASA AD 2020–0054, dated March 11, 2020.

(ii) [Reserved]

(6) The following service information was approved for IBR on September 5, 2014 (79 FR 44663, August 1, 2014).

(i) Airbus Service Bulletin A330–27–3195, Revision 01, dated February 6, 2014.

(ii) [Reserved]

(7) For EASA AD 2020–0054, EASA AD 2021–0248, and EASA AD 2023–0199, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find these EASA ADs on the EASA website at *ad.easa.europa.eu.*

(8) For Airbus service information, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* website *airbus.com.*

(9) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(10) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations,* or email *fr.inspection@nara.gov.*

Issued on January 24, 2024.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024–01711 Filed 1–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 125, 135, 137, and 145

[Docket No.: FAA–2024–0025; Notice No. 24–08]

RIN 2120–AL20

Inspection Programs for Single-Engine Turbine-Powered Airplanes and Unmanned Aircraft; and Miscellaneous Maintenance-Related Updates

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would revise certain aircraft maintenance inspection rules for small, corporate-sized, and unmanned aircraft. The proposed changes include additional inspection program options for owners of single-engine turbine-powered airplanes and unmanned aircraft, relaxed mechanical reliability reporting requirements for certain aircraft, and several changes to clarify and simplify various maintenance-related regulations. These proposed amendments would relieve aircraft owners, operators, maintenance providers, and the FAA. The proposed amendments would provide greater flexibility for aircraft maintenance, standardized reporting requirements, and provide clarification of various maintenance-related regulations.

DATES: Send comments on or before April 1, 2024.

ADDRESSES: Send comments identified by docket number FAA–2024–0025 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Bryan B. Davis, Airmen & Special Projects Branch, AFS–320, Aircraft Maintenance Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–1675; email *Bryan.Davis@faa.gov.*

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I. Executive Summary

A. Overview of Proposed Rule

The FAA proposes to revise certain rules for small, corporate-sized, and unmanned aircraft maintenance inspections. The most substantial change would be the increase in inspection program options for owners and operators of single-engine turbine-powered airplanes and unmanned aircraft. Currently, when operating under the rules in part 91 of title 14 of the Code of Federal Regulations (14 CFR), owners and operators of these aircraft must comply with annual or 100-hour inspection requirements or adopt progressive inspection programs in lieu of those requirements. For single-engine turbine-powered airplanes, this proposed rule would expand inspection options to include, among others, an inspection program recommended by the manufacturer or an inspection program established by the registered owner or operator and approved by the Administrator. For unmanned aircraft, including unmanned aircraft operating under 14 CFR part 135 that are authorized to use the inspection rules in part 91, this proposal would enable the selection of either an inspection program recommended by the manufacturer or a program established by the registered owner or operator and approved by the Administrator. The FAA believes this change would enhance safety and would provide unmanned and single-engine turbine-powered aircraft owners and operators with greater flexibility with aircraft maintenance.

Additionally, for aircraft operating under part 91, subpart K, fractional ownership rules, the FAA proposes to lengthen the reporting interval for aircraft mechanical reliability reports from 72 to 96 hours and to allow electronic report submissions. This would align the reporting interval requirement with those found in other regulations (*e.g.,* 14 CFR 121.703, 135.415, and 145.221).

Finally, the FAA proposes several changes to clarify and simplify various maintenance-related regulations in areas that have confusing or ambiguous

language, to include maintenance and inspection requirements for part 91 and 125 operators and document retention. It also proposes to clarify part 145 regulations pertaining to repair station maintenance documentation and contract maintenance.

B. Background

Subpart E of 14 CFR part 91 prescribes general rules governing the maintenance, preventive maintenance, and alterations of United States (U.S.)-registered civil aircraft operating within or outside of the United States. For aircraft operated under, or otherwise subject to, part 91, subpart E, § 91.409 contains the requirements for aircraft inspections, including requirements for annual inspections and 100-hour inspections. Section 91.409(c) provides exceptions to those inspection requirements; aircraft with special flight permits, experimental certificates, light-sport category, or provisional airworthiness certificates, and aircraft for which progressive inspection programs have been adopted are not required to meet the annual and 100-hour inspection requirements.

Paragraph (c)(3) excludes the types of airplanes identified in § 91.409(e). These types of airplanes—large airplanes (to which part 125 is not applicable), turbojet multiengine airplanes, and turbopropeller-powered multiengine airplanes—must be inspected in accordance with one of the inspection program options specified in § 91.409(f) in lieu of the annual or 100-hour inspection. These options include: (1) a continuous airworthiness inspection program under a part 121 or 135 operator's Continuous Airworthiness Maintenance Program (CAMP); (2) an approved aircraft inspection program under part 135; (3) a current inspection program recommended by the manufacturer; or (4) any other inspection program established by the owner or operator and approved by the FAA.

Certain rotorcraft may, but are not required to, use one of these inspection program options. *See* § 91.409(c)(4) and (e). In 1989, the FAA amended § 91.409 [54 FR 34284, Aug. 18, 1989] to allow turbine-powered rotorcraft (both single- and multiengine) owners and operators to choose between performing an annual, a progressive, or an inspection program under § 91.409(f).

In 2016, an aircraft manufacturer petitioned the FAA for rulemaking to include single-engine turbine-powered airplanes within the scope of § 91.409(e) and (f).[1] Single-engine turbine-powered airplanes are not currently permitted to use one of the inspection options in § 91.409(f) as an alternative to the annual or 100-hour inspection. Since single-engine turbine-powered airplanes were rare at the time the options were introduced for turbine-powered rotorcraft, they were not included in that rule. Today, there are over 4,500 registered single-engine turbine-powered airplanes.

Additionally, unmanned aircraft systems (UAS) commercial utilization and National Airspace System integration has increased since 2016. While 14 CFR part 107 addresses small UAS operations, the FAA has also granted exemptions and waivers from certain part 91 and part 135 rules to permit UAS operations under those parts. Under these exemptions (in the conditions and limitations), the FAA has generally required that unmanned aircraft be inspected in accordance with the manufacturer's inspection instructions or for those instructions to be incorporated into the operator's approved maintenance or inspection program.

II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is issued under the authority described in Subtitle VII, part A, subpart III, section 447, section 44701(a)(2)(A) and (B) and (a)(5), and section 44707. Under section 44701(a)(2)(A) and (B), the FAA is charged with prescribing regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances, and equipment and facilities for, and the timing of and manner of, the inspecting, servicing, and overhauling the FAA finds necessary for safety and commerce. Section 44701(a)(5) authorizes the FAA to prescribe regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. Under section 44707, the FAA may examine and rate repair stations. Specifically, under section 44707(2), the FAA is charged with inspecting and rating repair stations on the adequacy and suitability of the equipment, facilities, and materials for, and methods of, repair and overhaul, and the competency of the individuals doing the work or giving instruction in the work. The regulations proposed are within the scope of that authority.

III. Discussion of the Proposal

A. Inspection Programs for Single-Engine Turbine-Powered Airplanes and Unmanned Aircraft (§ 91.409)

Currently, § 91.409(e) prohibits the operation of a large airplane, turbojet multiengine airplane, turbopropeller-powered multiengine airplane, or turbine-powered rotorcraft unless the replacement times for life-limited parts specified in the aircraft specifications, type data sheets, or other documents approved by the Administrator are complied with and the airplane or turbine-powered rotorcraft is inspected in accordance with an inspection program selected under § 91.409(f), except that the owner or operator of a turbine-powered rotorcraft may elect to use the inspection provisions of § 91.409(a), (b), (c), or (d) instead. We propose to expand § 91.409(e) to apply to single-engine turbine-powered airplanes and unmanned aircraft. Unmanned aircraft would be required to be inspected in accordance with an inspection program selected under § 91.409(f). Owners and operators of single-engine turbine-powered airplanes would be able to select a § 91.409(f) inspection program or use the inspection provisions of § 91.409(a), (b), (c), or (d).

This change would provide single-engine turbine-powered airplane owners and operators more options for inspecting their aircraft. It would give those owners and operators the same choice of inspection program options currently available to owners and operators of turbine-powered rotorcraft. Providing these additional options would harmonize the requirements for similarly-sized turbine-powered airplanes and rotorcraft. Owners and operators would retain the ability to use their existing annual inspection program if they do not want to select any of the newly available options.

Currently, if operating under part 91, single-engine turbine-powered airplane owners and operators only have several inspection options: an annual, a 100-hour, or adopt a progressive inspection program. This proposed rule would expand inspection options to include the types of inspection programs authorized under § 91.409(f). This includes, among others, a manufacturer-

[1] *Textron Aviation Inc. Petition for Rulemaking for 14 CFR 91.409,* September 15, 2016, Public Docket No. FAA–2016–9166, available at *https://www.regulations.gov.*

recommended inspection program, or an inspection program established by the registered owner, or operator, and approved by the Administrator.

The FAA believes this change increases regulatory flexibility and will allow owners and operators the ability to select the program that works best for them. In 1989, the FAA amended § 91.409(e) to allow more inspection options for turbine-powered rotorcraft, which enabled operators to schedule inspections in a manner that has allowed a higher level of rotorcraft utilization. At that time, in the early 1980s, the number of single-engine turbine-powered airplanes was small compared to turbine-powered rotorcraft, which estimated approximately 3,000 aircraft during that time. Today, there are over 4,500 registered single-engine turbine-powered airplanes. The FAA does not believe there are any safety reasons why single-engine turbine-powered airplanes should not be afforded the same regulatory flexibilities as turbine-powered rotorcraft regarding part 91 inspection options. A turbine-powered rotorcraft's use of a manufacturer-recommended inspection program has been shown to be a safe and effective aircraft inspection method instead of the annual or 100-hour inspection requirements. The FAA expects that the same will be true for single-engine turbine-powered airplane manufacturer-recommended inspection programs. In its rulemaking petition, Textron Aviation, Inc., argued that manufacturer-recommended inspection programs are in the public interest because they are geared more specifically to the manufacturer's aircraft model and involve less invasive scheduled maintenance compared to an annual or 100-hour inspection because of less frequent component disassembly, inspection, and reassembly.[2] The FAA agrees these inspection programs can provide these articulated benefits, when applicable, when compared to an annual or a 100-hour inspection. Additionally, a manufacturer-recommended inspection program can contain inspection intervals at more appropriate times for each product and article based on the design and functional history of the same, coupled with the manufacturer's detailed technical knowledge of how best to maintain them.

Existing regulations regarding maintenance and inspection development during the aircraft's part 21 certification process contain the requirements for how a manufacturer-recommended inspection program shall be developed—to include the inspection intervals for products and articles. Section 21.50 requires that the Instructions for Continued Airworthiness and manufacturer's maintenance manuals must be developed in accordance with 14 CFR parts 23, 25, 27, 29, etc., as appropriate. Within each of these parts, the applicable regulation references its appendix, which contains specific requirements that the maintenance inspection program must possess. For example, when developing inspection interval timing for an aircraft while complying with § 21.50, a part 23 aircraft manufacturer is referred to § 23.1529 (Instructions for continued airworthiness), which states an applicant must prepare the same and further refers the applicant to appendix A for part 23. Appendix A, instruction A.23.3(b)(1) requires the manufacturer to develop maintenance/inspection scheduling instructions for all products and articles and must include an inspection program that includes the inspection frequency and extent necessary to provide for the aircraft's continued airworthiness. The recommended inspection intervals are part of the overall Instructions for Continued Airworthiness that would subsequently be submitted to the FAA for acceptance.

During the unmanned aircraft's certification process, whether it undergoes a traditional part 21 type certification or a 49 U.S.C. 44807 exemption request,[3] the manufacturer must submit an aircraft inspection program, for FAA approval, that meets certain requirements for life-limited part replacement times specified in the aircraft specifications, type certificate data sheets, or ''other documents approved by the Administrator (*i.e.,* the sec. 44807 exemption and its associated Conditions & Limitations).'' [4] These manufacturer-recommended inspection programs—to include inspection intervals for products and articles—must include the airframe, engines, propellers, rotors, appliances, emergency equipment, etc., which are ultimately approved by the FAA only when they are found to be adequate.

Regarding unmanned aircraft inspection program selection, excluding those operated under part 107, it is necessary for owners and operators to have the ability to select a program that is most appropriate for the design and configuration of their specific aircraft because of the wide variety in aircraft, which cannot be done in the existing regulations. Currently, part 135 unmanned aircraft applicants and approved operators can only use a CAMP, under § 135.411(a)(2), or an approved aircraft inspection program, under §§ 135.411(a)(1) and 135.419, because other inspection program options cannot be selected, as these aircraft are not incorporated in the regulations. The FAA has not approved part 135 unmanned aircraft operators to use an annual or a 100-hour inspection because the FAA has determined the scope and detail criteria [5] contained in these two options do not adequately cover the component characteristics that are typically installed on these aircraft (*e.g.,* multiple electric motors, circuit boards, batteries, etc.). Additionally, a manufacturer-recommended inspection program—that traditional aircraft may currently select—is not available to unmanned aircraft, despite CAMPs and AAIPs being primarily based on a manufacturer-recommended inspection

[2] *See* note 1 at *2.

[3] 49 U.S.C. 44807 provides the Secretary of Transportation with authority to determine whether a certificate of waiver, certificate of authorization, or a certificate under sec. 44703 or 44704 is required for certain unmanned aircraft system (UAS) operations. Section 44807(b) instructs the Secretary to base their determination on which types of unmanned aircraft do not create a hazard to users of the National Airspace System or the public. In making this determination, the Secretary must consider the unmanned aircraft's size, weight, speed, operational capability, and other aspects of the proposed operation. On October 1, 2021, the Secretary delegated this authority to the FAA Administrator. Unmanned aircraft exemptions have been subsequently issued with conditions & limitations that require the operator to follow the manufacturer's maintenance instructions, service bulletins, inspections, etc.

[4] Section 44807 exemption grants contain a Conditions & Limitations section, which must be followed. The exemptions contain language such as: ''The Operator must follow the UAS manufacturer's operating limitations, maintenance instructions, service bulletins, overhaul, replacement, inspection, and life-limit requirements for the UAS and UAS components. Each UAS operated under this exemption must comply with all manufacturers' safety bulletins. Maintenance must be performed by individuals who have been trained by the Operator in proper techniques and procedures for these UAS. All maintenance must be recorded in the UAS records including a brief description of the work performed, date of completion, and the name of the person performing the work.'' See Exemption No. 21079, Docket No. FAA–2023–1483, August 29, 2023. *See also* Exemption Nos.: 21079, Docket No. FAA–2023–1483, Aug. 29, 2023; 11204, Docket No. FAA–2014–0886, Oct. 23, 2014; 12145, Docket No. FAA–2015–1464, July 24, 2015; 21034, Docket No. FAA–2023–1303, Aug. 30, 2023, etc.

[5] *See* Appendix D to part 43 (Scope and Detail of Items (as Applicable to the Particular Aircraft) To Be Included in Annual and 100-Hour Inspections). Many of the 100-hour inspection requirements do not apply to the majority of unmanned aircraft. For example, paragraph (c) contains inspection criteria for the cabin and cockpit group, which unmanned aircraft do not possess. Similarly, paragraph (d) pertains to reciprocated engines and their associated components (oil, fuel, and hydraulic hoses, engine cylinders, etc.), which the majority of unmanned aircraft do not have because they possess electric propulsion systems.

program. Because of these issues, a CAMP or an AAIP has been the only option for part 135 unmanned aircraft operators to select.

Therefore, the FAA proposes to include unmanned aircraft, excluding part 107 aircraft, in § 91.409(e), which would apply to unmanned aircraft operating under, or otherwise required to be inspected in accordance with, part 91. In particular, the FAA intends for this proposal to apply to unmanned aircraft being operated under part 91 or 135 and that are required to select a maintenance program in accordance with § 91.409(f). While an unmanned aircraft operator would have the option to select a manufacturer-recommended inspection program, they could still continue to use an AAIP or CAMP. This proposal would be applicable to the unmanned aircraft inspections and not unmanned aircraft systems, as defined in 14 CFR 1.1.

The following discusses our proposal to amend certain § 91.409 paragraphs to reflect these changes and additional proposed revisions to this section to enhance clarification.

B. Scope of Covered Aircraft (§ 91.409(e))

For the reasons discussed above, we propose to expand § 91.409(e) to include all turbine-powered aircraft, including unmanned aircraft, and separate it into § 91.409(e)(1) and (2) to better organize the different regulatory frameworks.

Currently, paragraph (e) is limited to large airplanes (to which part 125 is not applicable), turbojet multiengine airplanes, turbopropeller-powered multiengine airplanes, and turbine-powered rotorcraft. Owners and operators of these covered aircraft, except for turbine-powered rotorcraft, are required to comply with replacement times for life-limited parts and have their airplanes inspected using one of the inspection programs specified in paragraph (f) instead of the annual or 100-hour inspection provisions. Owners and operators of turbine-powered rotorcraft, in contrast, can use one of the inspection program options in paragraph (f), or they can elect to use the annual, 100-hour, or progressive inspection provisions (paragraphs (a), (b), and (d), respectively)).

This proposed rule would add single-engine turbine-powered airplanes to § 91.409(e) and provide these owners and operators with the same inspection options that are currently available to owners and operators of turbine-powered rotorcraft. With the proposed addition of single-engine turbine-powered airplanes, § 91.409(e) would apply to all turbine-powered airplanes. These amendments will enable owners and operators of single-engine turbine-powered airplanes to inspect their aircraft using one of the inspection program options in paragraph (f) or elect to use the annual, 100-hour, or progressive inspection provisions.

We also propose to revise § 91.409(e) to include unmanned aircraft. Unmanned aircraft owners and operators subject to the regulation would be required to select one of the inspection programs in paragraph (f). This proposed change would incorporate the requirement, in the conditions & limitations section, that has been required in the existing UAS sec. 44807 exemptions [6] for unmanned aircraft inspections using the UAS manufacturer's inspection program.

We propose to separate § 91.409(e) into two paragraphs to increase clarity and readability, as stated above. Proposed paragraph (e)(1) would cover all current and proposed aircraft that would be required to be inspected in accordance with a § 91.409(f) program (*i.e.,* large airplanes, multiengine turbine-powered airplanes, and unmanned aircraft). Regarding large airplanes and multiengine turbine-powered airplanes, the proposed rule would not make any changes to the currently available inspection programs. Regarding unmanned aircraft, as previously described, the annual, 100-hour, and progressive inspection options are not viable inspection programs because of the significant differences between unmanned aircraft and traditional manned aircraft for which those provisions were designed. Unmanned aircraft would be included under the new § 91.409(e)(1) because they should comply with time-limited parts replacement and the better-suited inspection programs contained in paragraph (f). Proposed paragraph (e)(2) would cover all current and proposed aircraft that have the option to use the inspection options in paragraph (f) in lieu of the inspection provisions of § 91.409(a), (b), or (d) (*i.e.,* turbine-powered rotorcraft and single-engine turbine-powered airplanes).

C. Clarifications of Inspection Program Options (§ 91.409(f))

We intend to make several clarifying amendments to the inspection program options specified in § 91.409(f) and the manner in which these programs are to be submitted.

Paragraph (f)(1) currently specifies the first inspection program option available. The registered aircraft owner or operator under § 91.409(e) may use ''[a] continuous airworthiness inspection program'' that is part of a CAMP currently in use by a part 121 or 135 operator and operating that make and model aircraft under part 121 or operating that make and model under part 135 and maintaining it under § 135.411(a)(2). The FAA proposes to clarify the intent of this section by replacing the phrase ''[a] continuous airworthiness inspection program'' because it is not defined or referenced anywhere else in regulations. Instead, the FAA proposes to revise the phrase so that the paragraph refers only to ''[a]n inspection program'' that is part of a [CAMP]. This change would have no substantive effect and is only proposed to eliminate confusion by the phrase ''[a] continuous airworthiness inspection program.''

We will also amend paragraph (f)(1) to remove the word ''operating'' from the phrase ''air carrier operating certificate.'' This change would leave separate references to ''air carrier certificate'' and ''operating certificate,'' a change consistent with the separate usage of the terms in 14 CFR 119.5.

Current paragraph (f)(3) provides the third inspection program option: ''A current inspection program recommended by the manufacturer.'' The FAA proposes to revise paragraph (f)(3) to clarify that ''current inspection program'' means one that is available for selection at the time the selection is made. That inspection program would remain the ''current'' program to be used by that operator for that aircraft during subsequent inspections, without regard to changes that the manufacturer may have made to the recommended inspection program since the date of selection. This is consistent with an FAA legal interpretation on the subject, which states, ''to comply with § 91.409(f)(3) an operator need only adopt a manufacturer's inspection program that is 'current' as of the time they adopt it, and that program remains 'current' unless the FAA mandates revisions to it in accordance with § 91.415(a).'' [7]

We do not intend for future changes to inspection programs issued by manufacturers to be binding on an owner or operator who had already selected a specific program that was

[6] *See* supra note 7.

[7] *See, e.g., Legal Interpretation of 14 CFR 91.409(f)(3),* Memorandum Opinion to Manager, Aircraft Maintenance Division, AFS–300, from Assistant Chief Counsel for Regulations, AGC–200 (Dec. 5, 2008); and *Legal Interpretation of ''Current'' as it Applies to Maintenance Manuals and Other Documents Referenced in 14 CFR 43.13(a) and 145.109(d),* Memorandum Opinion to Manager, AWP–230 and Manager, Sacramento FSDO, from Assistant Chief Counsel for Regulations, AGC–200 (Aug. 13, 2010).

current at the time of selection.[8] Therefore, to comply with § 91.409(f)(3), an owner or operator need only select a manufacturer-recommended inspection program that is ''current'' at the time of selection, and that program would remain ''current'' for purposes of complying with the regulation—unless the FAA mandated a revision with an Airworthiness Directive or an amendment to an applicable operating rule. Although operators would not be required to revise their inspection programs when a manufacturer issues inspection program revisions, operators may choose to incorporate these revisions if they are applicable. This practice would comply with § 91.409(f)(3). In keeping with this interpretation and to clarify the requirement of paragraph (f)(3), we propose to revise the phrase ''current inspection program'' and replace it with the following: a program ''that was the most current program available at the time of selection and identified in the aircraft maintenance records.''

Current paragraph (f)(4) provides the fourth inspection program option, which is the option to select any other inspection program established by the registered owner or operator ''of that airplane or turbine-powered rotorcraft'' and approved by the Administrator. The FAA proposes to revise § 91.409(f)(4) to remove the phrase ''of that airplane or turbine-powered rotorcraft'' and replace it with ''for that aircraft'' for simplicity because it would cover all the types of aircraft referenced in the proposed revisions to paragraph (e) of the section, including unmanned aircraft.

Also, the phrase ''and approved by the Administrator'' would be moved from preceding the phrase ''under paragraph (g) of this section,'' to follow the phrase ''established by the registered owner or operator'' that appears earlier in the sentence. Accordingly, it would precede the phrase ''for that aircraft.'' This change would help clarify that the inspection program approval is specific to the specific aircraft.

Additionally, in the undesignated, concluding text of § 91.409(f), the FAA proposes to remove the requirement to include the name and address of the person responsible for scheduling inspections in the selected program. This requirement has resulted in unnecessary administrative revisions as personnel and addresses change. This is a burden to both the FAA and industry and has little or no safety benefit, as the owner and operator of the aircraft are ultimately responsible for ensuring all the required inspections are accomplished.

D. Conforming and Clarifying Changes to Subpart E of Part 91

1. Applicability Statement (§ 91.401)

The FAA proposes to amend § 91.401 (the applicability section for subpart E to part 91) to incorporate certain applicability provisions that are currently found in other sections of subpart E. These provisions would be better suited in subpart E's overall applicability section. The agency also proposes to make other clarifying changes to this section.

Specifically, § 91.401 would be revised to incorporate two provisions in § 91.409(c) that exempt certain aircraft from inspection requirements. As noted above, current § 91.409(c) provides, in part, that the requirements for annual inspections, airworthiness certification inspections, and 100-hour inspections (paragraphs (a) and (b) of § 91.409)) do not apply to certain aircraft under specified circumstances. This includes, in pertinent part, the following:

1. An aircraft that carries a special flight permit, a current experimental certificate, or a light-sport, or provisional airworthiness certificate (§ 91.409(c)(1)); and

2. An aircraft inspected in accordance with an approved aircraft inspection program under part 125 or 135 and so identified by the registration number in the operations specifications of the certificate holder having the approved inspection program (§ 91.409(c)(2)).

As § 91.409(c) is currently written, it excludes these aircraft from the inspection requirements in paragraphs (a) and (b) only and does not expressly exclude them from the alternative inspection programs in paragraphs (d) and (e). This language may be construed incorrectly to suggest that these aircraft are subject to the alternative inspection programs in paragraphs (d) and (e). It was not the FAA's intent to require that those covered aircraft comply with any other inspection program in § 91.409.

The FAA proposes to move the exception in § 91.409(c)(1) for aircraft that carry a special flight permit into a new § 91.401(c)(3). The FAA issues special flight permits for specific purposes under § 21.197 to aircraft that may not at the time meet applicable airworthiness standards but remain capable of safe flight for the intended purpose; therefore, under these circumstances, it is inconsistent to require compliance with an inspection program in subpart E. Accordingly, such aircraft should be excluded from the inspections required by paragraphs § 91.409(a) and (b), the other inspection requirements of that section, and § 91.405 because the special flight permit itself, when issued to the operator, already assures the aircraft has been inspected and found to be in a condition for safe flight for the intended operation.

The FAA also proposes to move the current § 91.409(c)(2) exceptions to new § 91.401(c)(1) and (2). The current § 91.409(c)(2) provides that paragraphs (a) and (b) do not apply to aircraft inspected in accordance with an approved aircraft inspection program under part 125 or 135. The current language in § 91.409 could be misread to suggest the other § 91.409 inspection program requirements apply to those aircraft in addition to those of part 125 or § 135.419, as applicable; this was not the FAA's intent. By moving this exception requirement to § 91.401, we would clarify that an aircraft inspected in accordance with part 125 or an approved aircraft inspection program, under § 135.419, is not subject to the other inspection requirements of § 91.409 or § 91.405.

Similarly, the FAA proposes to move the inspection exception provision for aircraft that carry a current experimental certificate, a light-sport airworthiness certificate, or a provisional airworthiness certificate in § 91.409(c)(1) to a new § 91.401(c)(4) because § 91.409(c)(1) does not expressly exclude these aircraft from the alternative inspection programs in paragraphs (d) and (e). However, the FAA also proposes to clarify that these aircraft types must comply with any portions of § 91.409 that are specified in the operating limitations under § 91.317 or § 91.319. This would remove conflicting requirements that occur when the current regulation excepts these aircraft from the requirements of paragraphs (a) and (b), but the operating limitations issued by the FAA for the aircraft require compliance with specified portions of the regulation.

2. Compliance With General Airworthiness Requirements (§ 91.403)

We propose to amend § 91.403(c) by revising the text and dividing the alternative compliance options located in that single paragraph into three new paragraphs (c)(1), (2), and (3) for clarity. The paragraph currently holds the requirement that no person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitations section unless the person has complied with any mandatory replacement times, inspection intervals,

[8] See 36 FR 19507, October 7, 1971, and 37 FR 14758, July 25, 1972.

and related procedures specified in that section or alternative inspection intervals and related procedures set forth in an operations specification approved by the Administrator under part 121 or 135 or in accordance with an inspection program approved under § 91.409(e). The proposed revision is intended to more clearly convey the alternative options available to maintain compliance with the FAA-approved Airworthiness Limitations Section of the Instructions for Continued Airworthiness (ICA) provided by the manufacturer.

The proposed options follow closely those in the current rule but with minor changes. The first option in paragraph (c)(1) would still mandate compliance with the replacement times, inspection intervals, and related procedures found in the airworthiness limitations section of the manufacturer's maintenance manual or ICA. The second option in paragraph (c)(2) would provide for alternative inspection intervals and related procedures set forth in a CAMP for parts 121 and 135 operators, which would be approved by the FAA and authorized by operations specifications issued to the operator. In addition to including operations under parts 121 and 135 as provided in the current rule, this alternative would include operations under subpart K of part 91 if the operators are utilizing a CAMP under § 91.1411. This is because the authorization process for a CAMP under part 91, subpart K, would be similar to the process for CAMPs under parts 121 and 135. The FAA may review and authorize any potential changes to an approved airworthiness limitations section during the review process of the CAMP.

The third option in § 91.403(c)(3) would be to use any alternative inspection intervals and related procedures set forth in an inspection program identified under § 91.409(f). Section 91.409(f) lists the inspection programs that the FAA authorizes for use. The FAA considers these inspection programs to be permissible inspection options for these aircraft. Currently, the reference in § 91.403(c), now proposed as § 91.403(c)(3), referred to inspection intervals within authorized inspection programs under § 91.409(e). This reference has been updated for clarity to § 91.409(f) because that paragraph directly lists the inspection programs.

Finally, the FAA proposes to add a new paragraph (e) to § 91.403 that clarifies that aircraft operating under a special flight permit must do so in accordance with conditions and limitations issued by the Administrator. The proposed revision would also state that the aircraft must be inspected, at least to the extent necessary, to determine the aircraft is in a condition for safe operation for the intended flight. While this is the current practice in the issuance of a special flight permit, the revision would make that requirement explicit. These requirements are necessary for safety because the aircraft in question would not otherwise meet applicable airworthiness requirements.

3. Clarification of Maintenance Required To Correct Discrepancies (§ 91.405)

The FAA proposes to revise § 91.405(a) to state that, between required inspections, the owner or operator would be required to evaluate and disposition or correct, as appropriate, any discrepancies through inspection, overhaul, repair, preservation, or the replacement of parts, in accordance with part 43, or appropriately deferred as provided in § 91.213. The paragraph currently requires that each owner or operator of an aircraft ''[s]hall have that aircraft inspected as prescribed in subpart E of this part and shall between required inspections, except as provided in paragraph (c) of this section, have discrepancies repaired as prescribed in part 43 of this chapter.''

The current text requires only that those discrepancies must be ''repaired,'' which does not properly include all ''maintenance'' elements, as it is defined in 14 CFR 1.1, and discrepancy disposition may be done through several different types of maintenance actions, such as inspection, preservation, or the replacement of parts. The FAA also proposes to add, in paragraph (a), a reference to § 91.213 (Inoperative instruments and equipment) as that section permits deferral of qualifying instruments and equipment under specific conditions and limitations.

The FAA also proposes to revise § 91.405(c), which provides an exception to the requirement in paragraph (a) to repair discrepancies. Paragraph (c) is narrowly tailored to only instruments or equipment permitted to be inoperative by § 91.213(d)(2), and those must be ''repaired, replaced, removed, or inspected at the next required inspection.'' The FAA proposes to change paragraph (c) to clarify that an inoperative instrument or item of equipment would be required to be inspected at each required inspection to ensure it will not have an adverse effect on the aircraft's continued safe operation.

We discussed this issue in the 1988 [9] rule preamble in response to a commenter, who had requested clarification on the length of time an inoperative instrument or equipment item could remain inoperative after deactivation or removal. In the FAA's response, we explained that the rule required a person to determine whether an aircraft with inoperative instruments and equipment is in condition for safe operation. Additionally, at every required inspection thereafter, the aircraft owner or operator would need to have any inoperative instrument and equipment reevaluated to ensure the discrepancy would not affect the operation of any other installed instrument or equipment. Therefore, the FAA believed that the rule provided adequate safeguards without having to impose time limits on the repair or replacement of inoperative instruments and equipment. The intent of the rule was that if the inoperative instrument or item of equipment is not repaired, replaced, or removed at or before the next required inspection, the inoperative item must be inspected again (*i.e.,* reevaluated) at the required inspection to ensure that it will not have an adverse effect on the aircraft's safe operation.[10] Revised paragraph (c) would provide clarification that there is no time limitation as to how long the inoperative instrument or item of equipment could remain inoperative so long as it is inspected at each required inspection and there is no adverse effect on the aircraft's continued safe operation.

Finally, the FAA proposes to revise paragraph (d) to grammatically follow the unnumbered introductory text of § 91.405. That text states: ''Each owner or operator of an aircraft—.'' The beginning of revised paragraph (d) would grammatically follow the section's introductory text by stating: ''Shall ensure that when inoperative instruments or equipment are present, a placard marking it 'Inoperative' has been installed as required by § 43.11 of this chapter.'' The FAA proposes to add the phrase ''marking it 'Inoperative' '' for clarity and to be consistent with the requirements in §§ 43.11(b) and 91.213(d)(3)(ii). The following table is added for clarity.

[9] 53 FR 50190, 50193; December 13, 1988 (inoperative instruments or equipment final rule document for 14 CFR 91.30 and 91.165 (re-codified as 14 CFR 91.213 and 91.405, respectively, on August 18, 1989)).

[10] FAA Legal Interpretation, Peri-Aircraft Electronics Association (June 13, 2018).

TABLE 1—LIST OF PROPOSED REVISIONS TO § 91.405

Current regulation:	Contains the requirements for:	Revised in proposed:
91.405	Each owner or operator of an aircraft—	N/A.
91.405(a)	Shall have that aircraft inspected as prescribed in subpart E of part 91 and shall between required inspections, except as provided in § 91.405(c), have discrepancies repaired as prescribed in part 43.	91.405(a) shall have that aircraft inspected as prescribed in subpart E of part 91 and shall, between required inspections, except as provided in § 91.405(c), have discrepancies evaluated and dispositioned or corrected, as appropriate, through inspection, overhaul, repair, preservation, or the replacement of parts, in accordance with part 43, or appropriately deferred as provided in § 91.213;
91.405(b)		N/A.
91.405(c)	Shall have any inoperative instrument or item of equipment, permitted to be inoperative by § 91.213(d)(2) repaired, replaced, removed, or inspected at the next required inspection.	91.405(c) shall, at the next required inspection, have any inoperative instrument or item of equipment that is permitted to be inoperative by § 91.213(d)(2) and that has not been repaired, replaced, or removed, inspected to ensure that the inoperative instrument or item of equipment will not have an adverse effect on the continued safe operation of the aircraft.
91.405(d)	When listed discrepancies include inoperative instruments or equipment, shall ensure that a placard has been installed as required by § 43.11.	91.405(d) shall ensure that when inoperative instruments or equipment are present, a placard marking it ''inoperative'' has been installed as required by § 43.11.

4. Additional Clarifications of the Aircraft Inspection Requirements (§ 91.409)

In addition to the proposal to extend the inspection program options in § 91.409(f) to single-engine turbine-powered airplanes and unmanned aircraft, we propose other minor clarifications to § 91.409. As discussed under the proposal to revise § 91.401, Applicability, aircraft that carry a special flight permit, a current experimental certificate, or a light-sport, or provisional airworthiness certificate as described in § 91.409(c)(1), are specifically excluded from the inspection requirements of § 91.409(a). The same is true for aircraft inspected in accordance with an approved aircraft inspection program under part 125 or 135 as described in § 91.409(c)(2). This proposal would relocate the exemption language of § 91.409(c)(1) and (2) placing it under § 91.401(c). This change would be part of our proposed clarification and streamlining of subpart E of part 91.

We also propose to revise § 91.409(c)(1) through (4), which provide an exception to the inspection requirements in paragraphs (a) and (b). As previously stated, § 91.409(c)(1) and (2) would be relocated to § 91.401(c), which will leave § 91.409(c)(1) and (2) vacant. We propose relocating § 91.409(c)(3), aircraft that are ''subject to the requirements of paragraph (d) or (e) of this section,'' into the vacant paragraphs (c)(1) and (2) positions. Additionally, we propose to relocate the progressive inspection program exception to paragraphs (a) and (b) from § 91.409(d) to paragraph (c)(1). We also propose to move the exception of large airplanes, multiengine turbine-powered airplanes, and unmanned aircraft that are subject to the proposed § 91.409(e)(1) into the vacant § 91.409(c)(2) position. Furthermore, we propose to move § 91.409(c)(4), aircraft that are subject to the proposed § 91.409(e)(2) (*i.e.,* turbine-powered rotorcraft and single-engine turbine-powered airplanes) into § 91.409(c)(3). Existing § 91.409(c)(4) will be deleted because these changes leave it vacant. Headings have been added for clarity and consistency to § 91.409(a), (b), and (c).

Finally, we propose to update the language in paragraph (g), which establishes the requirement for covered operators to submit new or changed inspection programs for FAA approval, to require simply that the program be submitted in a manner acceptable to the FAA. The proposed revision would provide both the FAA and operators more flexibility in the way these types of programs are submitted, reviewed, and approved. The FAA is also proposing conforming amendments to paragraphs (g) introductory text and (g)(1) to modify language that currently specifies ''airplane'' or ''rotorcraft'' so that it would read ''aircraft,'' to apply to airplanes, rotorcraft, and unmanned aircraft. The following table is added for clarity.

TABLE 2—LIST OF REORGANIZED REQUIREMENTS (§ 91.409)

Current regulation:	Contains the requirements for:	Reorganized in proposed:
91.409(c)(1)	Inspection requirements that are not applicable to an aircraft that carries a current experimental, light-sport, or provisional airworthiness certificate.	Moved to § 91.401(c)(3) and (4).
91.409(c)(2)	Inspection requirements that are not applicable to aircraft inspected in accordance with an approved aircraft inspection program under part 125 or 135.	Moved to § 91.401(c)(1) and (2).
91.409(c)(3)	Inspection requirements that are not applicable to aircraft subject to the requirements of paragraph (d) or (e).	Moved to § 91.409(c)(1) and (2).
91.409(c)(4)	Inspection requirements that are not applicable to turbine-powered rotorcraft when the operator elects to inspect that rotorcraft in accordance with paragraph (e).	Moved to § 91.409(c)(3). *Note:* Section 91.409(c)(4) would be vacant.
91.409(e)	Large Airplanes (not inspected in accordance with part 125).	Revised and separated into § 91.409(e)(1) and (2).

5. Language Used in Reference to Inspection Programs (§ 91.415(a))

We propose to clarify the language in § 91.415(a) by changing the phrase ''approved aircraft inspection program'' to ''an inspection program approved under § 91.409(f)(4) or § 91.1109, or § 125.247(e)(3) of this chapter'' to remain consistent with inspection program terminology in other 14 CFR sections. The FAA uses the term ''approved aircraft inspection program,'' or ''AAIP,'' for a program approved under § 135.419, whereas programs approved under parts 121 and 135 (10 or more), and part 91, subpart K, would be referred to as ''inspection programs.''

Additionally, we propose to add § 125.247(e)(3) to the list of inspection programs to which the Administrator can mandate revisions, if the Administrator finds that revisions are necessary for the continued adequacy of the program. This is to align with the changes being made to § 125.247(e)(3), discussed below.

E. Other Miscellaneous Inspection Program and Maintenance Program Updates

1. Removal of Reference to § 91.409 (§ 91.501(a))

We propose to revise § 91.501(a) to remove the information in parenthesis: ''(Section 91.409 prescribes an inspection program for large and for turbine-powered (turbojet and turboprop) multiengine airplanes and turbine-powered rotorcraft of U.S. registry when they are operated under this part or part 129 or 137.).'' This language is informational only, does not convey any regulatory requirement, and was only a specific reference to inspection requirements in subpart G that continue to apply to aircraft operated under subpart F. Moreover, the introductory sentence of the section states that the regulations in this subpart are in addition to the requirements prescribed in other subparts, which includes the requirements in § 91.409.

2. Mechanical Reliability Reporting Requirements (§ 91.1415(d))

We propose to revise the reporting requirements in § 91.1415(d) to align them with the equivalent service difficulty reporting requirements found in §§ 121.703, 125.409, 135.415, and 145.221. Section 91.1415 prescribes the requirements for occurrence and detection reporting for aircraft failures, malfunctions, and defects by fractional ownership program managers under subpart K, who maintain aircraft under a CAMP. Paragraph (d) sets forth the procedural requirements for report submission to the FAA.

When the FAA revised similar reporting requirements in parts 121, 125, 135, and 145 [70 FR 76979, Dec. 29, 2005], § 91.1415(d) was not included in the change. The proposed change would standardize the reporting requirements by increasing § 91.1415(d) from 72 to 96 hours, as it is in the others, to be consistent. Accordingly, the FAA proposes to change the section heading from ''Mechanical reliability reports'' to ''Service difficulty reports.'' Additionally, we would require that the reports be submitted ''to the FAA offices in Oklahoma City, Oklahoma,'' rather than specifying the reports be submitted directly ''to the Flight Standards office that issued the program manager's management specifications.'' This would be accomplished by submitting reports to the FAA Service Difficulty Reporting online database.

3. Part 125 Inspection Program and Maintenance Requirements (§ 125.247(d) and (e))

We propose to amend the text in § 125.247(d)(1), which prohibits operation of an airplane subject to part 125 unless the ''installed engines have been maintained in accordance with the overhaul periods recommended by the manufacturer or a program approved by the Administrator.'' Specifically, we will remove the phrase ''a program approved by the Administrator'' because there is no FAA-approved maintenance program required by part 125 that includes overhaul periods, nor will we establish one.

Similarly, we would revise paragraph (d)(2), which prohibits operation unless the ''engine overhaul periods are specified in the inspection programs required by § 125.247(a)(3),'' to remove the reference to overhaul periods being specified in an inspection program. The proposed text would state: ''The engine overhaul periods, or a reference to where they can be found, are specified in the certificate holder's operations specifications'' because inspection programs do not include overhaul limits; overhaul limits are part of maintenance programs, not inspection programs.

Additionally, we would revise the introductory paragraph in § 125.247(e) from ''Inspection programs which may be *approved* for use under this part . . .'' to ''Inspection programs that may be *authorized* for use under this part . . . [.]'' The inspection programs referenced in paragraphs (e)(1) and (2) do not require additional FAA acceptance or approval because authorization is contained in the operating specifications. In conjunction with this change, we propose to revise paragraph (a)(3) to replace the word ''approved'' with ''authorized,'' so the paragraph would conclude with the phrase ''inspection program *authorized* by the Administrator under paragraph (e).''

Finally, we will revise the text in paragraphs (e)(1), (2), and (3) to align with the proposed changes in § 91.409(f) (*e.g.,* in paragraph (e)(1), we would remove ''continuous'' from ''continuous inspection program'' because a ''continuous inspection program'' is not defined in the regulations, although an inspection program may be part of a CAMP). Additionally, we will add ''maintenance'' after ''airworthiness'' in the phrase ''continuous airworthiness program'' because these programs have the same requirements as a CAMP. To be consistent with the revision proposed for § 91.409(f)(3) to replace the reference to ''[a] current inspection program recommended by the manufacturer'' with ''[a]n inspection program recommended by the manufacturer that was the most current program available at the time of selection . . . , '' we will make the same revision to paragraph (e)(2) for the same reasons. This change would eliminate confusion over the use of the word ''current.''

Also, to be consistent with current § 91.409(f)(4), we will revise paragraph (e)(3) of this section to provide that an inspection program developed by the certificate holder for use under this part must be approved by the FAA. Further, we will incorporate into this paragraph the additional requirement in current § 91.409(f)(4) that the Administrator may require revision of the inspection program in accordance with the provisions of § 91.415. This would allow the Administrator to mandate changes to the program if it were found inadequate. The procedures of § 91.415 would be followed, and certificate holders would have the opportunity to file for a petition for reconsideration.

4. Terminology in the Applicability of Part 135, Subpart J (§ 135.411(a)(2))

The FAA proposes to clarify that a maintenance program referenced in § 135.411(a)(2) is a CAMP. Currently, § 135.411(a)(2) lists only the part 135 sections under which the operator's aircraft must be maintained, but it does not refer to that combination of sections as a ''continuous airworthiness maintenance program.'' This term is referenced in § 135.429(d)(3) and in other regulations, such as § 91.409(f)(1), which refers directly to a CAMP for aircraft maintained under § 135.411(a)(2). Therefore, we will

change ''maintained under a maintenance program . . .'' in paragraph (a)(2) to ''under a continuous airworthiness maintenance program . . .'' for consistency with other regulatory requirements.

5. Part 137 Inspection Requirements for Operations Over Congested Areas (§ 137.53(c))

The FAA proposes to revise § 137.53(c) by removing the text in paragraph (c)(1) of the section. Paragraph (c)(1)(i) currently provides an aircraft inspection requirement that must be met before the aircraft may be operated over a congested area. It requires that, except for the larger aircraft addressed by paragraph (c)(1)(ii), the aircraft must have had, within the preceding 100 hours of time in service, a 100-hour or annual inspection or have been inspected under a progressive inspection system. The FAA proposes to move this inspection requirement to § 91.409, the inspections regulation. Specifically, the 100-hour or annual inspection requirement would be re-located to § 91.409(b) to be included with the other 100-hour or annual inspection requirements for aircraft operated for hire or flight instruction. The option for the aircraft to be inspected under a progressive inspection system would be included under the § 91.409(c)(1) exception annual and 100-hour requirements in § 91.409.

Section 137.53(c)(1)(ii) specifies the inspection program requirements for ''a large or turbine-powered multiengine civil airplane . . .'' if it will be operated over congested areas under part 137. It directs that such aircraft be inspected in accordance with the applicable inspection program requirements of § 91.409. Large or turbine-powered multiengine civil airplanes are already required to be inspected in accordance with § 91.409, specifically paragraph (e), regardless of whether the aircraft is operated over congested areas under part 137. We propose to remove § 137.53(c)(1)(ii) in its entirety so only the § 91.409(e) inspection requirements will apply to remove redundancy and to eliminate possible confusion.

F. Clarification of Part 145 Requirements on Documents and Data and Contract Maintenance

1. Current and Accessible Documents and Data (§ 145.109(d))

The FAA proposes to remove the last sentence and its prescriptive list of documents in § 145.109(d),[11] that repair stations must keep ''current and accessible'' when performing maintenance, preventive maintenance, or alterations. The prescriptive list requires that the documents be ''current and accessible when the relevant work is being done;'' however, this conflicts with § 43.13(a) because not all of these documents must be ''current'' when used. For example, repair stations are also authorized to use maintenance and overhaul manuals that were current at the aircraft's certification instead of the manufacturer's most current version in time. Repair stations may also use other documents (including a manual revision that pre-dates the current version if the maintenance is performed using other acceptable methods, techniques, and practices).

A 2010 FAA legal interpretation[12] clarified that ''current'' in § 145.109(d) means ''up to date,'' *i.e.,* the most recent version (revision) of the document (*e.g.,* maintenance manual) issued by the manufacturer. This interpretation also clarified that if a maintenance provider used a prior version or revision of a manual in performing maintenance, that person would not be in violation of the maintenance performance rules in § 43.13 unless the FAA could show that the information used was no longer acceptable. This is because of the flexibility provided in the maintenance regulations. For example, § 43.13(a) provides that the person performing maintenance shall use the current manufacturer's maintenance manual or ICA, ''or other methods, techniques, and practices acceptable to the Administrator. . . .'' If a repair station were to use ''other methods, techniques, and practices acceptable to the Administrator'' (for example, those contained in a prior manual revision), then the repair station would not be required to use the latest revision provided by the manufacturer. Therefore, the FAA proposes to remove the requirement in § 145.109(d) that the documents and data referred to in that section must be current.

The means for assuring appropriate data would be provided by the repair station's quality control system. Currently, § 145.211(a) requires that each repair station establish and maintain a quality control system acceptable to the FAA that ensures the airworthiness of the articles being maintained. Section 145.211(c) provides that, as part of a repair station's acceptable quality control system, the repair station must keep current a quality control manual in a format acceptable to the FAA and specify what that manual must include. Section 145.211(c)(1)(v) provides specifically that the manual must include a description of the procedures used for ''[e]stablishing and maintaining current technical data for maintaining articles.'' In developing acceptable procedures for assuring the currency of the technical data, repair stations typically work with their responsible Flight Standards office to tailor procedures that consider realistic time frames in which to incorporate manual revisions and other changes and updates into their systems. Further, § 145.211(c)(2) requires that the manual include ''[r]eferences, where applicable, to the manufacturer's inspection standards for a particular article, including reference to any data specified by that manufacturer.''

Based on the above considerations, the FAA invites the public to comment on this proposal to remove the current requirement that a repair station must maintain the specified documents and that the documents be ''current'' and accessible when the relevant work is being done. In particular, we seek comments that address any concerns associated with repair stations using a manual that is not the most current revision issued by the manufacturer, in the context of the maintenance performance rule that permits using other acceptable methods, techniques, and practices, and any potential unintended impacts of the proposal. Based on the comments received, the FAA may consider alternatives to removing the requirements in § 145.109(d), including retaining or amending the provision.

2. FAA Contract Maintenance (§§ 145.201(a)(2) and 145.217) Approval

We propose to amend §§ 145.201(a)(2) and 145.217, which address contract maintenance by a certificated repair station, to clarify that the requirements in § 145.217, including the need to obtain FAA approval of contract maintenance, are applicable only when the certificated repair station is assuming responsibility for the maintenance, preventive maintenance, and alterations work performed by an outside source.

Section 145.201(a)(2) contains the general authority for a certificated repair station to arrange (*i.e.,* contract) for another person to perform maintenance,

[11] Section 145.109(d) prescribes the following document list: airworthiness directives, Instructions for Continued Airworthiness, maintenance manuals, overhaul manuals, standard practice manuals, service bulletins, and other applicable data acceptable to or approved by the FAA.

[12] *Legal Interpretation of ''Current'' as it Applies to Maintenance Manuals and Other Documents Referenced in 14 CFR 43.13(a) and 145.109(d),* Memorandum Opinion to Manager, AWP–230 and Manager, Sacramento FSDO, from Assistant Chief Counsel for Regulations, AGC–200 (Aug. 13, 2010).

preventive maintenance, or alterations of any article for which it is rated. That regulation further requires that if the person to whom the work is contracted is not certificated under part 145, the certificated repair station must ensure that the non-certificated person follows a quality control system equivalent to the system followed by the certificated repair station.

Section 145.217 contains additional specific procedures that a repair station must follow when contracting a maintenance function to an outside source. By the plain language of § 145.217(a)(1), FAA approval is required for a maintenance function to be contracted to an outside source, whether the outside source is an FAA-certificated repair station or a non-certificated person. This requirement has caused confusion in the past as some repair stations believed pre-approval was not required if: (1) the contract was with another FAA-certificated repair station that was rated for the task; and (2) after completing the requested work, the contracted repair station made the requisite airworthiness determination and approved the work performed for return to service.

In 2006, we attempted to address this confusion in a larger part 145 proposed rulemaking. In our proposal to amend § 145.217 [71 FR 70253, 70266, December 1, 2006], we proposed to remove the requirement in paragraph (a)(1) that maintenance functions contracted to all outside sources be approved by the FAA. We proposed to limit FAA approval to a maintenance function contracted to an outside source not certificated under part 145. A repair station contracting a maintenance function to a repair station certificated under part 145 would not have to obtain FAA approval. The FAA withdrew the large part 145 2006 NPRM because it did not adequately address the repair station operating environment at that time. It was also withdrawn because of the many significant issues commenters to the NPRM raised.[13]

We believe the confusion surrounding the approval requirement is part of a broader misunderstanding of contract maintenance regulations. Section 145.217 applies when a certificated repair station contracts a maintenance function to an outside source with the intent of then assuming regulatory responsibility for the maintenance work performed by the outside source, regardless of whether that outside source is certificated under part 145. The certificated repair station, rather than the outside source, would approve the article for return to service. The originating certificated repair station would be responsible for making the maintenance record entry required by 14 CFR 43.9(a), if applicable. Because it assumes responsibility for the outside source's performed maintenance, the certificated repair station must meet the requirements in § 145.217, notably to obtain FAA approval of the contract maintenance and to ensure that the work is accomplished in a satisfactory manner.

As written, however, §§ 145.201(a)(2) and 145.217 can be read to apply even to contract maintenance arrangements where the originating certificated repair station contracts work to another certificated repair station and that outside repair station then performs the work and approves the article for return to service under its own certificate, rating(s), and quality control system. This construction of the regulations was never intended. Compliance with this additional administrative procedure in § 145.217 does not provide any additional safety benefit in this scenario because the outside source is also certificated under part 145 with the appropriate rating(s) and will be using the privileges of its own certificate to perform the work and approve the article for return to service;[14] therefore, this constitutes an unnecessary administrative burden on the requesting repair station and the FAA. The FAA would have already determined, through the issuance of the repair station certificate, operations specifications, ratings, and other authorizations or approvals, that the outside certificated repair station meets the qualifications under part 145 to perform, independently, the maintenance, preventive maintenance, or alterations on the type of article(s) in question.

Accordingly, the FAA proposes to amend § 145.201(a)(2) to clarify that compliance with § 145.217 is required only where the certificated repair station assumes responsibility for the outside source's performed work. Section 145.201(a)(2) currently authorizes a certificated repair station to ''[a]rrange for another person to perform the maintenance, preventive maintenance, or alterations of any article for which the certificated repair station is rated.'' The phrase ''for which the certificated repair station is rated'' is confusing because it can be read to imply that the certificated repair station may not arrange for another person to perform the maintenance, preventive maintenance, or alterations of any article for which the certificated repair station is not rated. Repair stations routinely arrange for other repair stations to perform work on articles for which the originating repair station is not rated or otherwise qualified to maintain or alter as long as the other repair station is rated to perform the work and approves the article for return to service. Thus, we will remove the phrase ''for which the certificated station is rated'' from § 145.201(a)(2) to clarify that part 145 contains no restriction on the ability of repair stations to arrange for other persons to perform work on articles for which the originating repair station is not rated. The section would now provide that a certificated repair station may ''[a]rrange for another person to perform the maintenance, preventive maintenance, or alterations of any article.'' As discussed below, we are also proposing clarifications to limitations on contract maintenance in § 145.217.

The FAA proposes to add language to § 145.201(a)(2) that would permit the originating certificated repair station to approve an article for return to service after work performed by an outside person only if the originating certificated repair station is: (1) rated to perform maintenance, preventive maintenance, or alterations on the article; and (2) complies with the requirements in § 145.217 for contract maintenance. This will make it more explicit that while a repair station can make arrangements for other persons to perform maintenance, preventive maintenance, or alterations, the repair station would be able to approve the article(s) for return to service only if it meets the additional contract maintenance requirements in § 145.217, including the requirement in § 145.217(a)(1) to obtain FAA approval, regardless of whether the outside person is certificated under part 145.

In addition, we will remove the second sentence in § 145.201(a)(2) because it is redundant; this subsection requires a certificated repair station that enters into an arrangement with a noncertificated person to ''ensure that the noncertificated person follows a quality control system equivalent to the system followed by the certificated repair station.'' This requirement is already contained in § 145.217(b)(1), and its inclusion in § 145.201(a)(2) is superfluous.

Additionally, the FAA proposes to revise paragraph § 145.217(a) to reflect the same proposal for § 145.201(a)(2) to clarify that the approval and other

[13] The FAA summarized and responded to comments in the NPRM withdrawal, which did not include reference to negative comments regarding the contract maintenance proposal. See 74 FR 21287, May 7, 2009.

[14] See 14 CFR 145.5(a) and 145.201.

requirements in § 145.217 only apply when the originating certificated repair station approves an article for return to service after an outside source performs maintenance, preventive maintenance, or alterations.

The FAA is also proposing to move existing § 145.217(b)(3) into a new paragraph (a)(3). This provision currently applies when a certificated repair station contracts a maintenance function to a noncertificated person and requires that the originating certificated repair station verify, by test and/or inspection, that the work has been performed satisfactorily by the noncertificated person and that the article is airworthy before approving it for return to service. We believe the requirement to verify an outside person's work should be applicable any time the originating certificated repair station approves an article for return to service following work performed by an outside person, regardless of whether that outside person is certificated. Even if the outside person is another certificated repair station, that person would not be exercising the full privileges of its certificate because it will not be approving the article(s) for return to service. Therefore, it is imperative that the originating certificated repair station, which will be approving the article for return to service, verify that the work has been performed satisfactorily and that the article is airworthy. By moving the requirement into paragraph (a), the originating certificated repair station would be required to verify the satisfactory performance of work performed by both certificated and noncertificated outside persons and the airworthiness of the article prior to approving it for return to service.

IV. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 (''Modernizing Regulatory Review''), direct that each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $177 million using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory analysis available in the docket for this rulemaking.

In conducting these analyses, we determined that this proposed rule: (1) has benefits that justify its costs; (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) would not have a significant economic impact on a substantial number of small entities; (4) would not create unnecessary obstacles to the foreign commerce of the United States; and (5) would not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

A. Summary of the Regulatory Impact Analysis

The estimated per aircraft savings is $7,974, and if 20 percent of the estimated single-engine turboprops are inspected under a manufacturer-recommended inspection program, the net annualized cost savings would be $7.4 million using a seven percent discount rate. These estimates are based on only one manufacturer offering a manufacturer-recommended inspection program (*i.e.,* the manufacturer who has developed and provided us with cost savings estimates). The FAA does not identify any new costs for unmanned aircraft, and there are unquantifiable cost savings and benefits.

B. Statement of Need for Regulatory Action

The rule proposes to revise the aircraft maintenance inspection rules for small, corporate-sized, and unmanned aircraft. The most substantial change is the addition of more inspection program options for owners and operators of single-engine turbine-powered airplanes and unmanned aircraft. Currently, owners and operators of these types of aircraft operating under part 91 are limited to annual, 100-hour, or progressive inspection programs, while unmanned aircraft operating under part 135 are limited to AAIPs or CAMPs.

This change would increase these options or, in the case of unmanned aircraft, require the selection of one of the options to include, among others, a manufacturer-recommended inspection program and an inspection program established by the registered owner or operator and approved by the Administrator. The added inspection programs would afford aircraft owners and operators more flexibility in performing aircraft inspections because they would have more options and would likely reduce inspection costs for the same. These programs would provide owners and operators of single-engine turbine-powered airplanes and unmanned aircraft with more aircraft inspection options without reducing safety.

Manufacturers will also be able to implement more efficient and effective inspection programs for new and existing fleets of aircraft, which would bolster safety, control associated costs, and likely be attractive to new and existing owners. This rulemaking does not create a burden for single-engine turbine-powered airplane owners or operators because the decision to switch aircraft inspection programs is voluntary. This rulemaking does not create a burden for unmanned aircraft owners or operators because these aircraft are already using manufacturer inspection programs under authorized exemptions. Generally speaking, a manufacturer's inspection requirements are optimized for a particular unmanned aircraft model when compared to annual inspection requirements or inspections under an AAIP or CAMP. Additionally, some maintenance-related regulations have confusing language, which has resulted in legal interpretation requests. This proposed rule would make several changes to clarify and simplify maintenance and inspection requirements for part 91 and part 125 operators and contract maintenance document retention requirements for part 145 repair stations. These clarifications would help ensure consistency in use and interpretation.

Furthermore, the FAA proposes to align reporting requirements with similar requirements in other regulations, for example, §§ 121.703, 135.415, and 145.221. Specifically, the rule proposed would lengthen the reporting interval for mechanical reliability reports, for aircraft operating under part 91, subpart K, fractional ownership rules, from 72 to 96 hours;

and (2) allow electronic report submissions.

C. Summary of Benefits and Costs

By increasing inspection options available to owners and operators of single-engine turbine-powered airplanes and unmanned aircraft, this proposal is expected to result in improved safety and net cost savings. The FAA does not identify any new costs; there are unquantifiable cost savings and benefits. Unmanned aircraft manufacturers seeking type certification or operational approval are already required to have an inspection program developed at the time the aircraft receives certification.

One manufacturer estimated that inspecting aircraft under a Maintenance Steering Group—3rd Task Force (MSG–3) (used by manufacturers to develop initial scheduled maintenance/inspection requirements) inspection program could save owners/operators approximately $7,974 per aircraft compared to an annual inspection program.

Manufacturers would incur costs to update inspection programs, but these costs would be voluntary, as the rule would not require manufacturers to develop new inspection programs. However, most manufacturers would likely choose to do so, given the relatively low associated costs compared to potential safety and customer satisfaction benefits. Furthermore, even if a manufacturer does not choose to create an inspection program for a specific type of aircraft, this rule still provides a benefit to aircraft owners and operators because it allows them to develop their own inspection program.

Improved safety will be one of this proposal's benefits because a manufacturer-developed or owner-created inspection program would be customized to the specific aircraft. This is due to the utilization of more relevant and appropriate inspection tasks and intervals. A manufacturer-developed program likely would be less invasive compared with the annual or 100-hour inspection. For example, high-utilization operators performing a 100-hour inspection frequently generate maintenance issues due to frequent disassembly, inspection, and reassembly of components. Aircraft safety would be improved by having a less invasive scheduled maintenance process. The FAA estimated cost and cost savings over a 10-year time horizon as presented in the table below. Safety benefits were not quantified.

Table 1 below presents a summary of estimated costs and cost savings for this proposal's manned aircraft maintenance programs over a 10-year time period. These estimates are based on only one manufacturer offering a manufacturer-developed inspection program, *i.e.,* the manufacturer who has developed and provided us with cost savings estimates. They result in an annualized net cost savings of $7.4 million using a 7 percent discount rate.

TABLE 3—SUMMARY OF COSTS AND COST SAVINGS

[$2020 U.S. Dollars]

10-Year total cost savings (undiscounted)	10-Year total costs (undiscounted)	10-Year net cost savings (undiscounted)	Net cost savings 7% present value	Net cost savings 3% present value	Annualized net cost savings 7%	Annualized net cost savings 3%
$77,757,841	$3,526,016	$74,231,825	$52,058,197	$63,278,086	$7,372,660	$7,392,755

To understand the maximum potential cost savings for single-engine turbine-powered airplane and unmanned aircraft owners and operators, we ran a sensitivity analysis based on the assumption that all manufacturers of this type of aircraft would develop and make available manufacturer-developed inspection programs to those owners and operators. The sensitivity analysis indicates that annualized net cost savings reach $36.8 million at a 7 percent discount rate if all manufacturers offer similar inspection programs.

1. Who is potentially affected by this proposed rule?

- Owners and operators of single-engine turbine-powered airplanes and unmanned aircraft operating under or otherwise using the inspection provisions of part 91.
- Manufacturers who choose to develop inspection programs.

2. Assumptions

- Estimates are in 2020 dollars.
- The period of analysis is 10 years.
- Annual cost savings per aircraft of opting for a manufacturer-developed and recommended inspection program over an annual inspection program is $7,974.
- The FAA uses a wage rate of $84.76 per hour adjusted for total compensation and benefits to estimate costs. This is based on compensation data for an Aerospace Engineer from the Bureau of Labor Statistics.
- Development of manufacturer-recommended inspection program would require four aerospace engineers full-time for 1 year.
- Update of these programs would require two aerospace engineers full time each year.

Estimates of the number of single-engine turbine-powered airplanes are computed using estimates of turboprops (years 2021 through 2030) from the 2018 FAA Aerospace Forecast times the average number of single-engine turboprops as a percent of total turboprops from 2012 to 2019 from the FAA General Aviation Survey, Calendar Year 2019

3. Benefits

This proposal will result in improved safety because a manufacturer-developed inspection program would be less invasive compared with an annual or 100-hour inspection. For example, high-utilization operators performing 100-hour inspections may encounter more maintenance issues due to frequent disassembly, inspection, and reassembly of components.[15] The proposed inspection programs would meet the current minimum inspection requirements for turbine-powered multi-engine airplanes.

Another benefit would be more flexible scheduling for high-utilization operators because a 100-hour or annual inspection may require more aircraft downtime.[16] The FAA has not quantified these benefits; those who benefit would be passengers and owners and operators.

[15] *Textron Aviation Inc. Petition for Rulemaking for 14 CFR 91.409.*

[16] Due to less time in maintenance the improved aircraft availability would enable our high-utilization operators more flexible scheduling. An annual or 100-hour inspection is costly considering shop equipment, labor, and aircraft downtime. Reduced operating costs may lower fares, therefore making air travel available to a wider segment of the public.'' *Textron Aviation Inc. Petition for Rulemaking for 14 CFR 91.409.*

4. Costs and Cost Savings

This proposed rule would result in net cost savings. The proposal might potentially affect all the single-engine turbine airplanes. To estimate the number of affected aircraft and the proposed rule's impact on aircraft owners and operators, we use the FAA's general aviation survey (GA Survey) that tracks the number of single-engine turbine-powered airplanes. Estimates of the number of single-engine turboprop aircraft form the basis of the analysis and, accordingly, the number of aircraft that potentially could be inspected under one of the proposed optional inspection programs instead of the annual inspection program. However, we acknowledge the uncertainty on how many manufacturers of single-engine turbine airplanes would follow the example of one manufacturer that already developed its own inspection program.

That general aviation aircraft manufacturer provided estimates of the cost differential between an MSG–3 inspection program and an annual inspection program. An MSG–3 program is a manufacturers' inspection program. Their analysis found that the total cost savings over 5 years would be $39,871 or $7,974 on average per year, per aircraft.

The cost savings would apply to only 20 percent of the estimated number of single-engine turboprops fleet ranging from 4,847 in year 1 to 4,960 in year 10. The manufacturer that has developed this inspection program and supplied us with these estimates manufactures 20 percent of single-engine turbine aircraft. As this manufacturer has actively developed the program, we think it highly likely the company would offer it to owners and operators of its aircraft. As it is likely to save these owners and operators money, we think that owners and operators would adopt the manufacturer's recommended inspection program. The result would be the following total cost savings estimate in year 1:

- Savings per aircraft × estimated Single-Engine turboprops × 20% = $7,974 × 4,847 × .2 = $7,730,502.[17]

The manufacturer has already developed the program; therefore, the development costs have already been incurred, and these development costs would not be accounted for in this analysis. This manufacturer would only incur the annual costs to maintain its inspection program it already developed. Below is the estimate of annual maintenance costs:

The annual manufacturer cost to maintain a manufacturer-recommended inspection program is as follows:

- Two aerospace engineers × loaded hourly wage rate × 2,080 hours = 2 × $84.76 × 2,080 = $352,602.

The estimated annual per aircraft savings is $7,974, and if 20 percent of the estimated single-engine turboprops are inspected under this manufacturer's inspection program, the net cost savings in the first year would be $7.3 million, undiscounted ($7.7 million undiscounted cost savings − $.4 million undiscounted maintenance costs).[18]

Table 2 presents undiscounted cost savings, costs, net costs, discounted net cost savings, and annualized cost savings based on only one manufacturer offering its recommended inspection program. The annualized net cost savings would be $7.4 million at a 7 percent discount rate.

TABLE 4—ESTIMATED NET COST SAVINGS OF ONE MANUFACTURER

[$2020 U.S. dollars]*

Year	Estimated number of single-engine turboprops	20% of the fleet achieves cost savings (undiscounted)	Costs (undiscounted)	Net cost savings (undiscounted)	Net cost savings 7% present value	Net cost savings 3% present value
1	4,847	$7,730,502	$352,602	$7,377,900	$6,895,234	$7,163,010
2	4,836	7,712,810	352,602	7,360,209	6,428,691	6,937,703
3	4,834	7,708,955	352,602	7,356,354	6,004,976	6,732,106
4	4,841	7,720,321	352,602	7,367,719	5,620,798	6,546,123
5	4,852	7,738,000	352,602	7,385,399	5,265,687	6,370,710
6	4,866	7,760,935	352,602	7,408,333	4,936,485	6,204,363
7	4,882	7,786,358	352,602	7,433,757	4,629,370	6,044,324
8	4,905	7,823,019	352,602	7,470,417	4,347,851	5,897,216
9	4,933	7,867,064	352,602	7,514,462	4,087,369	5,759,209
10	4,960	7,909,877	352,602	7,557,275	3,841,736	5,623,323
Total		77,757,841	3,526,016	74,231,825	52,058,197	63,278,086
Annualized Net Cost Savings					7,411,916	7,418,122

* These numbers are subject to rounding.

5. Sensitivity Analysis

Since there are four other manufacturers producing single-engine turbine-powered aircraft in this market segment, we conducted a sensitivity analysis to illustrate the maximum potential cost savings that could be achieved by all five manufacturers—and the owners and operators of the estimated aircraft fleet if the proposed rule is adopted. The following table shows cost savings if all owners and operators of single-engine turbine-powered aircraft were to transfer to an MSG–3 program and were able to achieve an annual cost savings of $7,974 per airplane.

For Year 1 in Table 3, using 2022 forecast estimates, the annual potential cost savings of the proposed rule would be $38,652,509 [$7,974 (estimated cost savings per aircraft) × 4,847 (estimated single turboprops)]. In the remaining years in the 10-year period of analysis in Table 3, annual potential cost savings are calculated in the same manner as in Year 1 by multiplying $7,974 cost savings per aircraft with the number of forecasted aircrafts.

[17] These numbers are subject to rounding.

[18] These numbers are subject to rounding.

TABLE 5—SENSITIVITY ANALYSIS: MAXIMUM POTENTIAL COST SAVINGS

[$2020 U.S. dollars]

Year	Maximum potential cost savings (undiscounted)	7% present value	3% present value
1	$38,652,509	$36,123,840	$37,526,708
2	38,564,051	33,683,336	36,350,317
3	38,544,776	31,464,019	35,273,930
4	38,601,603	29,448,978	34,297,025
5	38,690,001	27,585,436	33,374,335
6	38,804,675	25,857,193	32,498,304
7	38,931,791	24,244,763	31,655,109
8	39,115,095	22,765,341	30,877,817
9	39,335,318	21,395,807	30,147,246
10	39,549,385	20,104,902	29,428,457
Total	388,789,204	272,673,615	331,429,247
Annualized Cost Savings		38,822,588	38,853,618

Airplane manufacturers would have had to develop the inspection programs and incur the necessary annual costs to maintain and update their inspection programs for airplane owners and operators to realize these cost savings. We estimate that each manufacturer will devote four aerospace engineers full-time for 1 year to develop the inspection program in the first year of the analysis. The development costs for five manufacturers are as follows:

- Five manufacturers × development costs = 5 × $705,203 = $3,526,016

Presented in the following table are cost savings, costs, net costs, discounted net cost savings, and annualized cost savings at their maximum potential. If all five manufacturers were to develop and offer manufacturer-recommended inspection programs, and all owners and operators of single-engine turbine-powered airplanes were to adopt these programs in place of their annual inspection programs, the annualized net cost savings would be $36.8 million at a 7 percent discount rate.

TABLE 6—SENSITIVITY ANALYSIS: MAXIMUM POTENTIAL NET COST SAVINGS *

Year	Maximum potential cost savings (undiscounted)	Costs (undiscounted)	Maximum potential net cost savings (undiscounted)	Maximum potential net cost savings 7% present value	Maximum potential net cost Savings 3% present value
1	$38,652,509	$3,526,016	$35,126,493	$32,828,498	$34,103,391
2	38,564,051	1,763,008	36,801,043	32,143,456	34,688,513
3	38,544,776	1,763,008	36,781,768	30,024,879	33,660,528
4	38,601,603	1,763,008	36,838,595	28,103,988	32,730,615
5	38,690,001	1,763,008	36,926,993	26,328,436	31,853,548
6	38,804,675	1,763,008	37,041,667	24,682,427	31,021,813
7	38,931,791	1,763,008	37,168,783	23,146,850	30,221,622
8	39,115,095	1,763,008	37,352,087	21,739,255	29,486,082
9	39,335,318	1,763,008	37,572,310	20,436,847	28,796,047
10	39,549,385	1,763,008	37,786,377	19,208,678	28,116,613
Total	388,789,204	19,393,088	369,396,116	258,643,314	314,678,773
Annualized Net Cost Savings				36,824,989	36,889,952

* Totals may not add due to rounding.

We request additional information regarding who would take advantage of this type of manufacturer's inspection program and quantified data on potential cost savings or costs. After the comment period closes and depending on what information we receive, the FAA may choose to update the estimates.

While the FAA quantified costs and cost savings, the rule would also result in unquantified cost savings by simplifying, clarifying, correcting terms, allowing for electronic data submission, and allowing an additional 24 hours to submit a mechanical reliability report.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) and the Small Business Jobs Act of 2010 (Pub. L. 111–240), requires Federal agencies to consider regulatory action effects on small business and other small entities and to minimize any significant impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

We believe this proposed rule would not have a significant impact on a substantial number of entities for the following reasons:

- The rule would not impose mandatory costs on small entities or result in any new costs to maintain the manufacturer inspection program.
- It is likely to result in cost savings on the order of about $8,000 per aircraft

for those small entities who voluntarily choose to use a manufacturer inspection program on their aircraft.

Therefore, for the reasons provided, we certify that this proposed rulemaking will not result in a significant economic impact on a substantial number of small entities.

The FAA solicits comments regarding this determination.

E. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that it would only have a domestic impact; therefore, it will not create unnecessary obstacles to United States foreign commerce.

F. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or Tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs.

The FAA determined that the proposed rule will not result in the expenditure of $165 million or more by State, local, or Tribal governments, in the aggregate, or the private sector, in any one year.

G. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined this proposed rule will not result in any new information collection requirements.

The FAA proposes to lengthen the reporting interval for mechanical reliability reports, for aircraft operating under part 91, subpart K, fractional ownership rules, from 72 to 96 hours, and allow electronic report submissions. This increase in the reporting interval would align the requirement with similar reporting requirements in other regulations, for example, 14 CFR 121.703, 135.415, and 145.221.

Currently, the general aviation public, including part 91, subpart K, owners and operators, use FAA Form 8010–4, Malfunction and Defect Report, to submit voluntary reporting of occurrences or detection of failure, malfunctions, or defects. Approval to collect such information previously was granted by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and was assigned OMB Control Number 2120–0663.

The supporting statement submitted to OMB for renewal of the Collection of Information 2120–0663 in October 2020 estimated that 2,000 respondents from the General Aviation public each year would use Form 8010–4 by spending 10 minutes each for an annual 334 total burden hours. The proposed change would simply align the required reporting interval from 72 hours to 96 hours with similar requirements for part 121, part 135, and part 145 operators of 14 CFR and would neither decrease nor increase the current burden hours on 2,000 respondents.

Therefore, we determined that there would be no new information collection requirements associated with the proposal to increase the reporting timeframe for mechanical reliability reports in 14 CFR 91.1415 from 72 to 96 hours and to allow for electronic submissions.

H. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

I. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order (E.O.) 13132, Federalism. We determined this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government; therefore, it will not have any federalism implications.

B. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,[19] and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,[20] the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to affect uniquely or significantly their respective Tribes. Our proposal analysis has not identified any unique or significant effects, environmental or otherwise, on tribes.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

We analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001) and determined that it would not be a ‘‘significant energy action’’ under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, International Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent

[19] 65 FR 67249 (Nov. 6, 2000).

[20] FAA Order No. 1210.20 (Jan. 28, 2004), available at *www.faa.gov/documentLibrary/media/1210.pdf.*

unnecessary differences in regulatory requirements.

We analyzed this action under the policies and agency responsibilities of E.O. 13609 and determined that this action would have no effect on international regulatory cooperation.

VI. Additional Information

A. Comments Invited

We invite interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

We will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments that we receive on or before the comments closing date; however, we will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments that are received.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal *www.regulations.gov;*

2. Visiting the FAA's Regulations and Policies web page at *www.faa.gov/regulations_policies/;* or

3. Accessing the Government Printing Office's web page at *www.GovInfo.com.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced in item (1) above.

C. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

D. Electronic Access and Filing

A copy of this NPRM, all comments received, any final rule, and all background material may be viewed online at *www.regulations.gov* using the docket number listed above. A copy of this proposed rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.federalregister.gov* and the Government Publishing Office's website at *www.govinfo.gov.* A copy may also be found at the FAA's Regulations and Policies website at *www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 91

Air carrier, Air taxis, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Transportation.

14 CFR Part 125

Aircraft, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety.

14 CFR Part 137

Agriculture, Aircraft, Aviation safety.

14 CFR Part 145

Aircraft, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend § 91.401 by revising paragraph (c) to read as follows:

§ 91.401 Applicability.

* * * * *

(c) Sections 91.405 and 91.409 do not apply to—

(1) An airplane inspected in accordance with part 125 of this chapter.

(2) An aircraft inspected in accordance with an approved aircraft

inspection program under part 135 of this chapter and so identified by the registration number in the operations specifications of the certificate holder having the approved aircraft inspection program.

(3) An aircraft that carries a special flight permit.

(4) An aircraft that carries a current experimental, light-sport, or provisional airworthiness certificate, unless specified in an additional operating limitation under § 91.317 or § 91.319.

■ 3. Amend § 91.403 by revising paragraph (c) and adding paragraph (e) to read as follows:

§ 91.403 General.

* * * * *

(c) No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitations section unless:

(1) The mandatory replacement times, inspection intervals, and related procedures specified in the airworthiness limitations section have been complied with; or

(2) Alternative inspection intervals and related procedures set forth in a continuous airworthiness maintenance program approved by the Administrator and authorized by operations specifications under part 121 or 135 of this chapter, or management specifications under subpart K of this part have been complied with; or

(3) Alternative inspection intervals and related procedures set forth in an inspection program authorized for use under § 91.409(f) have been complied with.

* * * * *

(e) No person may operate an aircraft under a special flight permit unless it is operated in accordance with any conditions and limitations issued by the Administrator and it has been inspected to the extent necessary to determine the aircraft is in a condition for safe operation for the intended flight.

■ 4. Amend § 91.405 by revising paragraphs (a), (c), and (d) to read as follows:

§ 91.405 Maintenance required.

* * * * *

(a) Shall have that aircraft inspected as prescribed in this subpart and shall, between required inspections, except as provided in paragraph (c) of this section, have discrepancies evaluated and dispositioned or corrected, as appropriate, through inspection, overhaul, repair, preservation, or the replacement of parts, in accordance with part 43 of this chapter, or appropriately deferred as provided in § 91.213;

* * * * *

(c) Shall, at each required inspection, have any inoperative instrument or item of equipment that is permitted to be inoperative by § 91.213(d)(2), and that has not been repaired, replaced, or removed inspected to ensure that the inoperative instrument or item of equipment will not have an adverse effect on the continued safe operation of the aircraft; and

(d) Shall ensure that when inoperative instruments or equipment are present, a placard marking it ''inoperative'' has been installed as required by § 43.11 of this chapter.

■ 5. Amend § 91.409 by:

■ a. Adding a heading for paragraph (a);

■ b. Revising paragraphs (b), (c), (e), (f) introductory text, and (f)(1), (3), and (4);

■ c. Removing the undesignated paragraph following paragraph (f)(4); and

■ d. Revising paragraphs (g) introductory text and (g)(1).

The addition and revisions read as follows:

§ 91.409 Inspections.

(a) *Annual inspections.* * * *

(b) *100 hour inspections.* Except as provided in paragraph (c) of this section, no person may operate an aircraft carrying any person (other than a crewmember) for hire, no person may give flight instruction for hire in an aircraft which that person provides, and no person may operate an aircraft over congested areas under part 137 of this chapter unless within the preceding 100 hours of time in service the aircraft has received an annual or 100-hour inspection and been approved for return to service in accordance with part 43 of this chapter or has received an inspection for the issuance of an airworthiness certificate in accordance with part 21 of this chapter. The 100-hour limitation may be exceeded by not more than 10 hours while en route to reach a place where the inspection can be done. The excess time used to reach a place where the inspection can be done must be included in computing the next 100 hours of time in service.

(c) *Applicability of annual and 100 hour inspections.* Paragraphs (a) and (b) of this section do not apply to—

(1) An aircraft authorized by the Administrator to be inspected in accordance with a progressive inspection program under paragraph (d) of this section;

(2) An aircraft subject to the requirements of paragraph (e)(1) of this section; or

(3) Turbine-powered rotorcraft or single-engine turbine-powered airplanes when the owner or operator elects to inspect that aircraft in accordance with paragraph (e)(2) of this section.

* * * * *

(e) *Large airplanes (which are not inspected in accordance with part 125 of this chapter), turbine-powered airplanes and rotorcraft, and unmanned aircraft*—(1) *Large airplanes, multiengine turbine-powered airplanes, and unmanned aircraft.* Except as specified in § 91.401, no person may operate a large airplane, multiengine turbine-powered airplane, or unmanned aircraft unless the replacement times for life-limited parts specified in the aircraft specifications, type data sheets, or other documents approved by the Administrator are complied with and the aircraft, including the airframe, engines, propellers, rotors, appliances, survival equipment, and emergency equipment, is inspected in accordance with an inspection program selected under the provisions of paragraph (f) of this section.

(2) *Turbine-powered rotorcraft and single-engine turbine-powered airplanes.* In lieu of paragraph (a), (b), or (d) of this section, the owner or operator of a turbine-powered rotorcraft or a single-engine turbine-powered airplane may elect to use an inspection program selected under the provisions of paragraph (f) of this section. If an alternate inspection program is selected, no person may operate the aircraft unless the replacement times for life-limited parts specified in the aircraft specifications, type data sheets, or other documents approved by the Administrator are complied with and the aircraft, including the airframe, engines, propellers, rotors, appliances, survival equipment, and emergency equipment, is inspected in accordance with the inspection program.

(f) *Selection of inspection program under paragraph (e) of this section.* The registered owner or operator of each aircraft that is required to or has opted to use an inspection program under this section, as described in paragraph (e) of this section, must select, identify in the aircraft maintenance records, and use one of the following programs for the inspection of the aircraft. Each operator shall make a copy of the selected program available to the person performing inspections on the aircraft and, upon request, to the Administrator.

(1) An inspection program that is part of a continuous airworthiness maintenance program currently in use by a person holding an air carrier certificate or an operating certificate

issued under part 121 or 135 of this chapter and operating that make and model aircraft under part 121 of this chapter or operating that make and model under part 135 of this chapter and maintaining it under § 135.411(a)(2) of this chapter.

* * * * *

(3) An inspection program recommended by the manufacturer that was the most current program available at the time of selection and identified in the aircraft maintenance records.

(4) Any other inspection program established by the registered owner or operator and approved by the Administrator for that aircraft under paragraph (g) of this section. The Administrator may require revision of this inspection program in accordance with the provisions of § 91.415.

(g) *Inspection program approved under paragraph (e) of this section.* Each operator of an aircraft desiring to establish or change an approved inspection program under paragraph (f)(4) of this section must submit the program for approval in a manner acceptable to the FAA. The program must be in writing and include at least the following information:

(1) Instructions and procedures for the conduct of inspections for the particular make and model aircraft, including necessary tests and checks. The instructions and procedures must set forth in detail the parts and areas of the airframe, engines, propellers, rotors, and appliances, including survival and emergency equipment required to be inspected.

* * * * *

■ 6. Amend § 91.415 by revising paragraph (a) to read as follows:

§ 91.415 Changes to aircraft inspection programs.

(a) Whenever the Administrator finds that revisions to an inspection program approved under § 91.409(f)(4) or § 91.1109 or § 125.247(e)(3) of this chapter are necessary for the continued adequacy of the program, the owner or operator must, after notification by the Administrator, make any changes in the program found to be necessary by the Administrator.

* * * * *

■ 7. Amend § 91.501 by revising paragraph (a) to read as follows:

§ 91.501 Applicability.

(a) This subpart prescribes operating rules, in addition to those prescribed in other subparts of this part, governing the operation of large airplanes of U.S. registry, turbojet-powered multiengine civil airplanes of U.S. registry, and fractional ownership program aircraft of U.S. registry that are operating under subpart K of this part in operations not involving common carriage. The operating rules in this subpart do not apply to those aircraft when they are required to be operated under parts 121, 125, 129, 135, and 137 of this chapter.

* * * * *

■ 8. Amend § 91.1415 by revising the section heading and paragraph (d) to read as follows:

§ 91.1415 CAMP: Service difficulty reports.

* * * * *

(d) Each program manager shall submit each report required by this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to the FAA offices in Oklahoma City, Oklahoma. Each report of occurrences during a 24-hour period shall be submitted to the collection point within the next 96 hours. However, a report that is due on Saturday or Sunday may be submitted on the following Monday, and a report due on a holiday may be submitted on the next workday.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 9. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 10. Amend § 125.247 by revising paragraphs (a)(3), (d), and (e) to read as follows:

§ 125.247 Inspection programs and maintenance.

(a) * * *

(3) The airplane, including airframe, aircraft engines, propellers, appliances, and survival and emergency equipment, and their component parts, is inspected in accordance with an inspection program authorized by the Administrator under paragraph (e) of this section.

* * * * *

(d) No person may operate an airplane subject to this part unless—

(1) The installed engines have been maintained in accordance with the overhaul periods recommended by the manufacturer or a period approved by the Administrator; and

(2) The engine overhaul periods, or a reference to where they can be found, are specified in the certificate holder's operations specifications.

(e) Inspection programs that may be authorized for use under this part include, but are not limited to—

(1) An inspection program that is a part of a current continuous airworthiness maintenance program approved for use by a certificate holder under part 121 or 135 of this chapter;

(2) An inspection program recommended by the manufacturer of the aircraft that was the most current program available at the time of selection and authorization under this part; or

(3) An inspection program developed by a certificate holder under this part and approved by the Administrator. The Administrator may require revision of this inspection program in accordance with the provisions of § 91.415 of this chapter.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 11. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 41706, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730).

■ 12. Amend § 135.411 by revising paragraph (a)(2) to read as follows:

§ 135.411 Applicability.

(a) * * *

(2) Aircraft that are type certificated for a passenger seating configuration, excluding any pilot seat, of ten seats or more, shall be maintained under a continuous airworthiness maintenance program in §§ 135.415, 135.417, and 135.423 through 135.443.

* * * * *

PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

■ 13. The authority citation for part 137 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 44701–44702.

■ 14. Amend § 137.53 by revising paragraph (c) to read as follows:

§ 137.53 Operation over congested areas: Pilots and aircraft.

* * * * *

(c) *Aircraft.* Each aircraft, other than a helicopter, must be equipped with a device capable of jettisoning at least

one-half of the aircraft's maximum authorized load of agricultural material within 45 seconds. If the aircraft is equipped with a device for releasing the tank or hopper as a unit, there must be a means to prevent inadvertent release by the pilot or other crewmember.

PART 145—REPAIR STATIONS

■ 15. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44709, 44717.

■ 16. Amend § 145.109 by revising paragraph (d) to read as follows:

§ 145.109 Equipment, materials, and data requirements.

* * * * *

(d) A certificated repair station must maintain, in a format acceptable to the FAA, the documents and data required for the performance of maintenance, preventive maintenance, and alterations under its repair station certificate and operations specifications in accordance with part 43 of this chapter. These documents and data must be accessible when the relevant work is being done.

■ 17. Amend § 145.201 by revising paragraph (a)(2) to read as follows:

§ 145.201 Privileges and limitations of certificate.

(a) * * *

(2) Arrange for another person to perform the maintenance, preventive maintenance, or alterations of any article. The certificated repair station may approve an article for return to service following the maintenance, preventive maintenance, or alterations performed on the article by the other person if—

(i) The certificated repair station is rated to perform maintenance, preventive maintenance, or alterations on the article; and

(ii) The requirements for contract maintenance in § 145.217 have been met.

* * * * *

■ 18. Amend § 145.217 by:

■ a. Revising paragraph (a) introductory text;

■ b. Removing ''; and'' at the end of paragraph (a)(1) and adding a period in its place;

■ c. Adding paragraph (a)(3);

■ d. Adding the word ''and'' at the end of paragraph (b)(1);

■ e. Removing ''; and'' at the end of paragraph (b)(2) and adding a period in its place; and

■ f. Removing paragraph (b)(3).

The revision and addition read as follows:

§ 145.217 Contract maintenance.

(a) A certificated repair station may approve an article for return to service following the maintenance, preventive maintenance, or alterations performed on an article by an outside source under contract or other arrangement, in accordance with § 145.201(a)(2), provided all the following conditions are met:

* * * * *

(3) The certificated repair station verifies, by test and/or inspection, that the work has been performed satisfactorily by the other person and that the article is airworthy before approving it for return to service.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44707 in Washington, DC.

Robert M. Ruiz,

Deputy Executive Director, Flight Standards Service.

[FR Doc. 2024–00763 Filed 1–30–24; 8:45 am]

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB65

Proposal of Special Measure Regarding Al-Huda Bank, as a Foreign Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is issuing a notice of proposed rulemaking (NPRM), pursuant to section 311 of the USA PATRIOT Act, that proposes prohibiting the opening or maintaining of a correspondent account in the United States for, or on behalf of, Al-Huda Bank, a foreign financial institution based in Iraq found to be of primary money laundering concern.

DATES: Written comments on the notice of proposed rulemaking must be submitted on or before March 1, 2024.

ADDRESSES: Comments must be submitted by one of the following methods:

- *Federal E-rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2024–0001 in the submission.
- *Mail:* Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2024–0001 in the submission.

Please submit comments by one method only and note that comments submitted in response to this NPRM will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

Section 311 of the USA PATRIOT Act (section 311), codified at 31 U.S.C. 5318A, grants the Secretary of the Treasury (Secretary) authority, upon finding that reasonable grounds exist for concluding that one or more financial institutions operating outside of the United States is of primary money laundering concern, to require domestic financial institutions and domestic financial agencies to take certain ''special measures.'' [1] The authority of the Secretary to administer the Bank Secrecy Act (BSA) and its implementing regulations has been delegated to FinCEN.[2]

The five special measures set out in section 311 are safeguards that may be employed to defend the U.S. financial system from money laundering and terrorist financing risks. The Secretary may impose one or more of these special measures in order to protect the U.S. financial system from such threats. Through special measures one through four, the Secretary may impose additional recordkeeping, information collection, and reporting requirements on covered domestic financial institutions and domestic financial agencies—collectively, ''covered financial institutions.'' [3] Through special measure five, the Secretary may prohibit, or impose conditions on, the opening or maintaining in the United States of correspondent or payable-

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[1] On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56 (USA PATRIOT Act). Title III of the USA PATRIOT Act amended the anti-money laundering (AML) provisions of the Bank Secrecy Act (BSA) to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. The BSA, as amended, is the popular name for a collection of statutory authorities that FinCEN administers that is codified at 12 U.S.C. 1829b, 1951–1960 and 31 U.S.C. 5311–5314, 5316–5336, and includes other authorities reflected in notes thereto. Regulations implementing the BSA appear at 31 CFR Chapter X.

[2] Pursuant to Treasury Order 180–01 (Jan. 14, 2020), the authority of the Secretary to administer the BSA, including, but not limited to, 31 U.S.C. 5318A, has been delegated to the Director of FinCEN.

[3] 31 U.S.C. 5318A(b)(1)–(b)(4). For definition of ''covered financial institutions,'' *see* 31 CFR 1010.100(t) and section V.A.3 of this notice.

through accounts for or on behalf of a foreign banking institution, if such correspondent account or payable-through account involves the foreign financial institution found to be of primary money laundering concern.[4]

Before making a finding that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General.[5] The Secretary is also required to consider such information as the Secretary determines to be relevant, including the following potentially relevant factors:

• The extent to which such a financial institution is used to facilitate or promote money laundering in or through a jurisdiction outside the United States, including any money laundering activity by organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction (WMD) or missiles;

• The extent to which such a foreign financial institution is used for legitimate business purposes in the jurisdiction; and

• The extent to which such action is sufficient to ensure that the purposes of section 311 are fulfilled and to guard against international money laundering and other financial crimes.[6]

Upon finding that a foreign financial institution is of primary money laundering concern, the Secretary may require covered financial institutions to take one or more special measures. In selecting one or more special measures, the Secretary ''shall consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act), the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration Board, and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find appropriate.'' [7] When imposing special measure five, the Secretary must do so ''in consultation with the Secretary of State, the Attorney General, and the Chairman of the Board of Governors of the Federal Reserve System.'' [8]

[4] 31 U.S.C. 5318A(b)(5).

[5] 31 U.S.C. 5318A(c)(1).

[6] 31 U.S.C. 5318A(c)(2)(B).

[7] 31 U.S.C. 5318A(a)(4)(A).

[8] 31 U.S.C. 5318A(b)(5).

In addition, the Secretary is required to consider the following factors when selecting special measures:

• Whether similar action has been or is being taken by other nations or multilateral groups;

• Whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;

• The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction, institution, class of transactions, or type of account; and

• The effect of the action on United States national security and foreign policy.[9]

II. Summary of NPRM

For years, Al-Huda Bank has exploited its access to U.S. dollars (USD) to support designated foreign terrorist organizations (FTOs), including Iran's Islamic Revolutionary Guard Corps (IRGC) and IRGC-Quds Force (IRGC–QF) as well as Iran-aligned Iraqi militias Kata'ib Hizballah (KH) and Asa'ib Ahl al-Haq (AAH).[10] Since its establishment, Al-Huda Bank has been controlled and operated by the IRGC and IRGC–QF. Moreover, the chairman of Al-Huda Bank is complicit in Al-Huda Bank's illicit financial activities, including money laundering through front companies that conceal the true nature of and parties involved in illicit transactions, ultimately enabling the financing of terrorism.

Given the nature of Iraq's economy and trade relationships, Iraqi businesses that import goods into Iraq rely on wire transfers of USD from the account of the Central Bank of Iraq (CBI) at the Federal Reserve Bank of New York (FRBNY), a process known as the wire auction, or more generally the ''CBI dollar auction.'' [11] Many Iraqi businesses and financial institutions use the CBI dollar auction for legitimate purposes. However, FinCEN assesses that Al-Huda Bank has deliberately embarked on a strategy that relies on exploiting the CBI dollar auction to support designated FTOs, including the IRGC, IRGC–QF, KH, and AAH, with the support of the Iranian government. Al-Huda Bank has actively supported terrorist groups and abused the CBI dollar auction through numerous money laundering typologies, including use of fraudulent documentation to obscure the ultimate beneficiaries of the transactions. Given these facts, FinCEN assesses that there is a high risk of Al-Huda Bank exploiting USD correspondent relationships to support its money laundering and terrorist financing activity.

[9] 31 U.S.C. 5318A(a)(4)(B).

[10] The Department of State has authority to designate organizations as FTOs. The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) has also designated the IRGC, IRGC–QF, KH, and AAH pursuant to multiple sanctions authorities.

[11] The CBI dollar auction comprises both (1) the wire auction and (2) bulk USD banknote shipments to Iraq which the CBI sells to exchange houses and banks in return for IQD. The latter is known as the ''cash auction'' and is a separate process from the wire auction. Al-Huda Bank's illicit finance activities described herein are related to the wire auction. *See* Section III.A.2.

This NPRM (1) sets forth FinCEN's finding that Al-Huda Bank is a foreign financial institution of primary money laundering concern; and (2) proposes that, under special measure five, covered financial institutions be prohibited from opening or maintaining a correspondent account for, or on behalf of, Al-Huda Bank.

III. Finding That Al-Huda Bank Is a Foreign Financial Institution of Primary Money Laundering Concern

Pursuant to 31 U.S.C. 5318A(a)(1), FinCEN finds that reasonable grounds exist for concluding that Al-Huda Bank is a foreign financial institution of primary money laundering concern. Below is a discussion of the relevant statutory factors FinCEN considered in making this finding related to this Iraq-based financial institution.

A. The Extent to Which Al-Huda Bank Is Used To Facilitate or Promote Money Laundering Outside the United States, Including Any Money Laundering Activity by Organized Criminal Groups, International Terrorists, or Entities Involved in the Proliferation of WMD or Missiles

FinCEN assesses that Al-Huda Bank is used to facilitate or promote money laundering outside the United States, particularly money laundering activity to support designated FTOs. FinCEN based this assessment on information available through both public and non-public reporting, and after thorough consideration of each of the following factors: (1) that Al-Huda Bank is a foreign financial institution; and (2) that Al-Huda Bank exploits its access to USD through the dollar auction; and (3) that through the exploitation of the dollar auction, Al-Huda Bank provides support to designated FTOs, in particular the IRGC and IRGC–QF, as well as Iran-aligned Iraqi militias KH and AAH.

1. Al-Huda Bank Is a Foreign Financial Institution

Al-Huda Bank is a private commercial bank registered and headquartered in Baghdad, Iraq, with five domestic branch locations. These domestic branches are in Baghdad, Karbala, and Nasiriyah. Al-Huda Bank has no subsidiaries or branches outside of Iraq, and is regulated by the CBI.

Al-Huda Bank has no direct U.S. correspondent banking relationships but interacts with the U.S. financial system indirectly through USD correspondent accounts at six foreign financial institutions. In other words, Al-Huda Bank interacts with foreign banks that themselves have correspondent accounts with U.S. banks. Al-Huda Bank also accesses USD through the CBI dollar auction.

2. Al-Huda Bank Exploits Its Access to USD Through the CBI Dollar Auction

Individual Iraqi businesses that import goods into Iraq rely on wire transfers of USD from CBI's account at the FRBNY. The CBI wire auction is the mechanism by which the CBI provides USD to facilitate the purchase of imports. When Iraq sells oil in the international petroleum markets, the revenues are credited in USD to the CBI's account at the FRBNY. Iraqi companies with accounts at Iraqi banks can then access the CBI dollar auction to purchase USD with Iraqi dinar (IQD) to pay for imports. USD are transferred from the CBI's FRBNY account to an Iraqi bank, and onward to a third-country bank on behalf of a third-country exporter.

Many Iraqi businesses and their banks use the CBI dollar auction for its intended, legitimate purpose of facilitating imports of goods. However, as discussed in section III.A.3, FinCEN assesses that Al-Huda Bank has deliberately embarked on a strategy that relies on illegitimate exploitation of the dollar auction to support designated FTOs, including the IRGC, IRGC–QF, KH, and AAH, with the support of the Iranian government.

With the knowledge of Al-Huda Bank's chairman, Al-Huda Bank's abuse of the dollar auction is obfuscated through the application of numerous money laundering typologies, including the use of fraudulent documentation, fake deposits, identity documents of the deceased, fake companies, and counterfeit IQD, which are used to purchase USD and support terrorist groups and militias. For years, Al-Huda Bank has been involved in these deceptive money laundering activities. Examples of three of these money laundering typologies are discussed below: (1) fraudulent documentation; (2) stolen identities; and (3) counterfeit IQD. Al-Huda Bank's use of these money laundering typologies also risks exposing covered financial institutions to Al-Huda Bank's exploitation of USD correspondent banking relationships to support its terrorist financing activities, discussed in section III.A.3.

Since at least 2012, Al-Huda Bank has used fraudulent documentation to purchase foreign currency—including USD—from the CBI at dollar auctions. Based on media reporting, during 2012 to 2014, Al-Huda Bank filed false documentation to justify international transfers of over $6 billion to banks and companies.[12] On at least one occasion, government authorities detected Al-Huda Bank's filing of fraudulent documentation, which resulted in freezing of a transfer of a significant amount of money. In another scheme, Al-Huda Bank would deposit fake checks to make the balance seem higher on the account Al-Huda Bank used in dollar auctions. The fake check deposits would allow Al-Huda Bank to purchase USD using that false higher balance before the fake check bounced, which Al-Huda Bank would then write off.

Al-Huda Bank, with its chairman's knowledge, has also abused the dollar auction by utilizing stolen identities. In one scheme, the Al-Huda Bank chairman and other Al-Huda Bank officials would use the identification documents of deceased individuals to purchase USD in dollar auctions. Al-Huda Bank officials would also pay living people for use of their identification documents. The illicit use of identification documents allowed Al-Huda Bank to circumvent limits on currency purchases.

With the knowledge of Al-Huda Bank's chairman, Al-Huda Bank has also been involved in funneling of counterfeit IQD through fake businesses in Iraq. The counterfeit IQD would be printed in Iran, funneled through Iraqi businesses, and then exchanged for USD. The use of counterfeit IQD greatly increases the amount of illicit profit gained from exchanging IQD for USD at the CBI dollar auction, and the funneling of counterfeit IQD through Iraqi businesses disguises the counterfeit IQD's source in Iran.

3. Through the Exploitation of the CBI Dollar Auction, Al-Huda Bank Provides Support to Designated FTOs

Iran has exploited its relationship with Iraq-based, Iran-backed militias to influence Iraqi businesses and officials to generate illicit revenue for the militias' operations. As part of this effort, Iran has developed a network of commercial platforms, including financial institutions, to move funds and misrepresent trade-based financial transactions that obscure the ultimate beneficiary, namely Iran-backed terrorist groups and militias.

Since its establishment, Al-Huda Bank has been controlled and operated by the IRGC and IRGC–QF. In 2008, the chairman of Al-Huda Bank established the bank specifically for the benefit of KH and has met with and taken orders from IRGC–QF leadership in Tehran, Iran. After establishing the bank, the Al-Huda Bank chairman began money laundering operations on behalf of the IRGC–QF and KH.

Al-Huda Bank has funded Iran-aligned militias through a scheme in which Al-Huda Bank and other Iraqi banks have falsely claimed imports that did not exist into Iraq worth billions of dollars to justify the purchase of USD in the CBI dollar auction. Al-Huda Bank would purchase the USD with counterfeit IQD printed in Iran. Al-Huda Bank was not allowed to conduct financial transactions without the Iran-aligned militias' involvement and Al-Huda Bank would provide part of Al-Huda Bank's revenue from this scheme to those Iran-aligned militias.

This fraudulent scheme has been a substantial source of funding for Iran-aligned militias' operations. The Iran-aligned Iraqi militia AAH has used companies based across Iraq to generate revenue, launder illicit profits, and convert IQD to USD. AAH has used Al-Huda Bank to maintain accounts for some of these companies, as well as to access the currency auction. The use of false imports, counterfeit currency, and front companies are essential components of exploitation of the CBI dollar auction by obscuring the source of funds and the purpose and ultimate beneficiaries of the transactions that support Iran-aligned Iraqi militias. Overall, IRGC and IRGC–QF use of Al-Huda Bank and several other Iraqi banks to access the dollar auction resulted in approximately $70 billion USD in profit from 2019 through 2020.

[12] Al-Arabiya, ''*Billions of Dollars*'' *Smuggled Out of Iraq During Maliki's Rule,* November 9, 2015, available at *https://english.alarabiya.net/News/middle-east/2015/11/09/Iraq-smuggled-billions-of-dollars-during-Maliki-s-rule.*

B. The Extent to Which Al-Huda Bank Is Used for Legitimate Business Purposes

Al-Huda Bank is the 30th largest bank in Iraq and approximately the 11,000th largest in the world, with 416 billion IQD ($285 million USD) in total assets in 2020, which is approximately 0.2 percent of total Iraqi banking system assets.[13] Records collected by FinCEN show Al-Huda Bank engaged in approximately $4.7 billion USD in USD-cleared international transactions through U.S. correspondent bank accounts between July 2017 and December 2022, the vast majority being CBI dollar auction-related transactions.

In 2020, Al-Huda Bank's self-reported total revenues were 8,937,678,000 IQD ($6,115,456 USD) with a gross profit of 2,753,653,000 IQD ($1,884,140 USD). As of December 31, 2020, Al-Huda Bank held 55,057,239,000 IQD ($37,671,991 USD) in customer account deposits, approximately 1,110,270,000 IQD ($760,000 USD) of which were current accounts belonging to private individuals.[14]

The assets noted above, based on Al-Huda Bank financial statements, are indicative of at least a portion of legitimate business transiting the financial institution. However, FinCEN assesses that Al-Huda Bank's legitimate business activities do not outweigh the money laundering risks posed by the bank, as the variety and type of the illicit finance risks presented by Al-Huda Bank are such that even a higher volume of legitimate activity would not allay FinCEN's significant money laundering concern.[15] As demonstrated above, Al-Huda Bank facilitates the financing of a wide variety of terrorists and terrorist groups, many of whom have attacked citizens and partners of the United States. Further, there is significant information indicating that the owner and chairman of Al-Huda Bank is a witting and active participant in the illicit finance involving and perpetrated by Al-Huda Bank.

C. The Extent to Which Action Proposed by FinCEN Would Guard Against International Money Laundering and Other Financial Crimes

As noted by the U.S. Department of State in 2023, corruption is a significant impediment to conducting business in Iraq, and Iran-aligned militias threaten U.S. citizens and companies throughout Iraq.[16] Al-Huda Bank has engaged in transactions that facilitate the financing of FTOs, including the IRGC, IRGC–QF, and Iran-aligned militias KH and AAH, with the support of the Iranian government. A finding that Al-Huda Bank is of primary money laundering concern would make clear to foreign correspondents Al-Huda Bank's illicit finance risk, and this awareness may cause those financial institutions or their regulators to take their own action to address the risk. Moreover, such a finding and subsequent imposition of one or more special measures would guard against money laundering and other financial crimes by severing Al-Huda Bank's access to the U.S. financial system.

IV. Proposed Special Measure

Having found that Al-Huda Bank is a financial institution of primary money laundering concern, particularly with regard to its misuse of the dollar auction to finance designated terrorist organizations, FinCEN proposes imposing a prohibition on covered financial institutions under special measure five. Special measure five authorizes the Secretary to impose conditions upon the opening or maintaining in the United States of a correspondent account or payable-through account, if such account ''involves'' a financial institution of primary money laundering concern. Although Al-Huda Bank does not have correspondent accounts with U.S. financial institutions, it has accounts with foreign financial institutions that maintain U.S. correspondent accounts. Those U.S. correspondent accounts involve Al-Huda Bank when transactions involving the bank are processed through those accounts. Thus, FinCEN has determined that special measure five will most effectively mitigate the risks posed by Al-Huda Bank.

FinCEN considered the other special measures available under section 311. As discussed further in Section IV.E. below, it determined that none of them would appropriately address the risks posed by Al-Huda Bank.

In proposing this special measure, FinCEN consulted with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Secretary of State, the staff of the Securities and Exchange Commission, the Commodity Futures Trading Commission, staff of the National Credit Union Administration, the Federal Deposit Insurance Corporation, and the Attorney General. These consultations involved obtaining interagency views on the imposition of special measure five and the effects that such a prohibition would have on the U.S. domestic and international financial systems.

Below is a discussion of the relevant statutory factors FinCEN considered in proposing the prohibition under special measure five.

A. Whether Similar Action Has Been or Is Being Taken by Other Nations or Multilateral Groups Regarding Al-Huda Bank

FinCEN is not aware of any other nation or multilateral group that has imposed, or is currently imposing, similar action against Al-Huda Bank.

B. Whether the Imposition of Any Particular Special Measure Would Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

While FinCEN assesses that the prohibition proposed in this NPRM would place some cost and burden on covered financial institutions, these burdens are neither undue nor inappropriate in view of the threat posed by the illicit activity facilitated by Al-Huda Bank. As described above, Al-Huda Bank has had access to USD through the CBI dollar auction, which does not require Iraqi banks to have direct USD correspondent relationships. Also as described above, Al-Huda Bank has no direct USD correspondent relationships with U.S. financial institutions. Rather, it accesses USD through its nested correspondent relationships, including but not limited to six USD accounts outside the United States. These accounts may be used for commercial payments, as well as foreign exchange and money markets. Covered financial institutions and transaction partners have ample opportunity to arrange for alternative payment mechanisms in the absence of

[13] Al-Huda Bank, *Consolidated Financial Statements,* December 31, 2020, available at *www.alhudabank.iq.*

[14] *Id.*

[15] Relatedly, there is limited publicly available information about Al-Huda Bank's existing AML policies and procedures to enable a current, fulsome assessment. Al-Huda Bank's 2020 End-of-Year report stated that its internal compliance monitor reviewed Al-Huda Bank's procedures when opening checking accounts for customers and found that Al-Huda Bank met the instructions and directives of Iraqi AML, terrorist financing, and risk management law, and it confirmed that current account holders were not included in banned lists, domestically or internationally. *Id.* at 11–12. Given the totality of the circumstances, however, this self-assessment lacks credibility and does not alter FinCEN's overall assessment of concern.

[16] U.S. Department of State, *2021 Investment Climate Statements: Iraq,* 2021, available at *https://www.state.gov/reports/2021-investment-climate-statements/iraq/.*

correspondent banking relationships with Al-Huda Bank.

As such, a prohibition on correspondent banking with Al-Huda Bank would impose minimal additional compliance costs for covered financial institutions, which would most commonly involve merely involve adding Al-Huda Bank to existing sanctions and money laundering screening tools. FinCEN assesses that given the risks posed by Al-Huda Bank's facilitation of money laundering, the additional burden on covered financial institutions in preventing the opening of correspondent accounts with Al-Huda Bank, as well as conducting due diligence on foreign correspondent account holders and notifying them of the prohibition, will be minimal and not undue.

C. The Extent to Which the Action or the Timing of the Action Would Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of Al-Huda Bank

FinCEN assesses that imposing the proposed special measure would have minimal impact upon the international payment, clearance, and settlement system. As a comparatively small bank, responsible for a nominal amount of transaction volume in the region, Al-Huda Bank is not a systemically important financial institution in Iraq, regionally, or globally. FinCEN views that prohibiting Al-Huda Bank's access to U.S.-Iraq correspondent banking channels would not affect overall cross-border transaction volumes.

Further, a prohibition under special measure five would not prevent Al-Huda Bank from conducting legitimate business activities in other foreign currencies. In addition to the six correspondent accounts used to access USD noted above, Al-Huda Bank currently holds two Euro accounts and two United Arab Emirates (UAE) dirham (AED) accounts as well.[17] Provided that its legitimate activities do not involve a correspondent account maintained in the United States, the bank could continue to engage in them.

D. The Effect of the Proposed Action on United States National Security and Foreign Policy

As described above, evidence available to FinCEN has demonstrated that Al-Huda Bank served as a significant conduit for the financing of FTOs in violation of U.S. and international sanctions. Imposing special measure five will: (1) close Al-Huda Bank's access to USD; (2) remove Al-Huda Bank as an illicit finance facilitator within an international network of front companies and sanctions evasion infrastructure supporting these FTOs; and (3) raise awareness of the way illicit actors exploit weaknesses in vulnerable jurisdictions to circumvent sanctions and finance terrorism.

E. Consideration of Alternative Special Measures

In assessing the appropriate special measure to impose, FinCEN considered alternatives to a prohibition on the opening or maintaining in the United States of correspondent accounts or payable-through accounts, including the imposition of one or more of the first four special measures, or imposing conditions on the opening or maintaining of correspondent accounts under special measure five. Having considered these alternatives and for the reasons set out below, FinCEN assesses that none of the other special measures available under section 311 would appropriately address the risks posed by Al-Huda Bank and the urgent need to prevent it from accessing USD through correspondent banking entirely.

With the knowledge of Al-Huda Bank's chairman, Al-Huda Bank's abuse of the dollar auction is obfuscated through the application of numerous money laundering typologies, including the use of fraudulent documentation, fake deposits, identity documents of the deceased, fake companies, and counterfeit IQD, which are used to purchase USD and support terrorist groups and militias. Taken as a whole, Al-Huda Bank's illicit activities present a heightened risk of obscured transaction counterparty identification that would be undetectable by covered financial institutions. Indeed, a key feature of the facilitation of funding for Iranian and Iran-aligned FTOs through Al-Huda Bank is the use of fake companies to obscure the true beneficial owners and ultimate destinations of funds involved in the transactions. Moreover, this behavior provides opportunities for obscuring the identities of transaction counterparties to correspondent banking relationship providers.

Because of the nature, extent, and purpose of the obfuscation engaged in by Al-Huda Bank, any special measure intended to mandate additional information collection would likely be ineffective and insufficient to determine the true identity of illicit finance actors. For example, the provision under special measure one, that ''the identity and address of the participants in a transaction or relationship, including the identity of the originator of any funds transfer'' be collected in records and reports, could be circumvented by the operations of shell companies, wherein the reported identity of the originator serves to obscure the true beneficial owner or originator. This would accordingly be ineffective in preventing illicit transactions. Al-Huda Bank's record of such circumvention suggests special measure one would not adequately protect the U.S. financial system from the threats posed by the bank.

Further, the requirements under special measures three and four, that domestic financial institutions obtain ''with respect to each customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States'', are also likely to be ineffective. First, Al-Huda Bank's use of nested correspondent account access through layers of payment systems would render these alternative measures ineffective. Only significant effort and expense by U.S. institutions could fill this gap, which would impose a disproportionate compliance burden and with no guarantee that the money laundering threat would be addressed through customer due diligence research.

FinCEN also considered special measure two, which may require domestic financial institutions to ''obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person.'' The agency determined this special measure to be largely irrelevant since the concerns involving Al-Huda Bank do not involve the opening or maintaining of accounts in the U.S. by foreign persons.

FinCEN similarly assesses that merely imposing conditions under special measure five would be inadequate to address the risks posed by Al-Huda Bank's activities. Special measure five also enables FinCEN to impose conditions as an alternative to a prohibition on the opening or maintaining of correspondent accounts. Given Al-Huda Bank's consistent and longstanding ties to terrorist financing organizations since its inception, and its track record of obfuscating transactions and account holders, FinCEN determined that imposing any condition would not be an effective measure to safeguard the U.S. financial system.

[17] BankCheck, *Al-Huda Bank—Iraq,* accessed December 13, 2023, available at *https://bankcheck.app.*

FinCEN assesses that the billions of dollars supplied to terrorist groups through Al-Huda Bank's exploitation of its access to USD, and the exposure of U.S. financial institutions to Al-Huda Bank's illicit activity outweigh the value in providing conditioned access to the U.S. financial system for any purportedly legitimate business activity. Conditions on the opening or maintaining of correspondent accounts would likely be insufficient to prevent illicit financial flows through the U.S. financial system, given Al-Huda Bank's use of fraudulent documentation and front companies to obscure its financing of terrorist groups in order to access USD. Given Al-Huda Bank's deliberate use of money laundering typologies, FinCEN cannot craft sufficient conditions to enable covered financial institutions to open or maintain correspondent accounts for Al-Huda Bank without introducing severe risk to those financial institutions in processing transactions that ultimately finance terrorism.

FinCEN, thus, assesses that any condition or additional recordkeeping or reporting requirement would be an ineffective measure to safeguard the U.S. financial system. Such measures would not prevent Al-Huda Bank from accessing the correspondent accounts of U.S. financial institutions, thus leaving the U.S. financial system vulnerable to processing illicit transfers that are likely to finance terrorist groups, posing a significant national security and money laundering risk. In addition, no recordkeeping or reporting requirements or conditions would be sufficient to guard against the risks posed by a bank that processes transactions that are designed to obscure the transactions' true nature and are ultimately for the benefit of terrorist groups. Therefore, FinCEN has determined that a prohibition on opening or maintaining correspondent banking relationships is the only special measure out of the special measures available under section 311 that can adequately protect the U.S. financial system from the illicit finance risk posed by Al-Huda Bank. For these reasons, and after thorough consideration of alternate measures, FinCEN assesses that no measures short of full prohibition on correspondent or payable-through banking access would be sufficient to address the money laundering risks posed by Al-Huda Bank.

V. Section-by-Section Analysis

The goal of this proposed rule is to combat and deter money laundering in facilitation of terrorist financing associated with Al-Huda Bank and prevent Al-Huda Bank from using the U.S. financial system to enable its illicit finance behavior.

A. 1010.663(a)—Definitions

1. Definition of Al-Huda Bank

The term ''Al-Huda Bank'' means all subsidiaries, branches, and offices of Al-Huda Bank operating as a bank in any jurisdiction. FinCEN is not currently aware of any subsidiary banks or branches outside of Iraq.

2. Definition of Correspondent Account

The term ''correspondent account'' has the same meaning as the definition contained in 31 CFR 1010.605(c)(1)(ii). In the case of a U.S. depository institution, this broad definition includes most types of banking relationships between a U.S. depository institution and a foreign bank that are established to provide regular services, dealings, and other financial transactions, including a demand deposit, savings deposit, or other transaction or asset account, and a credit account or other extension of credit. FinCEN is using the same definition of ''account'' for purposes of this proposed rule as is established for depository institutions in the final rule implementing the provisions of section 312 of the USA PATRIOT Act, requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.[18] Under this definition, ''payable-through accounts'' are a type of correspondent account.

In the case of securities broker-dealers, futures commission merchants, introducing brokers in commodities, and investment companies that are open-end companies (mutual funds), FinCEN is also using the same definition of ''account'' for purposes of this proposed rule as was established for these entities in the final rule implementing the provisions of section 312 of the USA PATRIOT Act, requiring due diligence for correspondent accounts maintained for certain foreign banks.[19]

3. Definition of Covered Financial Institution

The term ''covered financial institution'' is defined 31 CFR 1010.100(t), which in general includes the following:

- A bank (except bank credit card systems);
- A broker or dealer in securities;
- A money services business, as defined in 31 CFR 1010.100(ff);
- A telegraph company;
- A casino;
- A card club;
- A person subject to supervision by any state or Federal bank supervisory authority;
- A futures commission merchant or an introducing broker-commodities; and
- A mutual fund.

4. Definition of Foreign Banking Institution

The term ''foreign banking institution'' means a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank. The term does not include an agent, agency, branch, or office within the United States of a bank organized under foreign law. This is consistent with the definition of ''foreign bank'' under 31 CFR 1010.100. This proposed rule interprets Al-Huda Bank to be a foreign banking institution.

5. Definition of Subsidiary

The term ''subsidiary'' means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

B. 1010.663(b)—Prohibition on Accounts and Due Diligence Requirements for Covered Financial Institutions

1. Prohibition on Opening or Maintaining Correspondent Accounts

Section 1010.663(b)(1) of the proposed rule would prohibit covered financial institutions from opening or maintaining in the United States a correspondent account for, or on behalf of, Al-Huda Bank.

2. Prohibition on Use of Correspondent Accounts Involving Al-Huda Bank

Section 1010.663(b)(2) of the proposed rule would require covered financial institutions to take reasonable steps to not process a transaction for the correspondent account of a foreign banking institution in the United States if such a transaction involves Al-Huda Bank. Such reasonable steps are described in 1010.663(b)(3), which sets forth the special due diligence requirements a covered financial institution would be required to take when it knows or has reason to believe that a transaction involves Al-Huda Bank.

3. Special Due Diligence for Correspondent Accounts

As a corollary to the prohibition set forth in section 1010.663(b)(1) and (2), section 1010.663(b)(3) of the proposed rule would require covered financial institutions to apply special due diligence to all of their foreign

[18] *See* 31 CFR 1010.605(c)(2)(i).

[19] *See* 31 CFR 1010.605(c)(2)(ii)–(iv).

correspondent accounts that is reasonably designed to guard against such accounts being used to process transactions involving Al-Huda Bank. As part of that special due diligence, covered financial institutions would be required to notify those foreign correspondent account holders that the covered financial institutions know or have reason to believe provide services to Al-Huda Bank, that such correspondents may not provide Al-Huda Bank with access to the correspondent account maintained at the covered financial institution. A covered financial institution may satisfy this notification requirement using the following notice:

Notice: Pursuant to U.S. regulations issued under Section 311 of the USA PATRIOT Act, see 31 CFR 1010.663, we are prohibited from opening or maintaining in the United States a correspondent account for, or on behalf of, Al-Huda Bank. The regulations also require us to notify you that you may not provide Al-Huda Bank, including any of its subsidiaries, branches, and offices access to the correspondent account you hold at our financial institution. If we become aware that the correspondent account you hold at our financial institution has processed any transactions involving Al-Huda Bank, including any of its subsidiaries, branches, and offices, we will be required to take appropriate steps to prevent such access, including terminating your account.

The purpose of the notice requirement is to aid cooperation with correspondent account holders in preventing transactions involving Al-Huda Bank from accessing the U.S. financial system. FinCEN does not require or expect a covered financial institution to obtain a certification from any of its correspondent account holders that access will not be provided to comply with this notice requirement.

Methods of compliance with the notice requirement could include, for example, transmitting a notice by mail, fax, or email. The notice should be transmitted whenever a covered financial institution knows or has reason to believe that a foreign correspondent account holder provides services to Al-Huda Bank.

Special due diligence also includes implementing risk-based procedures designed to identify any use of correspondent accounts to process transactions involving Al-Huda Bank. A covered financial institution would be expected to apply an appropriate screening mechanism to identify a funds transfer order that on its face listed Al-Huda Bank as the financial institution of the originator or beneficiary, or otherwise referenced Al-Huda Bank in a manner detectable under the financial institution's normal screening mechanisms. An appropriate screening mechanism could be the mechanisms used by a covered financial institution to comply with various legal requirements, such as commercially available software programs used to comply with the economic sanctions programs administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC).

4. Recordkeeping and Reporting

Section 1010.663(b)(4) of the proposed rule would clarify that the proposed rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. A covered financial institution must, however, document its compliance with the notification requirement described above in section 1010.663(b)(3).

VI. Request for Comments

FinCEN is requesting comments for 30 days after the publication of this NPRM. Given Al-Huda Bank's consistent and longstanding ties to terrorist financing and its track record of obfuscating transactions, FinCEN assesses that a 30-day comment period for this NPRM strikes an appropriate balance between ensuring sufficient time for notice to the public and opportunity for comment on the proposed rule, while minimizing undue risk posed to the U.S. financial system in processing illicit transfers that are likely to finance terrorist groups. FinCEN invites comments on all aspects of the proposed rule, including the following specific matters:

1. FinCEN's proposal of a prohibition under the fifth special measure under 31 U.S.C. 5318A(b), as opposed to imposing special measures one through four or imposing conditions under the fifth special measure;
2. The form and scope of the notice to certain correspondent account holders that would be required under the rule; and
3. The appropriate scope of the due diligence requirements in this proposed rule.

VII. Regulatory Impact Analysis

FinCEN has analyzed this proposed rule under Executive Orders 12866, 13563, and 14094, the Regulatory Flexibility Act,[20] the Unfunded Mandates Reform Act,[21] and the Paperwork Reduction Act.[22]

As discussed above, the intended effects of the imposition of special measure five to Al-Huda Bank are twofold. The rule is expected to (1) combat and deter money laundering in facilitation of terrorist financing associated with Al-Huda Bank, and (2) prevent Al-Huda Bank from using the U.S. financial system to enable its illicit finance behavior. In the analysis below, FinCEN discusses the economic effects that are expected to accompany adoption of the rule as proposed and assess such expectations in more granular detail. This discussion includes detailed explanation of certain ways FinCEN's conclusions may be sensitive to methodological choices and underlying assumptions made in drawing inferences from available data. Throughout, these have been outlined so that the public may review and provide comment.[23]

A. Executive Orders

Executive Orders 12866, 13563, and 14094 direct 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, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

It has been determined that this proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" (IRFA) that will "describe the impact of the proposed rule on small entities."[24] However, Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This proposed rule would apply to all covered financial institutions and would affect a substantial number of small entities. However, for the reasons described below, FinCEN assesses that these changes would be unlikely to have

[20] 5 U.S.C. 603.

[21] 12 U.S.C. 1532, Public Law 104–4 (Mar. 22, 1995).

[22] 44 U.S.C. 3507(a)(1)(D).

[23] *See* Section VII.

[24] 5 U.S.C. 603(a).

a significant economic impact on such entities.

Covered financial institutions would also be required to take reasonable measures to detect use of their correspondent accounts to process transactions involving Al-Huda Bank. All U.S. persons, including U.S. financial institutions, currently must comply with OFAC sanctions, and U.S. financial institutions generally have suspicious activity reporting requirements and systems in place to screen transactions to comply with OFAC sanctions and section 311 special measures administered by FinCEN. The systems that U.S. financial institutions have in place to comply with these requirements can easily be modified to adapt to this proposed rule. Thus, the special due diligence that would be required under the proposed rule — *i.e.,* preventing the processing of transactions involving Al-Huda Bank and the transmittal of notification to certain correspondent account holders—would not impose a significant additional economic burden upon small U.S. financial institutions. For these reasons, FinCEN certifies that the proposals contained in this rulemaking would not have a significant impact on a substantial number of small businesses.

FinCEN invites comments from members of the public who believe there would be a significant economic impact on small entities from the imposition of a prohibition under the fifth special measure regarding Al-Huda Bank.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 [25] (Unfunded Mandates Reform Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by the state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, adjusted for inflation.[26] If a budgetary impact statement is required, section 202 of the Unfunded Mandates Reform Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.[27]

FinCEN has determined that this proposed rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of an annual $100 million or more, adjusted for inflation ($184.7 million).[28] Accordingly, FinCEN has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

D. Paperwork Reduction Act

The recordkeeping and reporting requirements, referred to by the Office of Management and Budget (OMB) as a collection of information, contained in this proposed rule will be submitted by FinCEN to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (PRA).[29] Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the OMB. Written comments and recommendations for the proposed prohibition can be submitted by visiting *www.reginfo.gov/public/do/PRAMain.* Find this particular document by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Comments are welcome and must be received by [30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. In accordance with requirements of the PRA and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information as required by 31 CFR 1010.663 is presented to assist those persons wishing to comment on the information collections.

The provisions in this proposed rule pertaining to the collection of information can be found in section 1010.663(b)(4). The information required to be maintained by that section will be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the notification requirements in 31 CFR 1010.663(b)(3)(i)(A), which are intended to aid cooperation from correspondent account holders in denying the Al Huda Bank access to the U.S. financial system. The collection of information would be mandatory.

Frequency: As required.

Description of Affected Financial Institutions: Only those covered financial institutions defined in section 1010.663(a)(3) engaged in correspondent banking with, or processing transactions potentially involving, Al-Huda Bank as defined in section 1010.663(b)(1) and (2) would be affected.

Estimated Number of Affected Financial Institutions: Approximately 15,000.[30]

TABLE 1—ESTIMATES OF AFFECTED FINANCIAL INSTITUTIONS BY TYPE

Financial institution type	Number of entities
Banks [31]	[32] 9,250
Broker-Dealers in securities [33]	[34] 3,477
Mutual Funds [35]	[36] 1,495
Futures Commission Merchants [37]	[38] 62
Introducing Brokers in Commodities [39]	[40] 937

Estimated Average Annual Burden in Hours per Affected Financial Institution: The estimated average annual burden associated with the collection of information in this

[25] 12 U.S.C. 1532, Public Law 104–4 (Mar. 22, 1995).

[26] *Id.*

[27] *Id.*

[28] The Unfunded Mandates Reform Act requires an assessment of mandates that will result in an annual expenditure of $100 million or more, adjusted for inflation. The U.S. Bureau of Economic Analysis reports the annual value of the gross domestic product (GDP) deflator in the first quarter of 1995, the year of the Unfunded Mandates Reform Act, as 66.452, and as 122.762 in the third quarter of 2023, the most recent available. *See* U.S. Bureau of Economic Analysis, ''Table 1.1.9. Implicit Price Deflators for Gross Domestic Product'' (accessed December 14, 2023) *available at https://www.bea.gov/itable/.* Thus, the inflation adjusted estimate for $100 million is $122.762/66.452 \times 100$ = $184.7 million.

[29] 44 U.S.C. 3507(a)(1)(D).

[30] This estimate is informed by public and non-public data sources regarding both an expected maximum number of entities that may be affected and the number of active, or currently reporting, registered financial institutions.

[31] *See* 31 CFR 1010.100(t)(1); *see also* 31 CFR 1010.100(d).

[32] Bank data is as of December 14, 2023, from Federal Deposit Insurance Corporation BankFind (*https://banks.data.fdic.gov/bankfind-suite/bankfind*). Credit union data is as of September 30, 2023 from the National Credit Union Administration Quarterly Data Summary Reports (*https://ncua.gov/analysis/credit-union-corporate-call-report-data/quarterly-data-summary-reports*).

[33] 31 CFR 1010.100(t)(2).

[34] According to the Securities and Exchange Commission (SEC), there are 3,477 broker-dealers in securities as of December 2023 from website ''Company Information About Active Broker-Dealers'' (*https://www.sec.gov/help/foiadocsbdfoia*).

[35] 31 CFR 1010.100(t)(10).

[36] According to the SEC, as of the third quarter of 2023, there are 1,495 open-end registered investment companies that report on Form N–CEN. (*https://www.sec.gov/dera/data/form-ncen-data-sets*).

[37] 31 CFR 1010.100(t)(8).

[38] According to the Commodity Futures Trading Commission (CFTC), there are 62 futures commission merchants as of October 31, 2023. See *Financial Data for FCMs,* available at *https://www.cftc.gov/MarketReports/financialfcmdata/index.htm.*

[39] 31 CFR 1010.100(t)(9).

[40] According to National Futures Association, there are 937 introducing brokers in commodities as of November 30, 2023.

proposed rule is one hour per affected financial institution.

Estimated Total Annual Burden: Approximately 15,000 hours.

FinCEN specifically invites comments on: (a) whether the proposed collection of information found in section 1010.663(b)(4) is necessary for the proper performance of the mission of FinCEN, including whether the information would have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to report the information.

VIII. Regulatory Text

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Banks, Banking, Brokers, Crime, Foreign banking, Terrorism.

Authority and Issuance

For the reasons set forth in the preamble, FinCEN proposes amending 31 CFR part 1010 as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 2006, Pub. L. 114–41, 129 Stat. 458–459; sec. 701 Pub. L. 114–74, 129 Stat. 599; sec. 6403, Pub. L. 116–283, 134 Stat. 3388.

■ 2. Add § 1010.663 to read as follows:

§ 1010.663 Special measures regarding Al-Huda Bank.

(a) *Definitions.* For purposes of this section, the following terms have the following meanings.

(1) *Al-Huda Bank.* The term ''Al-Huda Bank'' means all subsidiaries, branches, and offices of Al-Huda Bank operating as a bank in any jurisdiction.

(2) *Correspondent account.* The term ''correspondent account'' has the same meaning as provided in § 1010.605(c)(l)(ii).

(3) *Covered financial institution.* The term ''covered financial institution'' has the same meaning as provided in § 1010.605(e)(2).

(4) *Foreign banking institution.* The term ''foreign banking institution'' means a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank. The term does not include an agent, agency, branch, or office within the United States of a bank organized under foreign law.

(5) *Subsidiary.* The term ''subsidiary'' means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Prohibition on accounts and due diligence requirements for covered financial institutions—(1) Prohibition on opening or maintaining correspondent accounts for Al-Huda Bank.* A covered financial institution shall not open or maintain in the United States a correspondent account for, or on behalf of, Al-Huda Bank.

(2) *Prohibition on processing transactions involving Al-Huda Bank.* A covered financial institution shall take reasonable steps not to process a transaction for the correspondent account in the United States of a foreign banking institution if such a transaction involves Al-Huda Bank.

(3) *Special due diligence of correspondent accounts to prohibit transactions.* (i) A covered financial institution shall apply special due diligence to its foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving Al-Huda Bank. At a minimum, that special due diligence must include:

(A) Notifying those foreign correspondent account holders that the covered financial institution knows or has reason to believe provide services to Al-Huda Bank that such correspondents may not provide Al-Huda Bank with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify any use of its foreign correspondent accounts by Al-Huda Bank, to the extent that such use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, other due diligence measures it reasonably must adopt to guard against the use of its foreign correspondent accounts to process transactions involving Al-Huda Bank.

(iii) A covered financial institution that knows or has reason to believe that a foreign bank's correspondent account has been or is being used to process transactions involving Al-Huda Bank shall take all appropriate steps to further investigate and prevent such access, including the notification of its correspondent account holder under paragraph (b)(3)(i)(A) of this section and, where necessary, termination of the correspondent account.

(4) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notification requirement set forth in this section.

(ii) Nothing in paragraph (b) of this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Dated: January 29, 2024.

Andrea M. Gacki,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2024–02004 Filed 1–30–24; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2024–0018; FRL–11714–01–R1]

Air Plan Approval; New Hampshire; Amendments to Motor Vehicle Inspection and Maintenance Program Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision includes an amended regulation for the Enhanced Motor Vehicle Inspection and Maintenance (I/M) program in New Hampshire. Overall, the submittal updates and clarifies the implementation of the New Hampshire I/M program. The intended effect of this action is to propose approval of the updated I/M program regulation into the New Hampshire SIP. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before March 1, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2024–0018 at *https://www.regulations.gov,* or via email to *martinelli.ayla@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any

comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Ayla Martinelli, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 5–MI), Boston, MA 02109–3912, tel. (617) 918–1057, email: *martinelli.ayla@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

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I. Background and Purpose

On September 22, 2022, the State of New Hampshire submitted a formal revision to its State Implementation Plan (SIP). The submitted SIP revision included amendments to the New Hampshire Code of Administrative Rules Chapter Saf-C 3200 entitled, "Official Motor Vehicle Inspection Requirements," which update the Enhanced Motor Vehicle Inspection and Maintenance (I/M) program in New Hampshire.

New Hampshire first submitted an I/M program SIP revision on November 17, 2011, which EPA approved into the New Hampshire SIP on January 25, 2013 (78 FR 5292). New Hampshire's November 17, 2011 revision included all the regulatory and technical documentation required in an I/M SIP submittal to address the requirements of EPA's I/M regulations at 40 CFR 51 subpart S. The emissions modeling, I/M SIP narrative, and other technical documentation, included in New Hampshire's November 17, 2011 submittal continue to be applicable as the technical demonstration that New Hampshire's implemented I/M program meets the requirements of EPA's I/M regulations at 40 CFR 51 subpart S.

More recently, the State of New Hampshire submitted a formal revision to its SIP on June 7, 2016, which included amendments to the New Hampshire Code of Administrative Rules Chapter Saf-C 3200. This revision updated several regulatory provisions by adding language to clarify the I/M program requirements in New Hampshire. These updates did not reflect any changes to the technical implementation characteristics of the New Hampshire I/M program and thus resulted in no changes to the EPA-approved emissions modeling analysis. EPA approved this revision into the New Hampshire SIP on September 25, 2018 (83 FR 48385).

II. Summary of New Hampshire's Regulatory Changes

New Hampshire's amended Saf-C 3200 regulation, submitted as a SIP revision on September 22, 2022, updates a number of regulatory provisions by adding language to clarify the I/M program requirements in New Hampshire. A summary of the most substantial changes made to New Hampshire's SIP-approved regulation follows. New Hampshire (1) added clarifying definitions to Saf-C 3202; (2) amended Saf-C 3204.02 to update the required information for an application to become a fleet inspection station; (3) amended 3205.8 to extend the expiration date of inspection station certificates from once a year to biennially; (4) revised 3209.01 to reflect the updated sticker order form and respective revision date; (5) made multiple amendments to Saf-C 3209 regarding obtaining inspection stickers; (6) made multiple amendments to Saf-C 3222.08 to clarify criteria for an economic hardship waiver; and (7) amended Saf-C 3222.09 to replace exemption from visual inspection requirements with application requirements for a low mileage waiver.

III. New Hampshire Satisfying Clean Air Act Requirements for I/M Programs

In this document, EPA is only proposing to update New Hampshire's I/M regulation by revising subsections or provisions of the regulation as it currently exists in the New Hampshire SIP.[1] As stated earlier in this document, the remaining technical aspects (*i.e.,* I/M SIP narrative, the emissions modeling, and other technical documentation) included in New Hampshire's November 17, 2011 SIP revision, as approved by EPA on January 25, 2013 (78 FR 5292) continue to be applicable as the technical demonstration that New Hampshire's implemented I/M program meets the requirements of EPA's I/M regulations at 40 CFR 51 Subpart S.

IV. Proposed Action

EPA is proposing to approve New Hampshire's September 22, 2022 SIP revision request. This SIP revision request contains New Hampshire's revised motor vehicle I/M program regulation. Specifically, EPA is proposing to approve amendments to the following New Hampshire Department of Safety Regulation Saf-C 3200 subsections or provisions as they currently exist in the New Hampshire SIP: amendments to Saf-C 3202, Saf-C 3203, Saf-C 3204, Saf-C 3205, Saf-C 3206.04, Saf-C 3207.01, Saf-C 3209, Saf-C 3210.02, and Saf-C 3222.

EPA is proposing to approve New Hampshire's September 22, 2022 SIP revision, containing New Hampshire's updated I/M program regulation, because it is consistent with the CAA's I/M requirements and EPA's I/M regulations at 40 CFR 51 Subpart S, and will strengthen the SIP. The New Hampshire September 22, 2022 SIP that EPA is proposing to approve did not reflect any changes to the technical implementation characteristics of the New Hampshire I/M program and thus resulted in no changes to the EPA-approved emissions modeling analysis. EPA is soliciting public comments on

[1] EPA's January 25, 2013 (78 FR 5292) approval of New Hampshire's November 17, 2011 I/M SIP submittal describes how New Hampshire's I/M program satisfies the OBD2 and other I/M regulatory requirements established by the Clean Air Act and EPA's I/M regulations at 40 CFR 51 Subpart S. In addition, EPA's January 25, 2013 (78 FR 5292) approval contains a detailed discussion of EPA's rationale for approving New Hampshire's November 17, 2011 I/M SIP revision and will not be restated in this document.

the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the aforementioned New Hampshire Department of Safety Regulation Saf-C 3200 subsections identified in section IV of this proposal, except as set forth below. The EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

New Hampshire's I/M program regulation contains enforcement provisions that detail state enforcement procedures, including administrative, civil, and criminal penalties, and administrative and judicial procedures. Such enforcement-related provisions are required elements of an I/M SIP under 40 CFR 61.364, and EPA is proposing to approve the provisions as meeting those requirements. However, EPA is not proposing to incorporate those provisions by reference into the EPA-approved federal regulations at 40 CFR part 52. In any federal action to enforce violations of the substantive requirements of the New Hampshire I/M program, the relevant provisions of Section 113 or 304 of the CAA, rather than state enforcement provisions would govern. Similarly, the applicable procedures in any federal action would be the applicable federal court rules or EPA's rules for administrative proceedings at 40 CFR part 22, rather than state administrative procedures. Since the state enforcement provisions would not be applicable in a federal action, incorporating these state-only enforcement provisions into the federal regulations would have no effect. To avoid confusion to the public and regulated parties, EPA is not proposing to incorporate these provisions by reference into the EPA-approved federal regulations in the New Hampshire plan identification in 40 CFR part 52. Specifically, EPA is not proposing to incorporate New Hampshire's regulations Saf-C 3222.04(d) and Saf-C 3248 into the federal regulations at 40 CFR 52.1520(c).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

New Hampshire did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 25, 2024.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2024–01937 Filed 1–30–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 240124–0022]

RIN 0648–BM63

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plans of Puerto Rico, St. Croix, and St. Thomas and St. John; Framework Amendment 2

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Framework Amendment 2 to the Fishery Management Plans for Puerto Rico, St. Croix, and St. Thomas and St. John (collectively, the island-based FMPs). If implemented, this proposed rule would modify annual catch limits (ACLs) for spiny lobster in the U.S. Caribbean exclusive economic zone (EEZ) off Puerto Rico, St. Croix, and St. Thomas and St. John. The purpose of this proposed rule is to update management reference points for spiny lobster, consistent with the best scientific information available to prevent overfishing and achieve optimum yield (OY).

DATES: Written comments must be received no later than March 1, 2024.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2023–0137'' by either of the following methods:

• *Electronic Submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and type ''NOAA–NMFS–2023–0137'' in the Search box (copying and pasting the FDMS Docket Number directly from this document may not yield results). Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit all written comments to Sarah Stephenson, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

An electronic copy of Framework Amendment 2, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/generic-framework-amendment-2-updates-spiny-lobster-overfishing-limit-acceptable-biological.*

FOR FURTHER INFORMATION CONTACT: Sarah Stephenson, Southeast Regional Office, NMFS, telephone: 727–824–5305, email: *sarah.stephenson@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Puerto Rico, St. Croix, and St. Thomas and St. John fisheries include spiny lobster, and are managed under the island-based FMPs. The island-based FMPs were prepared by the Caribbean Fishery Management Council (Council) and NMFS. NMFS implements the island-based FMPs through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the OY from federally managed fish stocks to ensure that fishery resources are managed for the greatest overall benefit to the Nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

For Puerto Rico and the U.S. Virgin Islands (USVI), NMFS, with the advice of the Council, manages fisheries under the island-based FMPs. The island-based FMPs contain management measures applicable for Federal waters off the respective island group. Federal waters around Puerto Rico extend seaward from 9 nautical miles (nmi; 16.7 km) from shore to the offshore boundary of the EEZ. Federal waters around St. Croix, and St. Thomas and St. John extend seaward from 3 nmi (5.6 km) from shore to the offshore boundary of the EEZ.

For spiny lobster in the U.S. Caribbean EEZ, only commercial landings data are collected. Because recreational landings data are not available, the ACLs for spiny lobster are based on commercial landings and apply to all harvest for the stock, whether commercial or recreational.

In 2019, the Southeast Data, Assessment, and Review (SEDAR) completed separate stock assessments for spiny lobster for the Puerto Rico, St. Croix, and St. Thomas and St. John management areas (SEDAR 57). The Council's Scientific and Statistical Committee (SSC) reviewed SEDAR 57, determined it to be suitable for management advice, and provided catch level recommendations. In response to SEDAR 57 and the SSC's advice, the Council prepared Framework Amendment 1 to the island-based FMPs to update the OFLs, ABCs, and ACLs, and accountability measures (AMs) for spiny lobster. Framework Amendment 1 set ACLs for spiny lobster based on recommendations from its SSC. NMFS published the final rule to implement Framework Amendment 1 on March 16, 2023 (88 FR 16194).

Subsequent to the implementation of Framework Amendment 1, the Council requested that the NMFS Southeast Fisheries Science Center (SEFSC) conduct an update to SEDAR 57 to provide overfishing limits (OFL) and acceptable biological catch (ABC) estimates for spiny lobster for each island group for 2024 to 2026. Update assessments occur between regular, more comprehensive SEDAR assessments to determine trends in stock condition and project future catch advice. The SEFSC presented results of the 2022 Update Assessment to SEDAR 57 (SEDAR 57 Update) to the Council's SSC at its November–December 2022 meeting. The SSC accepted the SEDAR 57 Update and recommended both variable- and constant-catch OFLs and ABCs for spiny lobster under each FMP. The constant-catch values recommended by the SSC were equal to the average OFL or ABC values projected for 2024 to 2026 in the 2022 Update Assessment. The Council reviewed these recommendations in December 2022.

Consistent with the SEDAR 57 Update, and recommendations from the SSC, the Council developed Framework Amendment 2 to prevent overfishing of spiny lobster and achieve OY for each stock, consistent with the requirements of the Magnuson-Stevens Act. For each FMP, the Council recommended constant-catch ACLs for spiny lobster equal to 95 percent of the constant-catch ABCs recommended by the SSC, which reflects the Council's management uncertainty buffer.

All weights described in this proposed rule are in round weight.

Management Measures Contained in This Proposed Rule

This proposed rule would revise the ACLs for spiny lobster in the EEZ around Puerto Rico, St. Croix, and St. Thomas and St. John.

For the Puerto Rico FMP, the ACL for spiny lobster would decrease from the current ACL of 366,965 lb (166,452 kg) to 357,629 lb (162,218 kg).

For the St. Croix FMP, the ACL for spiny lobster would increase from the current ACL of 120,830 lb (54,807 kg) to 137,254 lb (62,257 kg).

For the St. Thomas and St. John FMP, the ACL for spiny lobster would increase from the current ACL of 126,089 lb (57,193 kg) to 133,207 lb (60,422 kg).

NMFS notes that Puerto Rico commercial landings of spiny lobster in recent years have come close to or exceeded the ACL. Therefore, NMFS reduced the length of the 2021 and 2022 fishing seasons as required by the AMs specified in 622.440(c)(2) (87 FR 38008, June 27, 2022 and 86 FR 40787, July 29, 2021). Conversely, commercial landings of spiny lobster in St. Croix, and St. Thomas and St. John in recent years have been below the respective ACLs, and therefore no reduction in the length of their fishing seasons was required.

Measures in Framework Amendment 2 Not Codified in This Proposed Rule

In addition to the revised ACLs described in this proposed rule, Framework Amendment 2 would revise the spiny lobster OFLs and ABCs for Puerto Rico, St. Croix, and St. Thomas and St. John.

For the Puerto Rico FMP, the OFL for spiny lobster would decrease from 438,001 lb (198,673 kg) to 426,858 lb (193,620 kg) and the ABC for spiny lobster would decrease from 386,279 lb (175,213 kg) to 376,452 lb (170,756 kg).

For the St. Croix FMP, the OFL for spiny lobster would increase from 144,219 lb (65,416 kg) to 163,823 lb (74,309 kg) and the ABC for spiny lobster would increase from 127,189 lb (57,691 kg) to 144,478 lb (65,534 kg).

For the St. Thomas and St. John FMP, the OFL for spiny lobster would increase from 150,497 lb (68,264 kg) to 158,993 lb (75,118 kg) and the ABC for spiny lobster would increase from 132,725 lb (60,203 kg) to 140,218 (63,602 kg).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs for Puerto Rico, St. Croix, and St. Thomas and St. John, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of this proposed rule, why it is being considered, and the purpose of this proposed rule are contained in the **SUPPLEMENTARY INFORMATION** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). The factual basis of this determination follows. The purpose of this proposed rule is to update the OFLs, ABCs, and ACLs for spiny lobster, consistent with the best scientific information available, with the objective to prevent overfishing and achieve OY. The Magnuson-Stevens Act provides the legal basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. No new reporting and record-keeping requirements are introduced by this proposed rule. All monetary estimates in the following analysis are in 2021 dollars.

The proposed action would directly affect both anglers (recreational fishers) and commercial fishing businesses that harvest spiny lobster in the U.S. Caribbean EEZ. Anglers, however, are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from for-hire fishing, privately owned, or leased vessels. Therefore, neither estimates of the number of anglers nor the impacts on them are required or provided in this analysis.

Any business that operates a commercial fishing vessel that lands spiny lobster in Puerto Rico or the USVI must be licensed to do so by the respective territorial government. Each licensed fisher represents a unique commercial fishing business.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing (North American Industry Classification System 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $11 million for all of its affiliated operations worldwide.

From 2017 through 2021, the commercial sector of the Puerto Rico fishery as a whole generated average annual direct revenues of about $9.58 million. Therefore, all commercial fishing businesses in Puerto Rico are small. During the same 5 years, an annual average of 710 commercial fishers reported landings; however, not all small businesses reported operating in the EEZ and harvesting spiny lobster. From 2017 through 2021, an average of 64 (9.0 percent) of Puerto Rico's small businesses reported landings of spiny lobster from the EEZ annually. These 64 small businesses collectively accounted for about 6.6 percent of all spiny lobster commercial landings by weight and value.

From 2015 through 2019, which is the most recent revenue data available for the USVI, the commercial fishing sector collectively generated average annual direct revenues of $4.39 million. Therefore, all commercial fishing businesses in the USVI (St. Croix, and St. Thomas and St. John) are small.

During the same 5-year period, an annual average of 59 small businesses reported landings in St. Croix. Not all of these 59 active commercial fishing businesses operated in the EEZ and harvested spiny lobster. From 2015 through 2019, an average of 11 (18.3 percent) of St. Croix's 59 active small businesses reported landings of spiny lobster from the EEZ. These 11 small businesses collectively accounted for 33.5 percent of all spiny lobster commercial landings in St. Croix by weight and 34.2 percent by value.

During the period from 2015 through 2019, an annual average of 67 small businesses reported landings in St. Thomas and St. John. Not all of these active businesses landed spiny lobster from the EEZ. During that time period, an annual average of 20 (30.1 percent) of St. Thomas and St. John's 67 active small businesses reported landings of spiny lobster from the EEZ. These 20 small businesses collectively accounted for 61.8 percent of all spiny lobster landings in St. Thomas and St. John by weight and 61.3 percent by value.

In summary, 64 small commercial fishing businesses in Puerto Rico, 11 in St. Croix, and 20 in St. Thomas and St. John would be directly affected by the proposed rule annually.

This proposed rule would decrease the spiny lobster ACL for Puerto Rico from 366,965 lb (166,452 kg) to 357,629 lb (162,218 kg). The average of the 3

most recent years of landings is compared to the ACL. In 2022, the 3 most recent years of landings were 2017 through 2019 and NMFS compared the average of those landings to the ACL and found the average to exceed the ACL at that time. In 2024, the most recent 3 years of landings are from 2019 through 2021. From 2019 through 2021, an annual average of 313,837 lb (142,354 kg) of spiny lobster was landed in Puerto Rico, and that annual average is less than the proposed ACL. More recently, from 2020 through 2022, the annual average was 228,522 lb (103,656 kg), and that average is less than the proposed ACL. Because those more recent averages are less than the proposed ACL, there is expected to be no economic impact on small commercial fishing businesses in Puerto Rico that harvest spiny lobster in the EEZ.

This proposed rule would increase the spiny lobster ACL for St. Croix from 120,830 lb (54,807 kg) to 137,254 lb (62,257 kg). From 2015 through 2019, 3-year averages of landings of spiny lobster in St. Croix have been much lower than the current and proposed ACLs every year. As such, the proposed rule is expected to have no economic impact on small businesses of St. Croix.

This proposed rule would increase the spiny lobster ACL for St. Thomas and St. John from 126,089 lb (57,193 kg) to 133,207 lb (60,422 kg). From 2015 through 2019, 3-year averages of landings of spiny lobster in St. Thomas and St. John have been much lower than the current and proposed ACLs every year. As such, the proposed rule is expected to have no economic impact on small businesses of St. Thomas and St. John.

In summary, this proposed rule is expected to have no significant economic impact on a substantial number of small entities of Puerto Rico, St. Croix, and St. Thomas and St. John. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Caribbean, Fisheries, Fishing, Spiny lobster.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 24, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 622 as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.440, revise paragraph (c)(1) to read as follows:

§ 622.440 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(c) * * *. (1) The ACL is 357,629 lb (162,218 kg), round weight.

* * * * *

■ 3. In § 622.480, revise paragraph (c)(1) to read as follows:

§ 622.480 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(c) * * *. (1) The ACL is 137,254 lb (62,257 kg), round weight.

* * * * *

■ 4. In § 622.515, revise paragraph (c)(1) to read as follows:

§ 622.515 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(c) * * *. (1) The ACL is 133,207 lb (60,422 kg), round weight.

* * * * *

[FR Doc. 2024–01716 Filed 1–30–24; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 89, No. 21
Wednesday, January 31, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of the Land Management Plan for the Lolo National Forest

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture (USDA) Forest Service is revising the land management plan for the Lolo National Forest and preparing an environmental impact statement (EIS). This notice announces the Forest Service's intent to prepare an EIS and initiates the scoping period on the proposed action. This notice describes the documents available for review and how to obtain them; summarizes the need for change to the existing land management plan; provides information concerning public participation and collaboration, including the process for submitting comments; provides an estimated schedule for the planning process, including the time available for comments; and how to obtain additional information.

DATES: Comments concerning the preliminary need for change and the proposed action must be received by April 1, 2024. The draft EIS and draft revised land management plan are expected in December 2024. The final EIS, final revised land management plan, and draft record of decision (ROD) are expected in 2026.

ADDRESSES: Send written comments or inquiries to: Lolo National Forest Supervisor's Office, Attn: Amanda Milburn—Lolo Plan Revision, 24 Fort Missoula Rd, Missoula, MT 59804. Commenters are encouraged to submit comments electronically on the Lolo Plan Revision website: *https://www.fs.usda.gov/goto/lolo/planrevision;* or via email to *SM.FS.LNFRrevision@usda.gov.* All correspondence, including names and addresses, will be part of the public record.

FOR FURTHER INFORMATION CONTACT: Amanda Milburn, Plan Revision Team Leader, 406–438–6640; email at *amanda.milburn@usda.gov.* Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays. If members of the public are interested in learning more, please visit the website listed above.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The National Forest Management Act (NFMA) of 1976 requires that the Forest Service develop a land management plan, often called a forest plan, for every National Forest. Land management plans provide the strategic direction for management of forest resources. The current Lolo land management plan was adopted in 1986. The purpose and need for revising the current land management plan are (1) the land management plan is 38 years old, (2) since the land management plan was approved in 1986, there have been changes in economic, social, and ecological conditions, new policies and priorities, and new information based on monitoring and scientific research, and (3) to address the preliminary identified need for change to the existing land management plan. The Notice of Intent to Prepare an Assessment and Initiate the Plan Revision Process pursuant to the 2012 Planning Rule (36 CFR 219) was published in the **Federal Register** on March 16, 2023. A Draft Assessment was posted for comment on June 9, 2023, and based on public comments received, the assessment was revised and posted on September 8, 2023, along with a Draft Preliminary Need to Change (*https://www.fs.usda.gov/goto/lolo/planrevision*). Overall, there is a need for land management plan direction that is strategic and identifies desired conditions with objectives for how resources should be managed; that eliminates redundancies with existing laws, regulations, and policy; and that incorporates the best available scientific information.

Proposed Action

The proposed action is to revise the 1986 Lolo National Forest land management plan to address the identified need for change. In response to the preliminary need for change, a preliminary Draft Land Management Plan has been developed that includes desired conditions, goals, objectives, standards, guidelines, suitability of lands for specific multiple uses, lands that could be recommended to Congress for inclusion into the National Wilderness Preservation System, and the identification of rivers eligible for inclusion into the National Wild and Scenic Rivers system. It can be found on the Lolo National Forest Plan Revision website along with the Preliminary Need to Change (*https://www.fs.usda.gov/goto/lolo/planrevision*).

Expected Impacts

The revised land management plan will not authorize any projects or actions but will guide future decision-making on the Lolo National Forest. In accordance with the 2012 Planning Rule, the revised land management plan will provide for sustainability, diversity of plant and animal communities, and multiple uses. It will inform the purpose and need for future actions, guide the design of projects, and will also include a plan monitoring program that will guide the development of biennial land management plan monitoring reports.

Lead and Cooperating Agencies

The Forest Service is the lead agency for this proposed action. Cooperating agencies thus far include the Confederated Salish and Kootenai Tribes, Mineral County, Montana Department of Natural Resources and Conservation, and Montana Department of Fish, Wildlife, and Parks.

Responsible Official

The responsible official is Carolyn Upton, Forest Supervisor, Lolo National Forest Supervisor's Office, 24 Fort Missoula Road, Missoula, MT 59804, 406–329–3750.

Scoping Comments and the Objection Process

This notice of intent initiates the scoping process, which will guide the development of the EIS. Written comments received in response to this notice will be analyzed to complete the

identification of the Need to Change the existing land management plan, further develop the proposed action (Preliminary Draft Land Management Plan) and identify potential significant issues. Significant issues will, in turn, form the basis for developing alternatives to the proposed action. The Forest Service will host public forums during the scoping period. Engagement opportunities will be posted on the Lolo National Forest Plan Revision website: *https://www.fs.usda.gov/goto/lolo/planrevision.* Information will also be shared through electronic mailing lists, social media, and local media outlets.

It is important that reviewers provide comments at such times and in such a manner that they are useful to the Forest Service's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Commenting during scoping and any other designated opportunity to comment provided by the Responsible Official will also establish standing to object once the final EIS and Draft Record of Decision have been published. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, they will not establish standing for the objection process.

The decision to approve the revised land management plan for the Lolo National Forest will be subject to the objection process identified in 36 CFR part 219 Subpart B (219.50 to 219.62). According to 36 CFR 219.53(a), those who may file an objection are individuals and entities who have submitted substantive formal comments related to land management plan revision during the opportunities provided for public comment. The burden is on the objector to demonstrate compliance with requirements for objections (36 CFR 219.53).

Nature of Decision To Be Made

The Lolo National Forest is preparing an EIS to revise its land management plan. The EIS process is meant to inform the Forest Supervisor so they can decide which alternative best maintains and restores National Forest System terrestrial and aquatic resources while providing ecosystem services and multiple uses, as required by the National Forest Management Act and the Multiple Use Sustained Yield Act. The revised land management plan will describe the strategic intent of managing the Forest for the next 10 to 15 years and will address the identified need for change to the existing land management plan.

The revised land management plan will supplement, not replace, overarching laws and regulations. The authorization of project level activities will be based on the guidance and direction contained in the revised land management plan but will occur through subsequent project-specific National Environmental Policy Act (NEPA) analysis and decision-making. No decisions will be made regarding the management of individual roads or trails such as those that might be associated with a Travel Management plan under 36 CFR part 212. No decision regarding oil and gas leasing availability will be made.

Dated: December 5, 2023.

Troy Heithecker,

Associate Deputy Chief, National Forest System.

[FR Doc. 2024–01896 Filed 1–30–24; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Tennessee Advisory Committee to the Commission will convene by Zoom on Wednesday, February 14, 2024, at 3:30 p.m. (CST). The purpose of the meeting is to review the draft report on Voting Rights.

DATES: The meeting will take place on Wednesday, February 14, 2024, at 3:30 p.m. (CST).

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN__FUuwLVRSuiodJt4NGY2ww.

Telephone (Audio Only): Dial (833) 568–8864 USA Toll Free; Access Code: 161 261 0611.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the Zoom link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesday, February 14, 2024, at 3:30 p.m. (CT)

1. Welcome & Roll Call
2. Chair's Comments
3. Discussion on Draft Report
4. Next Steps
5. Public Comment
6. Adjourn

Dated: January 26, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–01885 Filed 1–30–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Commonwealth of the Northern Mariana Islands Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Commonwealth of the Northern Mariana Islands Advisory Committee (Committee) to the U.S. Commission on

Civil Rights will hold a public meeting via Zoom at 9:00 a.m. ChST on Wednesday, February 21, 2024 (6:00 p.m. ET on Tuesday, February 20, 2024). The purpose of the meeting is to review the testimony received concerning the Committee's project, *Access to Adequate Health Care for Incarcerated Individuals in the CNMI Judicial System.*

DATES: Wednesday, February 21, 2024, 9:00 a.m.–10:30 a.m. Chamorro Standard Time (Tuesday, February 20, 2024, 6:00 p.m.–7:30 p.m. Eastern Time).

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual): https://www.zoomgov.com/s/1601977379.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 160 197 7379.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, Designated Federal Officer, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Kayla Fajota at *kfajota@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Commonwealth of the Northern Mariana Islands Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Approval of Prior Minutes
III. Discussion and Project Planning: Access to Health Care for Incarcerated Individuals Within the CNMI Judicial System
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: January 26, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–01884 Filed 1–30–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–834]

Certain Carbon and Alloy Steel Cut-to-Length Plate From Italy: Preliminary Results of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that certain carbon and alloy steel cut-to-length plate (CTL plate) from Italy were made at less than normal value (NV) during the period of review (POR), May 1, 2022, through April 30, 2023. Commerce also determines that one mandatory respondent did not make sales of subject merchandise at less than normal value during the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable January 31, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Grossnickle, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3818.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2017, Commerce published in the **Federal Register** the antidumping duty order on CTL plate from Italy.[1] On May 2, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order.*[2] On July 12, 2023, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order* covering two producers/exporters, NLMK Verona S.p.A. and Officine Tecnosider S.R.L..[3] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4]

Scope of the Order

The merchandise subject to the *Order* is certain carbon and alloy steel cut-to-length plate from Italy. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to

[1] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea, and Taiwan, and Antidumping Duty Orders,* 82 FR 24096, 24098 (May 25, 2017) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 88 FR 27449 (May 2, 2023).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 44262 (July 12, 2023).

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2022–2023 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Cut-to-Length Plate from Italy,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Preliminary Results of Review

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist for the period May 1, 2022, through April 30, 2023:

Producer or exporter	Weighted-average dumping margin (percent)
NLMK Verona S.p.A	2.45
Officine Tecnosider S.R.L	0.00

Disclosure and Public Comment

Commerce intends to disclose the calculations and analysis performed to interested parties for these preliminary results within five days after public announcement or if there is no public announcement, within five days after the date of publication of this notice in the **Federal Register**.[5] Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[6] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[7] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[8]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this administrative review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[9] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice. If a request for a hearing is made, Commerce intends to hold a hearing at a time and date to be determined.[11] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Assessment Rates

Upon completion of the final results of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.[12]

If a respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we intend to calculate an importer-specific *ad valorem* antidumping duty assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[13] If the weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of review, we intend to instruct CBP to liquidate entries without regard to antidumping duties.[14] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[15]

If a respondent has not reported entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those sales.

For entries of subject merchandise during the POR produced by each individually examined respondent for which the they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the original less-than-fair-value (LTFV) investigation (*i.e.,* 6.08 percent) if there is no rate for the intermediate company(ies) involved in the transaction.[16]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the

[5] *See* 19 CFR 351.224(b).

[6] *See* 19 CFR 351.309(c)(1)(ii).

[7] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Final Service Rule*).

[8] *See* 19 351.309(c)(2) and (d)(2).

[9] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[10] *See APO and Final Service Rule.*

[11] *See* 19 CFR 351.310(d).

[12] *See* 19 CFR 351.212(b).

[13] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[14] *Id.,* 77 FR at 8102; *see also* 19 CFR 351.106(c)(2).

[15] *See* section 751(a)(2)(C) of the Act.

[16] *See Order; see also Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

company-specific rate published for the most recently-completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 6.08 percent, the all-others rate established in the LTFV investigation.[17] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless the deadline is otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised by interested parties in the written comments, within 120 days after the date of publication of these preliminary results in the **Federal Register**.[18]

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: January 25, 2024.

Abdelalia Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation

[17] *See Order.*

[18] *See* section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

[FR Doc. 2024–01936 Filed 1–30–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD655]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the New York Bight

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization.

SUMMARY: NMFS received a request from Bluepoint Wind, LLC (BPW) for the renewal of their currently active incidental harassment authorization (IHA) (hereinafter, the ''initial IHA'') to take marine mammals incidental to marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight, specifically within the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (Lease) Area OCS–A 0537 and associated export cable route (ECR) area. BPW's activities will not be completed prior to the IHA's expiration. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than February 15, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.harlacher@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word, Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection*-act without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are promulgated or, if the taking is limited to harassment, an IHA is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the

availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). NMFS must also prescribe requirements pertaining to monitoring and reporting of such takings. The definition of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in the MMPA and the NMFS's implementing regulations (see 16 U.S.C. 1362; 50 CFR 216.103).

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial IHA, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal of an IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2); the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the DATES section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA);

2. The request for renewal must include the following:

• An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

• A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.* Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified for categorical exclusion from further NEPA review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

History of Request

On February 28, 2023, NMFS issued an IHA to BPW to take marine mammals incidental to conducting marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight, specifically within the BOEM Lease Area OCS–A 0537 and associated ECR area (88 FR 13783, March 6, 2023), effective from March 1, 2023 through February 29, 2024. On December 21, 2023, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

BPW's initial IHA included conducting marine site characterization surveys, including high-resolution geophysical (HRG) surveys, in coastal waters off of New Jersey and New York in the New York Bight, specifically within the BOEM Lease Area OCS–A 0537 and associated ECR area. Challenges and delays with procurement, mobilization, and downtime contributed to less survey being completed during the initial IHA period than anticipated.

The surveys were designed to obtain data sufficient to meet BOEM guidelines for providing geophysical, geotechnical, and geohazard information for site assessment plan surveys and/or construction and operations plan development. The objective of the surveys was to support the site characterization, siting, and engineering design of offshore wind project facilities including wind turbine generators, offshore substations, and submarine cables within the Lease Area. At least two survey vessels would operate as part of the planned surveys with a maximum of two nearshore (<20 meters (m)) vessels and a maximum of two offshore (≥20 m) vessels operating concurrently.

BPW is proposing to continue to conduct survey activities as per the initial IHA application up to approximately 17,008 kilometers (km) of trackline, which would be conducted over up to approximately 335 days across multiple vessels (in the same manner as the initial IHA). This is a subset of the survey trackline included in the initial IHA. The initial survey plan included 13,268 km of trackline in the ECR survey area and 9,923 km in the Lease Area (total of 23,191 km) using the sparker for all survey activities as

the worst-case-scenario. Through the expiration of the initial IHA, BPW expects to survey 6,183 km of trackline, leaving 17,008 km remaining from the initial request (up to 10,299 km in the ECR survey area and 6,709 km in the Lease Area).

The potential impacts of BPW's proposed activity on marine mammals could involve acoustic stressors and are unchanged from the impacts described in the Notice of the proposed IHA (88 FR 2325, January 13, 2023). Acoustic stressors include effects of the marine site characterization surveys. The effects of underwater disturbance from the BPW's proposed activities have the potential to result in Level B harassment of marine mammals in the specified geographic region.

This proposed renewal IHA is for the remainder of work that will not be completed by the expiration of the initial IHA. The renewal IHA would authorize incidental take, by Level B harassment only (in the form of behavioral disturbance), of 15 species (16 stocks) of marine mammals for a subset of marine site characterization survey activities to be completed in 1 year, in the same area, using survey methods identical to those described in the initial IHA application. Therefore, the anticipated effects on marine mammals and the affected stocks also remain the same. All mitigation, monitoring, and reporting measures would remain exactly as described in the **Federal Register** notice of the issued initial IHA (88 FR 13783, March 6, 2023).

Detailed Description of the Activity

A detailed description of the marine site characterization survey activities for which incidental take is proposed here may be found in the **Federal Register** notice of the proposed IHA (88 FR 2325, January 13, 2023) for the initial authorization. The location and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. The proposed renewal would be effective for a period not exceeding 1 year from the date of expiration of the initial IHA.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (88 FR 2325, January 13, 2023). NMFS has reviewed the finalized 2022 Stock Assessment Reports (SARs), which included updates to certain stock abundances since the initial IHA was issued, information on relevant Unusual Mortality Events, and other scientific literature. In August 2023 after the initial IHA was issued, NMFS released its final 2022 SARs, which updated the population estimate (N_{best}) of North Atlantic right whales from 368 to 338 and annual mortality and serious injury increased from 8.1 to 31.2. This large increase in annual serious injury/mortality is a result of NMFS including undetected annual mortality and serious injury in the total annual serious injury/mortality, which had not been previously included in the SARs. The population estimate is slightly lower than the North Atlantic Right Whale Consortium's 2022 Report Card, which identifies the population estimate as 340 individuals (Pettis *et al.,* 2023). The 2022 SAR and NARWC estimates are based on sighting history through November 2020 (Hayes et al., 2023). In October 2023, NMFS released a technical report identifying that the North Atlantic right whale population size based on sighting history through 2022 was 356 whales, with a 95 percent credible interval ranging from 346 to 363 (Linden, 2023). NMFS has determined that neither this nor any other new information affects which species or stocks have the potential to be affected or any other pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

On August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered North Atlantic right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921, August 1, 2022). Should a final vessel speed rule be issued and become effective during the effective period of this proposed Renewal IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. These changes would become effective immediately upon the effective date of any final vessel speed rule and would not require any further action on NMFS's part.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which an authorization of incidental take is proposed here may be found in the Notice of the Proposed IHA for the initial authorization (88 FR 2325, January 13, 2023). NMFS has reviewed the monitoring data from the initial IHA, recent draft SAR, information on relevant Unusual Mortality Events, and other scientific literature, and determined that there is no new information that affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the Notices of the Proposed and Final IHAs for the initial authorization (88 FR 2325, January 13, 2023; 88 FR 13783, March 6, 2023). Specifically, the source levels, days of operation, and marine mammal density/occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA. The number of takes proposed for authorization in this renewal IHA are a subset of the initial authorized takes that better represent the amount of activity BPW has left to complete. These estimated takes, which reflect the remaining survey days, are indicated below in table 1.

TABLE 1—PROPOSED NUMBER OF TAKES BY LEVEL B HARASSMENT BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Common name	Authorized take	Population abundance	Percent of population
North Atlantic right whale	11	338	3.3
Fin whale	63	6,802	0.9
Sei whale	15	6,292	0.2
Minke whale	149	21,968	0.7
Humpback whale	27	1,396	1.9
Sperm whale	5	4,349	0.1
Atlantic white-sided dolphin	316	93,233	0.3
Atlantic spotted dolphin	162	39,921	0.4
Bottlenose dolphin (W.N. Atlantic Offshore)	204	62,851	0.3
Bottlenose dolphin (Northern Migratory Coastal)	730	6,639	11.0
Long-finned pilot whale	50	39,215	0.1
Risso's dolphin	38	35,215	0.1
Common dolphin	3,456	172,947	2.0
Harbor porpoise	958	95,543	1.0
Gray seal	861	27,300	3.2
Harbor seal	861	61,366	1.4

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (88 FR 13783, March 6, 2023), and the discussion of the least practicable adverse impact included in that document and the Notice of the proposed IHA remains accurate (88 FR 2325, January 13, 2023). The following measures are proposed for this renewal:

- *Ramp-up:* A ramp-up procedure would be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities;
- *Protected Species Observers:* A minimum of one NMFS-approved Protected Species Observer (PSO) must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs will be on watch during nighttime operations;
- *Pre-Operation Clearance Protocols:* Prior to initiating HRG survey activities, BPW would implement a 30-minute pre-operation clearance period. If any marine mammals are detected within the Exclusion Zones prior to or during ramp-up, the HRG equipment would be shut down (as described below);
- *Shutdown Zones:* If an HRG source is active and a marine mammal is observed within or entering a relevant shutdown zone, an immediate shutdown of the HRG survey equipment would be required. Note this shutdown requirement would be waived for certain genera of small delphinids and pinnipeds;
- *Vessel strike avoidance measures:* Separation distances for large whales (500 m North Atlantic right whales; 100 m for sperm whales and all other baleen whales; 50 m all other marine mammals); restricted vessel speeds and operational maneuvers; and
- *Reporting:* BPW will submit a marine mammal report within 90 days following completion of the surveys.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (88 FR 2325, January 13, 2023) and solicited public comments on both our proposal to issue the initial IHA for marine site characterization surveys and on the potential for a renewal IHA, should certain requirements be met. All public comments were addressed in the notice announcing the issuance of the initial IHA (88 FR 13783, March 6, 2023) and none of the comments specifically pertained to the potential renewal of the 2023 IHA.

Preliminary Determinations

BPW's proposed activities consist of a subset of activities analyzed in the initial IHA. In analyzing the effects of the activities for the initial IHA, NMFS determined that BPW's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable adverse impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) BPW's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

NMFS Office of Protected Resources has authorized the incidental take of four species of marine mammals which are listed under the ESA (the North Atlantic right, fin, sei, and sperm whale) and has determined that these activities fall within the scope of activities analyzed in GARFO's programmatic

consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021). The proposed Renewal IHA provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other basis to require reinitiation of consultation with NMFS GARFO; therefore, the ESA consultation has been satisfied for the initial IHA and remains valid for the Renewal IHA.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to BPW for conducting marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight, from March 1, 2024 through February 28, 2025, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: January 25, 2024.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–01856 Filed 1–30–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD696]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Marine Planning Committee (MPC) will hold an online public meeting.

DATES: The online meeting will be held Tuesday, February 20, 2024, from 10 a.m. to 4 p.m., Pacific standard time or until business for the day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including a proposed agenda and directions on how to attend the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer, Pacific Council; telephone: (503) 820–2409.

SUPPLEMENTARY INFORMATION: The purpose of this online meeting is for the MPC to consider current offshore wind (OSW) energy issues and to provide information and advice to the Pacific Council for consideration at its March or April 2024 meetings. Meeting topics may include updates from lessees on their site survey activities within the lease sites off California. Other OSW or aquaculture topics may be considered, as appropriate.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 26, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–01917 Filed 1–30–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Northeast Region Observer Providers Requirements

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 1, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0546 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Travis Ford, Fishery Policy Analyst, 978–281–9233, *travis.ford@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection. Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce (Secretary) has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the

regulatory steps taken to carry out the conservation and management objectives is to collect data from users of the resource. Regulations at 50 CFR 648.11(g) require observer service providers to comply with specific requirements in order to operate as an approved provider in the Atlantic sea scallop (scallop) fishery. Observer service providers must comply with the following requirements: submit applications for approval as an observer service provider; formally request observer training by the Northeast Fisheries Observer Program (NEFOP); submit observer deployment reports and biological samples; give notification of whether a vessel must carry an observer within 24 hours of the vessel owner's notification of a prospective trip; maintain an updated contact list of all observers that includes the observer identification number; observer's name mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and whether or not the observer is ''in service.'' The regulations also require observer service providers submit any outreach materials, such as informational pamphlets, payment notification, and descriptions of observer duties as well as all contracts between the service provider and entities requiring observer services for review to NMFS/NEFOP. Observer service providers also have the option to respond to application denials, and submit a rebuttal in response to a pending removal from the list of approved observer providers.

Regulations at § 648.11(k)(2) require that limited access, limited access general category individual fishing quota, and Northern Gulf of Maine scallop vessels notify NMFS prior to the beginning of a scallop trip to facilitate the deployment of at-sea observers. Previously, vessels either called or email to notify NMFS of an upcoming scallop trip. NMFS will be adding a new method for notification called the Pre-Trip Notification System (PTNS). The integration of the scallop notification requirement into the PTNS helps standardize observer operations between fisheries and modernize reporting systems. The PTNS is a mobile-friendly website that is more sophisticated and flexible than the aging interactive voice response technology. The change to the PTNS does not affect determination of scallop coverage rates or the compensation analysis. There are no changes to the requirements vessels must abide by if selected to carry an observer, such as equal accommodations, a harassment-free environment, and other safety requirements. This change is not expected to impact the burden response time, but NOAA will continue to monitor use of this new tool, and will update the collection if it results in any burden changes at our next renewal. These requirements allow NMFS/NEFOP to effectively administer the scallop observer program.

II. Method of Collection

The approved observer service providers submit information to NMFS/NEFOP via email, fax, or postal service.

III. Data

OMB Control Number: 0648–0546.

Form Number: None.

Type of Review: Regular submission (extension and revision of a currently approved information collection).

Affected Public: Business or other for-profit organization.

Estimated Number of Respondents: 622.

Estimated Time per Response: Application for approval of observer service provider, 10 hours; applicant response to denial of application for approval of observer service provider, 10 hours; observer service provider request for observer training, 30 minutes; observer deployment report, 10 minutes; observer availability report, 10 minutes; safety refusal report, 30 minutes; submission of raw observer data, 5 minutes; observer debriefing, 2 hours; biological samples, 5 minutes; rebuttal of pending removal from list of approved observer service providers, 8 hours; vessel request to observer service provider for procurement of a certified observer, 25 minutes; vessel request for waiver of observer coverage requirement, 10 minutes; observer contact list updates, 5 minutes; observer availability updates, 1 minute; service provider material submissions, 30 minutes; service provider contracts, 30 minutes.

Estimated Total Annual Burden Hours: 6,320.

Estimated Total Annual Cost to Public: $60,545.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–01925 Filed 1–30–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD688]

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public virtual meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) District Advisory Panels (DAPs) will hold a public virtual joint meeting to discuss the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The DAPs public virtual joint meeting will be held on February 21, 2024, from 10a.m. to 3:30 p.m. The meeting will be at Atlantic standard time (AST).

ADDRESSES: You may join the DAPs public virtual joint meeting (via Zoom) from a computer, tablet or smartphone by entering the following addresses:

Join Zoom Meeting: DAPs *https://us02web.zoom.us/j/88004907357?pwd=ZnRPL0g4ekMzWHRJUzA1K1FoRnVOdz09*

Meeting ID: 880 0490 7357

Passcode: 849982

One tap mobile:

+17879451488,,88004907357#,,,,*849982# Puerto Rico

+17879667727,,88004907357#,,,,*849982# Puerto Rico

Dial by your location:

- +1 787 945 1488 Puerto Rico
- +1 787 966 7727 Puerto Rico
- +1 939 945 0244 Puerto Rico
- +1 669 444 9171 US

Meeting ID: 880 0490 7357

Passcode: 849982

Find your local number: https://us02web.zoom.us/u/kbtRmz6s7w

FOR FURTHER INFORMATION CONTACT: Miguel Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903; telephone: (787) 398–3717.

SUPPLEMENTARY INFORMATION: The items included in the tentative agenda are:

February 21, 2024

10 a.m. to 12 p.m.

—Environmental Equal Justice—Heather Blough, NOAA Fisheries, SERO

1:30 p.m.–3 p.m.

—NOAA Fisheries Permits Process Presentation—Jessica Stephen, NOAA Fisheries, SERO

3 p.m.–3:30 p.m.

—Other Business

Other than the starting date and time the order of business may be adjusted as necessary to accommodate the completion of agenda items, at the discretion of the Chair.

The meeting will begin on February 21, 2024 at 10 a.m. AST, and will end on February 21, 2024, at 3:30 p.m. AST.

Special Accommodations

For any additional information on this public hybrid meeting, you may contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 226–8849.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 26, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–01916 Filed 1–30–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; An Observer Program for At Sea Processing Vessels in the Pacific Coast Groundfish Fishery

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 1, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0500 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Matt Dunlap, Fishery Policy Analyst, West Coast Regional Office, 7600 Sand Point Way NE, Seattle, WA 98115, (206) 526–6119, or *matthew.dunlap@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In 2011, the National Marine Fisheries Service (NMFS) mandated observer requirements for the West Coast groundfish trawl catch shares program. For all fishery sectors, observers must be obtained through third-party observer provider companies operating under permits issued by NMFS. The regulations at §§ 660.140 (h), 660.150 (j), and 660.160 (g), specify observer coverage requirements for trawl vessels and define the responsibilities for observer providers, including reporting requirements. Regulations at § 660.140 (i) specify requirements for catch monitor coverage for first receivers. Data collected by observers are used by NMFS to estimate total landed catch and discards, monitor the attainment of annual groundfish allocations, estimate catch rates of prohibited species, and as a component in stock assessments. These data are necessary to comply with the Magnuson-Stevens Act requirements to prevent overfishing. In addition, observer data is used to assess fishing related mortality of protected and endangered species.

II. Method of Collection

This collection utilizes both electronic and paper forms, depending on the specific item. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms. Additionally, this collection utilizes interviews for some information collection and phone calls for transmission of other information.

III. Data

OMB Control Number: 0648–0500.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 268 (5 providers (supplying a total of 75 observers or catch monitors) and 263 fishing vessels).

Estimated Time per Response: For providers: 15 minutes for observer training/briefing/debriefing registration, notification of observer physical examination, observer status reports, other reports on observer harassment, safety concerns, or performance problems, catch monitor status reports, and other catch monitor reports on harassment, prohibited actions, illness or injury, or performance problems; 5 minutes for observer safety checklist submission to NMFS, observer provider contracts, observer information materials, catch monitor provider contracts, and catch monitor informational materials; 10 minutes for certificate of insurance; 7 minutes for catch monitor training/briefing registration, notification of catch monitor physical examination, and catch monitor debriefing registration. For vessels: 10 minutes for fishing departure reports and cease-fishing reports.

Estimated Total Annual Burden Hours: 525 (305 for providers and 220 for fishing vessels.

Estimated Total Annual Cost to Public: $0 in capital costs as it is assumed that each of the 5 observer/catch monitor providers will maintain a computer system with email capacity for general business purposes and each vessel owner/operator has access to a telephone for toll-free calls.

Respondent's Obligation: Mandatory.

Legal Authority: The regulations at §§ 660.140 (h), 660.150 (j), and 660.160 (g), specify observer coverage requirements for trawl vessels and define the responsibilities for observer providers, including reporting requirements. Regulations at § 660.140 (i) specify requirements for catch monitor coverage for first receivers.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–01926 Filed 1–30–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Meeting of the National Sea Grant Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Sea Grant Advisory Board (Board), a Federal Advisory Committee. Board members will discuss and provide advice on the National Sea Grant College Program (Sea Grant) in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the Sea Grant website. For more information on this Federal Advisory Committee please visit the Federal Advisory Committee database: *https://www.facadatabase.gov/FACA/FACAPublicPage.*

DATES: The announced meeting is scheduled for Monday March 4, 2024 from 9 a.m.–6 p.m. (EST) and Tuesday March 5, 2024 from 9 a.m.–3 p.m. (EST).

ADDRESSES: The meeting will be held at the Yours Truly Hotel in Washington, DC. For more information about the public meeting see below in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: For any questions concerning the meeting, please contact Ms. Donna Brown, National Sea Grant College Program. Email: *oar.sg-feedback@noaa.gov.* Phone number 301–734–1088.

SUPPLEMENTARY INFORMATION:

Status: The meeting will be open to public participation with a public comment period on Monday, March 4 at 9:10 a.m. The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by Ms. Donna Brown by Tuesday, February 27, 2024 to provide sufficient time for Board review. Written comments received after the deadline will be distributed to the Board, but may not be reviewed prior to the meeting date.

Special Accommodations: The Board meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Donna Brown by Tuesday, February 27, 2024.

The Board, which consists of a balanced representation from academia, industry, State government and citizens groups, was established in 1976 by section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Board advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

Matters To Be Considered: Board members will discuss updates and recommendations on the ''State of Sea Grant'' Report to Congress as well as other topics that need Board feedback, Board participation of Sea Grant Network Groups, as well as discuss and vote on the external reviewer for the Evaluation Committee: *https://seagrant.noaa.gov/About/Advisory-Board.*

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–01915 Filed 1–30–24; 8:45 am]

BILLING CODE 3510–KA–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Package for AmeriCorps VISTA Application and Reporting Forms

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service, operating as AmeriCorps, has submitted a public information collection request (ICR) entitled Package for AmeriCorps VISTA Application and Reporting Forms for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by March 1, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Kelly Daly, at 202–606–6849 or by email to *kdaly@cns.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

• Propose ways to enhance the quality, utility, and clarity of the information to be collected; and

• Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on November 17, 2023 at Vol. 88, No. 221 Page Number 80285. This comment period ended January 16, 2024. Zero public comments were received from this Notice.

Title of Collection: Package for AmeriCorps VISTA Application and Reporting Forms.

OMB Control Number: 3045–0038. Type of Review: Revision.

Respondents/Affected Public: Businesses and Organizations OR State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 750.

Total Estimated Number of Annual Burden Hours: 17,500.

Abstract: AmeriCorps seeks to renew the current information collection with revisions. AmeriCorps VISTA is revising its application and reporting package to reflect clarifications, make technical corrections, and simplify both the Support and Program Grant budget instructions. The Concept Paper and Application are being revised to add information about the Unique Entity ID registration process on *SAM.gov.* The VISTA Progress Report and Progress Report Supplement were not revised. The information collection will otherwise be used in the same manner as the existing application. AmeriCorps also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on March 31, 2024.

Carly Bruder,

Acting Director, AmeriCorp VISTA.

[FR Doc. 2024–01864 Filed 1–30–24; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0109]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 1, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Lane Purvis, (571) 372–0460, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Postsecondary Education Complaint Intake System; DD Form 2961; OMB Control Number: 0704–0501.

Type of Request: Extension.

Number of Respondents: 150.

Responses per Respondent: 1.

Annual Responses: 150.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 37.5.

Needs and Uses: The Postsecondary Education Complaint information collection is necessary to obtain, document, and respond to complaints, questions, and other issues concerning educational programs and services provided to military students, and their adult family members. It allows DoD to monitor and track the types of complaint issues that are submitted, the complaint content, the educational institutions the complaints have been filed against, the type of education benefits being used, and the branch of the military service. The information collected via the DoD Intake form is used to assist in further developing and shaping of relevant mitigating and preventative measures concerning abusive, deceptive, and fraudulent practices against service members and spouses who are pursuing higher education utilizing Tuition Assistance and My Career Advancement Account.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Lane Purvis.

Requests for copies of the information collection proposal should be sent to Mr. Purvis at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: January 25, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–01871 Filed 1–30–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

DATES: Comments regarding this proposed information collection must be received on or before March 1, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4718.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Aisha Miranda Rivera, Department of Energy, Grid Deployment Office, 1000 Independence Avenue SW, Suite 4H–065, Washington, DC 20585; (240) 429–5213; *aisha.miranda-rivera@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–5200;

(2) *Information Collection Request Titled:* Puerto Rico Energy Resiliency Fund (PR–ERF), Household Intake Form;

(3) *Type of Review:* Revision of a currently approved collection.

(4) *Purpose:* To authorize the use of the 'Household Intake Form' to collect homeowner data necessary to qualify households as eligible to receive rooftop solar and battery storage installations as prescribed under the DOE Grid Deployment Office's (GDO) PR–ERF. Eligibility is limited to very low-income, single-family households that (1) reside in a Last Mile Community and/or (2) include an individual with an energy-dependent disability.

The PR–ERF, a $1 billion initiative authorized by Congress under the Consolidated Appropriations Act of 2023, Public Law 117–328, will incentivize the installation of rooftop solar and battery storage technologies for eligible households.

GDO plans to initiate installations of solar PV and battery storage systems before the 2024 hurricane season to address the harm and risk represented by the fragility of the islands' power system. Failure to collect the information necessary to verify eligibility in a timely manner will cause delays in providing assistance necessary to reestablish the reliability of electric service to these vulnerable residents. This narrow scope in purpose necessitates the need for a diligent verification process to demonstrate to Congress, Senior Leadership, and the public that this specific demographic has been served. GDO developed an in-person application process recognizing that the demographic served will lack access to broadband and have limited mobility but that it is essential to program operation to verify beneficiary eligibility for participation in the program.

(5) *Annual Estimated Number of Respondents:* 40,160;

(6) *Annual Estimated Number of Total Responses:* 80,000;

(7) *Annual Estimated Number of Burden Hours:* 56,800;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $845,520;

Statutory Authority: The Consolidated Appropriations Act of 2023, Public Law 117–328, directs the Department of Energy to improve the resilience of the Puerto Rican electric grid, including grants for low-and-moderate-income households and households that include individuals with disabilities for the purchase and installation of renewable energy, energy storage, and other grid technologies.

Signing Authority

This document of the Department of Energy was signed on January 22, 2024, by Maria D. Robinson, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 26, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–01875 Filed 1–30–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 20–117; 703–001]

PacifiCorp; Notice of Intent To Prepare an Environmental Assessment

On March 16, 2023, PacifiCorp filed an application for a non-capacity amendment for the Bear River Hydroelectric Project No. 20 and an application for surrender of the conduit exemption for the Paris Hydroelectric Project No. 703. The Bear River Project is located on Bear River in Franklin and Caribou counties, Idaho, and occupies Federal lands administered by the U.S. Forest Service and U.S. Bureau of Land Management. The Paris Project is located on Paris Creek in Bear Lake County, Idaho, and does not occupy Federal lands.

PacifiCorp's proposal to surrender the Paris Project conduit exemption (P–703) is part of a larger habitat restoration effort proposed by PacifiCorp and the parties to a relicensing settlement agreement for PacifiCorp's Bear River Hydroelectric Project (P–20). PacifiCorp proposes to decommission the Paris Project and stop the diversion of water from Paris Creek into the irrigation canal that serves the Paris Project. After decommissioning and surrender, flows currently diverted through the canal would be returned to Paris Creek for the enhancement and restoration of approximately 3.5 miles of cold-water habitat for Bonneville Cutthroat Trout in the currently bypassed reach of Paris Creek. To partially mitigate the cost of the proposed decommissioning of the Paris Project, PacifiCorp proposes to amend the license for the Bear River Project to reduce the minimum instream flow requirement in the Grace Development's bypassed reach. This reduction in required minimum instream flow would allow PacifiCorp to

increase hydroelectric generation at the Grace Development to offset lost generation associated with the Paris Project decommissioning. A Notice of Amendment and Surrender Applications Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests was issued on July 21, 2023. The State of Idaho filed comments and a motion to intervene.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the proposed action. The planned schedule for the completion of the EA is May 2024.[1] Revisions to the schedule may be made as appropriate. The EA will be issued and made available for review by all interested parties. All comments filed on the EA will be reviewed by staff and considered in the Commission's final decision on the proceeding.

With this notice, the Commission is inviting Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal to cooperate in the preparation of the EA planned to be issued May 2024. Agencies wishing to cooperate, or further discuss the benefits, responsibilities, and obligations of the cooperating agency role, should contact staff listed at the bottom of this notice by February 14, 2024. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members, and others to access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Any questions regarding this notice may be directed to Jennifer Ambler at (202) 502–8586 or *jennifer.ambler@ferc.gov,* or Holly Frank at (202) 502–6833 or *holly.frank@ferc.gov.*

Dated: January 24, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–01840 Filed 1–30–24; 8:45 am]

BILLING CODE 6717–01–P

[1] 42 U.S.C. 4336a(g)(1)(B) requires lead Federal agencies to complete EAs within 1 year of the agency's decision to prepare an EA.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–1005–000.
Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C.
Description: Compliance filing: American Electric Power Service Corporation submits tariff filing per 35: AEP submits Informational Filing about Att. 1 of ILDSA, SA No. 1336 to be effective N/A.
Filed Date: 1/25/24.
Accession Number: 20240125–5092.
Comment Date: 5 p.m. ET 2/15/24.

Docket Numbers: ER24–1006–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2024–01–25_SA 3435 Entergy Mississippi-Wildwood Solar 2nd Rev GIA (J908) to be effective 3/26/2024.
Filed Date: 1/25/24.
Accession Number: 20240125–5095.
Comment Date: 5 p.m. ET 2/15/24.

Docket Numbers: ER24–1007–000.
Applicants: Black Hills Colorado Electric, LLC.
Description: § 205(d) Rate Filing: Unreserved Use Penalty and Transmission Planning Updates to be effective 3/26/2024.
Filed Date: 1/25/24.
Accession Number: 20240125–5106.
Comment Date: 5 p.m. ET 2/15/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: January 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–01901 Filed 1–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2660–038]

Woodland Pulp, LLC; Notice of Application for Surrender of License Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of License.

b. *Project No:* 2660–038.

c. *Date Filed:* October 31, 2023, and supplemented December 15, 2023.

d. *Applicant:* Woodland Pulp, LLC.

e. *Name of Project:* Forest City Storage Project.

f. *Location:* The project is located on the East Branch of the St. Croix River in Washington and Aroostook counties, Maine. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Steve Strout, 144 Main Street, Baileyville, ME 04694, *steve.strout@igic.com,* 207–214–4628.

i. *FERC Contact:* Michael Calloway, (202) 502–8041, *Michael.calloway@ferc.gov.*

j. *Cooperating Agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should

note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* February 29, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2660–038. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* The licensee is proposing to surrender the license for the Forest City Storage Project. After project surrender the licensee would leave the gates of the Forest City Dam in place and operable, which will allow East Grand Lake's elevation to remain similar to historical operations. The licensee is proposing to deed ownership of the dam to the St. Croix International Waterway Commission after finalization of the surrender. St. Croix International Waterway Commission would be in control of directing operations of the dam, which they intend to manage for the purposes of: protection, mitigation of, damage to, and enhancement of fish and wildlife; protection of recreational opportunities; preservation of other aspects of environmental quality; and flood control. No modifications to the existing dam are proposed and no ground-disturbing activities would occur with the proposed surrender.

The licensee filed a notice withdrawing their previous December 23, 2016 surrender application pursuant to 18 CFR 385.216 (Rule 216) of the Commission's regulations because the new application does not include removal of the gates and permanent lowering of the lake elevation as was contained in the 2016 application. A Notice of Effectiveness of Withdrawal of the 2016 application was issued on January 9, 2024, in the Commission's eLibrary system.

Because the licensee withdrew its 2016 surrender application, this is a new surrender proceeding, and anyone interested in commenting, intervening, or protesting in this proceeding should do so in accordance with the directions below.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application. As noted above, Woodland Pulp's October 31, 2023 application initiated a new proceeding and anyone interested in submitting a comment, motion to intervene, or protest on the proposal should do so.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: January 25, 2024.

Debbie-Anne. Reese,

Acting Secretary.

[FR Doc. 2024–01903 Filed 1–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1905–015.

Applicants: AZ721 LLC.

Description: Notice of Change in Status of Amazon Energy LLC.

Filed Date: 1/24/24.

Accession Number: 20240124–5176.

Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER18–2511–007; ER23–2874–001.

Applicants: NorthWestern Energy Public Service Corporation, NorthWestern Corporation.
Description: Notice of Change in Status of NorthWestern Corporation, et. al.
Filed Date: 1/23/24.
Accession Number: 20240123–5157.
Comment Date: 5 p.m. ET 2/13/24.

Docket Numbers: ER20–1996–004; ER16–1990–004; ER17–239–003; ER20–1014–001; ER20–1015–001; ER20–2458–001; ER21–285–001; ER21–1187–003; ER21–1188–003; ER21–1217–003; ER21–1218–003; ER21–1370–004; ER21–1916–002; ER21–1961–002.
Applicants: Big River Solar, LLC, Assembly Solar III, LLC, Assembly Solar II, LLC, St. James Solar, LLC, Iris Solar, LLC, Prairie State Solar, LLC, Dressor Plains Solar, LLC, Sigurd Solar LLC, Hunter Solar LLC, Cove Mountain Solar 2, LLC, Cove Mountain Solar, LLC,TPE Alta Luna, LLC, North Star Solar PV LLC, Assembly Solar I, LLC.
Description: Notice of Change in Status of Assembly Solar I, LLC, et. al.
Filed Date: 1/25/24.
Accession Number: 20240125–5039.
Comment Date: 5 p.m. ET 2/15/24.

Docket Numbers: ER24–986–000.
Applicants: Keystone Appalachian Transmission Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Keystone Appalachian Transmission Company submits tariff filing per 35.13(a)(2)(iii: KATCo submits amended IAs, SA Nos. 3998 and 3999 re: FirstEnergy Reorganization to be effective 1/1/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5133.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER24–987–000.
Applicants: FirstEnergy Pennsylvania Electric Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: FirstEnergy Pennsylvania Electric Company submits tariff filing per 35.13(a)(2)(iii: FE PA submits amended IAs, SA Nos. 4338 and 4341 re: FirstEnergy Reorganization to be effective 1/1/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5136.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER24–988–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Cancellation of WMPA, SA No. 5767; AF2–283 to be effective 3/25/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5138.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER24–989–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Cancellation of WMPA, SA No. 5768; AF2–284 to be effective 3/25/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5140.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER24–990–000.
Applicants: FirstEnergy Pennsylvania Electric Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: FirstEnergy Pennsylvania Electric Company submits tariff filing per 35.13(a)(2)(iii: FE PA submits amended IA, SA No. 5504 re: FirstEnergy Reorganization to be effective 1/1/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5144.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER24–991–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Cancellation of WMPA, SA No. 5769; AF2–285 to be effective 3/25/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5149.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER24–992–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Cancellation of WMPA, SA No. 5754; AF2–289 to be effective 3/25/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5155.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER24–993–000.
Applicants: FirstEnergy Pennsylvania Electric Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: FirstEnergy Pennsylvania Electric Company submits tariff filing per 35.13(a)(2)(iii: FE PA submits amended IAs, SA Nos. 3993 and 5030 re: FirstEnergy Reorganization to be effective 1/1/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5159.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER24–994–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Cancellation of ISA, SA No. 6475; AE1–079 to be effective 3/25/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5163.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER24–995–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Cancellation of ISA, SA No. 6454; AE1–237 to be effective 3/26/2024.
Filed Date: 1/25/24.
Accession Number: 20240125–5007.
Comment Date: 5 p.m. ET 2/15/24.

Docket Numbers: ER24–996–000.
Applicants: Airport Solar LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 3/26/2024.
Filed Date: 1/25/24.
Accession Number: 20240125–5008.
Comment Date: 5 p.m. ET 2/15/24.

Docket Numbers: ER24–997–000.
Applicants: Cove Mountain Solar, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 3/26/2024.
Filed Date: 1/25/24.
Accession Number: 20240125–5009.
Comment Date: 5 p.m. ET 2/15/24.

Docket Numbers: ER24–998–000.
Applicants: Cove Mountain Solar 2, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 3/26/2024.
Filed Date: 1/25/24.
Accession Number: 20240125–5011.
Comment Date: 5 p.m. ET 2/15/24.

Docket Numbers: ER24–999–000.
Applicants: Hunter Solar LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 3/26/2024.
Filed Date: 1/25/24.
Accession Number: 20240125–5012.
Comment Date: 5 p.m. ET 2/15/24.

Docket Numbers: ER24–1000–000.
Applicants: Sigurd Solar LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 3/26/2024.
Filed Date: 1/25/24.
Accession Number: 20240125–5014.
Comment Date: 5 p.m. ET 2/15/24.

Docket Numbers: ER24–1001–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Cancellation of ISA, SA No. 6239; AE2–343 to be effective 3/26/2024.
Filed Date: 1/25/24.
Accession Number: 20240125–5016.
Comment Date: 5 p.m. ET 2/15/24.

Docket Numbers: ER24–1002–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 7157; AD1–087/AD2–202 to be effective 3/26/2024.
Filed Date: 1/25/24.
Accession Number: 20240125–5026.
Comment Date: 5 p.m. ET 2/15/24.

Docket Numbers: ER24–1003–000.
Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: SCE 2024 WDAT Enhancements to be effective 3/26/2024.

Filed Date: 1/25/24.

Accession Number: 20240125–5042.

Comment Date: 5 p.m. ET 2/15/24.

Docket Numbers: ER24–1004–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3552R4 TEA and MEAN Meter Agent Agreement to be effective 1/1/2024.

Filed Date: 1/25/24.

Accession Number: 20240125–5051.

Comment Date: 5 p.m. ET 2/15/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5 p.m. eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: January 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–01905 Filed 1–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7153–018]

Consolidated Hydro New York, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 7153–018.

c. *Date filed:* April 29, 2022.

d. *Applicant:* Consolidated Hydro New York, LLC (Consolidated Hydro).

e. *Name of Project:* Victory Mills Hydroelectric Project (Victory Mills Project).

f. *Location:* The project is located on Fish Creek, in the village of Victory in Saratoga County, New York. This project does not occupy any Federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Kevin M. Webb, Licensing Manager, Consolidated Hydro New York, LLC, 670 N. Commercial Street, Suite 204, Manchester, NH 03101; phone at (978) 935–6039 or email at *kwebb@centralriverspower.com;* and Mr. Curtis Mooney, Manager, Regulatory Compliance, Consolidated Hydro New York, LLC, 670 N. Commercial Street, Suite 204, Manchester, NH 03101; phone at (603) 774–0846 or email at *cmooney@centralriverspower.com.*

i. *FERC Contact:* Jacob Harrell at (202) 502–7313; or email at *Jacob.Harrell@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Victory Mills Hydroelectric Project (P–7153–018).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted but is not ready for environmental analysis at this time.

l. *The Victory Mills Project includes:* (1) a dam that consists of: (a) an approximately 150-foot-long concrete spillway varying in height from 4 to 6 feet with a crest elevation of 187.5 feet National Geodetic Vertical Datum of 1929 (NGVD29), and (b) a sluice gate section approximately 19 feet high and 40 feet long with four gated spillway bays, each with a sill elevation of 181 feet NGVD29 and containing a 7-foot-high by 8-foot-wide wooden timber gate; (2) a 4.3-acre reservoir with a gross storage capacity of approximately 18 acre-feet at the normal surface elevation of 187.5 feet NGVD29; (3) an intake channel feeding a 51-foot-long, 25-foot-high concrete intake structure; (4) an 8-foot-diameter, 300-foot-long steel penstock; (5) a 27-foot by 46-foot concrete powerhouse containing a single Kaplan turbine with an installed capacity of 1,656 kilowatts; (6) an approximately 30-foot-wide by 530-foot-long tailrace channel; (7) a 480-foot-long, 4.8-kilovolt transmission line; and (8) appurtenant facilities.

The Victory Mills Project operates in a run-of-river mode with an average annual generation of 6,073 megawatt-hours between 2011 and 2021.

m. A copy of the application is available for review via the internet through the Commission's Home Page (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects.

For assistance, contact FERC Online Support.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members, and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595, or *OPP@ferc.gov.*

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document 1 for comments—March 2024

Hold Scoping Meeting—April 2024

Scoping Document 1 comments due—May 2024

Request Additional Information (*if necessary*)—June 2024

Issue Scoping Document 2 (*if necessary*)—June 2024

Issue Notice of Ready for Environmental Analysis—June 2024

Dated: January 24, 2024.

Debbie-Anne. Reese,

Acting Secretary.

[FR Doc. 2024–01837 Filed 1–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC24–01–000]

Commission Information Collection Activities (FERC Form Nos. 2 and 2–A); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC Form No. 2 (Annual Report for Major Natural Gas Companies) and FERC Form No. 2–A (Annual Report for Non-Major Natural Gas Companies), which will be submitted to the Office of Management and Budget (OMB) for review.

DATES: Comments on the collection of information are due March 1, 2024.

ADDRESSES: Send written comments on FERC Form Nos. 2 and 2–A to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0303) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC24–01–000) by one of the following methods: Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Jean Sonneman may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–6362.

SUPPLEMENTARY INFORMATION: No comments were received on the 60-day notice published on November 9, 2023 at 88 FR 77297.[1]

Title: FERC Form No. 2, Annual Report for Major Natural Gas Companies; OMB Control No. 1902–0028.

FERC Form No. 2–A, Annual Report for Non-Major Natural Gas Companies; OMB Control No. 1902–0030.

OMB Control Nos.: 1902–0028, 1902–0030.

Type of Request: Three-year extension of the FERC Form Nos. 2 and 2–A information collection requirements without a change to the current reporting and recordkeeping requirements.

Abstract: Pursuant to sections 8, 10 and 14 of the Natural Gas Act (NGA), (15 U.S.C. 717g, 717i, and 717m), the Commission is authorized to conduct investigations and collect and record data, and to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for purposes of administering the NGA. The Commission may prescribe a system of

[1] The 60-day notice published on November 9, 2023, inadvertently contained a burden table that did not reflect 2023 updates. However, the estimates contained in the instant 30-day notice accurately reflect these updates. Parties should inform the Commission should they need additional time to respond to this notice beyond the 30 days provided.

accounts for jurisdictional companies and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited.

The Commission collects FERC Form Nos. 2 and 2–A information as prescribed in 18 CFR 260.1 and 18 CFR 260.2. These forms provide information concerning a company's current performance, compiled using the Commission's Uniform System of Account (USofA).[2] FERC Form No. 2 is filed by ''Major'' natural gas companies that have combined natural gas transported or stored for a fee that exceeds 50 million Dekatherms in each of the three previous calendar years. FERC Form No. 2–A is filed by ''Non-Major'' natural gas companies that do not meet the filing threshold for the FERC Form No. 2 but have total gas sales or volume transactions that exceed 200,000 Dekatherms in each of the three previous calendar years.

The forms provide information concerning a company's financial and operational information. The forms contain schedules which include a basic set of financial statements: Comparative Balance Sheet, Statement of Income, Statement of Retained Earnings, Statement of Cash Flows, and the Statement of Comprehensive Income and Hedging Activities. Supporting schedules containing supplementary information are filed, including revenues and the related quantities of products sold or transported; account balances for various operating and maintenance expenses; selected plant cost data; and other information.

The information collected assists the Commission in the administration of its jurisdictional responsibilities and is used by Commission staff, state regulatory agencies, customers, financial analysts and others in the review of the financial condition of regulated companies. The information is also used in various rate proceedings, industry analyses and in the Commission's, audit programs and as appropriate, for the computation of annual charges. The information is made available to the public, interveners and all interested parties to assist in the proceedings before the Commission. For financial information to be useful to the Commission, it must be understandable, relevant, reliable, and timely. The Form Nos. 2 and 2–A financial statements are prepared in accordance with the Commission's USofA and related regulations and provide data that enables the Commission to develop and monitor cost-based rates, analyze costs of different services and classes of assets, and compare costs across lines of business. The use of the USofA permits natural gas companies to account for similar transactions and events in a consistent manner, and to communicate those results to the Commission on a periodic basis. Comparability of data and financial statement analysis for a particular entity from one period to the next, or between entities, within the same industry, would be difficult to achieve if each company maintained its own accounting records using dissimilar accounting methods and classifications to record similar transactions and events.

In summary, without the information collected in the forms, it would be difficult for the Commission to ensure, as required by the NGA, that a pipeline's rates remain just and reasonable, respond to Congressional and outside inquires, and make decisions in a timely manner.

Type of Respondent: Major and Non-Major Natural Gas Companies.

Estimate of Annual Burden:[3] The Commission estimates the annual public reporting burden and cost[4] for the information collection as shown in the following table:

RENEWAL FOR FERC FORM NOS. 2 AND 2A

Information collection (FERC form No.)	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response (4)	Total annual burden hours & cost (3) * (4) = (5)	Annual cost per respondent ($) (5) ÷ (1)[5]
2	106	1	106	1,643 hrs.; $157,728	174,158 hrs.; $16,719,168.	157,728
2–A	78	1	78	267 hrs.; $25,632	20,826 hrs.; $1,999,296.	25,632

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: January 24, 2024.

Debbie-Anne. Reese,

Acting Secretary.

[FR Doc. 2024–01841 Filed 1–30–24; 8:45 am]

BILLING CODE 6717–01–P

[2] *See* 18 CFR part 201 (Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act).

[3] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[4] The Commission staff believes the FERC FTE (full-time equivalent) average cost for wages plus benefits is representative of the corresponding cost for the industry respondents. Based upon the FERC's 2023 average cost for salary plus benefits, the average hourly cost is $96/hour.

[5] Every figure in this column is rounded to the nearest dollar.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–61–000.
Applicants: Montana-Dakota Utilities Co. v. Midcontinent Independent System Operator, Inc. and Southwest Power Pool, Inc.
Description: Complaint of Montana-Dakota Utilities Co. v. Midcontinent Independent System Operator, Inc. and Southwest Power Pool, Inc.
Filed Date: 1/23/24.
Accession Number: 20240123–5146.
Comment Date: 5 p.m. ET 2/12/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2044–003.
Applicants: Elk Hills Power, LLC.
Description: Notice of Non-Material Change in Status of Elk Hills Power, LLC.
Filed Date: 1/24/24.
Accession Number: 20240124–5025.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER23–1335–002.
Applicants: Ameren Illinois Company.
Description: Compliance Filing of Ameren Illinois Company.
Filed Date: 1/16/24.
Accession Number: 20240116–5197.
Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24–978–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 205(d) Rate Filing: 2024–1–23_SA 4228 GRE–OTP–Discovery Wind GIA (S1036) to be effective 3/24/2024.
Filed Date: 1/23/24.
Accession Number: 20240123–5124.
Comment Date: 5 p.m. ET 2/13/24.

Docket Numbers: ER24–979–000.
Applicants: MFT Energy US 1 LLC.
Description: Tariff Amendment: Cancellation entire tariff to be effective 1/25/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5063.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER24–980–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Swallowtail Solar LGIA Termination Filing to be effective 1/24/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5074.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER24–981–000.
Applicants: Black Hills Colorado Electric, LLC.
Description: 205(d) Rate Filing: Amended and Restated Standard LGIA with TC Colorado Solar, LLC to be effective 1/25/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5081.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER24–982–000.
Applicants: Arizona Public Service Company.
Description: 205(d) Rate Filing: Service Agreement No. 417, LGIA between APS, CAWCD, Maricopa Energy Center to be effective 1/9/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5086.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER24–983–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 205(d) Rate Filing: 2024–01–24_SA 4071 Duke Energy-Lowland Solar Park 1st Rev GIA (J1390) to be effective 1/12/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5090.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER24–984–000.
Applicants: FirstEnergy Pennsylvania Electric Company, PJM Interconnection, L.L.C.
Description: 205(d) Rate Filing: FirstEnergy Pennsylvania Electric Company submits tariff filing per 35.13(a)(2)(iii: FE PA submits 4 amended IAs, SA Nos. 4335, 4436, 4345 and 6411 re: FE Reorg to be effective 1/1/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5119.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: ER24–985–000.
Applicants: FirstEnergy Pennsylvania Electric Company, Interconnection, L.L.C.
Description: 205(d) Rate Filing: FirstEnergy Pennsylvania Electric Company submits tariff filing per 35.13(a)(2)(iii: FE PA submits amended IAs, SA Nos. 4665 and 6412 re: FirstEnergy Reorganization to be effective 1/1/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5121.
Comment Date: 5 p.m. ET 2/14/24.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH24–6–000.
Applicants: RPower Holdings, LLC.
Description: RPower Holdings, LLC submits FERC 65–B Notice of Change in Fact to Waiver Notification.
Filed Date: 1/23/24.
Accession Number: 20240123–5155.
Comment Date: 5 p.m. ET 2/13/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: January 24, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–01839 Filed 1–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP23–516–000; CP23–516–001]

East Tennessee Natural Gas, LLC; Supplemental Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Ridgeline Expansion Project Amendment, Request for Comments on Environmental Issues, and Notice of Revised Schedule for Environmental Review

On September 18, 2023, the Federal Energy Regulatory Commission (FERC

or Commission) issued in Docket No. CP23–516–000 a *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Ridgeline Expansion Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review* (NOI).[1] On December 18, 2023 East Tennessee Natural Gas, LLC (East Tennessee) incorporated minor adjustments to the proposed Ridgeline Expansion Project (Project) pipeline centerline and workspaces and relocated the Kingston Delivery Meter Station to the pipeline terminus. On December 19, 2023, East Tennessee amended its proposed Project to increase the pipeline diameter from 24 to 30 inches along 8 miles in Morgan and Roane Counties (formerly referred to as the ''Lateral''). This Supplemental Notice is being issued to seek comments on the Project modifications, filed on both December 18 and 19, 2023, and opens a new scoping period for interested parties to file comments on environmental issues.

The September 18, 2023 NOI announced that the FERC staff will prepare an environmental impact statement (EIS) to address the environmental impacts of the Project. Please refer to the NOI for more information about the facilities proposed by East Tennessee in Trousdale, Smith, Jackson, Putnam, Overton, Fentress, Morgan, and Roane counties, Tennessee. The Commission will use this EIS in its decision-making process to determine whether the Project, as modified, is in the public convenience and necessity.

You can make a difference by providing us with your specific comments or concerns about the Project modifications. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before February 26, 2024.

The Commission previously solicited public input on the Project in the fall of 2023. We[2] are specifically seeking comments on the pipeline centerline and workspace adjustments to help the Commission staff determine what issues need to be evaluated in the EIS. If you have previously submitted comments during the pre-filing review in docket no. PF22–7–000 or in response to the NOI, you do not need to resubmit your comments.

This Supplemental Notice is being sent to the Commission's current environmental mailing list for the Project. State and local government representatives are asked to notify their constituents of this proposed Project modifications and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if the easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC website (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

There are three methods you can use to submit your comments to the Commission.

Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23–516–001) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Summary of Project Modifications

Modifications East Tennessee filed on December 18, 2023 consist of the following changes:

- minor (300 feet or less) adjustments to the Mainline centerline and workspace areas to address landowner concerns, constructability constraints, and/or to avoid sensitive resources;
- modifications to the Kingston Delivery Meter Station and Crossover as follows:
  - relocation of the Kingston Delivery Meter Station to the pipeline terminus and installation of a new mainline valve (Valve #10) at milepost (MP) 122.2R at the shippers request; and
  - change the name of the crossover, which will remain at MP 114.1, to the ''Harriman Crossover'';

[1] The NOI can be found at accession number 20230918–3011 at *elibrary.ferc.gov.*

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

• modification to the horizontal directional drill path for the Emory River crossing;
• crossing Little Goose Creek and Goose Creek via one horizontal directional drill crossing; and
• a reduction in the number of construction spreads from three to two.

These modifications will affect 12 new landowners.

The Project Amendment, filed on December 19, 2023, would increase the pipeline diameter from 24 to 30 inches along about 8 miles of pipeline, formerly referred to as the ''Lateral'' in Morgan and Roane Counties, increasing the Mainline length to about 122.2 miles and eliminating references to this portion of pipeline as the ''Lateral.'' These modifications would not affect any new landowners.

An overview of the proposed Project is shown in appendix 1.[3] A figure that shows the revisions to the Project centerline and workspace compared to what was originally proposed is provided as attachment 1–1a of East Tennessee's December 18, 2023 supplemental filing.[4]

The NEPA Process and the EIS

The EIS issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

• geology and soils;
• water resources and wetlands;
• vegetation and wildlife;
• threatened and endangered species;
• cultural resources;
• socioeconomics and environmental justice;
• land use;
• air quality and noise; and
• reliability and safety.

We will also evaluate possible alternatives to the proposed Project or portions of the Project and make recommendations on how to lessen or avoid impacts on the various resource areas.

As part of our pre-filing review of the Project, we participated in public Open House meetings sponsored by East Tennessee in the project area in June 2022 to explain the environmental review process to interested stakeholders. We also conducted public scoping meetings along the proposed pipeline route in October 2022. We have also contacted federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS.

The EIS will present the FERC staff's independent analysis of the issues. The U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and National Park Service are cooperating agencies in the preparation of the EIS.[5] FERC staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary[6] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environmental-overview/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we initiated consultation with the applicable State Historic Preservation Offices with the issuance of the September 2023 NOI to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[7] The EIS will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Revised Schedule for Environmental Review

This notice identifies the Federal Energy Regulatory Commission staff's revised schedule for the completion of the EIS for East Tennessee's Ridgeline Expansion Project. The first notice of schedule, issued on September 18, 2023, identified September 20, 2024 as the final EIS issuance date. As discussed above, East Tennessee has proposed an amendment and multiple project changes that precluded FERC staff from completing the environmental review by the draft EIS issuance date. As a result, staff has revised the schedule for issuance of the final EIS, based on an issuance of the draft EIS in May 2024.

Issuance of the Notice of Availability of the final EIS December 20, 2024
90-day Federal Authorization Decision Deadline[8] March 20, 2025

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; affected landowners; and local libraries and newspapers. This list also includes landowners affected by the Project changes who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP23–516–001 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary.'' For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] East Tennessee's December 18, 2023 supplemental filing can be found at accession number 20231218–5284 at *elibrary.ferc.gov.*

[5] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at title 40 Code of Federal Regulations (CFR), section 1501.8 (2021).

[6] For instructions on connecting to eLibrary, refer to the last page of this notice.

[7] The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

[8] The Commission's deadline applies to the decisions of other Federal agencies, and state agencies acting under federally delegated authority, that are responsible for Federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by Federal law.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP23–516). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: January 25, 2024.

Debbie-Anne Reese,

Acting Secretary.

[FR Doc. 2024–01906 Filed 1–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–334–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: 4(d) Rate Filing: Non-Conforming—ESS—PSEG Superseding to be effective 3/1/2024.

Filed Date: 1/23/24.

Accession Number: 20240123–5138.

Comment Date: 5 p.m. ET 2/5/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: January 24, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–01843 Filed 1–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13123–031]

Eagle Crest Energy Company; Notice of Intent To Prepare an Environmental Assessment

On October 12, 2022, Eagle Crest Energy Company filed an application to revise the project boundary to remove the Red Bluff Substation from the project boundary and relocate a portion of the transmission line for the unconstructed Eagle Mountain Pumped Storage Project No. 13123. The project would be located at an inactive mine in Riverside County, California, near the town of Desert Center. The project will occupy private lands and approximately 699.2 acres of Federal land under the jurisdiction of the Department of the Interior (Interior) and Bureau of Land Management (BLM). The project boundary amendment pertains to the transmission line portion and its tie-in to the Red Bluff substation.

The Commission issued a public notice of the amendment application on March 16, 2023, with protests, comments, and motions to intervene due to be filed by April 17, 2023. In response to the public notice, Commission staff received comments concerning the potential environmental effects of the proposed license amendment on resources in the area, including endangered species.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the project. The planned schedule for the completion of the EA is July 2024.[1] Revisions to the schedule may be made as appropriate. The EA will be issued and made available for review by all interested parties. All comments filed on the EA will be reviewed by staff and considered in the Commission's final decision on the proceeding.

With this notice, the Commission is inviting Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal to cooperate in the preparation of the EA planned to be issued July 2024. Agencies wishing to cooperate, or further discuss the benefits, responsibilities, and obligations of the cooperating agency role, should contact staff listed at the bottom of this notice by February 15, 2024. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

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[1] 42 U.S.C. 4336a(g)(1)(B) requires lead Federal agencies to complete EAs within 1 year of the agency's decision to prepare an EA.

Any questions regarding this notice may be directed to Shawn Halerz at (202) 502–6360 or *Shawn.Halerz@ferc.gov.*

Dated: January 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–01904 Filed 1–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–855]

Duke Energy Carolinas, LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, Commission staff reviewed Duke Energy Carolinas, LLC's (Duke Energy) application for an amendment of license to implement the Mountain Island embankment seismic stability improvement project at the Mountain Island development of the Catawba-Wateree Project No. 2232 and has prepared an Environmental Assessment (EA) for the amendment. Duke Energy proposes to construct a counterweight stability berm on the downstream side of the earthen embankment at the Mountain Island development and obtain the material for the berm from an on-site borrow area. The project consists of 11 developments and is located on the Catawba and Wateree rivers in Burke, McDowell, Caldwell, Catawba, Alexander, Iredell, Mecklenburg, Lincoln and Gaston counties, North Carolina, and York, Lancaster, Chester, Fairfield, and Kershaw counties, South Carolina.

The EA contains Commission staff's analysis of the potential environmental impacts of the proposed action and concludes that amending the license, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number (P–2232) into the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed by February 23, 2024.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2232–855.

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For further information, contact Steven Sachs at *Steven.Sachs@ferc.gov* or 202–502–8666.

Dated: January 24, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–01838 Filed 1–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR24–43–000.
Applicants: Columbia Gas of Maryland, Inc.
Description: § 284.123 Rate Filing: CMD Stride Rates effective 1–1–2024 to be effective 1/1/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5079.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: RP24–335–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Rate Schedule S–2 Tracker Filing eff 2/1/2024 to be effective 2/1/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5100.
Comment Date: 5 p.m. ET 2/5/24.

Docket Numbers: RP24–336–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) Rate Filing: Non-Conforming Service Agreement—Puget Sound to be effective 2/24/2024.
Filed Date: 1/24/24.
Accession Number: 20240124–5157.
Comment Date: 5 p.m. ET 2/5/24.

Docket Numbers: RP24–337–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Compliance filing: IDLS Delta Revenue Sharing to be effective N/A.
Filed Date: 1/25/24.
Accession Number: 20240125–5003.
Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: RP24–338–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Yankee Gas to Emera eff 1–26–24 to be effective 1/26/2024.
Filed Date: 1/25/24.
Accession Number: 20240125–5081.
Comment Date: 5 p.m. ET 2/6/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5 p.m. eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: January 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–01898 Filed 1–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1417–277]

Central Nebraska Public Power & Irrigation District; Notice of Intent To Prepare an Environmental Assessment

On December 31, 2020, as supplemented on July 22, 2021, Central Nebraska Public Power and Irrigation District (Central) filed a non-capacity amendment of license application requesting Commission approval to modify the project boundary for the Kingsley Dam Project. Central's request is based on its analysis of the existing lands and shorelines around project reservoirs to determine their need for project operation and other project purposes, including public access for recreation. The proposed boundary modification would add approximately 3,400 acres and remove approximately 900 acres, resulting in a net increase of 2,500 acres of additional lands to be included within the project boundary. The project is located on the North Platte and Platte Rivers in Garden, Keith, Lincoln, Dawson, and Gosper counties, in south-central Nebraska.

The Commission issued a public notice of the amendment application on February 9, 2021, with protests, comments, and motions to intervene due to be filed by March 11, 2021. Several individuals filed comment letters and motions to intervene in opposition to Central's proposal. In general, these individuals express concerns about private property rights, increased restrictions on private uses, shoreline erosion and control, and/or Central's proposed flood surcharge determination.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the project. The planned schedule for the completion of the EA is July 2024.[1] Revisions to the schedule may be made as appropriate. The EA will be issued and made available for review by all interested parties. All comments filed on the EA will be reviewed by staff and considered in the Commission's final decision on the proceeding.

With this notice, the Commission is inviting Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal to cooperate in the preparation of the EA planned to be issued July 2024. Agencies wishing to cooperate, or further discuss the benefits, responsibilities, and obligations of the cooperating agency role, should contact staff listed at the bottom of this notice by February 15, 2024. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members, and others to access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Any questions regarding this notice may be directed to Jon Cofrancesco at 202.502.8951 or *jon.cofrancesco@ferc.gov.*

[1] 42 U.S.C. 4336a(g)(1)(B) requires lead Federal agencies to complete EAs within 1 year of the agency's decision to prepare an EA.

Dated: January 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–01899 Filed 1–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2343–001]

PE Hydro Generation, LLC; Notice of Application for Amendment of License Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary amendment under Article 403 and water quality certification condition no. 2.

b. *Project No:* 2343–001.

c. *Date Filed:* December 19, 2023, supplemented on January 23, 2024.

d. *Applicant:* PE Hydro Generation, LLC.

e. *Name of Project:* Millville Hydroelectric Project.

f. *Location:* The project is located on the Shenandoah River in Jefferson County, West Virginia. The project does not include Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Joyce Foster, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, MD 20814, *joyce.foster@eaglecreekre.com.*

i. *FERC Contact:* Brian Bartos, (202) 502–6679, *brian.bartos@ferc.gov.*

j. *Cooperating agencies:* With this notice, the Commission is inviting Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* February 8, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/*

efiling.asp. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Ann Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Ann Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2343–001. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* The licensee is requesting a temporary variance of requirements of minimum flow to the bypassed reach via spillway flow (veil flow) to facilitate the safe removal of flashboards during the winter season. The variance would require a project reservoir drawdown of 3–4 inches below the dam crest over an anticipated two-day period. The drawdowns would last approximately 6 hours each day and the reservoir would be refilled each evening during the work sequence to provide protection for aquatic resources. Flows of 200 cubic feet per second or greater would be passed downstream via the tailrace at all times.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: January 24, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–01842 Filed 1–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–39–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on January 16, 2024, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 State Route 56, Owensboro, Kentucky 42301, filed a prior notice request for authorization, in accordance with 18 CFR 157.205, 157.208, and 157.213 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act and Southern Star's blanket certificate issued in Docket No. CP82–479–000, to drill a new horizontal well and install a lateral pipeline to connect the new well to existing facilities at Southern Star's Webb Storage Field in Grant County, Oklahoma (Webb Storage Field Project or Project). Southern Star states that the Webb Storage Field Project is designed to supplement existing deliverability and improve overall efficiency, reduce operating costs, and serve as an alternative to the installation of new dewatering facilities on existing storage gathering laterals. The estimated cost for the project is 10.1 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Public access to records formerly available in the Commission's physical Public Reference Room, which was located at the Commission's headquarters, 888 First Street NE, Washington, DC 20426, are now available via the Commission's website. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-

free, (886 208–3676 or TTY (202) 502–8659.

Any questions concerning this application should be directed to Cindy Thompson, Director, Regulatory, Compliance & Information Governance, Southern Star Central Gas Pipeline, Inc., 4700 State Route 56, Owensboro, Kentucky 42301, by phone at (270) 852–4655 or by email to *cindy.thompson@southernstar.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5 p.m. eastern time on March 25, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is March 25, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is March 25, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before March 25, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How to File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–39–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–39–000.

To file via USPS: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Cindy Thompson, Director, Regulatory, Compliance & Information Governance, Southern Star Central Gas Pipeline, Inc., 4700 State Route 56, Owensboro, Kentucky 42301, or by email to *cindy.thompson@southernstar.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: January 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–01897 Filed 1–30–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0104; FRL–11588–01–OCSPP]

Safer Choice Partner of the Year Awards for 2024; Call for Submissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Safer Choice program in the Environmental Protection Agency (EPA) is accepting submissions for its 2024 Safer Choice Partner of the Year Awards. EPA developed the Partner of the Year Awards to recognize the leadership contributions of Safer Choice partners and stakeholders who have shown achievement in the design, manufacture, promotion, selection, and use of products with safer chemicals, that further outstanding or innovative source reduction. EPA especially encourages submission of award applications that show how the applicant's work involving products with safer chemical ingredients promotes environmental justice, bolsters resilience to the impacts of climate change, results in cleaner air or water, improves drinking water quality, or advances innovation in packaging. Similar achievement in the design, manufacture, promotion, selection, and use of Design for the Environment (DfE)-certified products will also make an organization eligible for the Partner of the Year Awards.

DATES: Submissions are due on or before April 25, 2024.

ADDRESSES: Please submit materials by email to *kirk.aerin@epa.gov* and copy *saferchoice_support@abtassoc.com.* Candidates interested in learning more about the Partner of the Year Awards should refer to the Safer Choice website at *https://www.epa.gov/saferchoice/safer-choice-partner-year-awards.* The docket for this action, identified by docket information (ID) number EPA–HQ–OPPT–2019–0104, is available at *https://www.regulations.gov.* Additional information about dockets is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Aerin Kirk, Data Gathering and Analysis Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mail Code 7406M, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9814; email address: *kirk.aerin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

You may be affected by this action if you are a Safer Choice program partner or stakeholder. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Affected entities may include:

- Other Basic Inorganic Chemical Manufacturing (NAICS code 325180).
- All Other Basic Organic Chemical Manufacturing (Primary) (NAICS code 325199).
- Pesticide and Other Agricultural Chemical Manufacturing (NAICS code 325320).
- Paint and Coating Manufacturing (NAICS code 325510).
- Adhesive Manufacturing (NAICS code 325520).
- Soap and Other Detergent Manufacturing (NAICS code 325611).
- Polish and Other Sanitation Good Manufacturing (NAICS code 325612).
- Surface Active Agent Manufacturing (Primary) (NAICS code 325613).
- Toilet Preparation Manufacturing (NAICS code 325620).
- Photographic Film, Paper, Plate, and Chemical Manufacturing (NAICS code 325992).
- All Other Miscellaneous Chemical Product and Preparation Manufacturing (NAICS code 325998).
- Service Establishment Equipment and Supplies Merchant Wholesalers (Primary) (NAICS code 423850).
- Other Chemical and Allied Products Merchant Wholesalers (Primary) (NAICS code 424690).
- Supermarkets and Other Grocery (except Convenience) Stores (Primary) (NAICS code 445110).
- All Other Specialty Food Stores (NAICS code 445299).
- Pharmacies and Drug Stores (NAICS code 446110).
- Office Supplies and Stationery Stores (NAICS code 453210).
- All Other Miscellaneous Store Retailers (except Tobacco Stores) (Primary) (NAICS code 453998).
- Electronic Shopping and Mail-Order Houses (NAICS code 454110).
- Research and Development in Biotechnology (except Nanobiotechnology) (Primary) (NAICS code 541714).
- Facilities Support Services (NAICS code 561210). Janitorial Services (NAICS code 561720).
- Carpet and Upholstery Cleaning Services (NAICS code 561740).
- Elementary and Secondary Schools (NAICS code 611110).
- Colleges, Universities, and Professional Schools (NAICS code 611310).
- Promoters of Performing Arts, Sports, and Similar Events with Facilities (NAICS code 711310).
- Drycleaning and Laundry Services (NAICS code 8123).
- Civic and Social Organizations (Primary) (NAICS code 813410).
- Business Associations (Primary) (NAICS code 813910).
- Other General Government Support (NAICS code 921190).
- Administration of Air and Water Resource and Solid Waste Management Programs (Primary) (NAICS code 924110).

II. What is the Safer Choice program?

As part of its environmental mission, the Safer Choice program partners with businesses to help consumers and commercial buyers identify products with safer chemical ingredients, without sacrificing quality or performance. The Safer Choice program certifies products containing ingredients that have met the program's specific and rigorous human health and environmental toxicological criteria. The Safer Choice program allows companies to use its label on certified products that contain safer ingredients and perform, as determined by expert evaluation. The Safer Choice program certification represents a high level of achievement in formulating products that are safer for people and the environment. For more information on the Safer Choice program, please see: *https://www.epa.gov/saferchoice.*

III. What is the DfE program?

The DfE program is a companion program to Safer Choice and certifies antimicrobial products. The DfE logo may be used on certified products and helps consumers and commercial buyers identify products that meet the health and safety standards of the pesticide registration process required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as well as the Safer Choice program's stringent criteria for efficacy and effects on human health and the environment. For more information on the DfE program, please see: *https://www.epa.gov/pesticide-labels/learn-about-design-environment-dfe-certification.*

IV. What is the purpose of the award?

The purpose of the Partner of the Year Awards is to recognize the leadership contributions of Safer Choice program partners and stakeholders who, over the past year, have shown achievement in the design, manufacture, promotion, selection, and use of products with safer chemicals, that further outstanding or innovative source reduction. EPA especially encourages submission of award applications that show how the applicant's work involving products with safer chemical ingredients promotes environmental justice, bolsters resilience to the impacts of climate change, results in cleaner air or water, improves drinking water quality, or advances innovation in packaging. Similar achievement in the design, manufacture, promotion, selection, and use of Design for the Environment (DfE)-certified products will also make an organization eligible for the Partner of the Year Awards.

V. How can I participate?

All Safer Choice stakeholders and program participants in good standing are eligible for recognition. Interested parties who would like to be considered for this award should submit to EPA an application detailing their accomplishments and contributions during calendar year 2023. The application form is available on the Safer Choice website. Candidates interested in learning more about the Partner of the Year Awards should refer to the following link: *https://www.epa.gov/saferchoice/safer-choice-partner-year-awards.* EPA will recognize award winners at a Safer Choice Partner of the Year Awards ceremony later in 2024.

Authority: 42 U.S.C. 13103(b)(13) and 15 U.S.C. 2609.

Dated: January 26, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2024–01909 Filed 1–30–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2023–0137; FRL–11708–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; New Source Performance Standards (NSPS) for Sewage Sludge Incineration Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Sewage Sludge Incineration Units (EPA ICR Number 2369.06, OMB Control Number 2060–0658), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through January 31, 2024. Public comments were previously requested, via the **Federal Register** on May 18, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before March 1, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2023–0137, to EPA online using *www.regulations.gov/* (our preferred method), or by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to: *www.reginfo.gov/public/do/PRAMain.* Find this specific information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a supporting extension of this ICR, which is currently approved through January 31, 2024. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested, via the **Federal Register**, on July 22, 2022, during a 60-day comment period (87 FR 43843) and May 18, 2023 (88 FR 31748). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards for Sewage Sludge Incineration Units (40 CFR part 60, subpart LLLL) were proposed on October 14, 2010; and promulgated on March 21, 2011. These regulations apply to new facilities with one or more sewage sludge incineration (SSI) units. New facilities are those that either commenced construction after October 14, 2010, or commenced modification after September 21, 2011. Physical or operational changes made to the SSI unit to comply with the SSI Emission Guidelines at 40 CFR part 60, subpart MMMM do not qualify as a modification under this NSPS. This information is being collected to assure compliance with 40 CFR part 60, subpart LLLL.

Form Numbers: None.

Respondents/affected entities: Sewage Sludge Incinerators.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart LLLL).

Estimated number of respondents: 11 (total).

Frequency of response: Semiannual, annual.

Total estimated burden: 1,800 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,950,000 (per year), which includes $1,850,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The increase in burden from the most-recently approved ICR is due to an increase in the number of new or modified sources. There is also an increase in costs due to the use of updated labor rates. This ICR uses labor rates from the most-recent Bureau of Labor Statistics report (September 2022) to calculate respondent burden costs. This ICR also adjusts the capital/startup and operation and maintenance costs from 2008 to 2022 values using the CEPCI CE Index.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2024–01807 Filed 1–30–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10788]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 1, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____: Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10788 Prescription Drug and Health Care Spending

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Prescription Drug and Health Care Spending; *Use:* On December 27, 2020, the Consolidated Appropriations Act, 2021 (CAA) was signed into law. Section 204 of title II of division BB of the CAA added parallel provisions at section 9825 of the Internal Revenue Code (the Code), section 725 of the Employee Retirement Income Security Act (ERISA), and section 2799A–10 of the Public Health Service Act (PHS Act) that require group health plans and health insurance issuers offering group or individual health insurance coverage to annually report to the Department of the Treasury, the Department of Labor (DOL), and the Department of Health and Human Services (HHS) (collectively, ''the Departments'') certain information about prescription drug and health care spending, premiums, and enrollment under the plan or coverage. This information will support the development of public reports that will be published by the Departments on prescription drug reimbursements for plans and coverage, prescription drug pricing trends, and the role of prescription drug costs in contributing to premium increases or decreases under the plans or coverage. The 2021 interim final rules, ''Prescription Drug and Health Care Spending'' (2021 interim final rules), issued by the Departments and the Office of Personnel Management (OPM) implement the provisions of section 9825 of the Code, section 725 of ERISA, and section 2799A–10 of the PHS Act, as enacted by section 204 of title II of division BB of the CAA. OPM joined the Departments in issuing the 2021 interim final rules, requiring Federal Employees Health Benefits (FEHB) carriers to report information about prescription drug and health care spending, premiums, and plan enrollment in the same manner as a group health plan or health insurance issuer offering group or individual health insurance coverage.

The 2023 Prescription Drug Data Collection (RxDC) Reporting Instructions reflect changes for the 2023 reference year and beyond. As a result of removing one-time first- and second-

year implementation costs and burdens that were incurred prior to 2024, it is estimated that there will be a decrease in total three-year average annual burden from 1,684,080 to 668,952. *Form Number:* CMS–10788 (OMB Control Number: 0938–1407); *Frequency:* Annually; *Affected Public:* Private Sector; *Number of Respondents:* 356; *Number of Responses:* 356 *Total Annual Hours:* 668,952. (For policy questions regarding this collection contact Christina Whitefield at 202–536–8676.)

Dated: January 25, 2024.

William N. Parham, III

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–01831 Filed 1–30–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–D–0361]

Development of Monoclonal Antibody Products Targeting SARS–CoV–2 for Emergency Use Authorization; Guidance for Industry; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** on December 21, 2023. The document announced the availability of a final guidance for industry entitled ‘‘Development of Monoclonal Antibody Products Targeting SARS–CoV–2 for Emergency Use Authorization.’’ The document was published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Maria Clary, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4638, Silver Spring, MD 20993–0002, 240–402–8615.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 21, 2023 (88 FR 88401), in FR Doc. 2023–28092, the following correction is made:

1. On page 88401, in the first column in the header of the document, and in the **ADDRESSES** section, in the second and third lines of the first paragraph, the Docket No. is corrected to read ‘‘Docket No. FDA–2024–D–0361.’’

Dated: January 25, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–01836 Filed 1–30–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel NIDDK Application Review: RFA–DK–23–017 (U01) and RFA–DK–23–018 (U24) Continuation of the Childhood Liver Disease Research Network (ChiLDReN).

Date: March 21, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cheryl Nordstrom, Ph.D., M.Ph., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7013, Bethesda, MD 20892, 301–402–6711, *cheryl.nordstrom@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 25, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01845 Filed 1–30–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK RC2 Application Review.

Date: March 1, 2024.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892,(Virtual Meeting).

Contact Person: Cheryl Nordstrom, Ph.D., M.Ph., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7013, Bethesda, MD 20892, 301–402–6711, *cheryl.nordstrom@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 25, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01849 Filed 1–30–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Learning, Memory and Decision Neuroscience Study Section.
Date: February 22–23, 2024.
Time: 8:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency, Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Roger Janz, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–8515, *janzr2@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Development and Disease Study Section.
Date: February 22–23, 2024.
Time: 8:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Arlington National Landing, 2399 Richmond Highway, Arlington, VA 22202.
Contact Person: Vanessa Dawn Sherk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 801C, Bethesda, MD 20892, (301) 594–3218, *sherkv2@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Biochemistry and Biophysics of Membranes Study Section.
Date: February 22–23, 2024.
Time: 8:30 a.m. to 8:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Nuria E Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov*.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Viral Dynamics and Transmission Study Section.
Date: February 22–23, 2024.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Hybrid Meeting).
Contact Person: Sharon Isern, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 810J, Bethesda, MD 20892, (301) 435–0000, *iserns2@mail.nih.gov*.

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Molecular Neurogenetics Study Section.
Date: February 22–23, 2024.
Time: 9:00 a.m. to 8:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Mary G. Schueler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, (301) 915–6301, *marygs@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Glia Study Section.
Date: February 22–23, 2024.
Time: 9:00 a.m. to 10:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Sung-Wook Jang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812P, Bethesda, MD 20892, (301) 435–1042, *jangs2@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biodata Management and Analysis Study Section.
Date: February 22–23, 2024.
Time: 9:00 a.m. to 8:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: E. Bryan Crenshaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–7129, *bryan.crenshaw@nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Reproductive, Perinatal and Pediatric Health Study Section.
Date: February 22–23, 2024.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Cynthia Chioma McOliver, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007G, Bethesda, MD 20892, (301) 594–2081, *mcolivercc@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Respiratory Integrative Biology and Translational Research Study Section.
Date: February 22–23, 2024.
Time: 9:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC7814, Bethesda, MD 20892, (301) 451–8754, *nussb@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Molecular Cancer Diagnosis and Classification Study Section.
Date: February 22–23, 2024.
Time: 9:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Lawrence Ka-Yun Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, (301) 435–1719, *ngkl@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuroimaging Technologies.
Date: February 22–23, 2024.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 435–1047, *kkrishna@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Nutrition and Metabolism in Health and Disease Study Section.
Date: February 22–23, 2024.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jonathan Michael Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *jonathan.peterson@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 25, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01858 Filed 1–30–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; HIV Comorbidities.

Date: March 25, 2024.

Time: 11:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 25, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01847 Filed 1–30–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Nonalcoholic Steatohepatitis Clinical Research Network (NASH CRN) Review.

Date: March 29, 2024.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7345, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 25, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01850 Filed 1–30–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK RC2 Application Review.

Date: February 29, 2024.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cheryl Nordstrom, Ph.D., M.Ph., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7013, Bethesda, MD 20892, 301–402–6711, *cheryl.nordstrom@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 25, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01848 Filed 1–30–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0009]

Agency Information Collection Activities; Revision of Existing Collection; U.S. Customs Declaration (CBP Form 6059B)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than March 1, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* . Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (88 FR 13452) on March 03, 2023, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: U.S. Customs Declaration.
OMB Number: 1651–0009.
Form Number: 6059B.
Current Actions: CBP is submitting a revision package to terminate the APC Program, announce MPC Expansion, and add the CBP One Mobile Application to the collection.
Type of Review: Revision.
Affected Public: Individuals.
Abstract: CBP Form 6059B, Customs Declaration, is used as a standard report of the identity and residence of each person arriving in the United States. This form is also used to declare imported articles to U.S. Customs and Border Protection (CBP) in accordance with 19 CFR 122.27, 148.12, 148.13, 148.110, 148.111; 31 U.S.C. 5316 and Section 498 of the Tariff Act of 1930, as amended (19 U.S.C. 1498).

Section 148.13 of the CBP regulations prescribes the use of the CBP Form 6059B when a written declaration is required of a traveler entering the United States. Generally, written declarations are required from travelers arriving by air or sea. Section 148.12 requires verbal declarations from travelers entering the United States. Generally, verbal declarations are required from travelers arriving by land.

CBP continues to find ways to improve the entry process through the use of mobile technology to ensure it is safe and efficient. To that end, CBP has deployed a process which allows travelers to use a mobile app to submit information to CBP prior to arrival in domestic locations and prior to departure at preclearance locations. This process, called Mobile Passport Control (MPC) allows travelers to self-segment upon arrival into the United States or departing a preclearance location. The MPC process also helps determine under what circumstances CBP should require a written customs declaration (CBP Form 6059B) and when it is beneficial to admit travelers who make an oral customs declaration during the primary inspection. MPC eliminates the administrative tasks performed by the officer during a traditional inspection and in most cases will eliminate the need for respondents/travelers to fill out a paper declaration. MPC provides a more efficient and secure in person inspection between the CBP Officer and the traveler.

Another electronic process that CBP has in lieu of the paper 6059B is the Automated Passport Control (APC). This is a CBP program that facilitates the entry process for travelers by providing self-service kiosks in CBP's Primary Inspection area that travelers can use to make their declaration.

Both APC and MPC allow an electronic method for travelers to answer the questions that appear on form 6059B without filling out a paper form. APC program will continue to collect this information until the program is terminated on September 30, 2023.

A sample of CBP Form 6059B can be found at: *https://www.cbp.gov/newsroom/publications/forms?title=6059.*

This collection is available in the following languages: English, French, Vietnamese, German, Italian, Japanese, Korean, Polish, Portuguese, Russian, Chinese, Hebrew, Spanish, Dutch, Arabic, Farsi, and Punjabi.

New Change

APC Program Termination

The Automated Passport Control (APC) program is terminated as of September 30, 2023. Termination of the APC program will allow CBP passenger processing to streamline into a single Simplified Arrival workflow without need of interacting with a kiosk. The removal of the kiosk space will also provide additional queueing space for travelers that will utilize MPC to

expedite their entry process into the United States.

MPC Expansion

Mobile Passport Control (MPC) program will expand to include U.S. Legal permanent residents (LPR) and Visa Waiver Program (VWP) country visitors arriving for their second visit to the United States. The Automated Passport Control (APC) program previously captured this population, and CBP is now expanding the MPC program to be used by these populations. U.S. LPRs are eligible for SA's photo biometric confirmation upon arrival into the United States. Other classes of admission eligible for SA's photo biometric confirmation will be considered for MPC inclusion as a future update.

CBP One™ Mobile Application

A new mobile application testing the operational effectiveness of a process which allows travelers to use a mobile application to submit information to CBP, in advance, prior to arrival. This second mobile capability is under the current CBP One™ application which is a platform application that serves as a single portal for travelers and stakeholders to virtually interact with CBP. The CBP One™ application will also allow travelers to self-segment upon arrival at land borders in the United States.

Similar to the MPC application, the CBP One™ application eliminates the administrative tasks performed by the officer during a traditional inspection and in most cases will eliminate the need for respondents/travelers to fill out a paper declaration. In addition, the CBP One™ application will also provide a more efficient and secure in person inspection between the CBP Officer and the traveler at the land border.

Unique to the CBP One™ application is that while the MPC submission is completed upon arrival, the CBP One™ application must be submitted in advance and will require the additional data elements:

1. Traveler Identify the Port of Entry (POE).

2. Time and/or date of arrival.

In addition, like the MPC application, travelers will provide their answers to CBP's questions, take a self-picture/selfie and submit the information via the CBP One™ application, after the plane lands. This will allow for advance vetting and proper resource management at the POE. This capability through the CBP One™ application is available to all travelers arriving with authorized travel documents, including foreign nationals.

Type of Information Collection: Customs Declarations (Form 6059B)

Estimated Number of Respondents: 5,206,850.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 5,206,850.

Estimated Time per Response: 4 minutes.

Estimated Total Annual Burden Hours: 348,859.

Type of Information Collection: Verbal Declarations.

Estimated Number of Respondents: 384,793,150.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 384,793,150.

Estimated Time per Response: 10 seconds.

Estimated Total Annual Burden Hours: 1,154,380.

Type of Information Collection: MPC APP.

Estimated Number of Respondents: 4,500,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 4,500,000.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 148,500.

Type of Information Collection: CBP One APP.

Estimated Number of Respondents: 500,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 500,000.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 16,500.

Dated: January 25, 2024.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–01854 Filed 1–30–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2024–0005; OMB No. 1660–0017]

Agency Information Collection Activities: Proposed Collection; Comment Request; Public Assistance Program

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning a revision of an instrument for the Public Assistance (PA) program eligibility determinations, grants management, and compliance with Federal laws and regulations.

DATES: Comments must be submitted on or before April 1, 2024.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2024–0005. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel Hildebrand, Acting Chief Public Assistance Program Delivery Branch, *Rachel.Hildebrand@fema.dhs.gov* or 202–646–3484. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C.

5121–5207 (the Stafford Act), authorizes grants to assist State, Tribal, and local governments and certain private non-profit entities with the response to and recovery from disasters following Presidentially declared major disasters and emergencies. 44 CFR part 206 specifies the information collections necessary to facilitate the provision of assistance under the Public Assistance (PA) Program. 44 CFR 206.202 describes the general application procedures for the PA Program. FEMA revised FEMA Form FF–104–FY–21–238, Pre-Approval Request to support survivors in non-congregate shelters and it was approved by OMB under an emergency request. FEMA is publishing this notice to allow for comments from the public.

Collection of Information

Title: Public Assistance Program.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0017.

FEMA Forms: FEMA Form FF–104–FY–22–233, Organization Profile; FEMA Form FF–104–FY–22–234, Recipient Incident Information; FEMA Form FF–104–FY–21–131 (formerly 009–0–49), Request for Public Assistance; FEMA Form FF–104–FY–22–235, Applicant Impact Survey; FEMA Form FF–104–FY–22–238, Pre-Approval Request; FEMA Form FF–104–FY–22–236, Impact List; FEMA Form FF–104–FY–22–239, Project Application for Debris Removal; FEMA Form FF–104–FY–22–240, Project Application for Emergency Protective Measures; FEMA Form FF–104–FY–22–242, Project Application for Infrastructure Restoration; FEMA Form FF–104–FY–22–243, Project Application for Building Code and Floodplain Administration and Enforcement; FEMA Form FF–104–FY–22–244, Project Application for Management Costs; FEMA Form FF–104–FY–22–245, Damage Information; FEMA Form FF–104–FY–22–241, Project Application for COVID–19; FEMA Form FF–104–FY–21–137 (formerly FF 009–0–123), Force Account Labor Summary Record; FEMA Form FF–104–FY–21–135 (formerly FF 009–0–128), Applicant's Benefits Calculation Worksheet; FEMA Form FF–104–FY–21–141 (formerly FF 009–0–127), Force Account Equipment Summary Record; FEMA Form FF–104–FY–21–138 (formerly FF 009–0–124), Materials Summary Record; FEMA Form FF–104–FY–21–139 (formerly FF 009–0–125), Rented Equipment Summary; FEMA Form FF–104–FY–21–140 (formerly FF 009–0–126), Contract Work Summary; FEMA Form FF–104–FY–22–237, Donated Labor Sign-in; FEMA Form FF–104–FY–21–132 (formerly FEMA Form 009–0–111), Quarterly Progress Reports; FEMA Form FF–104–FY–22–248, Time Extension; FEMA Form FF–104–FY–22–249, State Administrative Plan; FEMA Form FF–104–FY–21–250, Tribal Administrative Plan; Request for Appeals or Arbitrations; Request for Arbitration resulting from Hurricanes Katrina or Rita; and FEMA Template FT–104–FY–21–100, Equitable COVID–19 Response and Recovery: Vaccine Administration Information.

Abstract: The information collected is required for the Public Assistance (PA) Program eligibility determinations, grants management, and compliance with other Federal laws and regulations. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), authorizes grants to assist State, Tribal, and local governments and certain private non-profit entities with the response to and recovery from disasters following Presidentially declared major disasters and emergencies.

Affected Public: State, local or Tribal government and certain private non-profit entities.

Estimated Number of Respondents: 1,505.

Estimated Number of Responses: 635,269.

Estimated Total Annual Burden Hours: 341,635.

Estimated Total Annual Respondent Cost: $21,697,240.

Estimated Respondents' Operation and Maintenance Costs: 0.

Estimated Respondents' Capital and Start-Up Costs: 0.

Estimated Total Annual Cost to the Federal Government: $2,053,221.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent L. Brown,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2024–01844 Filed 1–30–24; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0036 OMB No. 1660–0033]

Agency Information Collection Activities: Proposed Collection; Comment Request; Residential Basement Floodproofing Certification

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of extension and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning information collected for eligible properties insured under the National Flood Insurance Program (NFIP) policies to certify the floodproofing of residential basements.

DATES: Comments must be submitted on or before April 1, 2024.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2023–0036. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joycelyn Collins, Underwriting Branch Program Analyst, Federal Insurance Directorate, 202–701–3383. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized by the National Flood Insurance Act of 1968 (90–448, title XIII) and expanded by the Flood Disaster Protection Act of 1973 (93–234) and requires that FEMA provide flood insurance. FEMA delineates flood zones on a Flood Insurance Rate Map to identify Special Flood Hazard Areas (SFHAs) in a community. 44 CFR 60.3(c)(2) requires that all new construction and substantial improvements of residential structures within SFHA Zones A1–30, AE, AH, and AO zones have the lowest floor, including the basement, elevated to or above the base flood level unless a community-wide exception or site-specific variance is granted. 44 CFR 60.6(a)(7) and 44 CFR 60.6(b)(1) allow communities to apply for an exception when circumstances present a hardship that would not allow for adherence to the requirement for elevation above the base flood level. This exception must meet the conditions set forth in 44 CFR 60.6(c). When owners of residential structures in these zones are seeking flood insurance, they must be certified that the structural design is floodproof.

Collection of Information

Title: Residential Basement Floodproofing Certification.

Type of Information Collection: Extension of a currently approved information collection.

OMB Number: 1660–0033.

FEMA Forms: FEMA Form FF–206–FY–21–122 (formerly 086–0–24), Residential Basement Floodproofing Certificate.

Abstract: The Residential Basement Floodproofing Certification is required to certify that floodproofing of a structure in communities approved for Residential Basement floodproofing meets at least minimal floodproofing specifications. Residential structures that receive this certification are granted a discount on flood insurance premiums.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Estimated Total Annual Burden Hours: 25.

Estimated Total Annual Respondent Cost: $1,697.

Estimated Respondents' Operation and Maintenance Costs: $5,000.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $191.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2024–01846 Filed 1–30–24; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2402]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before April 30, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2402, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other

Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Woodson County, Kansas and Incorporated Areas Project: 21–07–0019S Preliminary Dates: February 3, 2023 and September 29, 2023	
City of Neosho Falls	Woodson County Courthouse, 105 West Rutledge Street, Yates Center, KS 66783.
City of Toronto	City Hall, 215 West Main Street, Toronto, KS 66777.
City of Yates Center	City Hall, 117 East Rutledge Street, Yates Center, KS 66783.
Unincorporated Areas of Woodson County	Woodson County Courthouse, 105 West Rutledge Street, Yates Center, KS 66783.

[FR Doc. 2024–01944 Filed 1–30–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6410–N–01]

Federally Mandated Exclusions From Income—Updated Listing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing; Office of the Assistant Secretary for Housing-Federal Housing Commissioner; and Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD's regulations provide for HUD to periodically publish in the **Federal Register** a notice that lists sources of income specifically excluded by any Federal statute from consideration as income for purposes of determining eligibility or benefits in a HUD program. HUD last published a notice that listed federally mandated exclusions from consideration of income on May 20, 2014. This notice replaces the previously published version, adds new exclusions, and removes exclusions that are now codified in HUD regulations.

FOR FURTHER INFORMATION CONTACT: For Multifamily Housing programs: Jennifer Lavorel, Director, Program Administration Office, Office of Asset Management and Portfolio Oversight, telephone number 202–402–2515. For other Section 8 programs administered under 24 CFR part 882 (Moderate Rehabilitation) and under part 982 (Housing Choice Voucher): Ryan Jones, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, telephone number 202–402–2677. For Public Housing Programs administered under part 960: Kymian Ray, Director, Public Housing Management and Occupancy Division, Office of Public and Indian Housing, telephone number 202–402–2065. For Indian Housing Programs: Heidi Frechette, Deputy Assistant Secretary, Office of Native American Programs, Office of Public and Indian Housing, telephone number 202–401–7914. For the HOME Investment Partnerships Program and the Housing Trust Fund Program, Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, at 202–708–2684, Room 7160; Rita Harcrow, Director, Office of HIV/AIDS Housing, Office of Community Planning and Development, at 202–402–5374, Room 7248; Jessie Kome, Director, Office of Block Grant Assistance, Office of Community Planning and Development, at 202–402–5539, Room 7282. The mailing address for each office contact is Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410. With the exception of the telephone number for the PIH Information Resource Center, these are not toll-free numbers. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Please note: Members of the public who are aware of any other Federal statutes that require certain income sources to be excluded from income or asset calculations in HUD programs, but are not mentioned in the notice, should submit information about the statute and the benefit program to one of the persons listed in the "For Further Information Contact" section above. Members of the public may also submit this information to the Regulations Division, Office of General Counsel, Department of Housing and Urban

Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

SUPPLEMENTARY INFORMATION: Under several HUD programs (Mortgage Insurance and Interest Reduction Payment for Rental Projects under 24 CFR part 236; Section 8 Housing Assistance programs; Public Housing programs); HOME Investment Partnerships Program under 24 CFR part 92; Housing Trust Fund under 24 CFR part 93; Housing Opportunities for Persons With AIDS under 24 CFR part 574, the definition of income excludes amounts of other benefits specifically excluded by Federal law.

Background

Certain HUD programs require income and asset calculations to determine eligibility and levels of assistance. Some HUD programs are required by statute to perform income and asset determinations and other HUD programs apply these requirements administratively through regulations, notices, contract agreements, etc. Any HUD program that requires income calculations for these purposes must not consider sources or amounts of income that are specifically excluded by Federal law. The purpose of this notice is to update the list of income and asset sources required by Federal law to be excluded from consideration in HUD programs.

Changes to the Previously Published List

HUD last published in the **Federal Register** a notice of federally mandated exclusions from income on May 20, 2014, at 79 FR 28938. Today's notice replaces the previously published version by adding four new income exclusions and correcting existing exclusions to identify where amounts are excluded from consideration as assets in HUD programs.

(1) Corrects an exception to payments, including for supportive services and reimbursement of out-of-pocket expenses, for volunteers under the Domestic Volunteer Service Act of 1973, listed as exclusion (2);

(2) Adds the amount of any refund (or advance payment with respect to a refundable credit) issued under the Internal Revenue Code is excluded from income and assets for a period of 12 months from receipt (26 U.S.C. 6409), listed as exclusion (14);

(3) Adds allowance paid to children of certain Thailand service veterans born with spina bifida (38 U.S.C. 1822), listed as exclusion (17);

(4) Corrects the exclusion of income applicable to programs under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 *et seq.*) to more accurately capture the language of 25 U.S.C. 4103(9), listed as exclusion (23);

(5) Corrects that any assistance, benefit, or amounts earned by or provided to the individual development account are excluded from income, as provided by the Assets for Independence Act, as amended (42 U.S.C. 604(h)(4)), listed as exclusion (25);

(6) Corrects that the first $2,000 of per capita payments are also excluded from assets unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe's private bank account in which the Tribe has deposited the settlement proceeds (25 U.S.C. 117b(a), 25 U.S.C. 1407), listed as exclusion (26);

(7) Adds the value of, distributions from, and certain contributions to Achieving Better Life Experience (ABLE) accounts established under the ABLE Act of 2014 (Pub. L. 113–295.), listed as exclusion (28); and

(8) Adds assistance received by a household from payments made under the Emergency Rental Assistance Program pursuant to the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), and the American Rescue Plan Act of 2021 (Pub. L. 117–2), listed as exclusion (29).

Updated List of Federally Mandated Exclusions From Income

The following updated list of Federally mandated income exclusions supersedes the notice published in the **Federal Register** on May 20, 2014. The exclusions listed below apply to income only, except where HUD states that the exclusion also applies to assets. Actual income earned from an excluded asset may be included in income if it is not deposited into an account that is disregarded and excluded under one of the below authorities. If an amount is in an excluded account, like an Independent Development Account or an ABLE account, then the statute or the regulations associated with that income/asset exclusion will dictate what portion of the income earned off the amount, if any, is to be included in the family's income. Please note that exclusions (13) and (23) have provisions that apply only to specific HUD programs):

(1) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b)). This exclusion also applies to assets;

(2) Payments, including for supportive services and reimbursement of out-of-pocket expenses, for volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5044(f)(1), 42 U.S.C. 5058), are excluded from income except that the exclusion shall not apply in the case of such payments when the Chief Executive Officer of the Corporation for National and Community Service appointed under 42 U.S.C. 12651c determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 *et seq.*) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater (42 U.S.C. 5044(f)(1)). This exclusion also applies to assets;

(3) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c)). This exclusion also applies to assets;

(4) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 5506). This exclusion also applies to assets;

(5) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f)(1)). This exclusion also applies to assets;

(6) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540, section 6). This exclusion also applies to assets;

(7) The first $2000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands. This exclusion does not include proceeds of gaming operations regulated by the Commission (25 U.S.C. 1407–1408). This exclusion also applies to assets;

(8) Amounts of student financial assistance funded under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070), including awards under Federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For section 8 programs only (42 U.S.C. 1437f), any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be

considered income to that individual if the individual is over the age of 23 with dependent children (Pub. L. 109–115, section 327) (as amended)

(9) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056g);

(10) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (Pub. L. 101–201) or any other fund established pursuant to the settlement in *In Re Agent Orange Product Liability Litigation,* M.D.L. No. 381 (E.D.N.Y.). This exclusion also applies to assets;

(11) Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420 section 9(c)). This exclusion also applies to assets;

(12) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

(13) Earned income tax credit (EITC) refund payments[1] received on or after January 1, 1991, for programs administered under the United States Housing Act of 1937, title V of the Housing Act of 1949, section 101 of the Housing and Urban Development Act of 1965, and sections 221(d)(3), 235, and 236 of the National Housing Act (26 U.S.C. 32(l)). This exclusion also applies to assets;

(14) The amount of any refund (or advance payment with respect to a refundable credit) issued under the Internal Revenue Code is excluded from income and assets for a period of 12 months from receipt (26 U.S.C. 6409);

(15) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95–433 section 2). This exclusion also applies to assets;

(16) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));

(17) Any allowance paid to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802–05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811–16), and children of certain Korean and Thailand service veterans born with spina bifida (38 U.S.C. 1821–22) is excluded from income and assets (38 U.S.C. 1833(c)).

(18) Any amount of crime victim compensation that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) under the Victims of Crime Act of 1984 received through a crime victim assistance program, unless the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime (34 U.S.C. 20102(c)). This exclusion also applies to assets;

(19) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 reauthorized as the Workforce Innovation and Opportunity Act of 2014 (29 U.S.C. 3241(a)(2));

(20) Any amount received under the Richard B. Russell School Lunch Act (42 U.S.C. 1760(e)) and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC). This exclusion also applies to assets;

(21) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (Pub. L. 101–503 section 8(b)). This exclusion also applies to assets;

(22) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. 1437a(b)(4));

(23) Any amounts (i) not actually received by the family, (ii) that would be eligible for exclusion under 42 U.S.C. 1382b(a)(7), and (iii) received for service-connected disability under 38 U.S.C. chapter 11 or dependency and indemnity compensation under 38 U.S.C. chapter 13 (25 U.S.C. 4103(9)(C)) as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111–269 section 2) to the definition of income applicable to programs under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 *et seq.*);

(24) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled *Elouise Cobell et al.* v. *Ken Salazar et al.,* 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111–291 section 101(f)(2)). This exclusion also applies to assets;

(25) Any amounts in an ''individual development account'' are excluded from assets and any assistance, benefit, or amounts earned by or provided to the individual development account are excluded from income, as provided by the Assets for Independence Act, as amended (42 U.S.C. 604(h)(4));

(26) Per capita payments made from the proceeds of Indian Tribal Trust Settlements listed in IRS Notice 2013–1 and 2013–55 must be excluded from annual income unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe's private bank account in which the Tribe has deposited the settlement proceeds. Such amounts received in excess of the Tribal Trust Settlement are included in the gross income of the members of the Tribe receiving the per capita payments as described in IRS Notice 2013–1. The first $2,000 of per capita payments are also excluded from assets unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe's private bank account in which the Tribe has deposited the settlement proceeds (25 U.S.C. 117b(a), 25 U.S.C. 1407);

(27) Federal assistance for a major disaster or emergency received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d)). This exclusion also applies to assets;

(28) Any amount in an Achieving Better Life Experience (ABLE) account, distributions from and certain contributions to an ABLE account established under the ABLE Act of 2014 (Pub. L. 113–295.), as described in Notice PIH 2019–09/H 2019–06 or subsequent or superseding notice is excluded from income and assets; and

(29) Assistance received by a household under the Emergency Rental Assistance Program pursuant to the Consolidated Appropriations Act, 2021 (Pub. L. 116–260, section 501(j)), and the American Rescue Plan Act of 2021

[1] *Please note:* While this income exclusion addresses EITC refund payments for certain HUD programs, the exclusion in 26 U.S.C. 6409 excludes Federal tax refunds more broadly for any Federal program or under any State or local program financed in whole or in part with Federal fund.

(Pub. L. 117–2, section 3201). This exclusion also applies to assets.

Richard Monocchio,

Principal Deputy Assistant Secretary for Public and Indian Housing.

Julia R. Gordon,

Associate General Deputy Assistant Secretary for Housing—Associate Deputy Federal Housing Commissioner.

Marion M. McFadden,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2024–01873 Filed 1–30–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2023–N104; FXES11130100000–245–FF01E00000]

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before March 1, 2024.

ADDRESSES: *Document availability and comment submission:* Submit a request for a copy of the application and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name and application number (*e.g.,* Dana Ross, ES001705):

- *Email: permitsR1ES@fws.gov.*
- *U.S. Mail:* Marilet Zablan, Regional Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Karen Colson, Regional Recovery Permit Coordinator, Ecological Services, (503) 231–6283 (telephone); *permitsR1ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of "take" includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
PER5646208	Christopher Adams, Oregon State University, OR.	Taylor's checkerspot butterfly (*Euphydryas editha taylori*).	Oregon	Harass by handle and captively propagate.	New.
ES69397C	Seattle Aquarium Society, Seattle, WA.	Hawksbill sea turtle (*Eretmochelys imbricata*), Leatherback sea turtle (*Dermochelys coriacea*), Loggerhead sea turtle (*Caretta caretta*).	Washington and Oregon.	Harass by handle, measure, weigh, biosample, mark, transfer, and release.	Renew with changes.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to the applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of

1973, as amended (16 U.S.C. 1531 *et seq.*).

Marilet A. Zablan,

Regional Program Manager for Restoration and Endangered Species Classification, Pacific Region.

[FR Doc. 2024–01895 Filed 1–30–24; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–704–705 and 731–TA–1664–1666 (Preliminary)]

Paper Plates From China, Thailand, and Vietnam; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–704–705 and 731–TA–1664–1666 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of paper plates from China, Thailand, and Vietnam, provided for in subheading 4823.69.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of China and Vietnam. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by March 11, 2024. The Commission's views must be transmitted to Commerce within five business days thereafter, or by March 18, 2024.

DATES: January 25, 2024.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones (202–205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on January 25, 2024, by the American Paper Plate Coalition, which is comprised of AJM Packaging Corporation, Bloomfield Hills, Michigan, Aspen Products, Inc., Kansas City, Missouri, Dart Container Corporation, Mason, Michigan, Hoffmaster Group, Inc., Oshkosh, Wisconsin, Huhtamaki Americas, Inc., De Soto, Kansas, and the Unique Industries, Inc., Philadelphia, Pennsylvania.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold a staff conference in connection with the preliminary phase of these investigations beginning at 9:45 a.m. on Thursday, February 15, 2024. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before Tuesday, February 13, 2024. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation, including guidance for requests to appear as a witness via videoconference, will be available on the Commission's Public Calendar (Calendar (USITC) | United States International Trade Commission). A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before 5:15 p.m. on February 21, 2024, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on February 14, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either

the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: January 26, 2024.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2024–01881 Filed 1–30–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–589 and 731–TA–1394–1396 (Review)]

Forged Steel Fittings From China, Italy, and Taiwan

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing duty order on forged steel fittings from China and the antidumping duty orders on forged steel fittings from China, Italy, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on August 1, 2023 (88 FR 50172) and determined on November 6, 2023 that it would conduct expedited reviews (88 FR 84361, December 5, 2023).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on January 26, 2024. The views of the Commission are contained in USITC Publication 5486 (January 2024), entitled *Forged Steel Fittings from China, Italy, and Taiwan: Investigation Nos. 701–TA–589 and 731–TA–1394–1396 (Review).*

By order of the Commission.

Issued: January 26, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–01929 Filed 1–30–24; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Jason E. Kearns not participating.

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On January 24, 2024, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Idaho in the lawsuit entitled *United States of America* v. *PotlatchDeltic Land & Lumber, LLC,* Civil Action No. 2:24–cv–00043.

The proposed consent decree resolves claims brought by the United States on behalf of the Environmental Protection Action pursuant to sections 301 and 402 of the Clean Water Act against PotlatchDeltic Land & Lumber, LLC for violations of its National Pollutant Discharge Elimination System permits related to stormwater discharges from its sawmill and lumberyard facility in St. Maries, Idaho. The settlement requires Defendant to pay a $225,000 civil penalty. The settlement also requires Defendant to implement injunctive relief designed to ensure it will meet the compliance schedule in its current permit for its stormwater outfalls, as well as significant mitigation actions to offset environmental harms of its discharges.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *PotlatchDeltic Land & Lumber, LLC,* D.J. Ref. No. 90–5–1–1–12509. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $18.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Kathryn C. Macdonald,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–01852 Filed 1–30–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0002]

Agency Information Collection Activities; Proposed eCollection eComments Requested

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Federal Bureau of Investigation, Criminal Justice Information Services Division, Department of Justice (DOJ), will be submitting the following information collection request to OMB for review and approval in accordance with the Paperwork Reduction Act (PRA) of 1995. The proposed information collection was previously published in the **Federal Register** on November 28,

2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until March 1, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Edward L. Abraham, Crime and Law Enforcement Statistics Unit Chief, FBI, CJIS Division, Module D–1, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, telephone: 304–625–4830, email: *elabraham@fbi.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and/or
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1110–0002. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *Title of the Form/Collection:* Supplementary Homicide Report.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is 1–704. The applicable component within the DOJ is the CJIS Division, FBI.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: State, local and tribal governments.

Abstract: Under Title 28, United States Code, Section 534(a) and (c), this collection requests homicide data from respondents in order for the FBI's Uniform Crime Reporting (UCR) Program to serve as the national clearinghouse for the collection and dissemination of homicide and other crime-related data and to publish these statistics. SHR collects details about all murders and nonnegligent manslaughters (including justifiable homicides) and negligent manslaughters. The details include the reporting agency; month and year; situation; age, sex, race, and ethnicity of the victim(s) and the offender(s); weapon type used; relationship of the victim(s) to the offender(s); and circumstance(s) surrounding the incident (*e.g.,* argument, robbery, gang related), if known.

5. *Obligation to Respond:* Voluntary.

6. *Total Estimated Number of Respondents:* 6,652. Annually, those LEAs submit a total of 79,824 responses (6,652 LEAs × 12 months = 79,824 responses annually).

7. *Estimated Time per Respondent:* Nine (9) minutes.

8. *Frequency:* Once a month.

9. *Total Estimated Annual Time Burden:* 11,974 hours.

10. *Total Estimated Annual Other Costs Burden:* $107,000.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: January 8, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–01868 Filed 1–30–24; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

On January 24, 2024, the Department of Justice lodged a proposed Fourth Amendment of the Consent Decree with the United States District Court for the Eastern District of Pennsylvania in the lawsuit entitled *United States and Commonwealth of Pennsylvania* v. *City of Reading,* Civil Action No. 04–05696.

The United States' Complaint and the Commonwealth's Complaint in intervention alleged, *inter alia,* that the City of Reading Wastewater Treatment Plant (''Reading'') violated its National Pollutant Discharge Elimination System permits, the Clean Water Act, and the Pennsylvania Clean Streams law by discharging pollutants into the Schuylkill River in violation of various effluent limits, and that Reading failed to enforce the requirements of its pretreatment program for industrial users and failed to properly operate and maintain its wastewater treatment plant and systems.

In 2005, the parties entered into a Consent Decree to resolve the United States' and the Commonwealth's claims. Among other things, the Consent Decree established a process to return the City of Reading to NPDES compliance, including required capital improvements to its wastewater treatment plant. The process of new construction and significantly updating and overhauling existing infrastructure has been underway since the Consent Decree was originally entered. Many of the required tasks have been completed or are substantially complete, but some remain outstanding.

The parties to the Consent Decree have agreed to certain modifications set forth in the Fourth Amendment to the Decree. The Fourth Amendment extends the deadlines for completing remaining capital improvement projects because of delays that have occurred in the process of designing, seeking bids for, entering into contracts for, securing materials for, and completing construction on the remaining projects. In particular, Reading experienced delays due to social-distancing-related limitations on staffing and delays in manufacturing due to shutdowns and supply chain delays, and expects that the remaining

projects will have some level of delays due to these ongoing issues.

The publication of this notice opens a period for public comment on the proposed Fourth Amendment of the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Commonwealth of Pennsylvania* v. *City of Reading,* D.J. Ref. No. 90–5–1–1–07869/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Fourth Amendment of the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Fourth Amendment upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–01883 Filed 1–30–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0009]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Law Enforcement Officers Killed and Assaulted Data Collection, LEOKA Collection Tool 701 for Feloniously Killed; and LEOKA Collection Tool 701a for Accidentally Killed

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Federal Bureau of Investigation, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on November 21, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until March 1, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Mr. Edward Abraham, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division, Module D–1, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, 304–625–4830, *elabraham@fbi.gov* or *LEOKA.STATISTICS@fbi.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

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

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/*PRAMain. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1110–0009. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Law Enforcement Officers Killed and Assaulted Data Collection, LEOKA Collection Tool 701 for Feloniously Killed; and LEOKA Collection Tool 701a for Accidentally Killed.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form number is 1–701 and 1–701a. The applicable component within the Department of Justice is the Criminal Justice Information Services Division, Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as a brief abstract: Affected Public:* State, local and tribal. governments.

Abstract: Under Title 28, United States Code, section 534, Acquisition, Preservation, and Exchange of Identification Records; Appointment of Officials, this collection requests the number of officers killed from law enforcement agencies in order for the FBI's Uniform Crime Reporting Program to serve as the national clearinghouse for the collection and dissemination of law enforcement officer death data and to share these statistics in the Law Enforcement Officers Killed and Assaulted Data Collection.

5. *Obligation to Respond:* Voluntary.

6. *Total Estimated Number of Respondents:* 118.

7. *Estimated Time per Respondent:* One (1) hour.

8. *Frequency:* Annually.

9. *Total Estimated Annual Time Burden:* 118.

10. *Total Estimated Annual Other Costs Burden:* $0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning

Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: January 25, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–01867 Filed 1–30–24; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; National Compensation Survey

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before March 1, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Under the National Compensation Survey (NCS), BLS currently uses the Employment Cost Index (ECI) and Occupational Employment Statistics to provide grade and local wage data required by the President's Pay Agent to comply with the requirements of the Federal Employees Pay Comparability Act of 1990. The President's Pay Agent uses these data to recommend pay increases for Federal General Schedule workers; NCS data produces the Employment Cost Index which is designated a Principal Federal Economic Indicator under OMB Statistical Policy Directive No. 3. NCS data is used to produce the ECI, the Employer Cost for Employee Compensation, employee benefit provision publications, Modeled Wage Estimates, and data for the President's Pay Agent. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 9, 2023 (88 FR 77363).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Agency: DOL–BLS.

Title of Collection: National Compensation Survey.

OMB Control Number: 1220–0164.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; State, Local and Tribal Governments.

Total Estimated Number of Respondents: 19,567.

Total Estimated Number of Responses: 53,896.

Total Estimated Annual Time Burden: 41,465 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–01894 Filed 1–30–24; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–New]

New Information Collection Request: Demographic Information Collection for MSHA Grants

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information, in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the new information collection regarding Demographic Information Collection for MSHA Grants.

DATES: All comments must be received on or before April 1, 2024.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late comments received after the deadline will not be considered.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2023–0021.
- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov*

(email); 202–693–9440 (voice); or 202–693–9441 (facsimile). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977, as amended (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

MSHA works to prevent death, illness, and injury from mining and to promote safe and healthful workplaces for U.S. miners. Section 115 of the Mine Act, 30 U.S.C. 825, requires MSHA to approve mine operators' health and safety training programs for miners. To assist mine operators, MSHA administers two grant programs: State Grants and Brookwood-Sago Mine Safety Grants. The grant programs fund training for individuals, miners, employers, and contractors on how to recognize, avoid, and prevent unsafe and unhealthful working conditions in accordance with section 503 of the Mine Act, 30 U.S.C. 953, and section 14 of the Mine Improvement and New Emergency Response Act of 2006 (MINER Act), 30 U.S.C. 965.

State Grants

Under section 503 of the Mine Act, 30 U.S.C. 953, the Secretary may award grants to States to assist in developing and enforcing State mine health and safety laws and regulations, to improve State workers' compensation and mining occupational disease laws and programs, and to improve health and safety conditions in the Nation's mines through Federal-State coordination and cooperation. Any State in which mining takes place may apply for the State Grants. Under 30 U.S.C. 953(g), MSHA may fund up to 80 percent of the State Grants activities and a Grant recipient must provide matching funds of no less than 20 percent of the total costs. This State Grant program supports federally mandated training of miners and mine operators working at surface and underground coal, metal, and nonmetal mines. Under 30 U.S.C. 953(e) of the Mine Act, a State grant application or modification may include a program to train State mine inspectors.

MSHA recognizes that State training programs are a key source of mine safety and health training and education for individuals who work or will work at mines. MSHA encourages State training programs to prioritize health and safety training for small mining operations and underserved mines and miners within the mining industry, and to prioritize diversity, equity, inclusion, and accessibility. MSHA has recently expanded the priority to include underserved operators and miners, including limited English proficient (LEP) and low literacy individuals.

MSHA supports programs that emphasize training on miners' statutory rights, including the right to work in a safe working environment, to refuse an unsafe task, and to have a voice in the safety and health conditions at the mine. In particular, MSHA encourages grant recipients to address the following topics in their training and education programs: occupational health hazards caused by exposures to respirable coal mine dust and respirable crystalline silica; powered haulage and mobile equipment safety; mine emergency preparedness; mine rescue; electrical safety; contract and customer truck drivers; improving training for new and inexperienced miners; managers and supervisors performing mining tasks; pillar safety for underground mines; and falls from heights.

Brookwood-Sago Mine Safety Grants

Section 14 of the MINER Act, 30 U.S.C. 965, established the Brookwood-Sago Mine Safety Grants. This competitive grant program provides funding for education and training programs to better identify, avoid, and prevent unsafe working conditions in and around mines. Grantees can use these funds to establish and implement education and training programs or to create training materials and programs on MSHA-identified safety priorities. Funds can also be used to develop and implement training and related materials for mine emergency preparedness as well as for the prevention of accidents in underground mines.

MSHA expects Brookwood-Sago Mine Safety grantees to develop training or educational materials and/or provide mine safety training or educational programs, to recruit mine operators and miners to participate in training, and to conduct and evaluate the training program. 30 U.S.C. 965 mandates that the Secretary emphasize programs and materials that target smaller mines, including programs and materials for training mine operators and miners about new MSHA standards, high risk activities, or hazards. The Brookwood-Sago Mine Safety Grants give priority to the funding of pilot and demonstration projects that will provide opportunities for broad applicability for mine safety. Special attention will also be given to programs and materials that serve underserved mines and miners within the mining industry, and that prioritize diversity, equity, inclusion, and accessibility.

Under 30 U.S.C. 965, the Brookwood-Sago Mine Safety Grants are required to conduct follow-up evaluations with the people who received the training provided under the grants to measure how the training promotes the DOL's strategic goal to ''Ensure Safe Jobs, Essential Protections, and Fair Workplaces,'' and MSHA's goal to ''prevent fatalities, disease, and injury from mining, and secure safe and healthful working conditions for America's miners.'' Evaluations will focus on determining how effective the subject training was in either reducing hazards, improving miners' skills, or improving safety and health conditions in mines. Grantees must fully cooperate with MSHA evaluators; such cooperation may include providing MSHA evaluators relevant data, educational or training materials, or information on training methods and equipment.

Additional Authorities

Executive Order (E.O.) 13985 on ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government'' aims to advance equity and provide everyone with the opportunity to reach their full potential. The E.O. requires each agency to assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups.

In response to E.O. 13985, the Department of Labor developed an ''Equity Action Plan'' which highlighted several of MSHA's planning efforts to reach workers with limited English proficiency, including:

- MSHA is planning several initiatives to expand its reach to Spanish language-speaking populations, including by recruiting for new bilingual positions in regions where there is a mining community that is predominantly Spanish-speaking, developing more bilingual signs to inform mine workers of health and safety risks in languages they can read and understand, and introducing new bilingual training assistance, including for mine operators and contractors, to

ensure that health and safety training initiatives reach all mine workers.

• In addition, MSHA is tracking progress toward its new performance milestone of making half of MSHA signs available in Spanish.

To fulfill these goals and to carry out MSHA's initiatives, the Agency creates the ''MSHA Participant Demographic Information Form.'' This optional form will be distributed among training participants by grantees after completing training. The new survey form will ask training participants to identify their age, gender, ethnicity, race, and primary language spoken. This information will be kept confidential (*i.e.,* the responses are not associated with a specific participant) and will be reported only in the aggregate.

By collecting this demographic and primary language data, MSHA will improve its ability to identify barriers that prevent underserved rural and minority communities from benefitting from MSHA grantees' training and compliance assistance programs and thereby accessing safe and healthy jobs in the mining industry. The collected data may identify training needs for women and individuals with limited English proficiency in underserved communities in rural and minority areas. Equipped with this data, MSHA will be better able to take steps to overcome these barriers and lay out targeted activities, such as increasing the number of MSHA-approved non-English speaking instructors and training materials to assist individuals with low literacy and limited English proficiency.

Additionally, State grantees will submit to MSHA a modified form called ''State Grants Demographic Information Progress Report.'' This form will report a summary of training participants' aggregate responses by the end of each quarter.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Demographic Information Collection for MSHA Grants. MSHA is particularly interested in comments that:

• Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;

• Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

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

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns Demographic Information Collection for MSHA Grants, including two new data collection forms. MSHA has provided the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this new information collection request.

Type of Review: New collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–New.

Affected Public: Individuals, state, tribal, and territorial governments, business or other for-profits, and non-profit institutions.

Number of Annual Respondents: 150,706.

Frequency: On occasion, quarterly, and annually.

Number of Annual Responses: 150,930.

Annual Burden Hours: 8,093.

Annual Respondent or Recordkeeper Cost: $0.

MSHA Forms: MSHA Participant Demographic Information Collection Form; MSHA State Grants Demographic Information Progress Report.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed new information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Song-ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2024–01893 Filed 1–30–24; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0025]

Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice; correction.

SUMMARY: The Occupational Safety and Health Administration (OSHA) published a document in the **Federal Register** on January 9, 2024, soliciting public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the regulation on Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers. The document contained an incorrect OMB Control Number. This notice corrects this error.

DATES: This correction is effective January 31, 2024.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–2222.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of January 9, 2024 (89 FR 1129), correct the OMB Control Number as described below.

On page 1129—in the third column the section titled ''III. Proposed Actions'' listed under *OMB Control Number* change 1219–0218 to read:

[*1218–0218*].

* * * * *

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority

for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on January 25, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–01892 Filed 1–30–24; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2024–3]

Notice of Intent To Audit

AGENCY: Copyright Office, Library of Congress.

ACTION: Public notice.

SUMMARY: The U.S. Copyright Office is announcing receipt of notices of intent to conduct audits pursuant to the section 115 blanket license.

FOR FURTHER INFORMATION CONTACT: Rhea Efthimiadis, Assistant to the General Counsel, by email at *meft@copyright.gov* or telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

The Orrin G. Hatch-Bob Goodlatte Music Modernization Act (the ''MMA'') substantially modified the compulsory ''mechanical'' license for reproducing and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.[1] It did so by switching from a song-by-song licensing system to a blanket licensing regime that became available on January 1, 2021 (the ''license availability date''), administered by a mechanical licensing collective (the ''MLC'') designated by the Copyright Office (the ''Office'').[2] Digital music providers (''DMPs'') are able to obtain this new statutory mechanical blanket license (the ''blanket license'') to make digital phonorecord deliveries of nondramatic musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as ''covered activity'' where such activity qualifies for a blanket license), subject to various requirements, including reporting and payment obligations.[3] The MLC is tasked with collecting royalties from DMPs under the blanket license and distributing them to musical work copyright owners.[4]

In connection with the new blanket license, the MMA also provides for certain audit rights. Under the MMA, the MLC may periodically audit DMPs operating under the blanket license to verify the accuracy of royalty payments made by DMPs to the MLC.[5] Likewise, musical work copyright owners may periodically audit the MLC to verify the accuracy of royalty payments made by the MLC to copyright owners.[6] To commence an audit, a notice of intent to conduct an audit must be filed with the Office and delivered to the party(ies) being audited.[7] The Office must then cause notice to be published in the **Federal Register** within 45 days of receipt.[8]

II. Notices

On January 10, 2024, the Office received the below notices of intent to conduct audits of DMPs submitted by the MLC.

1. Notice of intent to audit Amazon Media Venture LLC for the period of January 1, 2021, through December 31, 2023.
2. Notice of intent to audit Amazon.com Services LLC for the period of January 1, 2021, through December 31, 2023.
3. Notice of intent to audit Anghami FZ LLC for the period of January 1, 2021, through December 31, 2023.
4. Notice of intent to audit Appcompanist, LLC for the period of January 1, 2021, through December 31, 2023.
5. Notice of intent to audit Apple Inc. for the period of January 1, 2021, through December 31, 2023.
6. Notice of intent to audit Artist Technology Group DBA PANTHR Music for the period of January 1, 2021, through December 31, 2023.
7. Notice of intent to audit Audiomack Inc for the period of January 1, 2021, through December 31, 2023.
8. Notice of intent to audit Avail LLC for the period of January 1, 2021, through December 31, 2023.
9. Notice of intent to audit Beatport LLC for the period of January 1, 2021, through December 31, 2023.
10. Notice of intent to audit Bill Graham Archives, LLC for the period of January 1, 2021, through December 31, 2023.
11. Notice of intent to audit Boxine GmbH for the period of January 1, 2021, through December 31, 2023.
12. Notice of intent to audit Choral Tracks LLC for the period of January 1, 2021, through December 31, 2023.
13. Notice of intent to audit Classical Archives, LLC for the period of January 1, 2021, through December 31, 2023.
14. Notice of intent to audit Da Capo Music, LLC for the period of January 1, 2021, through December 31, 2023.
15. Notice of intent to audit Deezer S.A. for the period of January 1, 2021, through December 31, 2023.
16. Notice of intent to audit Fan Label, LLC for the period of January 1, 2021, through December 31, 2023.
17. Notice of intent to audit Global Tel*Link Corporation for the period of January 1, 2021, through December 31, 2023.
18. Notice of intent to audit Google, LLC for the period of January 1, 2021, through December 31, 2023.
19. Notice of intent to audit GrooveFox Inc. for the period of January 1, 2021, through December 31, 2023.
20. Notice of intent to audit IDAGIO GmbH for the period of January 1, 2021, through December 31, 2023.
21. Notice of intent to audit iHeartMedia + Entertainment, Inc. for the period of January 1, 2021, through December 31, 2023.
22. Notice of intent to audit M&M Media, Inc. for the period of January 1, 2021, through December 31, 2023.
23. Notice of intent to audit Midwest Tape, LLC for the period of January 1, 2021, through December 31, 2023.
24. Notice of intent to audit Mixcloud Ltd for the period of January 1, 2021, through December 31, 2023.
25. Notice of intent to audit MONKINGME S.L. for the period of January 1, 2021, through December 31, 2023.
26. Notice of intent to audit Music Choice for the period of January 1, 2021, through December 31, 2023.
27. Notice of intent to audit Napster Group PLC for the period of January 1, 2021, through December 31, 2023.
28. Notice of intent to audit Naxos Digital Services US Inc. for the period of January 1, 2021, through December 31, 2023.
29. Notice of intent to audit Nugs.net Enterprises, Inc. for the period of January 1, 2021, through December 31, 2023.
30. Notice of intent to audit Pacemaker Music AB for the period of January 1, 2021, through December 31, 2023.
31. Notice of intent to audit Pandora Media, LLC for the period of January 1, 2021, through December 31, 2023.

[1] Public Law 115–264, 132 Stat. 3676 (2018).

[2] 17 U.S.C. 115(d).

[3] *Id.*

[4] *Id.*

[5] *Id.* at 115(d)(4)(D).

[6] *Id.* at 115(d)(3)(L).

[7] *Id.* at 115(d)(3)(L)(i)(IV), (d)(4)(D)(i)(IV).

[8] *Id.* at 115(d)(3)(L)(i)(IV), (d)(4)(D)(i)(IV).

32. Notice of intent to audit PianoTrax LLC for the period of January 1, 2021, through December 31, 2023.

33. Notice of intent to audit Power Music, Inc. for the period of January 1, 2021, through December 31, 2023.

34. Notice of intent to audit PRIMEPHONIC B.V. for the period of January 1, 2021, through December 31, 2023.

35. Notice of intent to audit Recisio SAS for the period of January 1, 2021, through December 31, 2023.

36. Notice of intent to audit Saavn Media Limited for the period of January 1, 2021, through December 31, 2023.

37. Notice of intent to audit Securus Technologies, LLC for the period of January 1, 2021, through December 31, 2023.

38. Notice of intent to audit Slacker, Inc. for the period of January 1, 2021, through December 31, 2023.

39. Notice of intent to audit Smithsonian Institution for the period of January 1, 2021, through December 31, 2023.

40. Notice of intent to audit Sonos, Inc. for the period of January 1, 2021, through December 31, 2023.

41. Notice of intent to audit SoundCloud Operations Inc. for the period of January 1, 2021, through December 31, 2023.

42. Notice of intent to audit Spotify USA Inc. for the period of January 1, 2021, through December 31, 2023.

43. Notice of intent to audit TIDAL Music AS for the period of January 1, 2021, through December 31, 2023.

44. Notice of intent to audit Transsnet Music Limited for the period of January 1, 2021, through December 31, 2023.

45. Notice of intent to audit TRIBL, LLC for the period of January 1, 2021, through December 31, 2023.

46. Notice of intent to audit Ultimate Guitar USA LLC for the period of January 1, 2021, through December 31, 2023.

47. Notice of intent to audit Weav Music, Inc. for the period of January 1, 2021, through December 31, 2023.

48. Notice of intent to audit XANDRIE USA for the period of January 1, 2021, through December 31, 2023.

49. Notice of intent to audit Yoto Ltd for the period of January 1, 2021, through December 31, 2023.

On January 25, 2024, the Office received a notice of intent to conduct an audit of the MLC from Caswell Weinbren for the period of January 1, 2021, through December 31, 2023.

A copy of each notice will be made available on the Office's website at *https://copyright.gov/music-modernization/audits/.*

Dated: January 25, 2024.

Suzanne V. Wilson,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2024–01878 Filed 1–30–24; 8:45 am]

BILLING CODE 1410–30–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–244, 50–454, 50–455, 50–456, 50–457, 72–067, 72–068, and 72–073; NRC–2024–0027]

Issuance of Multiple Exemptions Regarding Security Notifications, Reports, and Recording Keeping

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemptions; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a single notice to announce the issuance of three exemptions in response to requests from one licensee in response to a change to NRC's regulations published in the **Federal Register** on March 14, 2023.

DATES: During the period from December 1, 2023, to December 31, 2023, the NRC granted three exemptions in response to requests submitted by one licensee from October 13, 2023, to December 7, 2023.

ADDRESSES: Please refer to Docket ID NRC–2024–0027 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0027. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the ''For Further Information Contact'' section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ed Miller, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2481, email: *Ed.Miller@nc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

During the period from December 1, 2023, to December 31, 2023, the NRC granted three exemptions in response to requests submitted by the licensee, Constellation Energy Generation, LLC (Constellation), from October 13, 2023, to December 7, 2023. Constellation's requested exemptions pertaining to its Byron Station, Units 1 and 2; R.E. Ginna Nuclear Power Plant; and Braidwood Station, Units 1 and 2. These exemptions temporarily allow the licensee to deviate from certain requirements of part 73 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Physical Protection of Plants and Materials,'' subpart T, ''Security Notifications, Reports, and Recordkeeping.'' In support of its exemption requests, Constellation agreed to effect site-specific administrative controls that maintain the approach to complying with 10 CFR part 73 in effect prior to the NRC's issuance of a final rule, ''Enhanced Weapons, Firearms Background Checks, and Security Event Notifications,'' which was published in the **Federal Register** on March 14, 2023, and became effective on April 13, 2023 (88 FR 15864).

II. Availability of Documents

The tables in this notice provide transparency regarding the number and type of exemptions the NRC has issued and provide the facility name, docket number, document description, document date, and ADAMS accession number for each exemption issued. Additional details on each exemption issued, including the exemption request submitted by the respective licensee and the NRC's decision, are provided in each exemption approval listed in the following tables. For additional directions on accessing information in ADAMS, see the **ADDRESSES** section of this document.

BYRON STATION, UNITS 1 AND 2; DOCKET NOS. 50–454, 50–455, AND 72–068

Document description	ADAMS accession No.	Document date
Byron Station, Units 1 and 2, Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23286A036	October 13, 2023.
Byron Station, Units 1 and 2—Supplemental Information Letter for Part 73 Exemption Request—Responses to Request for Confirmatory Information.	ML23317A102	November 10, 2023.
[External_Sender] Supplement—Byron Security Rule Exemption Request—ISFSI Docket No. Reference (EPID L–2023–LLE–0027).	ML23317A201	November 22, 2023.
Byron Station, Units 1 and 2—Exemption from Select Requirements of 10 CFR part 73 (EPID L–2023–LLE–0027 [Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting]).	ML23320A176	December 13, 2023.

R.E. GINNA NUCLEAR POWER PLANT; DOCKET NOS. 50–244 AND 72–067

Document description	ADAMS accession No.	Document date
R.E. Ginna Nuclear Power Plant—Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23289A104	October 16, 2023.
R.E. Ginna Nuclear Power Plant—Supplemental Information Letter for part 73 Exemption Request—Responses to Request for Confirmatory Information and Request for Additional Information.	ML23321A139	November 17, 2023.
R.E. Ginna Nuclear Power Plant—Supplemental Response to part 73 Exemption Request—Withdrawal of Request for Exemption from 10 CFR 73, subpart B, Preemption Authority Requirements.	ML23341A125	December 7, 2023.
R.E. Ginna Nuclear Power Plant—Exemption from Select Requirements of 10 CFR part 73 (EPID L–2023–LLE–0029 [Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting]).	ML23348A099	December 15, 2023.

BRAIDWOOD STATION, UNITS 1 AND 2; DOCKET NOS. 50–456, 50–457, AND 72–073

Document description	ADAMS accession No.	Document date
Braidwood Station, Units 1 and 2—Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23289A119	October 16, 2023.
Braidwood Station, Units 1 and 2—Supplemental Information Letter for part 73 Exemption Request—Responses to Request for Confirmatory Information.	ML23317A101	November 10, 2023.
Supplement—Braidwood Security Rule Exemption Request—ISFSI Docket No. Reference (EPID L–2023–LLE–0030).	ML23331A892	November 22, 2023.
Braidwood Station, Units 1 and 2—Exemption from Select Requirements of 10 CFR part 73 (EPID L–2023–LLE–0030 [Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting]).	ML23348A216	December 15, 2023.

Dated: January 25, 2024.

For the Nuclear Regulatory Commission.

Jeffrey A. Whited,

Chief, Plant Licensing Branch 3, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2024–01834 Filed 1–30–24; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P–S)

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM), Suitability Executive Agent Programs, is notifying the general public and other Federal agencies that OPM proposes to request the Office of Management and Budget (OMB) revise and renew the Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P–S).

DATES: Comments are encouraged and will be accepted until March 1, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation,

may be obtained by contacting Office of Personnel Management, Suitability Executive Agent Programs, P.O. Box 699, Slippery Rock, PA 16057, or by electronic mail at *SuitEAForms@opm.gov.* Please contact Alexys Stanley at 202–936–2501, if you have questions.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, OPM is soliciting comments for this collection (OMB No. 3206–0258). This information collection was previously published in the **Federal Register** on November 1, 2023, at 88 FR 75078, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. OPM is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Background: The Questionnaire for Public Trust Positions, SF 85P, and Supplemental Questionnaire for Selected Positions, SF 85P–S, are information collections completed by applicants for, or incumbents of, Federal Government civilian positions, or positions in private entities performing work for the Federal Government under contract (SF 85P only). The collections are used as the basis of information for background investigations to establish that such persons are:

Suitable for employment or retention in Federal employment in a public trust position or fit for employment or retention in Federal employment in the excepted service when the duties to be performed are equivalent in degree of trust reposed in the incumbent to a public trust position;

Fit to perform work on behalf of the Federal Government pursuant to the Government contract, when the duties to be performed are equivalent in degree of trust reposed in the individual to a public trust position; and

Eligible for physical and logical access to federally controlled facilities or information systems, when the duties to be performed by the individual are equivalent to the duties performed by an employee in a public trust position.

For applicants, the SF 85P and SF 85P–S are to be used only after a conditional offer of employment has been made. The SF 85P–S is supplemental to the SF 85P and is used only as approved by OPM, for certain positions such as those requiring carrying of a firearm. eApp (Electronic Application) is a web-based application that houses the SF 85P and SF 85P–S. A variable in assessing burden hours is the nature of the electronic application. The electronic application includes branching questions and instructions which provide for a tailored collection from the respondent based on varying factors in the respondent's personal history. The burden on the respondent is reduced when the respondent's personal history is not relevant to a particular question. The question branches, or expands for additional details, only for those persons who have pertinent information to provide regarding that line of questioning. Accordingly, the burden on the respondent will vary depending on whether the respondent's personal history relates to the information collection.

OPM recommends renewal of the form. Since posting the 60 Day Notice, OPM is making a minor change to the *Instructions* and *Fair Credit Reporting Disclosure and Authorization* that accompanies the form by removing instructions related to security freezes on consumer or credit files. With the passage of the Economic Growth, Regulatory Relief, and Consumer Protection Act which was signed into law on May 24, 2018, security freezes do not apply to the making of a credit report for use in connection with employment or background screening purposes. Therefore, it is no longer necessary for individuals undergoing a background investigation to request the freeze be lifted.

Analysis:

Agency: Suitability Executive Agent Programs, Office of Personnel Management.

Title: Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P–S).

OMB Number: 3206–0258.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 152,700 (SF 85P); 16,700 (SF 85P–S).

Estimated Time per Respondent: 155 minutes (SF 85P); 10 minutes (SF 85P–S).

Total Burden Hours: 394,475 (SF 85P); 2,783 (SF 85P–S).

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–01859 Filed 1–30–24; 8:45 am]

BILLING CODE 6325–66–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99432; File No. SR–NSCC–2023–007]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Amendment No. 2 to Proposed Rule Change To Modify the Amended and Restated Stock Options and Futures Settlement Agreement and Make Certain Revisions to the NSCC Rules

January 25, 2024.

On August 10, 2023, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2023–007 (''Filing'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder.[2] The Filing was published for comment in the **Federal Register** on August 30, 2023. On November 8, 2023, NSCC filed Amendment No. 1 to the Filing. Notice is hereby given that on January 24, 2024, NSCC filed with the Commission Amendment No. 2 to the Filing (''Amendment No. 2'') as described in Items I and II below, which Items have been prepared by NSCC. This Amendment No. 2 supersedes and replaces the Filing in its entirety. The Commission is publishing this notice to solicit comments on this Amendment No. 2 from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b) of the Exchange Act,[3] and Rule 19b–4 thereunder,[4] National Securities Clearing Corporation (''NSCC'') is filing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

this Amendment No. 2 to proposed rule change SR–NSCC–2023–007 with the Commission to (1) modify the Stock Options and Futures Settlement Agreement dated August 5, 2017, between NSCC and The Options Clearing Corporation (''OCC,'' and together with NSCC, the ''Clearing Agencies'') (''Existing Accord'') [5] to permit OCC to elect to make a cash payment to NSCC following the default of a common clearing participant that would cause NSCC's central counterparty trade guaranty to attach to certain obligations of that participant (''Phase 1''); (2) improve information sharing between the Clearing Agencies to facilitate the upcoming transition to a T+1 standard securities settlement cycle and allow OCC, after the compliance date under amended Exchange Act Rule 15c6–1(a), to provide certain assurances to NSCC prior to the default of a common clearing participant that would enable NSCC to begin processing E&A/Delivery Transactions (defined below) before the central counterparty trade guaranty attaches to certain obligations of that participant (''Phase 2''); and (3) make certain revisions to the NSCC Rules & Procedures (''NSCC Rules'') [6] in connection with the proposed Phase 1 and Phase 2 modifications to the Existing Accord.[7] This Amendment No. 2 would amend and replace the Initial Filing and Amendment No. 1 in their entirety.

The proposed changes to the NSCC Rules and the Existing Accord are included in Exhibits 5A and 5B of Amendment No. 2 to File No. SR–NSCC–2023–007. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Executive Summary

NSCC is a clearing agency that provides clearing, settlement, risk management, and central counterparty services for trades involving equity securities. OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, including options that contemplate the physical delivery of equities cleared by NSCC in exchange for cash (''physically-settled'' options).[8] OCC also clears certain futures contracts that, at maturity, require the delivery of equity securities cleared by NSCC in exchange for cash. As a result, the exercise/assignment of certain options or maturation of certain futures cleared by OCC effectively results in stock settlement obligations. NSCC and OCC maintain a legal agreement, generally referred to by the parties as the ''Accord'' agreement, that governs the processing of such physically-settled options and futures cleared by OCC that result in settlement obligations in underlying equity securities to be cleared by NSCC (*i.e.,* the Existing Accord).

The Existing Accord establishes terms under which NSCC accepts for clearing certain securities transactions that result from the exercise and assignment of relevant options contracts and the maturity of futures contracts that are cleared and settled by OCC.[9] It also establishes the time when OCC's settlement guaranty in respect of those transactions ends and NSCC's settlement guaranty begins.

The Existing Accord allows for a scenario in which NSCC could choose not to guarantee the settlement of such securities arising out of E&A/Delivery Transactions. Specifically, NSCC is not obligated to guarantee settlement until its member has met its collateral requirements at NSCC. If NSCC chooses not to guarantee settlement, OCC would engage in an alternate method of settlement outside of NSCC. This scenario presents two primary problems. First, the cash required for OCC and its Clearing Members in certain market conditions to facilitate settlement outside of NSCC could be significantly more than the amount required if NSCC were to guarantee the relevant transactions. This is because settlement of the transactions in the underlying equity securities outside of NSCC would mean that they would no longer receive the benefit of netting through the facilities of NSCC. In such a scenario, the additional collateral required from Clearing Members to support OCC's continuing settlement guarantee would also have to be sufficiently liquid to properly manage the risks associated with those transactions being due on the second business day following the option exercise or the relevant futures contract maturity date. Based on an analysis of scenarios using historical data where it was assumed that OCC could not settle transactions through the facilities of NSCC, the worst-case outcome resulted in extreme liquidity demands of over $300 billion for OCC to effect settlement via an alternative method, *e.g.,* by way of gross broker-to-broker settlement, as discussed in more detail below. OCC Clearing Members, by way of their contributions to the OCC Clearing Fund, would bear the brunt of this demand. Furthermore, there is no guarantee that OCC Clearing Members could fund the entire amount of any similar real-life scenarios. By contrast, projected Guaranty Substitution Payments, defined below, identified during the study ranged from approximately $419 million to over $6 billion, also as discussed in more detail below.

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[5] The Existing Accord was previously approved by the Commission. *See* Securities Exchange Act Release Nos. 81266, 81260 (Jul. 31, 2017), 82 FR 36484 (Aug. 4, 2017) (File Nos. SR–NSCC–2017–007; SR–OCC–2017–013).

[6] Capitalized terms not defined herein are defined in the NSCC Rules. The NSCC Rules are *available at www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[7] NSCC initially filed a proposed rule change concerning the proposed Phase 1 changes on August 10, 2023. *See* Securities Exchange Act Release No. 98213 (Aug. 24, 2023), 88 FR 59968 (Aug. 30, 2023) (File No. SR–NSCC–2023–007) (''Initial Filing''). NSCC subsequently submitted a partial amendment to clarify the proposed implementation plan for the Initial Filing. *See* Securities Exchange Act Release No. 98930 (Nov. 14, 2023), 88 FR 80790 (Nov. 20, 2023) (File No. SR–NSCC–2023–007) (''Amendment No. 1''). OCC also has submitted proposed rule change and advance notice filings with the Commission in connection with this proposal. *See* Securities Exchange Act Release No. 98215 (Aug. 24, 2023), 88 FR 59976 (Aug. 30, 2023) (File No. SR–OCC–2023–007) and Securities Exchange Act Release No. 98214 (Aug. 24, 2023), 88 FR 59988 (Aug. 30, 2023) (SR–OCC–2023–801). (''OCC Filings'').

[8] The term ''physically-settled'' as used throughout the OCC Rules refers to cleared contracts that settle into their underlying interest (*i.e.,* options or futures contracts that are not cash-settled). The OCC By-Laws and OCC Rules are *available at www.theocc.com/company-information/documents-and-archives/by-laws-and-rules.* When a contract settles into its underlying interest, shares of stock are sent, *i.e.,* delivered, to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option and maturity in the case of a future.

[9] Under the Existing Accord, such options and futures are defined as ''E&A/Delivery Transactions,'' which refers to ''Exercise & Assignment Delivery Transactions.''

The second primary problem relates to the significant operational complexities if settlement occurs outside of NSCC. More specifically, netting through NSCC reduces the volume and value of settlement obligations. For example, in 2022 it is estimated that netting through NSCC's continuous net settlement (''CNS'') accounting system [10] reduced the value of CNS settlement obligations by approximately 98% or $510 trillion from $519 trillion to $9 trillion. If settlement occurred outside of NSCC, on a broker-to-broker basis between OCC Clearing Members, for example, shares would not be netted, and Clearing Members would have to coordinate directly with each other to settle the relevant transactions. The operational complexities and uncertainty associated with alternate means of settlement would impact every market participant involved in a settlement of OCC-related transactions.

To address these problems, the Clearing Agencies are proposing certain changes as part of Phase 1 to amend and restate the Existing Accord and make related changes to their respective rules that would allow OCC to elect to make a cash payment (the ''Guaranty Substitution Payment'' or ''GSP'') to NSCC following the default of a Common Member [11] that would cause NSCC to guarantee settlement of that Common Member's transactions and, therefore, cause those transactions to be settled through processing by NSCC. In connection with this proposal, OCC also would enhance its daily liquidity stress testing processes and procedures to account for the possibility of OCC making such a payment to NSCC in the event of a Common Member default. By making these enhancements to its stress testing, OCC could include the liquid resources necessary to make the payment in its resource planning. The Clearing Agencies believe that by NSCC accepting such a payment from OCC, the operational efficiencies and reduced costs related to the settlement of transactions through NSCC would limit market disruption following a Common Member default because settlement through NSCC following such a default would be less operationally complex and would be expected to require less liquidity and other collateral from market participants than the processes available to OCC for closing out positions. Additionally, proposed enhancements by OCC to its liquidity stress testing would add assurances that OCC could make such a payment in the event of a Common Member default. The Clearing Agencies believe that their respective clearing members and all other participants in the markets for which OCC provides clearance and settlement would benefit from OCC's ability to choose to make a cash payment to effect settlement through the facilities of NSCC. This change would provide more certainty around certain default scenarios and would blunt the financial and operational burdens market participants could experience in the case of most clearing member defaults.[12]

Finally, the Clearing Agencies are also proposing certain changes as part of Phase 2 that, if approved, would not be implemented until after the Commission shortens the standardized settlement cycle under Exchange Act Rule 15c6–1(a) from two days after the traded date (''T+2'') to one day after the trade date (''T+1''), which currently is set for May 28, 2024. The Phase 2 changes would address the operational realities concerning the Accord that will result from the Commission's adoption and implementation of a new standard settlement cycle of T+1 pursuant to Rule 15c6–1(a) under the Act. The Phase 2 changes generally are designed to allow OCC to provide certain assurances with respect to OCC's ability to make a GSP in the event of a Common Member default to NSCC that would permit NSCC to begin processing Common Members' E&A/Delivery Transactions in a shortened settlement cycle prior to guaranty substitution occurring by introducing new or amended terms and setting out the processes associated therewith.

Background

OCC acts as a central counterparty clearing agency for U.S.-listed options and futures on a number of underlying financial assets including common stocks, currencies, and stock indices. In connection with these services, OCC provides the OCC Guaranty pursuant to its By-Laws and Rules. NSCC acts as a central counterparty clearing agency for certain equity securities, corporate and municipal debt, exchange traded funds and unit investment trusts that are eligible for its services. Eligible trading activity may be processed through NSCC's CNS system [13] or through its Balance Order Accounting system,[14] where all eligible compared and recorded transactions for a particular settlement date are netted by issue into one net long (buy), net short (sell) or flat position. As a result, for each day with activity, each Member has a single deliver or receive obligation for each issue in which it has activity at NSCC. In connection with these services, NSCC also provides the NSCC Guaranty pursuant to Addendum K of the NSCC Rules.

OCC's Rules provide that delivery of, and payment for, securities underlying certain exercised stock options and matured single stock futures that are physically settled are generally effected through the facilities of NSCC and are not settled through OCC's facilities.[15] OCC and NSCC executed the Existing Accord to facilitate, via NSCC's systems, the physical settlement of securities arising out of options and futures cleared by OCC. OCC Clearing Members that clear and settle physically-settled options and futures transactions through OCC also are required under OCC's Rules [16] to be Members of NSCC or to have appointed or nominated a Member of NSCC to act on its behalf. As noted above, these firms are referred to as ''Common Members'' in the Existing Accord.

Summary of the Existing Accord

The Existing Accord governs the transfer between OCC and NSCC of responsibility for settlement obligations that involve a delivery and receipt of stock in the settlement of physically-settled options and futures that are cleared and settled by OCC and for which the underlying securities are eligible for clearing through the facilities of NSCC (''E&A/Delivery Transactions''). It also establishes the time when OCC's settlement guarantee (the ''OCC Guaranty'') ends and NSCC's settlement guarantee (the ''NSCC Guaranty'') [17] begins with respect to E&A/Delivery Transactions. However, in

[10] *See* Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation) of the NSCC Rules, *supra* note 6.

[11] A firm that is both an OCC Clearing Member and an NSCC Member or is an OCC Clearing Member that has designated an NSCC Member to act on its behalf is referred to herein as a ''Common Member.'' The term ''Clearing Member'' as used herein has the meaning provided in OCC's By-Laws. *See* OCC By-Laws, *supra,* note 6. The term ''Member'' as used herein has the meaning provided in the NSCC Rules. *See* NSCC Rules, *supra* note 6.

[12] OCC provided its analysis of the financial impact of alternate means of settlement as an exhibit to the OCC Filings.

[13] *See* Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation) of the NSCC Rules, *supra* note 6.

[14] *See* Rule 8 (Balance Order and Foreign Security Systems) and Procedure V (Balance Order Accounting Operation) of the NSCC Rules, *supra* note 6.

[15] *See* Chapter IX of OCC's Rules (Delivery of Underlying Securities and Payment), *supra* note 8.

[16] *See* OCC Rule 901, *supra* note 8.

[17] *See* Addendum K and Procedure III of the NSCC Rules, *supra* note 6.

the case of a Common Member default [18] NSCC can reject these settlement obligations, in which case the settlement guaranty would not transfer from OCC to NSCC and OCC would not have a right to settle the transactions through the facilities of NSCC. Instead, OCC would have to engage in alternative methods of settlement that have the potential to create significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members.[19] More specifically, this could involve broker-to-broker settlement between OCC Clearing Members.[20] This settlement method is operationally complex because it requires bilateral coordination directly between numerous Clearing Members rather than relying on NSCC to facilitate multilateral netting to settle the relevant settlement obligations. As described above, it also potentially could result in significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members because the transactions would not be netted through the facilities of NSCC. Alternatively, where NSCC accepts the E&A/Delivery Transactions from OCC, the OCC Guaranty ends and the NSCC Guaranty takes effect. The transactions are then netted through NSCC's systems, which allows settlement obligations for the same settlement date to be netted into a single deliver or receive obligation. This netting reduces the costs associated with securities transfers by reducing the number of securities movements required for settlement and further reduces operational and market risk. The benefits of such netting by NSCC may be significant with respect to the large volumes of E&A/Delivery Transactions processed during monthly options expiry periods.

Pursuant to the Existing Accord, on each trading day NSCC delivers to OCC a file that identifies the securities, including stocks, exchange-traded funds and exchange-traded notes, that are eligible (1) to settle through NSCC and (2) to be delivered in settlement of (i) exercises and assignments of stock options cleared and settled by OCC or (ii) delivery obligations from maturing stock futures cleared and settled by OCC. OCC, in turn, delivers to NSCC a file identifying securities to be delivered, or received, for physical settlement in connection with OCC transactions.[21]

After NSCC receives the list of eligible transactions from OCC and NSCC has received all required deposits to the NSCC Clearing Fund from all Common Members taking into consideration amounts required to physically settle the OCC transactions, the OCC Guaranty would end and the NSCC Guaranty would begin with respect to physical settlement of the eligible OCC-related transactions.[22] At this point, NSCC is solely responsible for settling the transactions.[23]

Each day, NSCC is required to promptly notify OCC at the time the NSCC Guaranty takes effect. If NSCC rejects OCC's transactions due to an improper submission [24] or if NSCC ''ceases to act'' for a Common Member,[25] NSCC's Guaranty would not take effect for the affected transactions pursuant to the NSCC Rules.

NSCC is required to promptly notify OCC if it ceases to act for a Common Member. Upon receiving such a notice, OCC would not continue to submit to NSCC any further unsettled transactions that involve such Common Member, unless authorized representatives of both OCC and NSCC otherwise consent. OCC would, however, deliver to NSCC a reversal file containing a list of all transactions that OCC already submitted to NSCC and that involve such Common Member. The NSCC Guaranty ordinarily would not take effect with respect to transactions for a Common Member for which NSCC has ceased to act, unless both Clearing Agencies agree otherwise. As such, NSCC does not have any existing contractual obligation to guarantee such Common Member's transactions. To the extent the NSCC Guaranty does not take effect, OCC's Guaranty would continue to apply, and, as described above, OCC would remain responsible for effecting the settlement of such Common Member's transactions pursuant to OCC's By-Laws and Rules.

As noted above, the Existing Accord does provide that the Clearing Agencies may agree to permit additional transactions for a Common Member default (''Defaulted NSCC Member Transactions'') to be processed by NSCC while subject to the NSCC Guaranty. This optional feature, however, creates uncertainty for the Clearing Agencies and market participants about how Defaulted NSCC Member Transactions may be processed following a Common Member default, and also does not provide NSCC with the ability to collect collateral from OCC that it may need to close out these additional transactions. While the optional feature would remain in the agreement as part of this proposal, the proposed changes to the Existing Accord, as described below, could significantly reduce the likelihood that it would be utilized.

Proposed Phase 1 Changes

The proposed changes to the Existing Accord would permit OCC to make a cash payment, referred to as the ''Guaranty Substitution Payment'' or ''GSP,'' to NSCC. This cash payment could occur on either or both of the day that the Common Member becomes a Mutually Suspended Member and on the next business day. Upon NSCC's receipt of the Guaranty Substitution Payment from OCC, the NSCC Guaranty

[18] A Common Member that has been suspended by OCC or for which NSCC has ceased to act is referred to as a ''Mutually Suspended Member.''

[19] For example, OCC evaluated certain Clearing Member default scenarios in which OCC assumed that NSCC would not accept the settlement obligations under the Existing Accord, including the default of a large Clearing Member coinciding with a monthly options expiration. OCC has estimated that in such a Clearing Member default scenario, the aggregate liquidity burden on OCC in connection with obligations having to be settled on a gross broker-to-broker basis could reach a significantly high level. For example, in January 2022, the largest gross broker-to-broker settlement amount in the case of a larger Clearing Member default would have resulted in liquidity needs of approximately $384,635,833,942. OCC provided the data and analysis as an exhibit to the OCC Filings.

[20] In broker-to-broker settlement, Clearing Member parties are responsible for coordinating settlement—delivery and payment—among themselves on a transaction-by-transaction basis. Once transactions settle, the parties also have an obligation to affirmatively notify OCC so that OCC can close out the transactions. If either one of or both of the parties do not notify OCC, the transaction would remain open on OCC's books indefinitely until the time both parties have provided notice of settlement to OCC.

[21] Each day that both OCC and NSCC are open for accepting trades for clearing is referred to as an ''Activity Date'' in the Existing Accord. Securities eligible for settlement at NSCC are referred to collectively as ''Eligible Securities'' in the Existing Accord. Eligible securities are settled at NSCC through NSCC's CNS Accounting Operation or NSCC's Balance Order Accounting Operation.

[22] The term ''NSCC Clearing Fund'' as used herein has the same meaning as the term ''Clearing Fund'' as provided in the NSCC Rules. Procedure XV of the NSCC Rules provides that all NSCC Clearing Fund requirements and other deposits must be made within one hour of demand, unless NSCC determines otherwise, *supra* note 6.

[23] This is referred to in the Existing Accord as the ''Guaranty Substitution Time,'' and the process of the substitution of the NSCC Guaranty for the OCC Guaranty with respect to E&A/Delivery Transactions is referred to as ''Guaranty Substitution.''

[24] Guaranty Substitution by NSCC (discussed further below) does not occur with respect to an E&A/Delivery Transaction that is not submitted to NSCC in the proper format or that involves a security that is not identified as an Eligible Security on the then-current NSCC Eligibility Master File.

[25] Under NSCC's Rules, a default would generally be referred to as a ''cease to act'' and could encompass a number of circumstances, such as an NSCC Member's failure to make a Required Fund Deposit in a timely fashion. *See* NSCC Rule 46 (Restrictions on Access to Services), *supra* note 6. An NSCC Member for which it has ceased to act is referred to in the Existing Accord as a ''Defaulting NSCC Member.'' Transactions associated with a Defaulting NSCC Member are referred to as ''Defaulted NSCC Member Transactions'' in the Existing Accord.

would take effect for the Common Member's transactions, and they would be accepted by NSCC for clearance and settlement.[26] OCC could use all Clearing Member contributions to the OCC Clearing Fund[27] and certain Margin Assets[28] of a defaulted Clearing Member to pay the GSP, as described in more detail below.

NSCC would calculate the Guaranty Substitution Payment as the sum of the Mutually Suspended Member's unpaid required deposit to the NSCC Clearing Fund (''Required Fund Deposit'')[29] and the unpaid Supplemental Liquidity Deposit[30] obligation that is attributable to E&A/Delivery Transactions. The proposed changes to the Existing Accord define how NSCC would calculate the Guaranty Substitution Payment.

More specifically, NSCC would first determine how much of the member's unpaid Clearing Fund requirement would be included in the GSP. NSCC would look at the day-over-day change in gross market value of the Mutually Suspended Member's positions as well as day-over-day change in the member's NSCC Clearing Fund requirements. Based on such changes, NSCC would identify how much of the change in the Clearing Fund requirement was attributable to E&A/Delivery Transactions coming from OCC. If 100 percent of the day-over-day change in the NSCC Clearing Fund requirement is attributable to activity coming from OCC, then the GSP would include 100 percent of the member's NSCC Clearing Fund requirement. If less than 100 percent of the change is attributable to activity coming from OCC, then the GSP would include that percent of the member's unpaid NSCC Clearing Fund requirement attributable to activity coming from OCC. NSCC would then determine the portion of the member's unpaid SLD obligation that is attributable to E&A/Delivery Transactions. As noted above, the GSP would be the sum of these two amounts. A member's NSCC Clearing Fund requirement and SLD obligation at NSCC are designed to address the credit and liquidity risks that a member poses to NSCC. The GSP calculation is intended to assess how much of a member's obligations arise out of activity coming from OCC so that the amount paid by OCC is commensurate with the risk to NSCC of guarantying such activity.

To permit OCC to anticipate the potential resources it would need to pay the GSP for a Mutually Suspended Member, each business day, NSCC would provide OCC with (1) Required Fund Deposit and Supplemental Liquidity Deposit obligations, as calculated pursuant to the NSCC Rules, and (2) the gross market value of the E&A/Delivery Transactions and the gross market value of total Net Unsettled Positions (as such term is defined in the NSCC Rules). On options expiry days that fall on a Friday, NSCC would also provide OCC with information regarding liquidity needs and resources, and any intraday SLD requirements of Common Members. Such information would be delivered pursuant to the ongoing information sharing obligations under the Existing Accord (as proposed to be amended) and the Service Level Agreement (''SLA'') to which both NSCC and OCC are a party pursuant to Section 2 of the Existing Accord.[31] The SLA addresses specifics regarding the time, form, and manner of various required notifications and actions described in the Accord and also includes information applicable under the Accord.

NSCC and OCC believe the proposed calculation of the Required Fund Deposit portion of the GSP is appropriate because it is designed to provide a reasonable proxy for the impact of the Mutually Suspended Member's E&A/Delivery Transactions on its Required Fund Deposit. While impact study data did show that the proposed calculation could result in a GSP that overestimates or underestimates the Required Fund Deposit attributable to the Mutually Suspended Member's E&A/Delivery Transactions,[32] current technology constraints prohibit NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member.[33]

Implementing the ability for OCC to make the GSP and cause the E&A/Delivery Transactions to be cleared and settled through NSCC would promote the ability of OCC and NSCC to be efficient and effective in meeting the requirements of the markets they serve. This is because data demonstrates that the expected size of the GSP would be smaller than the amount of cash that would otherwise be needed by OCC and its Clearing Members to facilitate settlement outside of NSCC. More specifically, based on a historical study of alternate means of settlement available to OCC from September 2021 through September 2022, in the event that NSCC did not accept E&A/Delivery Transactions, the worst-case scenario peak liquidity need OCC identified was $384,635,833,942 for settlement to occur on a gross broker-to-broker basis. OCC estimates that the corresponding GSP in this scenario would have been $863,619,056. OCC also analyzed several other large liquidity demand amounts that were identified during the study if OCC effected settlement on a gross broker-to-broker basis.[34] These liquidity demand amounts and the largest liquidity demand amount OCC observed of $384,635,833,942 substantially exceed the amount of liquid resources currently available to OCC.[35] By contrast, projected GSPs identified during the study ranged from $419,297,734 to $6,281,228,428. For each of these projected GSP amounts, OCC observed that the Margin Assets and OCC Clearing Fund contributions that would have been required of Clearing Members in these scenarios would have been sufficient to satisfy the amount of the projected GSPs.

To help address the current technology constraint that prohibits NSCC from performing a precise calculation of the GSP on a daily basis

[26] Acceptance of such transactions by NSCC would be subject to NSCC's standard validation criteria for incoming trades. *See* NSCC Rule 7, *supra* note 6.

[27] The term ''OCC Clearing Fund'' as used herein has the same meaning as the term ''Clearing Fund'' in OCC's By-Laws, *supra* note 8.

[28] The term ''Margin Assets'' as used herein has the same meaning as provided in OCC's By-Laws, *supra* note 8.

[29] The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules, *see supra* note 6.

[30] Under the NSCC Rules, NSCC collects additional cash deposits from those Members who would generate the largest settlement debits in stressed market conditions, referred to as ''Supplemental Liquidity Deposits'' or ''SLD.'' *See* Rule 4A of the NSCC Rules, *supra* note 6.

[31] NSCC provided a draft of the revised SLA for Phase 1 to the Commission as confidential Exhibit 3E to this filing.

[32] The impact study was conducted at the Commission's request to cover a three-day period and reviewed the ten Common Members with the largest Required Fund Deposits attributable to the Mutually Suspended Member's E&A/Delivery Transactions. Over the 30 instances in the study, approximately 15 instances resulted in an underestimate of the Required Fund Deposit by an average of approximately $112,900,926, four instances where the proxy calculation was the same as the Required Fund Deposit, and eleven instances of an overestimate of the Required Fund Deposit by an average of approximately $59,654,583. NSCC filed additional detail related to the referenced study in confidential Exhibit 3A of this filing.

[33] OCC and NSCC agreed that performing the necessary technology build during Phase 1 would delay the implementation of Phase 1 of this proposal. NSCC would incorporate those technology updates in connection with Phase 2 of this proposal.

[34] OCC filed additional detail related to the referenced study as an exhibit to the OCC Filings.

[35] As of September 30, 2023, OCC held approximately $12.37 billion in qualifying liquid resources. *See OCC Quantitative Disclosure,* July–September 2023, *available at www.theocc.com/risk-management/pfmi-disclosures.*

for every Common Member, proposed Section 6(b)(i) of the Existing Accord and related Section 7(d) of the SLA would provide that with respect to a Mutually Suspended Member, either NSCC or OCC may require that the Required Fund Deposit portion of the GSP be re-calculated by calculating the Required Fund Deposit for the Mutually Suspended Member both before and after the delivery of the E&A/Delivery Transactions and utilize the precise amount that is attributable to that activity in the final GSP. If such a recalculation is required, the result would replace the Required Fund Deposit component of the GSP that was initially calculated. The SLD component of the GSP would be unchanged by such recalculation.

As the above demonstrates, the GSP is intended to address the significant collateral and liquidity requirements that could be required of OCC Clearing Members in the event of a Common Member default. Allowing OCC to make a GSP payment also is intended to allow for settlement processing to take place through the facilities of NSCC to retain operational efficiencies associated with the settlement process. Alternative settlement means such as broker-to-broker settlement add operational burdens because transactions would need to be settled individually on one-off bases. In contrast, NSCC's netting reduces the volume and value of settlement obligations that would need to be closed out in the market.[36] Because the clearance and settlement of obligations through NSCC's facilities following a Common Member default, including netting of E&A/Delivery Transactions with a Common Member's positions at NSCC, would avoid these potentially significant operational burdens for OCC and its Clearing Members, OCC and NSCC believe that the proposed changes would limit market disruption relating to a Common Member default. NSCC netting significantly reduces the total number of obligations that require the exchange of money for settlement. Allowing more activity to be processed through NSCC's netting systems would minimize risk associated with the close out of those transactions following the default of a Common Member.

Amending the Existing Accord to define the terms and conditions under which Guaranty Substitution may occur, at OCC's election, with respect to Defaulted NSCC Member Transactions *after* a Common Member becomes a Mutually Suspended Member would also provide more certainty to both the Clearing Agencies and market participants generally about how a Mutually Suspended Member's Defaulted NSCC Member Transactions may be processed.

NSCC and OCC have agreed it is appropriate to limit the availability of the proposed provision to the day of the Common Member default and the next business day because, based on historical simulations of cease to act events involving Common Members, most activity of a Mutually Suspended Member is closed out on those days.[37] Furthermore, the benefits of netting through NSCC's systems would be reduced for any activity submitted to NSCC after that time.

To implement the proposed Phase 1 changes to the Existing Accord, OCC and NSCC propose to make the following changes.

Section 1—Definitions

First, new definitions would be added, and existing definitions would be amended in Section 1, which is the Definitions section.

The new defined terms would be as follows.

- The term ''Close Out Transaction'' would be defined to mean ''the liquidation, termination or acceleration of one or more exercised or matured Stock Options[38] or Stock Futures[39] contracts, securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, master netting agreements or similar agreements of a Mutually Suspended Member pursuant to OCC Rules 901, 1006 and 1101 through 1111 (including but not limited to Rules 1104 and 1107) and/or NSCC Rule 18.'' This proposed definition would make it clear that the payment of the Guaranty Substitution Payment and NSCC's subsequent acceptance of Defaulted NSCC Member Transactions for clearance and settlement are intended to fall within the ''safe harbors'' provided in the Bankruptcy Code,[40] the Securities Investor Protection Act,[41] and other similar laws.
- The term ''Guaranty Substitution Payment'' would be defined to mean ''an amount calculated by NSCC in accordance with the calculations set forth in Appendix A [to the Existing Accord (as proposed to be amended)], to include two components: (i) a portion of the Mutually Suspended Member's Required Fund Deposit deficit to NSCC at the time of the cease to act; and (ii) a portion of the Mutually Suspended Member's unpaid Supplemental Liquidity Deposit obligation at the time of the cease to act.''
- The term ''Mutually Suspended Member'' would mean ''any OCC Participating Member[42] that has been suspended by OCC that is also an NSCC Participating Member[43] for which NSCC has ceased to act.''
- The term ''Required Fund Deposit'' would have the meaning ''provided in Rule 4 of NSCC's Rules and Procedures (or any replacement or substitute rule), the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.''
- The term ''Supplemental Liquidity Deposit'' would have the meaning ''provided in Rule 4A of NSCC's Rules and Procedures (or any replacement or substitute rule), the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.''

The defined terms that would be amended in Section 1 of the Existing Accord are as follows.

- The definition for the term ''E&A/Delivery Transaction'' generally contemplates a transaction that involves a delivery and receipt of stock in the settlement of physically-settled options

[36] CNS reduces the value of obligations that require financial settlement by approximately 98%, where, for example $519 trillion in trades could be netted down to approximately $9 trillion in net settlements.

[37] OCC filed data regarding simulated events as an exhibit to the OCC Filings.

[38] The term ''Stock Options'' is defined in the Existing Accord within the definition of ''Eligible Securities'' and refers to options issued by OCC.

[39] The term ''Stock Futures'' is defined in the Existing Accord within the definition of ''Eligible Securities'' and refers to stock futures contracts cleared by OCC.

[40] 11 U.S.C. 101 *et seq.,* including §§ 362(b)(6), (7), (17), (25) and (27) (exceptions to the automatic stay), §§ 546(e)–(g) and (j) (limitations on avoiding powers), and §§ 555–556 and 559–562 (contractual right to liquidate, terminate or accelerate certain contracts).

[41] 15 U.S.C. 78aaa–lll, including § 78eee(b)(2)(C) (exceptions to the stay).

[42] The term ''OCC Participating Member'' is defined in the Existing Accord to mean ''(i) a Common Member; (ii) an OCC Clearing Member that is an 'Appointing Clearing Member' (as defined in Article I of OCC's By-Laws) and has appointed an Appointed Clearing Member that is an NSCC Member to effect settlement of E&A/Delivery Transactions through NSCC on the Appointing Clearing Member's behalf; (iii) an OCC Clearing Member that is an Appointed Clearing Member; or (iv) a Canadian Clearing Member.'' No changes are proposed to this definition.

[43] The term ''NSCC Participating Member'' is defined in the Existing Accord to mean ''(i) a Common Member; (ii) an NSCC Member that is an 'Appointed Clearing Member' (as defined in Article I of OCC's By-Laws); or (iii) [Canadian Depository for Securities Limited or ''CDS'']. For the avoidance of doubt, the Clearing Agencies agree that CDS is an NSCC Member for purposes of this Agreement.'' No changes are proposed to this definition.

and futures that are cleared and settled by OCC and for which the underlying securities are eligible for clearing through the facilities of NSCC. The definition would be amended to make clear that it would apply in respect of a ''Close Out Transaction'' of a ''Mutually Suspended Member'' as those terms are proposed to be defined (described above).

- The definition for the term ''Eligible Securities'' generally contemplates the securities that are eligible to be used for physical settlement under the Existing Accord. The term would be modified to clarify that this may include, for example, equities, exchange-traded funds and exchange-traded notes that are underlying securities for options issued by OCC.

Section 6—Default by an NSCC Participating Member or OCC Participating Member

Section 6 of the Existing Accord provides that NSCC is required to provide certain notice to OCC in circumstances in which NSCC has ceased to act for a Common Member. Currently, Section 6(a)(ii) of the Existing Accord also requires NSCC to notify OCC if a Common Member has failed to satisfy its Clearing Fund obligations to NSCC, but for which NSCC has not yet ceased to act. In practice, this provision would trigger a number of obligations (described below) when a Common Member fails to satisfy its NSCC Clearing Fund obligations for any reason, including those due to an operational delay. Therefore, OCC and NSCC are proposing to remove the notification requirement under Section 6(a)(ii) from the Existing Accord. Under Section 7(d) of the Existing Accord, NSCC and OCC are required to provide each other with general surveillance information regarding Common Members, which includes information regarding any Common Member that is considered by the other party to be in distress. Therefore, if a Common Member has failed to satisfy its NSCC Clearing Fund obligations and NSCC believes this failure is due to, for example, financial distress and not, for example, due to a known operational delay, and NSCC has not yet ceased to act for that Common Member, such notification to OCC would still occur but would be done pursuant to Section 7(d) of the Existing Accord (as proposed to be amended), and not Section 6(a)(ii). Notifications under Section 6 of the Existing Accord (as proposed to be amended) would be limited to instances when NSCC has actually ceased to act for a Common Member pursuant to the NSCC Rules.[44]

Following notice by NSCC that it has ceased to act for a Common Member, OCC is obligated in turn to deliver to NSCC a list of all E&A/Delivery Transactions (excluding certain transactions for which Guaranty Substitution does not occur) involving the Common Member.[45] This provision would be amended to clarify that it applies in respect of such E&A/Delivery Transactions for the Common Member for which the NSCC Guaranty has not yet attached—meaning that Guaranty Substitution has not yet occurred.

As described above in the summary of the Existing Accord, where NSCC has ceased to act for a Common Member, the Existing Accord refers to the Common Member as the Defaulting NSCC Member and also refers to the relevant E&A/Delivery Transactions in connection with that Defaulting NSCC Member for which a Guaranty Substitution has not yet occurred as Defaulted NSCC Member Transactions.

If the Defaulting NSCC Member is also suspended by OCC, it would be covered by the proposed definition that is described above for a Mutually Suspended Member. For such a Mutually Suspended Member, the proposed changes in Section 6(b) would provide that NSCC, by a time agreed upon by the parties, would provide OCC with the amount of the Guaranty Substitution Payment as calculated by NSCC and related documentation regarding the calculation. The Guaranty Substitution Payment would be calculated pursuant to NSCC's Rules as that portion of the unmet Required Fund Deposit[46] and Supplemental Liquidity Deposit[47] obligations of the Mutually Suspended Member attributable to the Defaulted NSCC Member Transactions. By a time agreed upon by the parties,[48] OCC would then be required to either notify NSCC of its intent to make the full amount of the Guaranty Substitution Payment to NSCC or notify NSCC that it will not make the Guaranty Substitution Payment. If OCC makes the full amount of the Guaranty Substitution Payment, NSCC's guaranty would take effect at the time of NSCC's receipt of that payment and the OCC Guaranty would end.

The proposed changes would further provide that if OCC does not suspend the Common Member (such that the Common Member would therefore not meet the proposed definition of a Mutually Suspended Member) or if OCC elects to not make the full amount of the Guaranty Substitution Payment to NSCC, then all of the Defaulted NSCC Member Transactions would be exited from NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation, as applicable, and Guaranty Substitution would not occur in respect thereof. Therefore, NSCC would continue to have no obligation to guarantee or settle the Defaulted NSCC Member Transactions, and the OCC Guaranty would continue to apply to them pursuant to OCC's By-Laws and Rules.[49]

Proposed changes to the Existing Accord would also address the application of any Guaranty Substitution Payment by NSCC. Specifically, new Section 6(d) would provide that any Guaranty Substitution Payment made by OCC may be used by NSCC to satisfy any liability or obligation of the Mutually Suspended Clearing Member to NSCC on account of transactions involving the Mutually Suspended Clearing Member for which the NSCC Guaranty applies and to the extent that any amount of assets otherwise held by NSCC for the account of the Mutually Suspended Member (including any Required Fund Deposit or Supplemental Liquidity Deposit) are insufficient to satisfy its obligations related to transactions for which the NSCC Guaranty applies. Proposed changes to Section 6(d) would further provide for the return to OCC of any unused portion of the GSP. With regard to the portion of the Guaranty Substitution Payment that corresponds to a member's Supplemental Liquidity Deposit obligation, NSCC must return any unused amount to OCC within fourteen (14) days following the conclusion of NSCC's settlement, close-out and/or liquidation. With regard to the portion of the Guaranty Substitution Payment that corresponds to a Required

[44] *See* Rule 46 (Restrictions on Access to Services) of the NSCC Rules, *supra* note 6.

[45] The section of the Existing Accord that addresses circumstances in which NSCC ceases to act and/or an NSCC Member defaults is currently part of Section 6(a). It would be re-designated as Section 6(b) for organizational purposes.

[46] The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules, *see supra* note 6.

[47] The Supplemental Liquidity Deposit is calculated pursuant to Rule 4A (Supplemental Liquidity Deposits) of the NSCC Rules, *see supra* note 6.

[48] The time by which OCC would be required to notify NSCC of its intent would be defined in the Service Level Agreement. As of the time of this filing, the parties intend to set that time as one hour after OCC's receipt of the calculated Guaranty Substitution Payment from NSCC.

[49] Under the current and proposed terms of the Existing Accord, NSCC would be permitted to voluntarily guaranty and settle the Defaulted NSCC Member Transactions.

Fund Deposit, NSCC must return any unused amount to OCC under terms agreed to by the parties.[50]

Other Proposed Changes as Part of Phase 1

Certain other technical changes are also proposed to the Existing Accord to conform it to the proposed changes described above. For example, the preamble and the ''whereas'' clauses in the Preliminary Statement would be amended to clarify that the agreement is an amended and restated agreement and to summarize that the agreement would be modified to contemplate the Guaranty Substitution Payment structure. Section 1(c), which addresses the terms in the Existing Accord that are defined by reference to NSCC's Rules and Procedures and OCC's By-Laws and Rules would be modified to state that such terms would have the meaning then in effect at the time of any transaction or obligation that is covered by the agreement rather than stating that such terms have the meaning given to them as of the effective date of the agreement. This change is proposed to help ensure that the meaning of such terms in the agreement will not become inconsistent with the meaning in the NSCC Rules and/or OCC By-Laws and Rules, as they may be modified through proposed rule changes with the Commission.

Technical changes would be made to Sections 3(d) and (e) of the Existing Accord to provide that those provisions would not apply in the event new Section 6(b) described above, is triggered. Section 3(d) generally provides that OCC will no longer submit E&A/Delivery Transactions to NSCC involving a suspended OCC Participating Member.[51] Similarly, Section 3(e) generally provides that OCC will no longer submit E&A/Delivery Transactions to NSCC involving an NSCC Participating Member[52] for which NSCC has ceased to act. A proposed change would also be made to Section 5 of the Existing Accord to modify a reference to Section 5 of Article VI of OCC's By-Laws to instead provide that the updated cross-reference should be to Chapter IV of OCC's Rules.

Section 5 would also be amended to clarify that Guaranty Substitution occurs when NSCC has received both the Required Fund Deposit and Supplemental Liquidity Deposit, as calculated by NSCC in its sole discretion, from Common Members. The addition of the collection of the Supplemental Liquidity Deposit to the definition of the Guaranty Substitution Time in this Section 5 would reflect OCC and NSCC's agreement that both amounts are components of the Guaranty Substitution Payment (as described above) and would make this definition consistent with that agreement.

In Section 7 of the Existing Accord, proposed changes would be made to provide that NSCC would provide to OCC information regarding a Common Member's Required Fund Deposit and Supplemental Liquidity Deposit obligations, to include the Supplemental Liquidity Deposit obligation in this notice requirement, and additionally that NSCC would provide OCC with information regarding the potential Guaranty Substitution Payment for the Common Member. On an options expiration date that is a Friday, NSCC would, by close of business on that day, also provide to OCC information regarding the intra-day liquidity requirement, intra-day liquidity resources and intra-day calls for a Common Member that is subject to a Supplemental Liquidity Deposit at NSCC.

Finally, Section 14 of the Existing Accord would be modernized to provide that notices between the parties would be provided by email rather than by hand, overnight delivery service or first-class mail.

Proposed Phase 1 Changes to NSCC Rules

In connection with the proposed changes to the Existing Accord, NSCC is also proposing changes to its Rules, described below.

First, NSCC would amend Rule 18 (Procedures for When the Corporation Ceases to Act), which describes the actions NSCC would take with respect to the transactions of a Member after NSCC has ceased to act for that Member.[53] The proposed changes would include a new Section 9(a) to specify that following a Member default, NSCC may continue to act and provide the NSCC Guaranty pursuant to a ''Close-Out Agreement'' such as the Existing Accord (as it is proposed to be amended);[54] a new Section 9(b) to specify that any transactions undertaken pursuant to a Close-Out Agreement would be treated as having been received, provided or undertaken for the account of the Member for which NSCC has ceased to act, but that any deposit, payment, financial assurance or other accommodation provided to NSCC pursuant to a Close-Out Agreement shall be returned or released as provided for in the agreement; and a new Section 9(c), to provide that NSCC shall have a lien upon, and may apply, any property of the defaulting Member in satisfaction of any obligation, liability or loss that relates to a transaction undertaken or service provided pursuant to a Close-Out Agreement.

NSCC would also propose clarifications to Sections 4, 6(b)(iii)(B) and 8 to use more precise references to the legal entity described in those sections of this Rule.

Second, NSCC would amend Section B of Procedure III and Addendum K of the NSCC Rules[55] to provide that the NSCC Guaranty would not attach to Defaulted NSCC Member Transactions except as provided for in the Existing Accord (as it is proposed to be amended), and that the NSCC Guaranty attaches, with respect to obligations arising from the exercise or assignment of OCC options settled at NSCC or stock futures contracts cleared by OCC, as provided for in the Existing Accord (as it is proposed to be amended) or other arrangement with OCC. Finally, the proposed changes to Procedure III would clarify that Guaranty Substitution occurs when NSCC has received both the Required Fund Deposit and Supplemental Liquidity Deposit, consistent with the proposed revisions to Section 5 of the Current Accord, described above. As noted above, the proposal to include the collection of the Supplemental Liquidity Deposit in connection with the Guaranty Substitution reflect OCC and NSCC's agreement that both amounts are components of the Guaranty Substitution Payment. NSCC also proposes to make a number of non-substantive clean up changes to Procedure III, such as correcting references to NSCC's ''guaranty.''

Collectively, these proposed changes would establish and clarify the rights of both NSCC and a Member for which NSCC has ceased to act with respect to property held by NSCC and the operation and applicability of any Close-Out Agreement, and would make it clear that any payments received pursuant to a Close-Out Agreement and NSCC's acceptance of a Mutually

[50] Such amounts would be returned to OCC as appropriate and in accordance with a Netting Contract and Limited Cross-Guaranty, by and among The Depository Trust Company, Fixed Income Clearing Corporation, NSCC and OCC, dated as of January 1, 2003, as amended.

[51] *See supra* note 42 defining OCC Participating Member.

[52] *See supra* note 43 defining NSCC Participating Member.

[53] *See supra* note 6.

[54] The Existing Accord is currently the only agreement that would be considered a ''Close-Out Agreement'' under this new Section 9(b).

[55] *See id.*

Suspended Member's transactions for clearance and settlement pursuant to a Close-Out Agreement are intended to fall within the Bankruptcy Code and Securities Investor Protection Act ''safe harbors.''

Proposed Phase 2 Changes

On February 15, 2023, the Commission adopted amendments to Rule 15c6–1(a) under the Act [56] to shorten the standard settlement cycle for most broker-dealer transactions in securities from T+2 to T+1. In doing so, the Commission stated that a shorter settlement cycle ''can promote investor protection, reduce risk, and increase operational and capital efficiency.'' [57] Moreover, the Commission stated that delaying the move to a shorter settlement cycle would ''allow undue risk to continue to exist in the U.S. clearance and settlement system'' [58] and that it ''believes that the May 28, 2024, compliance date will help ensure that market participants have sufficient time to implement the changes necessary to reduce risk, such as risks associated with the potential for increases in settlement fails.'' [59] The Phase 2 changes proposed herein serve those risk reduction objectives related to securities settlements by endeavoring to limit market disruption following a Common Member default. The proposed changes would allow OCC to provide certain assurances with respect to its ability to make a GSP in the event of a Common Member default to NSCC in a shortened settlement cycle, which would permit NSCC to begin processing E&A/Delivery Transactions prior to Guaranty Substitution occurring. This, in turn, would promote settlement through NSCC that is less operationally complex and would be expected to require less collateral and liquidity from market participants than if OCC engaged in the alternative settlement processes discussed above.

To address the operational realities concerning the Accord that will result from the Commission's adoption and implementation of a new standard settlement cycle of T+1 pursuant to Rule 15c6–1(a) under the Act, OCC and NSCC are proposing Phase 2 changes to further modify the Accord after the T+1 settlement cycle becomes effective. As described in greater detail below, the Phase 2 changes would allow the GSP and other changes that are part of the Phase 1 changes to continue to function appropriately and efficiently in the new T+1 settlement environment. Because of the phased approach, a separate mark-up is provided in confidential Exhibit 4A of the Phase 2 changes against the Accord as modified through the Phase 1 changes.

As described in more detail below, shortening the settlement cycle to T+1 will require NSCC to process stock settlement obligations arising from E&A/Delivery Transactions one day earlier, *i.e.,* on the day after the trade date, than is currently the case. Moving processing times ahead by a full day will require processing to occur before the guaranty transfers from OCC to NSCC.[60]

In this new T+1 processing environment, the Phase 2 changes would limit market disruption following a Common Member default because the Phase 2 changes would allow OCC to provide certain assurances with respect to its ability to make a GSP in the event of a Common Member default to NSCC that would permit NSCC to begin processing the defaulting Common Member's E&A/Delivery Transactions prior to Guaranty Substitution occurring. This, in turn, would promote settlement through NSCC that is less operationally complex and would be expected to require less collateral and liquidity from market participants than if OCC engaged in alternative settlement processes. The specific changes included in Phase 2 are described below. The changes would facilitate the continued ability of the GSP to function in an environment with a shorter settlement cycle. These changes are generally designed to allow OCC to provide certain assurances with respect to its ability to make a GSP in the event of a Common Member default to NSCC that would permit NSCC to begin processing E&A/Delivery Transactions prior to Guaranty Substitution occurring by introducing new or amended terms and setting out the processes associated therewith. All of the descriptions below explain the changes to the Accord as they would be made after the Accord has already been modified through prior implementation of the proposed Phase 1 changes.

Section 1—Definitions

First, new definitions would be added, and existing definitions would be amended or removed in Section 1.

The new defined terms would be as follows.

- The term ''GSP Monitoring Data'' would be defined to mean a set of margin and liquidity-related data points provided by NSCC on each Activity Date prior to the submission of E&A/Delivery Transactions by OCC to be used for informational purposes at OCC and NSCC.
- The term ''Final Guaranty Substitution Payment'' would be defined to mean an amount calculated by NSCC for each Settlement Date in accordance with Appendix A to the Accord, to include two components: (i) a portion of the NSCC Participating Member's [61] Required Fund Deposit deficit to NSCC calculated as a difference between the Required Fund Deposit deficit calculated on the NSCC Participating Member's entire portfolio and the Required Fund Deposit deficit calculated on the NSCC Participating Member's portfolio prior to submission of the E&A/Delivery Transactions; and (ii) the portion of the NSCC Participating Member's unpaid Supplemental Liquidity Deposit obligation attributable to the additional activity to be guaranteed.
- The term ''Historical Peak Guaranty Substitution Payment'' would be defined to mean the largest Final Guaranty Substitution Payment for an NSCC Participating Member and its affiliates that are also NSCC Participating Members over the 12 months immediately preceding the Activity Date, to include two components: (i) the Required Fund Deposit deficits associated with E&A/Delivery Transactions based on peak historical observations of the largest NSCC Participating Member and its affiliates that are also NSCC Participating Members; and (ii) the Supplemental Liquidity Deposit obligations associated with E&A/Delivery Transactions based on peak historical observations as calculated in accordance with applicable NSCC or OCC Rules and procedures.
- The term ''Qualifying Liquid Resources'' would be defined to have the meaning provided by Rule 17Ad–22(a)(14) of the Exchange Act, 17 CFR 240.17Ad–22(a)(14), or any successor Rule under the Exchange Act.
- The term ''Settlement Date'' would be defined to mean the date on which an E&A/Delivery Transaction is designated to be settled through payment for, and delivery of, the Eligible Securities underlying the

[56] 17 CFR 240.15c6–1.

[57] Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872, 13873 (Mar. 6, 2023).

[58] *Id.* at 13881.

[59] *Id.* at 13917.

[60] Given the reduction in the settlement cycle and existing processes that must be completed for settlement, NSCC would not be able to safely compress its processing times further to allow processing to occur after the guaranty transfers from OCC to NSCC. NSCC provided proposed processing timelines in confidential Exhibit 3D to this filing.

[61] *See supra* note 43.

exercised Stock Option [62] or matured Stock Future,[63] as the case may be.

- The term ''Weekday Expiration'' would be defined to mean any expiration for which the options expiration date occurs on a date other than a Friday or for which the Settlement Date is any date other than the first business date following a weekend.
- The term ''Weekend Expiration'' would be defined to mean any expiration for which the options expiration date occurs on a Friday or for which the Settlement Date is the first business date following a weekend.

The defined term that would be removed in Section 1 is as follows.

- ''Guaranty Substitution Payment,'' which would be replaced by the new defined terms ''Final Guaranty Substitution Payment'' and ''Historical Peak Guaranty Substitution Payment.''

The defined terms that would be amended in Section 1 are as follows.

- The definition for the term ''Eligible Securities'' generally contemplates the securities that are eligible to be used for physical settlement under the Existing Accord. In Phase 2, the term would be modified to exclude any transactions settled through NSCC's Balance Order System and any security undergoing a voluntary corporate action that is being supported by NSCC's CNS system. This is because the processing of E&A/Delivery Transactions and potential reversals of such transactions under the Phase 2 changes would not be feasible under the anticipated operation of NSCC's CNS and Balance Order Accounting Operations under the shortened T+1 settlement cycle.

Section 3—Historical Peak Guaranty Substitution Payment

A new Section 3 would be added to describe the process by which OCC would send to NSCC evidence of sufficient funds to cover the Historical Peak Guaranty Substitution Payment. In particular, Section 3(a) would provide that on each Activity Date, at or before a time agreed upon by the Clearing Agencies (which may be modified on any given Activity Date with the consent of an authorized representative of OCC), NSCC will communicate to OCC the amount of the Historical Peak Guaranty Substitution Payment amount and the GSP Monitoring Data, which are to be used by OCC for informational purposes. The Historical Peak Guaranty Substitution Payment would reflect the largest GSP of the NSCC Participating Member and its affiliates over the prior twelve months and would be calculated based on the sum of the Required Fund Deposit deficits and Supplemental Liquidity Deposit associated with E&A/Delivery Transactions. Section 3(b) would provide that OCC would then submit to NSCC an acknowledgement of the Historical Peak Guaranty Substitution Payment amount and evidence that OCC has sufficient cash resources in the OCC Clearing Fund to cover the Historical Peak Guaranty Substitution Payment. Section 3(c) would provide that if OCC does not provide NSCC with evidence within the designated time period that it has sufficient cash resources in the OCC Clearing Fund to cover the Historical Peak Guaranty Substitution Payment on the Activity Date, OCC will immediately contact NSCC to escalate discussions to discuss potential exposures and determine, among other things, whether OCC has other qualifying liquidity resources available to satisfy such amount.

As described above, the Historical Peak Guaranty Substitution Payment is designed to serve as a reasonable proxy for the largest potential Final Guaranty Substitution Payment. Its purpose is to allow OCC to provide evidence that it likely will be able to satisfy the Final Guaranty Substitution Payment in the event of a Common Member default, which will provide NSCC with reasonable assurances such that NSCC can begin processing E&A/Delivery Transactions upon receipt and prior to the Guaranty Substitution occurring, which will minimize the probability of reversals in a default event in light of the shortened settlement cycle. The Historical Peak Guaranty Substitution Payment amount also will provide OCC with information that will allow OCC to include the amount of a potential GSP in its liquidity resource planning.

Section 6—Final Guaranty Substitution Payment; OCC's Commitment

A new Section 6 would be added to provide the process by which NSCC would communicate the amount of, and OCC would commit to pay, the Final Guaranty Substitution Payment. In particular, Section 6(a) would provide that on each Settlement Date (or each Saturday for Weekend Expirations), by no later than the time(s) agreed upon by NSCC and OCC, NSCC will communicate to OCC the Final Guaranty Substitution Payment for each Common Member calculated by NSCC. NSCC would make such calculation according to a calculation methodology described in a new Appendix A to the Accord. This calculation would represent the sum of the Required Fund Deposit [64] and the Supplemental Liquidity Deposit [65] for the Common Member. As with the Phase 1 Accord, payment of the Final Guaranty Substitution Payment would be contingent on the mutual suspension of the Common Member and payment of the Final Guaranty Substitution Payment would continue to be the means by which Guaranty Substitution may occur.

Section 6(b) would provide that, following NSCC's communication of the Final Guaranty Substitution Payment for each Common Member to OCC, and by no later than the agreed upon time, OCC must either (i) commit to NSCC that it will pay the Final Guaranty Substitution Payment in the event of a mutual suspension of a Common Member,[66] or (ii) notify NSCC that it will not have sufficient cash resources to pay the largest Final Guaranty Substitution Payment calculated for every Common Member. Section 6(b)(i) would further provide that for Weekday Expirations, OCC's submission of E&A/Delivery Transactions to NSCC would constitute OCC's commitment to pay the Final Guaranty Substitution Payment on the Settlement Date in the event of a mutual suspension of a Common Member.

Section 6(c) would provide that if OCC notifies NSCC that it will not have sufficient cash resources to pay the Final Guaranty Substitution Payment, NSCC may, in its sole discretion (i) reject or reverse all E&A/Delivery Transactions, or (ii) voluntarily accept E&A/Delivery Transactions subject to certain terms and conditions mutually agreed upon by NSCC and OCC.[67]

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[62] *See supra* note 38.

[63] *See supra* note 39.

[64] The Required Fund Deposit is the portion of the defaulted Common Member's Required Fund Deposit deficit to NSCC, calculated as a difference between the Required Fund Deposit deficit calculated on the entire portfolio and the Required Fund Deposit deficit calculated on the Common Member's portfolio prior to the submission of E&A/Delivery Transactions. The Phase 2 changes would refine the existing calculation methodology for the Required Fund Deposit in order to provide for a more accurate amount.

[65] If NSCC calculates a liquidity shortfall with respect to a defaulted Common Member, the Supplemental Liquidity Deposit is the portion of that shortfall that is attributable to the additional activity to be guaranteed.

[66] If OCC does not have sufficient cash to pay the Final GSP, then it must confirm for NSCC the availability of other qualifying liquid resources and the expecting timeline for converting such resources to cash.

[67] Such terms and conditions may include, but would not be limited to, OCC's agreement to (i) pay NSCC available cash resources in partial satisfaction of the Final Guaranty Substitution Payment; (ii) collect or otherwise source additional resources that would constitute NSCC Qualifying Liquid Resources to pay the full Final Guaranty Substitution Payment amount; and/or (iii) reimburse NSCC for any losses associated with closing out such E&A/Delivery Transactions.

Section 6(c) would also provide that any necessary reversals of E&A/Delivery Transactions shall be delivered by NSCC to OCC at such time and in such form as the Clearing Agencies agree.

Section 6(d) would provide that if, at any time after OCC has acknowledged the Historical Peak Guaranty Substitution Payment in accordance with proposed Section 3(b) of the Accord or committed to pay the Final Guaranty Substitution Payment in accordance with proposed Section 6(b) of the Accord, OCC has a reasonable basis to believe it will be unable to pay the Final Guaranty Substitution Payment, OCC will immediately notify NSCC.

Section 8—Default by an NSCC Participating Member or OCC Participating Member

Section 6(b)(i), which would be renumbered as Section 8(b)(i), would be amended to reflect the modified use of the Final Guaranty Substitution Payment in the event of a mutual suspension of a Common Member. Section 8(b)(i) would also be revised to remove the ability for OCC or NSCC to require that the Guaranty Substitution Payment be re-calculated in accordance with an alternative methodology. This would not be necessary under the calculation methodology used in the Phase 2 changes because the proposed methodology would result in a more accurate calculation. Section 8(b)(i) would further amend the Accord by providing NSCC with discretion to voluntarily accept Defaulted NSCC Member Transactions and assume the guaranty for such transactions, subject to certain terms and conditions mutually agreed upon by NSCC and OCC. The only remaining change to the Guaranty Substitution process from its operation under the Accord would be the shortened time duration under which OCC would elect (by way of its commitment) to make the Final Guaranty Substitution Payment and the timing under which the Guaranty Substitution would be processed in order to function in a T+1 environment.

In particular, Section 8(b)(i) would provide that, with respect to a Mutually Suspended Member, if OCC has committed to make the Final Guaranty Substitution Payment, it will make such cash payment in full by no later than the agreed upon time(s). Upon NSCC's receipt of the full amount of the Final Guaranty Substitution Payment, NSCC's Guaranty would attach (and OCC's Guaranty will no longer apply) to the Defaulted NSCC Member Transactions. NSCC would have no obligation to accept a Final Guaranty Substitution Payment and attach the NSCC Guaranty to any Defaulted NSCC Member Transactions for more than the Activity Date on which it has ceased to act for that Mutually Suspended Member and one subsequent Activity Date. If NSCC does not receive the full amount of the Final Guaranty Substitution Payment in cash by the agreed upon time, the Guaranty Substitution Time would not occur with respect to the Defaulted NSCC Member Transactions and Section 8(b)(ii), described below, would apply. NSCC would, however, have discretion to voluntarily accept Defaulted NSCC Member Transactions and assume the guaranty for such transactions, subject to certain terms and conditions mutually agreed upon by NSCC and OCC.

Section 6(b)(ii), which would be renumbered as Section 8(b)(ii), would also be amended to reflect the modified use of the Final Guaranty Substitution Payment in the event OCC continues to perform or does not make the Final Guaranty Substitution Payment. In particular, Section 8(b)(ii) would add an additional criterion of OCC not satisfying any alternative agreed upon terms for Guaranty Substitution to reflect this as an additional option under the Phase 2 changes. As amended, Section 8(b)(ii) would provide that if OCC does not suspend an OCC Participating Member for which NSCC has ceased to act, OCC does not commit to make the Final Guaranty Substitution Payment, NSCC does not receive the full amount of the Final Guaranty Substitution Payment in cash by the agreed upon time, or OCC does not satisfy any alternative agreed upon terms for Guaranty Substitution, Guaranty Substitution with respect to all Defaulted NSCC Member Transactions for that Activity Date will not occur, all Defaulted NSCC Member Transactions for that Activity Date will be reversed and exited from NSCC's CNS accounting system, and NSCC will have no obligation to guaranty or settle such Defaulted NSCC Member Transactions. NSCC may, however, exercise its discretion to voluntarily accept the Defaulted NSCC Member Transactions, and assume the guaranty for such transactions, subject to certain agreed upon terms and conditions.

Section 8(b) would also be modified to provide for escalated discussion between the Clearing Agencies in the event of an intraday NSCC Cease to Act and/or NSCC Participating Member Default, particularly to confirm that OCC has sufficient qualifying liquid resources to pay the projected Final Guaranty Substitution Payment for the Defaulting NSCC Member's projected E&A/Delivery Transactions based on information provided in GSP Monitoring Data for such Defaulting NSCC Member.

Conforming changes would also be made to Section 8(d) to reflect the use of the new defined term ''Final Guaranty Substitution Payment.''

Other Proposed Changes as Part of Phase 2

Certain other technical changes are also proposed as part of the Phase 2 changes, including to conform the Accord to the proposed changes described above. For example, Section 9(c) would be revised regarding information sharing to reflect the introduction of the Historical Peak and Final Guaranty Substitution Payments and the GSP Monitoring Data; Section 4(c)(ix) would be conformed to reflect the addition of ''Settlement Date'' as a defined term in Section 1; various sections would be renumbered and internal cross-references would be adjusted to reflect the addition of new sections proposed herein; correct current references throughout the Accord to ''NSCC Rules and Procedures'' would be changed to simply read ''the NSCC Rules;'' and various non-substantive textual changes would be made to increase clarity.

Section 4(a) would also be modified to reflect that the Eligibility Master Files referenced in that paragraph, which identify Eligible Securities to OCC, are described in the SLA between OCC and NSCC. Section 9(b) would be modified to include OCC's available liquidity resources, including Clearing Fund cash balances in the information OCC provides to NSCC and to specify that information will be provided on each Activity Date at an agreed upon time and in an agreed upon form by the Clearing Agencies. Finally, Section 16(b) would be modified to provide the correct current delivery address information for NSCC.

The Phase 2 changes would also include an Appendix A that would describe in detail the calculation methodology for the Guaranty Substitution Payment. This would provide the detailed technical calculation to determine each of the Mutually Suspended Member's Required Fund Deposit deficit and liquidity shortfall to NSCC. The full text of Appendix A is filed confidentially with the Commission in Exhibit 5B to this filing.

Phase 2 Guaranty Substitution Process Changes

As described above, the Phase 2 changes would modify the Guaranty

Substitution process to reflect the shortened time duration under which the Guaranty Substitution will be processed in order to function in a T+1 environment. Below is a description of how that process would operate. The actual process would be implemented pursuant to a modified SLA between the Clearing Agencies.[68] All times provided below are in Eastern Time and represent the latest time by which the specified action must occur unless otherwise agreed by the Clearing Agencies.

Weekend Expirations: On Friday (the Activity Date), NSCC would provide OCC with the Historical Peak GSP amount by 8:00 a.m. By 5:00 p.m. on Friday, OCC must acknowledge the Historical Peak GSP and provide evidence of OCC's Clearing Fund cash resources sufficient to cover that amount, following which NSCC would provide the Eligibility Master File by 5:45 p.m. By 1:00 a.m. on Saturday, OCC would then provide NSCC with the E&A/Delivery Transactions file and by 8:00 a.m. NSCC would provide OCC with the Final GSP, which OCC must commit to pay by 9:00 a.m. in the event of a mutual suspension of a Common Member.[69] By 8:00 a.m. Monday (the Settlement Date) if a cease to act is declared over the weekend (or the later of 10:00 a.m. or one hour after the cease to act is declared if declared on Monday), OCC must pay the Final GSP if there has been a mutual suspension of a Common Member. Finally, by 1:00 p.m. on Monday, OCC must provide reversals for the defaulted member's E&A/Delivery Transactions if OCC has not satisfied (or will not satisfy) the Final GSP.

Weekday Expirations: On the Activity Date, NSCC would provide OCC with the Historical Peak GSP amount by 8:00 a.m. By 5:00 p.m. on the Activity Date, OCC must acknowledge the Historical Peak GSP and provide evidence of its cash resources in the OCC Clearing Fund sufficient to cover that amount, following which NSCC would provide the Eligibility Master File by 5:45 p.m. By 1:00 a.m. on the Settlement Date (the day after the Activity Date in the T+1 environment), OCC would then provide NSCC with the E&A/Delivery Transactions file, which also constitutes OCC's commitment to pay the Final GSP. By 8:00 a.m. NSCC would provide OCC with the Final GSP. By the later of 10:00 a.m. on the Settlement Date or one hour after a cease to act is declared, OCC must pay the Final GSP if there has been a mutual suspension of a Common Member. Finally, by 1:00 p.m. on the Settlement Date, OCC must provide reversals for the defaulted member's E&A/Delivery Transactions if OCC has not satisfied (or will not satisfy) the Final GSP.

For both Weekend Expirations and Weekday Expirations, Guaranty Substitution will take place only after the Common Members meet their start of day margin funding requirements at NSCC, if any. In a Common Member default event, the Guaranty Substitution will take place when OCC pays the Final GSP to NSCC.

The Clearing Agencies note that the Phase 2 changes described above are designed to change the process by which the GSP is implemented such that the use of the GSP as a mechanism to facilitate the acceptance of settlement obligations by NSCC can continue to operate within the condensed timing for clearance and settlement in a T+1 environment. However, the ultimate use of the GSP, its purpose, and its substantive import would remain consistent with the Phase 1 changes.

Phase 2 Changes to NSCC Rules

In connection with the proposed changes to the Accord, NSCC is also proposing changes to its Rules, described below.

First, NSCC would amend Section B of Procedure III of the NSCC Rules to make conforming changes to align with the Phase 2 Accord. NSCC proposes to remove references to Balance Order Securities and the Balance Order Accounting Operation in Procedure III to align with the removal of Balance Order transactions from the types of Eligible Securities under the Phase 2 Accord. NSCC would also update a reference to the Settlement Date for OCC E&A/Delivery Transactions to reflect that it would be one business day (rather than two business days) after exercise/assignment under the forthcoming T+1 settlement cycle. In addition, NSCC would add new language to Procedure III to clarify that E&A/Delivery Transactions that are indicated in a report or Consolidated Trade Summary shall have no force and effect with respect to the NSCC's guaranty or a Member's ultimate obligation to deliver or pay for the receipt of such securities unless and until such transactions have satisfied all requirements for the NSCC's guaranty under Addendum K and the new Accord (unless NSCC notifies Members to the contrary). NSCC would also clarify that E&A/Delivery Transactions indicated in a report or Consolidated Trade Summary for which the NSCC's guaranty does become effective shall be canceled and thereafter shall be null and void and such cancelation shall be reflected in the next available report or Consolidated Trade Summary. The proposed rule change is intended to reflect the timing of the receipt and processing of E&A/Delivery Transactions under the T+1 settlement cycle and the ultimate Guaranty Substitution and Guaranty Substitution Time under the Phase 2 Accord.

Implementation Timeframe

The proposed Phase 1 and Phase 2 changes will be implemented as follows:

- *Phase 1:* Within 120 days after the date OCC and NSCC receive all necessary regulatory approvals for these proposed changes to the Accord, NSCC will implement all Phase 1 changes. NSCC would announce the implementation date by an Important Notice posted to its public website at least seven days prior to implementation.
- *Phase 2:* On the compliance date with respect to the final T+1 amendments to Exchange Act Rule 15c6–1(a) established by the Commission, NSCC will implement all Phase 2 changes, keep in place any applicable Phase 1 changes that carry over to Phase 2, and decommission all Phase 1 changes that do not apply to Phase 2.[70]

2. Statutory Basis

NSCC believes the proposed changes to the Existing Accord and the NSCC Rules are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes the proposed change is consistent with Section 17A(b)(3)(F) of the Act[71] and Rules 17Ad–22(e)(7) and (20), each promulgated under the Act,[72] for the reasons described below.

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and

[68] NSCC provided a draft of the revised Phase 2 SLA illustrating such changes to the Commission in confidential Exhibit 3F to this filing.

[69] If OCC does not have sufficient cash resources to pay the Final GSP and the Clearing Agencies are unable to reach an agreement on additional terms for NSCC to accept E&A/Delivery Transactions, OCC must submit a reversal file by 12:30 a.m. on Monday so that NSCC can remove the E&A/Delivery Transactions from CNS prior to the start of NSCC's overnight processing. NSCC has included additional details on action deadlines and processing times in confidential Exhibit 3D of this filing.

[70] If, due to the timing of regulatory approval, the implementation dates for Phase 1 and Phase 2 overlap, NSCC would implement only the Phase 2 changes and Phase 1 changes that carry over to Phase 2.

[71] 15 U.S.C. 78q–1(b)(3)(F).

[72] 17 CFR 240.17Ad–22(e)(7), (20).

accurate clearance and settlement of securities transactions, and in general, protect investors and the public interest.[73] In addition, Rule 17Ad–22(e)(7) requires NSCC, in relevant part, to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor and manage the liquidity risk that arises in or is borne by NSCC and to, among other things, address foreseeable liquidity shortfalls that would not be covered by NSCC's liquid resources.[74] Rule 17Ad–22(e)(20) further requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor and manage risks related to any link that NSCC establishes with one or more other clearing agencies, financial market utilities, or trading markets.[75]

Proposed Phase 1 Changes

As described above, NSCC believes that providing OCC with the ability to make a Guaranty Substitution Payment to it with respect to any unmet obligations of a Mutually Suspended Member would promote prompt and accurate clearance and settlement because it would allow relevant securities settlement obligations to be accepted by NSCC for clearance and settlement, which would reduce the size of the related settlement obligations for both the Mutually Suspended Member and its assigned delivery counterparties through netting through NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation. Further, this proposal would reduce the circumstances in which OCC's Guaranty would continue to apply to these settlement obligations, to be settled on a broker-to-broker basis between OCC Clearing Members, which could result in substantial collateral and liquidity requirements for OCC Clearing Members and that, in turn, could also increase a risk of default by the affected OCC Clearing Members at a time when a Common Member has already been suspended. For these reasons, NSCC believes that the proposed changes would be beneficial to and protective of OCC, NSCC, their participants, and the markets that they serve. NSCC believes the proposed Phase 1 changes are therefore designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, protect investors and the public interest.

NSCC also believes the proposal is consistent the requirements of Rule 17Ad–22(e)(7) because any increase to NSCC's liquidity needs that may be created by applying the NSCC Guaranty to Defaulted Member Transactions would occur with a simultaneous increase to its liquidity resources in the form of the Guaranty Substitution Payment. Therefore, NSCC believes it would continue to adhere to the requirements of Rule 17Ad–22(e)(7) under the proposal.

The Existing Accord between OCC and NSCC is a clearing agency link as contemplated by Rule 17Ad–22(e)(20). As described above, NSCC believes that implementation of the proposal would help manage the risks presented by the settlement link because, when the proposed provision is triggered by OCC, NSCC would receive the Guaranty Substitution Payment with respect to the relevant securities settlement obligations thereby ensuring that NSCC accepts those obligations for clearance and settlement and thereby reducing the size of the related settlement obligations for both the Mutually Suspended Member and its assigned delivery counterparties.

Proposed Phase 2 Changes

As described above, the Phase 2 changes to the Existing Accord would enable OCC to provide certain assurances that would permit NSCC to begin processing E&A/Delivery Transactions prior to Guaranty Substitution occurring—thereby promoting the continued effectiveness of the Guaranty Substitution process contemplated by the Existing Accord and the Phase 1 changes discussed above. By effecting these changes, the Phase 2 Accord would facilitate the continued ability of the GSP model to function in an environment with a shorter settlement cycle. For these reasons, NSCC believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions and protect investors and the public interest. The proposed changes would facilitate implementation of the new settlement cycle and support the Commission's stated goal of implementing necessary risk reducing changes in connection with the move to a T+1 settlement by the May 28, 2024, compliance date designated by the Commission. NSCC therefore believes that the proposed changes would be beneficial to and protective of NSCC, OCC, their participants, and the markets that they serve. As a result, NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.

NSCC believes the Phase 2 changes are also consistent the requirements of Rule 17Ad–22(e)(7) because any increase to NSCC's liquidity needs that may be created by applying the NSCC Guaranty to Defaulted Member Transactions would continue to occur with a simultaneous increase to NSCC's liquidity resources in the form of the Guaranty Substitution Payment. Therefore, NSCC believes it would continue to adhere to the requirements of Rule 17Ad–22(e)(7) under the proposal.

Finally, NSCC believe the proposed Phase 2 changes are consistent with the requirements of Rule 17Ad–22(e)(20). NSCC believes that the continued ability in the T+1 environment for OCC to make a Guaranty Substitution Payment to NSCC in the relevant circumstances involving a Mutually Suspended Member would help manage the risks presented to OCC, NSCC and their collective clearing members because the Guaranty Substitution Payment would ensure that the relevant securities settlement obligations would be accepted by NSCC, and therefore, the size of the related settlement obligations could be decreased from netting through NSCC's CNS Accounting Operation. Furthermore, the Phase 2 changes would require OCC to provide certain assurances to NSCC that would permit NSCC to begin processing E&A/Delivery Transactions prior to Guaranty Substitution occurring—particularly, OCC's acknowledgement of the Historical Peak GSP, demonstration of sufficient cash resources in its Clearing Fund to cover the Historical Peak GSP prior to submitting E&A/Delivery Transactions to NSCC, and OCC's commitment to pay the Final GSP prior to NSCC processing such E&A/Delivery Transactions, further mitigating the risks presented by this link.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act[76] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. NSCC does not believe that the proposal would impose any burden on competition. As described above, the proposed Phase 1 changes would amend the Existing Accord to permit OCC in certain circumstances to make a Guaranty Substitution Payment to NSCC so that the NSCC Guaranty would take effect for the Defaulted NSCC Member Transactions, and the OCC Guaranty

[73] 15 U.S.C. 78q–1(b)(3)(F).

[74] 17 CFR 240.17Ad–22(e)(7).

[75] 17 CFR 240.17Ad–22(e)(20).

[76] 15 U.S.C. 78q–1(b)(3)(I).

would end. The proposed Phase 2 changes would further allow OCC to provide certain assurances to NSCC prior to the default of a Common Member that would enable NSCC to begin processing E&A/Delivery Transactions before the NSCC central counterparty trade guaranty attaches. The proposed changes would not inhibit access to NSCC's services in any way, apply to all Members and do not disadvantage or favor any particular user in relationship to another user. Accordingly, NSCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

NSCC reserves the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of the notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NSCC–2023–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR–NSCC–2023–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*https://dtcc.com/legal/sec-rule-filings.aspx*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NSCC–2023–007 and should be submitted on or before February 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[77]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01863 Filed 1–30–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Monday, January 29, 2024.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic:

Resolution of litigation claims.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

[77] 17 CFR 200.30–3(a)(12).

Dated: January 29, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–01974 Filed 1–29–24; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35117]

Deregistration Under Section 8(f) of the Investment Company Act of 1940

January 26, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of January 2024. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on February 20, 2024, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

BNY Mellon International Securities Funds, Inc. [File No. 811–07502]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 22, 2022, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $5,481.49 incurred in connection with the liquidation were paid by the applicant and applicant's investment adviser.

Filing Date: The application was filed on December 15, 2023.

Applicant's Address: c/o BNY Mellon Investment Adviser, Inc., 240 Greenwich Street, New York, New York 10286.

Corbin Multi-Strategy Fund, LLC [File No. 811–22517]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On August 12, 2022, February 13, 2023, May 8, 2023 and June 23, 2023, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $20,000 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Date: The application was filed on July 21, 2023.

Applicant's Address: c/o UMB Fund Services, Inc., 235 West Galena Street, Milwaukee, Wisconsin 53212.

EQ Premier VIP Trust [File No. 811–10509]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to EQ Advisors Trust, and on November 12, 2023 made a final distribution to its shareholders based on net asset value. Expenses of $1,996,997 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

Filing Date: The application was filed on January 8, 2024.

Applicant's Address: 1345 Avenue of the Americas, New York, New York 10105.

Fiera Capital Series Trust [File No. 811–23220]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to MainStay Fiera SMID Growth Fund, MainStay PineStone International Equity Fund, MainStay PineStone U.S. Equity Fund, and MainStay PineStone Global Equity Fund, each a series of Mainstay Funds Trust, and on July 24, 2023, and August 28, 2023, made final distributions to its shareholders based on net asset value. No expenses were incurred in connection with the reorganization.

Filing Dates: The application was filed on September 8, 2023 and amended on January 12, 2024.

Applicant's Address: 375 Park Avenue, 8th Floor, New York, New York 10152.

JPMorgan Insurance Trust [File No. 811–07874]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Lincoln Variable Insurance Products Trust, and on May 1, 2023, made a final distribution to its shareholders based on net asset value. Expenses of $417,907.96 incurred in connection with the reorganization were paid by the applicant's investment adviser and the acquiring fund's investment adviser.

Filing Dates: The application was filed on September 22, 2023 and amended on January 19, 2024.

Applicant's Address: 277 Park Avenue, New York, New York 10172.

Strategas Trust [File No. 811–23608]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On May 30, 2022, and November 11, 20222, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $2,000 incurred in connection with the liquidation were paid by the applicant.

Filing Dates: The application was filed on November 15, 2023 and amended on January 3, 2024.

Applicant's Address: 52 Vanderbilt Avenue, 19th Floor, New York, New York 10017.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01923 Filed 1–30–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99428; File No. SR–NYSEARCA–2023–70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Grayscale Ethereum Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

January 25, 2024.

On October 10, 2023, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Grayscale Ethereum Trust (''Trust'') under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on October 27, 2023.[3]

On December 5, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal

As described in more detail in the Notice,[7] the Exchange proposes to list and trade the Shares of the Trust under NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

According to the Exchange, the investment objective of the Trust is for the value of the Shares to reflect the value of the Ethereum (''ETH'') [8] held by the Trust, determined by reference to the ''Index Price,'' less the Trust's expenses and other liabilities.[9] The ''Index Price'' is the U.S. dollar value of an ETH derived from the ''Digital Asset Exchanges'' [10] that are reflected in the ''Index,'' calculated at 4:00 p.m., New York time, on each business day.[11] The Trust's assets will consist solely of ETH; Incidental Rights; [12] IR Virtual Currency; [13] proceeds from the sale of ETH, Incidental Rights, and IR Virtual Currency pending use of such cash for payment of Additional Trust Expenses [14] or distribution to shareholders, and any rights of the Trust pursuant to any agreements, other than the trust agreement, to which the Trust is a party.[15] Each Share represents a proportional interest, based on the total number of Shares outstanding, in each of the Trust's assets as determined by reference to the Index Price, less the Trust's expenses and other liabilities (which include accrued but unpaid fees and expenses).[16] On each business day at 4:00 p.m., New York time, or as soon thereafter as practicable, the Sponsor will evaluate the ETH held by the Trust and calculate and publish the ''Digital Asset Holdings'' [17] of the Trust.[18] When the Trust sells or redeems its Shares, it will do so either in ''in-kind'' or ''in-cash'' transactions with authorized participants in blocks of 100 Shares.[19]

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEARCA–2023–70 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [20] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[21] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [22]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. Given the nature of the underlying assets held by the Trust, has the Exchange properly filed its proposal to list and trade the Shares under NYSE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98780 (Oct. 23, 2023), 88 FR 73892 (''Notice''). Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nysearca-2023-70/srnysearca202370.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 99082, 88 FR 85962 (Dec. 11, 2023). The Commission designated January 25, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3.

[8] In its filing, the Exchange defines ''ETH'' as ''Ethereum''. *See id.* at 73893. It, however, also provides that ''[t]he Ethereum Network allows people to exchange tokens of value, called Ether, which are recorded on a public transaction ledger known as a blockchain.'' *See id.* at 73894.

[9] *See id.* at 73894. Grayscale Investments, LLC (''Sponsor'') is the sponsor of the Trust and is a wholly-owned subsidiary of Digital Currency Group, Inc. *See id.* at 73893.

[10] A ''Digital Asset Exchange'' is an electronic marketplace where participants may trade, buy and sell ETH based on bid-ask trading. *See id.* at 73894 n.16.

[11] *See id.* at 73894 n.14. The index provider for the Trust is CoinDesk Indices, Inc. *See id.* at 73893. While the Exchange does not name the ''Index'' that the Trust would use to value the ETH held by the Trust, the Exchange provides that the value of the Index, as well as additional information regarding the Index, will be available at *https://www.coindesk.com/indices. See id.* at 73910.

[12] ''Incidental Rights'' are rights to acquire, or otherwise establish dominion and control over, any virtual currency or other asset or right, which rights are incident to the Trust's ownership of ETH and arise without any action of the Trust, or of the Sponsor or trustee on behalf of the Trust. *See id.* at 73893 n.11.

[13] ''IR Virtual Currency'' is any virtual currency tokens, or other asset or right, acquired by the Trust through the exercise (subject to the applicable provisions of the trust agreement) of any Incidental Right. *See id.* at 73893 n.12.

[14] ''Additional Trust Expenses'' are any expenses incurred by the Trust in addition to the Sponsor's fee that are not Sponsor-paid expenses. *See id.* at 73893 n.13.

[15] *See id.* at 73893–94.

[16] *See id.* at 73894.

[17] The Exchange does not define this term in the proposed rule change. Additional information about the calculation of the Digital Asset Holdings can be found in the Notice. *See id.* at 73898.

[18] *See id.*

[19] *See id.* at 73907.

[20] 15 U.S.C. 78s(b)(2)(B).

[21] *Id.*

[22] 15 U.S.C. 78f(b)(5).

Arca Rule 8.201–E (Commodity-Based Trust Shares)? [23]

2. The Exchange raises substantially similar arguments to support the listing and trading of the Shares as those made in proposals to list and trade spot bitcoin exchange-traded products (''Bitcoin ETPs''). Do commenters agree that arguments to support the listing of Bitcoin ETPs apply equally to the Shares? Are there particular features related to ETH and its ecosystem, including its proof of stake consensus mechanism and concentration of control or influence by a few individuals or entities, that raise unique concerns about ETH's susceptibility to fraud and manipulation?

3. What are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters' views generally with respect to the liquidity and transparency of the ETH markets and the ETH markets' susceptibility to manipulation?

4. Based on data and analysis provided by the Exchange,[24] do commenters agree with the Exchange that the Chicago Mercantile Exchange (''CME''), on which CME ETH futures trade, represents a regulated market of significant size related to spot ETH? [25] What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME to manipulate the Shares? [26] Do commenters agree with the Exchange that it is unlikely that trading in the Shares would be the predominant influence on prices in the CME ETH futures market? [27]

5. Some sponsors of proposed ETH exchange-traded products (''ETPs'') have made statements regarding the correlation between ETH spot markets and the CME ETH futures market.[28] What are commenters' views on the correlation between the ETH spot market and the CME ETH futures market? What are commenters' views on the extent to which a surveillance-sharing agreement with the CME would assist in detecting and deterring fraud and manipulation that impacts an ETP that holds spot ETH, and on whether correlation analysis provides any evidence to this effect? What are commenters' views generally on whether an ETP that holds only CME ETH futures and an ETP that only holds spot ETH are similar products?

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[29]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by February 21, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 6, 2024.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number

SR–NYSEARCA–2023–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–70. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–70 and should be submitted on or before February 21, 2024. Rebuttal comments should be submitted by March 6, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01860 Filed 1–30–24; 8:45 am]

BILLING CODE 8011–01–P

[23] NYSE Arca Rule 8.201–E(c)(1) defines the term ''Commodity-Based Trust Shares'' as a security (a) that is issued by a trust that holds (1) a specified commodity deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash.

[24] *See* Notice, 88 FR at 73906–07.

[25] *See id.* at 73906.

[26] *See id.*

[27] *See id.*

[28] *See, e.g.,* Notice of Filing of a Proposed Rule Change to List and Trade Shares of the VanEck Ethereum ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 98457 (Sept. 20, 2023), 88 FR 66076 (Sept. 26, 2023), 66081 (stating that ''The Sponsor's research indicates daily correlation between the spot ETH and the CME ETH Futures is 0.998 from the period of 9/1/22 through 9/1/23.'').

[29] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[30] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99430; File No. SR–BX–2024–003]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX Options 7, Section 2

January 25, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 12, 2024, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Pricing Schedule at Options 7, Section 2. While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on February 1, 2024.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BX's Pricing Schedule at Options 7, Section 2, BX Options Market-Fees and Rebates. Specifically, the Exchange proposes to amend Options 7, Section 2(5) related to the BX Price Improvement Auction (''PRISM'').

Currently, the Exchange assesses the below fees and pays the below rebates for orders executed in its PRISM Auction.

FEES AND REBATES (PER CONTACT)

Type of market participants	Submitted PRISM auction order in penny classes		Submitted PRISM auction order in non-penny classes rebate		PRISM response to PRISM auction fee		PRISM order traded with PRISM response rebate	
	PRISM order	Initiating order	PRISM order	Initiating order	Penny classes	Non-penny classes	Penny classes	Non-penny classes
Customer	$0.00	$0.00	$0.12	$0.00	$0.40	$0.79	$0.35	$0.70
Lead Market Maker	0.00	0.00	0.00	0.00	0.50	1.25	0.00	0.00
BX Options Market Maker	0.00	0.00	0.00	0.00	0.50	1.25	0.00	0.00
Non-Customer	0.00	0.00	0.00	0.00	0.50	1.25	0.00	0.00

Today, the Exchange assesses no PRISM Order [4] fees in Penny and Non-Penny Classes to any Participant. Today, the Exchange pays a $0.12 per contract rebate to Customers [5] for PRISM Orders in Non-Penny Classes. Today, the Exchange assesses no Initiating Order [6] fees in Penny and Non-Penny Classes to any Participant for PRISM Auction Orders.[7] Today, the Exchange assesses a $0.40 per contract PRISM Response [8] to Customers and a $0.50 per contract PRISM Response to Non-Customers [9] in Penny Classes. Today, the Exchange assesses a $0.79 per contract PRISM Response to Customers and a $1.25 per contract PRISM Response to Non-Customers in Non-Penny Classes. Today, if a PRISM Order trades with a PRISM Response, the Exchange pays a rebate of $0.35 to Customers for Penny Classes and a rebate of $0.70 to Customers for Non-Penny Classes. Non-Customers are not paid a rebate if a PRISM Order trades with a PRISM Response.

Proposal

The Exchange proposes to amend its PRISM pricing to increase its Initiating Order fees in Penny and Non-Penny Classes for Non-Customers [10] from $0.00 to $0.05 per contract. Customers will continue to be assessed no Initiating Order Fee in Penny and Non-Penny Classes. The Exchange also proposes to decrease its pricing for Non-Penny PRISM Responses for Non-Customers from $1.25 to $1.10 per contract. The Exchange is not amending its Non-Penny PRISM Responses for Customers.

While the Exchange is increasing its Initiating Order fee from $0.00 to $0.05 per contract in Penny and Non-Penny Classes for Non-Customers, the Exchange believes the proposed pricing remains competitive and will continue to encourage BX Participants to participate in PRISM Orders on BX. Customers will continue to be assessed no Initiating Order fee in a PIXL Auction in Penny and Non-Penny Classes. The Exchange believes that the decreased Non-Penny Non-Customer PRISM Response fees will encourage Participants to participate in PRISM Orders on BX. Customers will continue

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A PRISM Order is one-side of a PRISM Auction Order that represents an agency order on behalf a Public Customer, broker-dealer or other entity which is paired with an Initiating Order. *See* BX Options 7, Section 2(5).

[5] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Options 1, Section 1(a)(48)). *See* BX Options 7, Section 1(a).

[6] An Initiating Order is one-side of a PRISM Auction Order that represents principal or other interest which is paired with a PRISM Order. *See* BX Options 7, Section 2(5).

[7] A PRISM Auction Order is a two-sided, paired order comprised of a PRISM Order and an Initiating Order. *See* BX Options 7, Section 2(5).

[8] A PRISM Response is interest that executed against the PRISM Order pursuant to Options 3, Section 13. *See* BX Options 7, Section 2(5).

[9] The term ''Non-Customer'' shall include a Professional, Broker-Dealer and Non-BX Options Market Maker. *See* BX Options 7, Section 1(a).

[10] The term ''Non-Customer'' shall include a Professional, Broker-Dealer and Non-BX Options Market Maker. *See* BX Options 7, Section 1(a).

to be assessed a lower Non-Penny PRISM Response fee as compared to other Participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission* [13] (''NetCoalition''), the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [14]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[14] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

The Exchange's proposal to amend its PRISM pricing to increase its Initiating Order fees in Penny and Non-Penny Classes for Non-Customers from $0.00 to $0.05 per contract is reasonable. While the Exchange is increasing its Initiating Order fee from $0.00 to $0.05 in Penny and Non-Penny Classes for Non-Customers, the Exchange believes the proposed pricing remains competitive and will continue to encourage BX Participants to participate in PRISM Orders on BX. The Exchange's proposal to decrease its pricing for Non-Penny PRISM Responses for Non-Customers from $1.25 to $1.10 per contract is reasonable. The Exchange believes that the decreased Non-Penny PRISM Response fees will encourage Participants to attract order flow to BX since the Exchange is no longer assessing any fees to participate in PRISM Orders on BX. The proposed pricing is comparable to the spread between the agency order and responses in a price improvement auction on another options exchange.[15]

The Exchange's proposal to amend its PRISM pricing to increase its Initiating Order fees in Penny and Non-Penny Classes for Non-Customers from $0.00 to $0.05 per contract is equitable and not unfairly discriminatory. The Exchange will uniformly not assess a Penny or Non-Penny Initiating Order fee to any Non-Customer. While Customers will continue to not be assessed an Initiating Order fee in Penny and Non-Penny Classes, the Exchange notes that Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. The Initiating Order fee is comparable to other options exchanges. The Exchange's proposal to decrease its pricing for Non-Penny PRISM Responses for Non-Customers from $1.25 to $1.10 per contract is equitable and not unfairly discriminatory. The Exchange will uniformly assess the $1.10 per contract Non-Penny PRISM Responses to Non-Customers. Customers will continue to be assessed a lower Non-Penny PRISM Response fee of $0.79 per contract. Assessing Customers a lower Non-Penny PRISM Response fee of $0.79 per contract as compared to $1.10 per contract for Non-Customers is equitable and not unfairly discriminatory as Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers.

[15] BOX Exchange LLC (''BOX'') assesses customers no agency order fee and assesses Non-Customers a $0.05 per contract agency order fee in Penny and Non-Penny classes in BOX's Price Improvement Period or ''PIP''. BOX assesses a Penny Response Fee of $0.49 per contract for Customers and $0.50 per contract for Non-Customers in PIP. BOX assesses a Non-Penny Response Fee of $0.96 per contract for Customers and $1.15 per contract for Non-Customers in PIP.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice to initiate a price improvement auction. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

The Exchange's proposal to amend its PRISM pricing to increase its Initiating Order fees in Penny and Non-Penny Classes for Non-Customers from $0.00 to $0.05 per contract does not impose an undue burden on competition. The Exchange will uniformly not assess a Penny or Non-Penny Initiating Order Fee to any Non-Customer. While Customers will continue to not be assessed an Initiating Order fee in Penny and Non-Penny Classes, the Exchange notes that Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. The Exchange's proposal to decrease its pricing for Non-Penny PRISM Responses for Non-Customers from $1.25 to $1.10 per contract does not impose an undue burden on

competition. The Exchange will uniformly assess the $1.10 per contract Non-Penny PRISM Responses to Non-Customers. Customers will continue to be assessed a lower Non-Penny PRISM Response fee of $0.79 per contract. Assessing Customers a lower Non-Penny PRISM Response fee of $0.79 per contract as compared to $1.10 per contract for Non-Customers does not impose an undue burden on competition as Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

• Send an email to *rule-comments@sec.gov.* Please include file number SR–BX–2024–003 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–BX–2024–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BX–2024–003 and should be submitted on or before February 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01861 Filed 1–30–24; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35116; 812–15534]

AMG Pantheon Credit Solutions Fund and Pantheon Ventures (US) LP

January 26, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees and early withdrawal charges.

Applicants: AMG Pantheon Credit Solutions Fund and Pantheon Ventures (US) LP.

Filing Dates: The application was filed on December 14, 2023, and amended on January 9, 2024.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on February 20, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Joshua B. Deringer, Esq., Faegre Drinker Biddle & Reath LLP, *joshua.deringer@faegredrinker.com;* with a copy to Kara Zanger, Pantheon Ventures (US) LP, *kara.zanger@pantheon.com.*

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated January 9, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01902 Filed 1–30–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99431; File No. SR–OPRA–2023–01]

Joint Industry Plan; Notice of Designation of a Longer Period for Commission Action on a Proposed Amendment To Modify the Options Price Reporting Authority's Fee Schedule Regarding Caps on Certain Port Fees

January 25, 2024.

On July 14, 2023, the Options Price Reporting Authority ("OPRA"), pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act") [1] and Rule 608 of Regulation National Market System ("Regulation NMS") thereunder,[2] filed with the Securities and Exchange Commission ("Commission"), a proposed amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").[3] The proposed OPRA Plan amendment ("Proposed Amendment") would amend the OPRA Fee Schedule to reflect the applicable monthly fee caps on certain connectivity ports that are used to access OPRA data. The Proposed Amendment was published for comment in the **Federal Register** on August 2, 2023.[4]

On September 25, 2023, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS [5] to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate.[6]

Rule 608(b)(2)(i) of Regulation NMS provides that proceedings to determine whether a plan or amendment should be disapproved shall be concluded within 180 days of the date of publication of notice of the plan or amendment and that the time for conclusion of such proceedings may be extended for up to 60 days (up to 240 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to a longer period.[7] The 180th day after publication of the Notice for the Proposed Amendment is January 29, 2024. The Commission is extending this 180-day period.

The Commission finds that it is appropriate to designate a longer period within which to conclude proceedings regarding the Proposed Amendment so that it has sufficient time to consider any issues raised by the Proposed Amendment. Accordingly, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[8] the Commission designates March 29, 2024, as the date by which the Commission shall conclude the proceedings to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate (File No. SR–OPRA–2023–01).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01862 Filed 1–30–24; 8:45 am]

BILLING CODE 8011–01–P

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981), 22 SEC. Docket 484 (Mar. 31, 1981). The full text of the OPRA Plan and a list of its participants are available at *https://www.opraplan.com/.* The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges.

[4] *See* Securities Exchange Act Release No. 98012 (July 27, 2023), 88 FR 50939 ("Notice").

[5] 17 CFR 242.608(b)(2)(i).

[6] *See* Securities Exchange Act Release No. 98514 (Sept. 25, 2023), 88 FR 67398 (Sept. 29, 2023).

[7] 17 CFR 242.608(b)(2)(i).

[8] *Id.*

[9] 17 CFR 200.30–3(a)(85).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35115; 812–15537]

Axxes Private Markets Fund and Axxes Advisors LLC

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees and early withdrawal charges.

APPLICANTS: Axxes Private Markets Fund and Axxes Advisors LLC.

FILING DATES: The application was filed on December 22, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on February 20, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a

hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Joseph DaGrosa, Jr., Axxes Capital Inc., *jdagrosa@axxescapital.com,* and Adrain L. Bryant, Esq., Axxes Capital Inc., *ABryant@axxescapital.com,;* with a copy to Steven B. Boehm, Esq., Eversheds Sutherland (US) LLP, *StevenBoehm@eversheds-sutherland.us,* Payam Siadatpour, Esq., Eversheds Sutherland (US) LLP, *PayamSiadatpour@eversheds-sutherland.us,* and Anne G. Oberndorf, Esq., Eversheds Sutherland (US) LLP, *anneoberndorf@eversheds-sutherland.us.*

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated December 22, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system.

The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: January 26, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01900 Filed 1–30–24; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 12314]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy (ACPD) will hold an in-person public meeting with online access from 11:00 a.m. until 12:15 p.m., Wednesday, February 26, 2024. In addition to discussing the Commission's recently published 2023 Comprehensive Annual Report on Public Diplomacy and International Broadcasting, a panel of current and former ACPD commissioners, executive directors, and longtime research and policy partners will examine the ACPD's 75 years of service to the White House, Congress, and the American people.

This meeting is open to the public, including the media and members and staff of governmental and non-governmental organizations. To attend the event in-person or virtually, please register at *https://bit.ly/47uZVtM.* Doors will open at 10:30 a.m.

To request reasonable accommodation, please email ACPD Program Assistant Kristy Zamary at *ZamaryKK@state.gov.* Please send any request for reasonable accommodation no later than Tuesday, February 13, 2024. Requests received after that date will be considered but might not be possible to fulfill.

Since 1948, the ACPD has been charged with appraising activities intended to understand, inform, and influence foreign publics and to increase the understanding of, and support for, these same activities. The ACPD conducts research that provides honest assessments of public diplomacy efforts, and disseminates findings through reports, white papers, and other publications. It also holds public symposiums that generate informed discussions on public diplomacy issues and events. The Commission reports to the President, Secretary of State, and Congress and is supported by the Office of the Under Secretary of State for Public Diplomacy and Public Affairs.

For more information on the U.S. Advisory Commission on Public Diplomacy, please visit *https://www.state.gov/bureaus-offices/under-secretary-for-public-diplomacy-and-public-affairs/united-states-advisory-commission-on-public-diplomacy,* or contact Executive Director Vivian S. Walker at *WalkerVS@state.gov* or Senior Advisor Jeff Ridenour at *RidenourJM@state.gov.*

Authority: 22 U.S.C. 2651a, 22 U.S.C. 1469, 5 U.S.C. 1001 *et seq.,* and 41 CFR 102–3.150.

Jeffrey M. Ridenour,

Senior Advisor, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 2024–01910 Filed 1–30–24; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice: 12312]

Notification of Meetings of the United States-Oman Subcommittee on Environmental Affairs and Joint Forum on Environmental Cooperation

AGENCY: U.S. Department of State.

ACTION: Notice of meetings and request for comments; invitation to public session.

SUMMARY: The U.S. Department of State and the Office of the United States Trade Representative (USTR) are providing notice that the Government of the United States and the Government of Oman plan to hold the inaugural meeting of the Subcommittee on Environmental Affairs (Subcommittee), established under the United States-Oman Free Trade Agreement (FTA), and the fourth meeting of the Joint Forum on Environmental Cooperation (Joint Forum), established under the United States-Oman Memorandum of Understanding on Environmental Cooperation (MOU), on February 19, 2024, in Muscat, Oman. The purposes of the meetings of these two bodies, respectively, are to review implementation of the Environment Chapter (chapter 17) of the FTA and to review and assess cooperative environmental activities undertaken under the MOU.

DATES: The joint public sessions of the Subcommittee and Joint Forum will be held on February 20, 2024, from 12 a.m. to 1:40 a.m. EST (9 a.m. to 10:40 a.m. GST) in Muscat, Oman, with an option to join virtually or in-person. Please contact Anel Gonzalez-Ruiz and Tia Potskhverashvili for the location of this meeting in Muscat, Oman, or to request a link to join virtually. Confirmations of attendance and comments or questions are requested in writing no later than February 14, 2024.

ADDRESSES: Written comments or questions should be submitted to both:

(1) Anel Gonzalez-Ruiz, U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Environmental Quality, by email to *Gonzalez-RuizA@state.gov* with the subject line ''United States-Oman FTA Subcommittee/MOU Joint Forum Meetings''; and

(2) Tia Potskhverashvili, Office of the United States Trade Representative, by email to *tiapots@ustr.eop.gov* with the subject line ''United States-Oman FTA Subcommittee/MOU Joint Forum Meetings''.

In your email, please include your full name and organization.

If you have access to the internet, you can view and comment on this notice by going to: *http://www.regulations.gov/#!home* and searching for docket number DOS–2024–0003.

FOR FURTHER INFORMATION CONTACT: Anel Gonzalez-Ruiz, (202) 705–5282, *Gonzalez-RuizA@state.gov* or Tia

Potskhverashvili, (202) 395–5414, *tiapots@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of State and USTR invite written comments or questions from the public to be submitted no later than February 14, 2024, regarding implementation of chapter 17 and the MOU, and any topics that should be considered for discussion at the Subcommittee and Joint Forum meetings consistent with their respective purposes. When preparing comments, submitters are encouraged to refer to chapter 17 of the FTA and/or the MOU, as relevant (available at *https://www.state.gov/key-topics-office-of-environmental-quality-and-transboundary-issues/current-trade-agreements-with-environmental-chapters/#oman* and *https://ustr.gov/trade-agreements/free-trade-agreements/oman-fta*). Instructions on how to submit comments are under the heading **ADDRESSES**.

Article 17.5 of the FTA provides for the establishment of a Subcommittee on Environmental Affairs to discuss matters related to the operation of chapter 17. Article 17.5 further provides that, unless the Parties otherwise agree, meetings of the Subcommittee shall include a session in which members of the Subcommittee have an opportunity to meet with the public to discuss matters relating to the implementation of chapter 17.

Section II of the MOU establishes a Joint Forum on Environmental Cooperation responsible for, among other things, establishing, reviewing, and assessing cooperative environmental activities under the MOU.

On February 19, 2024, the Subcommittee and Joint Forum will meet in a closed government-to-government session to (1) review implementation of chapter 17 and (2) review activities under the United States-Oman 2018–2021 Environmental Cooperation Plan of Action and future activities under the 2024–2027 Environmental Cooperation Plan of Action, respectively.

All interested persons are invited to attend a joint public session on chapter 17 implementation and environmental cooperation under the MOU, beginning at 12 a.m. EST (9 a.m. GST) on February 20, 2024. At the session, the Subcommittee and Joint Forum will welcome questions, input, and information about challenges and achievements in implementation of chapter 17 and environmental cooperation under the MOU. If you would like to attend the public session either in-person, in Muscat, Oman, or virtually, please notify Anel Gonzalez-Ruiz and Tia Potskhverashvili at the email addresses listed under the heading **ADDRESSES**.

Visit the Department of State website at *www.state.gov* and the USTR website at *www.ustr.gov* for more information.

Robert D. Wing,

Acting Director, Office of Environmental Quality, Department of State.

[FR Doc. 2024–01876 Filed 1–30–24; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2024–0217]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Air Taxi and Commercial Operator Airport Activity Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval renew information collection. The collection involves requesting that small on-demand operators voluntarily provide the number of revenue passengers that boarded their aircraft at each airport annually. This information is used in determining an airport's category and eligibility for federal funding on an annual basis. It is not available through any other federal data source.

DATES: Written comments should be submitted by March 26, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Luis Loarte, FAA, 800 Independence Avenue SW, Washington, DC 20591.

By fax: 202–267–5257.

FOR FURTHER INFORMATION CONTACT: Luis Loarte by email at: *Luis.Loarte@faa.gov;* phone: 202–267–9622.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0067.

Title: Air Taxi and Commercial Operator Airport Activity Survey.

Form Numbers: FAA Form 1800–31.

Type of Review: Clearance of a renewal of an information collection.

Background: The data collected through this survey is the only source of data for charter and nonscheduled passenger data part 135 operator (air taxis). The data received on the form (either paper or signed electronic copy) is then incorporated into the Air Carrier Activity Information System which is used to determine whether an airport is eligible for Airport Improvement Program funds and for calculating primary airport sponsor apportionment as specified by title 49 United Stated Code (U.S.C.), section 47114. The data collected on the form includes passenger enplanements by carrier and by airport. Passengers traveling on air taxis would be overlooked entirely if this passenger survey were not conducted. As a result, many airports would not receive their fair share of funds since there is currently no other source for this type of charter activity. On average, approximately 70 operators respond each year, reporting a total 1 million passengers. This data is important to those airports that struggle to meet the 2,500 and 10,000 passenger levels and could not do so without the reporting of the charter passengers.

Respondents: A cover letter and instructions are sent through the United Parcel Service. The cover letter and instructions provide the carriers with the Airports External Portal (*faa.gov*) (AEP) site and the password for the voluntary Airport Activity Survey form. The cover letter and password for the Airport Activity Survey form is sent to approximately 150 small on-demand operators (certificated under Federal Aviation Regulation Part 135) that have reported activity in the last three years. The form is also available on the FAA website. We allowed electronic submittals of the voluntary survey beginning with calendar year 2020 data. Operators can electronically access the form, sign, and submit to the FAA. The Airports External Portal is used by airports in the National Plan of Integrated Airport Systems (NPIAS).

They can also view their final data through AEP once the process is complete.

Frequency: Annually.

Estimated Average Burden per Response: 1.0 hours per respondent.

Estimated Total Annual Burden: On average, approximately 70 respondents submit an annual response. The cumulative total annual burden is estimated to be 70 hours.

Issued in Washington, DC, on December 20, 2023.

Luis Loarte,

Senior Airport Planner, Office of Airports/ Airport Planning and Environmental Division.

[FR Doc. 2024–01931 Filed 1–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–2309; Summary Notice No. 2024–03]

Petition for Exemption; Summary of Petition Received; GE Aerospace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 20, 2024.

ADDRESSES: Send comments identified by docket number FAA–2023–2309 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Philip Haberlen, AIR–625, Federal Aviation Administration, phone (781) 238–7770, email *Philip.Haberlen@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 25, 2024.

Daniel J. Commins,

Manager, Integration and Performance.

PETITION FOR EXEMPTION

Docket No.: FAA–2023–2309.

Petitioner: GE Aerospace.

Section(s) of 14 CFR Affected: § 33.68(e).

Description of Relief Sought: GE Aerospace, is seeking relief from 14 CFR 33.68 (e), which requires Appendix D measurements to demonstrate acceptable engine operation throughout the airplane flight envelope and the convective cloud ice crystal icing envelope. Specifically, GE Aerospace is proposing to use the Aviation Rulemaking Advisory Committee's Ice Crystal Icing Working Group draft report dated October 18, 2023, in lieu of using Appendix D to part 33 (Amendment 33–34) to demonstrate acceptable engine operation throughout the aircraft flight envelope and the convective cloud ice crystal icing envelope on its GE Catalyst 1300–CS1A engine.

[FR Doc. 2024–01835 Filed 1–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[4910–RY]

Final Environmental Impact Statement and Record of Decision for the Earthquake Ready Burnside Bridge Project

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is issuing this notice to advise other Federal, State, and local agencies, Tribes, and the public that a combined Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) have been prepared in accordance with the National Environmental Policy Act for the Earthquake Ready Burnside Bridge (EQRBB) Project to create a seismically resilient Burnside Street lifeline route crossing of the Willamette River in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Keith Lynch, Division Administrator, Federal Highway Administration, 530 Center Street NE, Suite 420, Salem, OR 97301; *Telephone:* (503) 316–2540. Thomas Parker, Environmental Program Manager, Federal Highway Administration, 530 Center Street NE, Suite 420, Salem, OR 97301; *Telephone:* (503) 316–2549.

SUPPLEMENTARY INFORMATION: The FHWA, the Oregon Department of Transportation (ODOT), and Multnomah County (County) propose to undertake the seismic improvement of the Burnside Bridge over the Willamette River in Portland, Oregon. Federal cooperating agencies in the preparation of the FEIS and ROD include the National Oceanic and Atmospheric Administration National Marine Fisheries Service, U.S. Army Corps of Engineers, and the U.S. Coast Guard.

The EQRB Draft Environmental Impact Statement (EIS) included a No-Build Alternative and four build alternatives. It identified one build alternative (the Long-span Alternative) as the Preferred Alternative. Following the issuance of the Draft EIS, additional cost and funding analysis identified a substantial risk that the construction costs of any of the build alternatives would exceed $1 billion. The Selected Alternative is anticipated to cost between $830 to $915 million. This risk led the County to direct the project team to identify and evaluate ways to reduce the Project's construction costs while still meeting the Project's purpose and need and striving to achieve the other

advantages of the Draft EIS Preferred Alternative. The Refined Long-span Alternative, which addressed that directive and was evaluated in the SDEIS, was identified as the Preferred Alternative in the SDEIS that was made available for public review and comment. The public was able to view and comment on the SDEIS for a period of 45 days from April 29 to June 13, 2022. The SDEIS NOA was published in the **Federal Register** on April 29, 2022. Multnomah County held live SDEIS Public Hearing testimony on June 8, 2022.

(Authority: 42 U.S.C. 4321 *et seq.;* 23 U.S.C. 139)

Issued on: January 25, 2024.

Keith Lynch,

FHWA Division Administrator, Salem, OR.

[FR Doc. 2024–01830 Filed 1–30–24; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA 2022–0038]

Notice of Availability: Joint Development Circular C 7050.1C and Response to Comments

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of availability: Joint Development Circular C 7050.1C and response to comments.

SUMMARY: The Federal Transit Administration (FTA) is issuing a new Circular 7050.1C to address joint development projects using FTA funds or FTA-funded property. The purpose of these changes is to incorporate changes made by the Bipartisan Infrastructure Law (BIL), implemented as the Infrastructure Investment and Jobs Act, that amended the definition of a ''capital project.''

DATES: The applicable date of these changes is January 31, 2024.

ADDRESSES: One may view the comments at docket number FTA–2022–0038 For access to the docket, please visit *https://www.regulations.gov* or the Docket Operations office located in the West Building of the United States Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For policy guidance questions, contact Stacy Weisfeld, Office of Budget and Policy, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E52–316, Washington, DC 20590, phone: (202) 366–6166, or email: *stacy.weisfeld@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice announces the availability of Joint Development Circular 7050.1C, which replaces Circular 7050.1B. This notice also responds to comments received on the proposed changes that were announced in a notice published in the **Federal Register** on January 30, 2023 (88 FR 5957). The Circular itself is not included in this notice; instead, an electronic version may be viewed on FTA's website at: *https://www.transit.dot.gov/JointDevelopment.*

Sec. 30001 of the Bipartisan Infrastructure Law (Pub. L. 117–58) amended Section 5302 of title 49, United States Code, by adding section 5302(4)(G)(vi)(XV); revising section 5302(4)(G)(iv); and reordering Sections 5302(4)(G)(i–vi).

Section 5302(4)(G)(vi)(XV) added ''technology to fuel a zero-emission vehicle'' as an eligible joint development improvement under the definition of a ''capital project.'' Accordingly, Joint Development Circular 7050.1C adds ''technology to fuel a zero-emission vehicle'' as an eligible joint development improvement under FTA programs. Recipients of assistance for these improvements must collect fees for the use of the charging facilities unless exceptions apply.

Section 5302(4)(G)(iv) provides that ''if equipment to fuel privately owned zero-emission passenger vehicles is installed, the recipient of assistance shall collect fees from users of the equipment in order to recover the costs of construction, maintenance, and operation of the equipment.'' Accordingly, this language is addressed in the Joint Development Circular on pages III–7 and VI–4—VI–5, with the following clarifying conditions: ''The recipient of assistance shall be required to collect fees from usage only if the equipment is used primarily by privately-owned passenger vehicles. Fee collection may also be waived if the recipient demonstrates in the joint development application that the cost to install a fee collection system is more than the recipient anticipates collecting from users of the equipment. The method of fee collection in all circumstances is at the discretion of the site host (the owner or occupant of land on which the charging station is built) and/or recipient of FTA assistance. Electricity costs are considered operating costs and would, therefore, fall under the fee collection requirements.''

II. Response to Public Comments

FTA received submissions from three commenters in response to the **Federal Register** notice. The following is a summary of the comments received, FTA's responses, and the clarifications included in the final guidance.

Comment: One commenter requested clarification if Zero Emission Vehicle (ZEV) fees are considered program income.

Response: Yes, ZEV fees collected under this provision shall be considered program income.

Comment: A transit agency requested clarification whether recipients are required to charge for the use of fueling equipment that is constructed, operated, and maintained with funds other than FTA funds; in other words, are recipients required to charge for the use of fueling equipment if there are no FTA-assisted construction, maintenance, or operation costs to recover; or if the equipment is not owned or operated by the recipient.

Response: Circular 7050.1C provides on pages III–7 and VI–5 that recipients are not required to charge for the use of fueling equipment if no FTA funds are used to construct, operate, or maintain the equipment and the equipment is not owned or operated by the recipient. Though not required, recipients may negotiate for any fees charged to be shared as part of the joint development agreement.

Comment: The transit agency also asked FTA to clarify whether collection of the required fees by the owner and/or operator of the fueling equipment is sufficient or if such fees need to be passed through to the project sponsors.

Response: Recipients are not required to charge for the use of fueling equipment that they do not own or operate. Though not required, recipients may negotiate for any fees charged to be shared as part of the joint development agreement.

Comment: The transit agency commented that the term ''site host'' was undefined.

Response: FTA is clarifying in Circular 7050.1C that a site host is the owner or occupant of land on which the charging station is built.

Comment: The transit agency also requested clarification as to whether the owner/operator of the fueling equipment possesses the discretion to determine the method of fee collection.

Response: In instances where the recipient partners with another entity in constructing, operating, or maintaining the charging equipment and is required

to charge for the use of the equipment, the recipient and their partner(s) should come to an agreement as to the fee collection method.

Comment: The transit agency further commented that FTA should consider exempting the vehicles of a joint developments' affordable housing tenants from the fee collection requirement.

Response: Exempting any private users from the fee collection requirements is outside the scope of the statute and is therefore not discussed further in Circular7050.1C. However, FTA encourages recipients to work with their partners to consider negotiating a different fee structure for affordable housing tenants.

Comment: An industry association commented in support of the proposed changes to the Joint Development Circular and noted the importance of allowing the fee collection to be waived if the recipient demonstrates the cost to install a fee collection system is more than the costs paid by the users.

Response: FTA acknowledges these comments and refers the reader to the response provided above.

Comment: The industry association further commented that charging stations should be allowed to accommodate not only personal automobiles but any other form of electrically powered mobility devices such as electric bicycles, electric scooters, electric mopeds, or any other emerging battery-powered or zero-emission vehicle.

Response: The statute only addresses the collection of fees from ''passenger vehicles'' and does not address the shared or incidental use of the equipment by other vehicle types or the collection of fees from the users of those vehicles. 49 U.S.C. 5302(4)(G)(iv). While the term ''passenger vehicle'' is not defined in the statute, FTA interprets it to mean automobiles or vans, consistent with similar definitions in other Federal statutes. *See* 49 U.S.C. 30127(a)(2) (''multipurpose passenger vehicle''); 49 U.S.C. 32101(9)–(10) (''multipurpose passenger vehicle'' and ''passenger motor vehicle''); 49 U.S.C. 30127(a)(3) (''passenger car'').

Comment: The industry association also commented that agencies should have the ability to cover the costs of the infrastructure, the operation and maintenance costs as well as the cost of the electricity provided.

Response: FTA concurs with this comment and further clarifies in the final circular that electricity costs are considered operating costs and would, therefore, fall under the fee collection requirements. Electricity costs may also be negotiated as part of the fair share of costs pursuant to 49 U.S.C. 5302(4)(G)(v).

Nuria I. Fernandez,

Administrator.

[FR Doc. 2024–01919 Filed 1–30–24; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[[Docket No. MARAD–2024–0011]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: KALA (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 1, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0011 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0011 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0011, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel KALA is:

—*Intended Commercial Use of Vessel:* Requester intends to use for sailing and sightseeing trips.
—*Geographic Region Including Base of Operations:* Florida. Base of Operations: Clearwater Beach, FL.
—*Vessel Length and Type:* 39′ Sailing Catamaran.

The complete application is available for review identified in the DOT docket as MARAD 2024–0011 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary.

There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0011 or visit the Docket Management Facility (see ADDRESSES for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–01887 Filed 1–30–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0009]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: MALAMA I KE KAI (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 1, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0009 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0009 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0009, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel MALAMA I KE KAI is:

Intended Commercial Use of Vessel: Requester intends to use for snorkeling, diving, and sightseeing trips.

Geographic Region Including Base of Operations: Hawaii. Base of Operations: Hilo, HI.

Vessel Length and Type: 35′ Motor.

The complete application is available for review identified in the DOT docket as MARAD 2024–0009 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled ADDRESSES. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0009 or visit the Docket

Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–01888 Filed 1–30–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0006]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SHAMAHAWK (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 1, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0006 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0006 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0006, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SHAMAHAWK is:

—*Intended Commercial Use of Vessel:* Requester intends to use for sightseeing tours and passenger transport.
—*Geographic Region Including Base of Operations:* Alaska, Washington. Base of Operations: Sitka, AK.
—*Vessel Length and Type:* 31.5′ Motor vessel.

The complete application is available for review identified in the DOT docket as MARAD 2024–0006 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search

MARAD–2024–0006 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–01891 Filed 1–30–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0008]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ODKAVONIC (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 1, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0008 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0008 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0008, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel ODKAVONIC is:

—*Intended Commercial Use of Vessel:* Requester intends to use for multi hour harbor sightseeing cruises.
—*Geographic Region Including Base of Operations:* New Jersey, New York. Base of Operations: Atlantic Highlands, NJ.
—*Vessel Length and Type:* 42′ Monohull sailboat.

The complete application is available for review identified in the DOT docket as MARAD 2024–0008 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search

MARAD–2024–0008 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–01889 Filed 1–30–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0007]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PRIMA MEA (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 1, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0007 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0007 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0007, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:
Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PRIMA MEA is:

—*Intended Commercial Use of Vessel:* Requester intends to use for expedition style charters along the U.S. West Coast.
—*Geographic Region Including Base of Operations:* California, Oregon, Washington, Alaska. Base of Operations: Port Angeles, WA.
—*Vessel Length and Type:* 99.3′ Motor yacht.

The complete application is available for review identified in the DOT docket as MARAD 2024–0007 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search

MARAD–2024–0007 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–01890 Filed 1–30–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0010]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: CHAO LAY (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 1, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0010 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0010 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0010, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel CHAO LAY is:

—*Intended Commercial Use of Vessel:* Requester intends to use for sailing charters in Marathon, Florida.
—*Geographic Region Including Base of Operations:* Florida. Base of Operations: Marathon, FL.
—*Vessel Length and Type:* 50′ Sailboat.

The complete application is available for review identified in the DOT docket as MARAD 2024–0010 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0010 or visit the Docket Management Facility (see **ADDRESSES** for

hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–01886 Filed 1–30–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2024–0002; Notice No. 232]

Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages With Alcohol Content, Nutritional Information, Major Food Allergens, and Ingredients

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Announcement of listening sessions; request for comments.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is announcing virtual listening sessions to receive input from the public on labeling of wine, distilled spirits, and malt beverages to disclose per-serving alcohol and nutritional information, major food allergens, and/or ingredients. The Department of the Treasury's February 2022 report on ''Competition in the Markets for Beer, Wine, and Spirits'' recommended that TTB revive or initiate rulemaking in these areas. These listening sessions are intended to engage the public, including consumers, public health stakeholders, and industry members of all sizes, and facilitate the public's ability to provide input to inform rulemaking. This notice sets forth the dates and times of the virtual listening sessions and instructions for registration. It also opens a docket for submitting written comments on the issues to be discussed in the listening sessions.

DATES:

Listening sessions and requests to speak: The virtual listening sessions will be held February 28, 2024, from 10 a.m. to 2 p.m., Eastern Standard Time; and February 29, 2024, from 1 p.m. to 5 p.m., Eastern Standard Time. The deadline to register to virtually attend either session is 12 p.m., Eastern Standard Time, February 27, 2024. Submit requests to speak during one of the listening sessions by 12 p.m., Eastern Standard Time, on February 26, 2024. If all registered speakers have had an opportunity to speak, the session may conclude early.

Comment submissions: Written comments on this notice must be submitted by 11:59 p.m. Eastern Standard Time, March 29, 2024. For additional registration information, see the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: Additional details, such as registration information, are available at *https://www.ttb.gov/laws-regulations-and-public-guidance/listening-session.* You may also electronically submit comments to TTB in response to this notice and view any comments TTB receives on it within Docket No. TTB–2024–0002, as posted at *https://www.regulations.gov.* A direct link to this notice is available on the TTB website at *https://www.ttb.gov/rrd/miscellaneous-federal-register-documents.* Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please see the Public Participation section of this document for further information on the comments requested and the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Curt Eilers, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; telephone 202–453–1039, ext. 041.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this notice is to announce virtual listening sessions and the opening of a public docket to receive input from the public on labeling of wine, distilled spirits, and malt beverages with per-serving alcohol and nutritional information, major food allergens, and/or ingredients. The Department of the Treasury's February 2022 report on ''Competition in the Markets for Beer, Wine, and Spirits'' recommended that TTB revive or initiate rulemaking in these areas. These listening sessions are intended to engage the public, including consumers, public health stakeholders, and industry members of all sizes, in addition to those who may traditionally respond through the rulemaking process, and facilitate the public's ability to provide input to inform rulemaking.

The Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e)(2), authorizes the Secretary of the Treasury to prescribe regulations that will provide adequate information as to the identity and quality of alcohol beverages. The FAA Act does not require alcohol beverage labels to disclose a full list of ingredients,[1] any

[1] TTB regulations do require the disclosure of certain specified ingredients that the Food and Drug Administration (FDA) determined posed a recognized health problem. TTB regulations require labels to disclose the presence of FD&C Yellow No. 5, cochineal extract or carmine, and sulfites (when present in alcohol beverages at a level of ten or

Continued

major food allergens [2] used in the production of alcohol beverages, or nutritional information such as the number of calories or the amount of carbohydrate, protein, fat, or other nutrients. TTB and its predecessor agencies have published regulations on the labeling of wine, distilled spirits, and malt beverages in parts 4, 5, and 7, respectively, of chapter I of title 27 of the Code of Federal Regulations (27 CFR chapter I). TTB also has provided standards for voluntary nutrient content statements (TTB Ruling 2013–2), standards for voluntary disclosures of major food allergens (27 CFR 4.32a–4.32b, 5.82–5.83, and 7.82–7.83), and requirements for alcohol content disclosures for most alcohol beverages (27 CFR 4.36, 5.65, and 7.65). TTB is now considering whether the disclosure of the information currently subject to voluntary standards should instead be required; whether required alcohol content disclosures should be expanded to a broader scope of beverages; and, if so, how the information should be presented.

In 2005, TTB sought comments in an advance notice of proposed rulemaking on alcohol content, nutritional information, major food allergen, and ingredient labeling. See Notice No. 41 (70 FR 22274, April 29, 2005).

TTB is now seeking updated input regarding these topics. We are particularly interested in whether consumers will find such information useful, the costs and burdens associated with industry members providing that information, and alternate approaches for providing that information in a way that is both effective and appropriately balances the benefit to consumers with the costs and burdens on industry members.

This action follows the Department of the Treasury's report, issued on February 9, 2022, titled ''Competition in the Markets for Beer, Wine and Spirits,'' that included recommendations related to labeling alcohol beverages with nutrition, major food allergen, and ingredient information.[3] The Department issued the report pursuant to Executive Order (E.O.) 14036, ''Promoting Competition in the American Economy.'' Among other things, Treasury addressed text in E.O. 14036 that asked the Department to review labeling regulations ''that may unnecessarily inhibit competition by increasing costs without serving any public health, informational, or tax purpose.'' The report found that ''[r]egulatory proposals that could serve public health and foster competition by providing information to consumers, such as mandatory allergen, nutrition, and ingredient labeling proposals, have not been implemented.'' The report contains several recommendations, including that ''TTB should revive or initiate rulemaking proposing ingredient labeling and mandatory information on alcohol content, nutritional content, and appropriate serving sizes.''

Further, in April 2023, the President signed Executive Order 14094, ''Modernizing Regulatory Review,'' encouraging agencies to provide opportunities for public participation in regulatory actions to promote equitable and meaningful participation by a range of interested or affected parties, including underserved communities. The Office of Management and Budget's guidance for implementing E.O. 14094 encourages Federal agencies to solicit comments in non-written formats, such as live webinars or audio recordings, to encourage participation from members of the public who might not otherwise participate in the regulatory process and to use virtual listening sessions to reach people who may be unable to attend in-person sessions. The guidance also provides that listening sessions are most appropriate before a proposed rule.

II. Topics for Comment

To facilitate input from the public, including individual consumers, consumer and other public interest groups, public health stakeholders, affected industry members of all sizes, and any other interested parties, TTB has developed the following list of questions. TTB encourages commenters to explain the rationale behind their comments and to include any available supporting data and other information, as appropriate.

1. Do consumers believe that they are adequately informed by the information currently provided on alcohol beverage labels?

2. Is alcohol content per serving, and nutritional information (such as calories, carbohydrates, protein, and fat) per serving important for consumers in deciding whether to purchase or consume a particular alcohol beverage? Would a full list of ingredients, and/or major food allergens, be important information for consumers in making their purchasing or consumption decisions? In what ways would this information be useful, and in what ways could it be misleading? Is some of this information more important than others?

3. What types of per-serving nutritional information, such as calories, carbohydrates, protein, and fat, should be included?

4. Would requiring this information on labels be expected to increase the cost of the products and, if so, by how much? To what extent are businesses already following voluntary guidelines for this information? Are there alternative ways of providing the information, for example by allowing information to be provided through a website using a quick response code (QR code) or website address on the label?

5. How would any new mandatory labeling requirements particularly affect small businesses and new businesses entering the marketplace?

III. Public Participation

As the intent of the public listening sessions is to allow the general public to provide input to TTB on aspects of potential approaches to labeling of wine, distilled spirits, and malt beverages with alcohol content, nutritional information, major food allergens, and/or ingredients, the sessions have been designed to facilitate one-way communications. Outside of introductory and logistical remarks, TTB will not be providing substantive information on the topic or responding to comments during the public listening sessions. Attendance at the listening sessions will be capped depending on webinar capacity limitations.

Registration to attend virtual listening sessions. TTB will hold virtual listening sessions on February 28, 2024, from 10 a.m. to 2 p.m., Eastern Standard Time, and on February 29, 2024, from 1 p.m. to 5 p.m., Eastern Standard Time. To register for either of the free virtual listening sessions, please visit the following website: *https://www.ttb.gov/laws-regulations-and-public-guidance/listening-session.* You may register until 12 p.m., Eastern Standard Time, on February 27, 2024. Live closed captioning will be available during the listening sessions. TTB is committed to ensuring all participants have equal access to the session regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please contact TTB at *Outreach@ttb.gov* or 202–508–0271 as soon as possible but no later than 5 days in advance of the session you wish to attend.

more parts per million). The regulations also require a warning statement when aspartame is present. See 27 CFR 4.32, 5.63, and 7.63.

[2] Major food allergens include milk, eggs, fish, Crustacean shellfish, tree nuts, peanuts, wheat, soybeans, and sesame. See 21 U.S.C. 321(qq) and 343(w). More information on major food allergens is available at *https://www.fda.gov/food/food-labeling-nutrition/food-allergies.*

[3] The report is available at *https://home.treasury.gov/system/files/136/Competition-Report.pdf.*

TTB reserves the right to reschedule or cancel the session for any reason, including a health emergency or severe weather that impacts the ability of TTB to conduct the session safely and effectively at the proposed date and time. Any changes or updates to the date or start and end time for the session will be posted on *https://www.ttb.gov/laws-regulations-and-public-guidance/listening-session.*

Requests to speak. When you register, you may indicate whether you wish to speak and during which session. You must submit such requests by 12 p.m., Eastern Standard Time, on February 26, 2024. We will attempt to accommodate each speaker's session preference; however, if we are unable to do so, we will make the determination on a first-come, first-served basis, based on the time and date of the registration request.

TTB will notify speakers of the order in which they are scheduled to speak and provide information on how to log in to the session as a speaker. An individual may speak during only one of the sessions (*i.e.,* either on February 28, 2024, or on February 29, 2024, but not both). TTB reserves the right to reject the registration of an entity, individual, or individual affiliated with an entity, that is already scheduled to present comments, to ensure that a broad range of entities and individuals are able to present. We will limit each participant's comments to 5 minutes.

No presentation, or commercial or promotional material, will be permitted to be displayed during the listening sessions.

Streaming webcast of the listening sessions: The listening sessions will be webcast. Please register online as described above to attend or to request to speak. Registrants will receive a hyperlink that provides access to the webcast.

Transcripts: As soon as transcripts of the listening sessions are available, they will be placed in Docket No. TTB–2024–0002 and will be accessible at *https://www.regulations.gov.*

Submitting comments: You may submit comments as an individual or on behalf of a business or other organization via the *Regulations.gov* website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Docket No. TTB–2024–0002 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You do not have to register to speak in order to submit written comments on this docket.

Confidentiality and Disclosure of Comments: All submitted comments and attachments are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that would be inappropriate for public disclosure.

TTB will post, and you may view, copies of this document and any comments TTB receives within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings Division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions regarding comments on this proposal or to request copies of this document, its supporting materials, or the comments received in response.

TTB notes, the public meeting is being held solely for information and program-planning purposes. Input provided during the public meeting does not bind TTB to any further action.

Signed: January 25, 2024.

Mary G. Ryan,

Administrator.

[FR Doc. 2024–01855 Filed 1–30–24; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability

ACTION: Technical correction to the maximum TA award amount cited in the Executive Summary of the NOFA.

SUPPLEMENTARY INFORMATION:

Funding Opportunity Number: CDFI–2024–NACA.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.012.

Executive Summary: On December 11, 2023, the Community Development Financial Institutions Fund (CDFI Fund) published a Notice of Funds Availability (NOFA) inviting Applications for Financial Assistance (FA) or Technical Assistance (TA) awards under the Native American CDFI Assistance (NACA Program) fiscal year (FY) 2024 Funding Round. The CDFI Fund is issuing this notice to correct the maximum TA award amount cited in the Executive Summary of the NOFA.

In the **Federal Register**/Vol. 88, No. 236/Monday, December 11, 2023/Notices. On page 85995, in the third column, the following sentence of the Executive Summary: ''(ii) TA awards of up to $300,000 to build Certified, and Emerging CDFIs' organizational capacity to serve Eligible Markets and/or their Target Markets, and Sponsoring Entities' ability to create Certified CDFIs that serve Native Communities'' is corrected to read: ''(ii) TA awards of up to $400,000 to build Certified, and Emerging CDFIs' organizational capacity to serve Eligible Markets and/or their Target Markets, and Sponsoring Entities' ability to create Certified CDFIs that serve Native Communities.''

All other award amount information shall remain in accordance with the NOFA published on December 11, 2023.

I. Agency Contacts

A. General Information and CDFI Fund Support

The CDFI Fund will respond to questions concerning the NOFA and the Application between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, starting on the date that the NOFA was published through the dates listed in this notice. The CDFI Fund strongly recommends Applicants submit questions to the CDFI Fund via an AMIS service request to the NACA Program, Office of Certification Policy and Evaluation, the Office of Compliance Monitoring and Evaluation, or IT Help Desk. Other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *http://www.cdfifund.gov.*

B. The CDFI Fund's Contact Information is as Follows:

TABLE A—CONTACT INFORMATION

Type of question	Preferred method	Telephone number (not toll free)	Email addresses
NACA Program Questions	Service Request via AMIS	202–653–0421, Option 1	*cdfihelp@cdfi.treas.gov.*
CDFI Certification	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
Compliance Monitoring and Evaluation.	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov.*

TABLE A—CONTACT INFORMATION—Continued

Type of question	Preferred method	Telephone number (not toll free)	Email addresses
AMIS—IT Help Desk	Service Request via AMIS	202–653–0422	*AMIS@cdfi.treas.gov.*

C. Communication With the CDFI Fund

The CDFI Fund will use the contact information in AMIS to communicate with Applicants and Recipients. It is imperative therefore, that Applicants, Recipients, Subsidiaries, Affiliates, and signatories maintain accurate contact information in their accounts. This includes information such as contact names (especially for the Authorized Representative), email addresses, fax and phone numbers, and office locations. For more information about AMIS, please see the AMIS Landing Page at *https://amis.cdfifund.gov.*

Authority: 12 U.S.C. 4701, et seq; 12 CFR parts 1805 and 1815; 2 CFR part 200.

Dated: January 25, 2024.

Marcia Sigal,

Acting Director, Community Development Financial Institutions Fund.

[FR Doc. 2024–01879 Filed 1–30–24; 8:45 am]

BILLING CODE 4810–05–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability

ACTION: Technical correction to the maximum TA award amount cited in the Executive Summary of the NOFA.

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: Change to Notice of Funds Availability (NOFA) inviting Applications for Financial Assistance (FA) or Technical Assistance (TA) awards under the Community Development Financial Institutions Program (CDFI Program) fiscal year (FY) 2024 Funding Round.

Funding Opportunity Number: CDFI–2024–FATA.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

Executive Summary: On December 11, 2023, the Community Development Financial Institutions Fund (CDFI Fund) published a Notice of Funds Availability (NOFA) inviting Applications for Financial Assistance (FA) or Technical Assistance (TA) awards under the Community Development Financial Institutions Program (CDFI Program) fiscal year (FY) 2024 Funding Round. The CDFI Fund is issuing this notice to correct the maximum TA award amount cited in the Executive Summary of the NOFA.

In the **Federal Register**/Vol. 88, No. 236/Monday, December 11, 2023/ Notices. On page 85972, in the first column, the following sentence of the Executive Summary: ‘‘(ii) TA awards of up to $250,000 to build Certified and Emerging CDFIs' organizational capacity to serve Eligible Markets and/or their Target Markets'' is corrected to read:

‘‘(ii) TA awards of up to $300,000 to build Certified and Emerging CDFIs' organizational capacity to serve Eligible Markets and/or their Target Markets.''

All other award amount information shall remain in accordance with the NOFA published on December 11, 2023.

I. Agency Contacts

A. General Information and CDFI Fund Support

The CDFI Fund will respond to questions concerning the NOFA and the Application between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, starting on the date that the NOFA was published through the dates listed in this notice. The CDFI Fund strongly recommends Applicants submit questions to the CDFI Fund via an AMIS service request to the CDFI Program, Office of Certification Policy and Evaluation, the Office of Compliance Monitoring and Evaluation, or IT Help Desk. Other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *http://www.cdfifund.gov.*

B. The CDFI Fund's Contact Information is as Follows:

TABLE A—CONTACT INFORMATION

Type of question	Preferred method	Telephone number (not toll free)	Email addresses
CDFI Program Questions	Service Request via AMIS	202–653–0421, Option 1	*cdfihelp@cdfi.treas.gov.*
CDFI Certification	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
Compliance Monitoring and Evaluation.	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
AMIS—IT Help Desk	Service Request via AMIS	202–653–0422	*AMIS@cdfi.treas.gov.*

C. Communication With the CDFI Fund

The CDFI Fund will use the contact information in AMIS to communicate with Applicants and Recipients. It is imperative therefore, that Applicants, Recipients, Subsidiaries, Affiliates, and signatories maintain accurate contact information in their accounts. This includes information such as contact names (especially for the Authorized Representative), email addresses, fax and phone numbers, and office locations. For more information about AMIS, please see the AMIS Landing Page at *https://amis.cdfifund.gov.*

Authority: 12 U.S.C. 4701, et seq; 12 CFR parts 1805 and 1815; 2 CFR part 200.

Dated: January 25, 2024.

Marcia Sigal,

Acting Director, Community Development Financial Institutions Fund.

[FR Doc. 2024–01880 Filed 1–30–24; 8:45 am]

BILLING CODE 4810–05–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On November 30, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals:

1. CHOE, Un Hyok (Korean: 최은 혁) (a.k.a. CH'OE, U'n-hyo'k), Moscow, Russia; DOB 19 Oct 1985; nationality Korea, North; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214 (individual) [DPRK3].

   Designated pursuant to section 2(a)(viii) of Executive Order 13722 of March 15, 2016 "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea" (E.O. 13722) for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, KOREA UNITED DEVELOPMENT BANK, a person whose property and interests in property are blocked pursuant to E.O. 13722.

2. SO, Myong (Korean: 서명), Vladivostok, Russia; DOB 02 Mar 1978; nationality Korea, North; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Passport 927320285 (Korea, North); Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [NPWMD].

   Designated pursuant to section 1(a)(iv) of Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters" (E.O. 13382) for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, FOREIGN TRADE BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, a person whose property or interests in property are blocked pursuant to E.O. 13382.

3. CHOE, Song Chol (Korean: 최성철) (a.k.a. CHOE, Cholung), Korea, North; DOB 16 May 1973; nationality Korea, North; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Passport 563438637 (Korea, North) (individual) [DPRK4].

Designated pursuant to section 1(a)(iv) of Executive Order 13810 of September 20, 2017 "Imposing Additional Sanctions With Respect to North Korea" (E.O. 13810) for being a North Korean person, including a North Korean person that has engaged in commercial activity that generates revenue for the Government of North Korea or the Workers' Party of Korea.

4. IM, Song Sun (Korean: 임성순), Korea, North; DOB 02 Sep 1965; nationality Korea, North; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Passport 745335827 (Korea, North) (individual) [DPRK4].

   Designated pursuant to section 1(a)(iv) of E.O. 13810 for being a North Korean person, including a North Korean person that has engaged in commercial activity that generates revenue for the Government of North Korea or the Workers' Party of Korea.

5. Myong Chol (a.k.a. CHANG, Myo' ng-ch'o' l), Shenyang, China; Dandong, China; DOB 09 Sep 1968; nationality Korea, North; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214 (individual) [DPRK4].

   Designated pursuant to section 1(a)(vi) of E.O 13810 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, KORYO COMMERCIAL BANK LTD., a person whose property and interests in property are blocked pursuant to E.O. 13810.

6. KANG, Phyong Guk (a.k.a. KANG, Pyong Guk; a.k.a. KANG, P'yo'ng-kuk), Beijing, China; DOB 07 Jun 1978; nationality Korea, North; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214 (individual) [DPRK] (Linked To: GREEN PINE ASSOCIATED CORPORATION).

   Designated pursuant to section 1(a)(ii)(F) of Executive Order 13551 of August 30, 2010, "Blocking Property of Certain Persons With Respect to North Korea" (E.O. 13551) for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, GREEN PINE ASSOCIATED CORPORATION, a person whose property or interests in property are blocked pursuant to E.O. 13551.

7. KANG, Kyong Il (a.k.a. KANG, Kyo'ng-il), Tehran, Iran; DOB 01 Sep 1969; nationality Korea, North; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Passport 563210175 (Korea, North) (individual) [DPRK] (Linked To: GREEN PINE ASSOCIATED CORPORATION).

   Designated pursuant to section 1(a)(ii)(F) of E.O. 13551 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, GREEN

PINE ASSOCIATED CORPORATION, a person whose property or interests in property are blocked pursuant to E.O. 13551.

8. RI, Sung Il (a.k.a. RI, Su'ng-il), Tehran, Iran; DOB 10 Dec 1966; nationality Korea, North; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214 (individual) [DPRK] (Linked To: GREEN PINE ASSOCIATED CORPORATION).

   Designated pursuant to section 1(a)(ii)(F) of E.O. 13551 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, GREEN PINE ASSOCIATED CORPORATION, a person whose property or interests in property are blocked pursuant to E.O. 13551.

Entity:

1. KIMSUKY (a.k.a. "APT43"; a.k.a. "ARCHIPELAGO"; a.k.a. "BLACK BANSHEE"; a.k.a. "EMERALD SLEET"; a.k.a. "NICKEL KIMBALL"; a.k.a. "THALLIUM"; a.k.a. "VELVET CHOLLIMA"), Korea, North; Website onerearth.xyz; alt. Website sovershopp.online; alt. Website mofa.lat; alt. Website janskinmn.lol; alt. Website supermeasn.lat; alt. Website bookstarrtion.online; alt. Website cdredos.site; alt. Website scemsal.site; alt. Website somelmark.store; Email Address hongsiao@naver.com; alt. Email Address teriparl25@gmail.com; alt. Email Address seanchung.hanvoice@hotmail.com; alt. Email Address pkurui9999@gmail.com; alt. Email Address ssdkfdlsfd@gmail.com; alt. Email Address haris2022100@outlook.com; alt. Email Address bing2020@outlook.kr; alt. Email Address marksigal1001@gmail.com; alt. Email Address donghyunkim1010@gmail.com; alt. Email Address hong_xiao@naver.com; alt. Email Address sm.carls0000@gmail.com; alt. Email Address kennedypamla@gmail.com; alt. Email Address ds1kdie@aol.com; alt. Email Address ds1kde@daum.net; alt. Email Address yoon.dasl@yahoo.com; alt. Email Address syshim10@mofa.lat; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214 [DPRK2].

   Designated pursuant to section 1(a)(i) of Executive Order 13687 of January 2, 2015 "Imposing Additional Sanctions With Respect To North Korea" for being an agency, instrumentality, or controlled entity of the Government of North Korea or the Worker's Party of Korea.

BILLING CODE 4810–AL–C

Authorities: E.O. 13382, 70 FR 38567, 3 CFR, 2005 Comp., p. 170; E.O. 13551, 75 FR 53837, 3 CFR, 2010 Comp., p.242; E.O. 13687, 80 FR 819, 3 CFR, 2015 Comp., p. 259; E.O. 13722, 81 FR 14943, 3 CFR, 2016 Comp., p. 446; E.O. 13810, 82 FR 44705, 3 CFR, 2017 Comp., p. 379

Dated: November 30, 2023.

Gregory T. Gatjanis,

Associate Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–01918 Filed 1–30–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Imposition of Special Measure Against Bank of Dandong as a Financial Institution of Primary Money Laundering Concern

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on this request.

DATES: Comments should be received on or before March 1, 2024 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Financial Crimes Enforcement Network (FinCEN)

Title: Imposition of Special Measure against Bank of Dandong as a Financial Institution of Primary Money Laundering Concern.

OMB Control Number: 1506–0072.

Type of Review: Extension without change of a currently approved collection.

Description: FinCEN issued a final rule on November 8, 2017, imposing the fifth special measure to prohibit U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, Bank of Dandong. The rule requires that covered U.S. financial institutions apply due diligence to correspondent accounts they maintain on behalf of foreign financial institutions that is reasonably designed to guard against the indirect use of those accounts by Bank of Dandong. Covered U.S. financial institutions are required under 31 CFR 1010.660(b)(3)(i)(A) to notify holders of foreign correspondent accounts that they may not provide Bank of Dandong with access to such accounts. The requirement is intended to ensure cooperation from correspondent account holders in denying Bank of Dandong access to the U.S. financial system. Covered U.S. financial institutions are required under 31 CFR 1010.660(b)(4)(i) to document compliance with the notification requirement. The information is used by federal agencies and certain self-regulatory organizations to verify compliance with 31 CFR 1010.660.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 15,876.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 15,876.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 15,876.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2024–01921 Filed 1–30–24; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Bureau of the Fiscal Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before March 1, 2024 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *https://www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Bureau of the Fiscal Service

1. Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1530–0023.

Type of Review: Extension without change of a currently approved collection.

Description: This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs.

Form: None.

Affected Public: Individuals and households.

Estimated Number of Respondents: 75,000.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 75,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 12,000.

2. Title: Legacy Treasury Direct Forms.

OMB Control Number: 1530–0042.

Type of Review: Extension without change of a currently approved collection.

Description: The collection of this information is necessary to identify securities and to determine the circumstances related to their loss, theft, or destruction. Chapter 31 of Title 31 of the United States Code (31 U.S.C. 3101, *et seq.*) authorizes the Secretary of the Treasury to issue United States Treasury Bills, Bonds, Notes, and to prescribe the terms and conditions governing those issuances.

Form: FS Forms 5178, 5179, 5188, 5191, 5235 and 5236.

Affected Public: Individuals and households.

Estimated Number of Respondents: 5,100.

Frequency of Response: Once, On occasion.

Estimated Total Number of Annual Responses: 5,100.

Estimated Time per Response: 13 minutes.

Estimated Total Annual Burden Hours: 1,105.

3. Title: Resolution for Transactions Involving Treasury Securities.

OMB Control Number: 1530–0049.

Type of Review: Extension without change of a currently approved collection.

Description: The information is collected to establish an official's authority (by name and title) when conducting transactions involving Treasury Securities on behalf of an organization.

Form: FS Form 1010.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 3,500.

Frequency of Response: Once, On occasion.

Estimated Total Number of Annual Responses: 3,500.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 583.

4. Title: Direct Deposit Sign-Up Form.

OMB Control Number: 1530–0050.

Type of Review: Extension without change of a currently approved collection.

Description: This form is used to request the direct deposit of Series HH or Series H bond interest payments or a savings bond redemption payment.

Form: FS Form 5396.

Affected Public: Individuals and households.

Estimated Number of Respondents: 14,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 14,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 2,333.

5. Title: U.S. Treasury Auctions Submitter Agreement.

OMB Control Number: 1530–0056.

Type of Review: Extension without change of a currently approved collection.

Description: The information is requested from entities wishing to participate in U.S. Treasury Securities auctions via the Treasury Automated Auction Processing System (TAAPS).

Form: FS Forms 5441 and 5441–2

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,050.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 1,050.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 88.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2024–01920 Filed 1–30–24; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service (IRS) Information Collection Requests

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before March 1, 2024 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. Title: Nonemployee Compensation.

OMB Number: 1545–0116.

Form Project Number: Form 1099–NEC.

Abstract: Form 1099–NEC is used to report nonemployee compensation, nonqualified deferred compensation (NQDC) and cash payments for fish.

Current Actions: Editorial changes being made to the form and instructions, to update the tax year references will have a nominal effect on burden. Updates to the estimated number of annual responses for Form 1099–NEC will increase the overall burden estimate by 16,353,674 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organization, and not-for-profit institution.

Estimated Number of Responses: 101,154,000.

Estimated Time per Respondent: 13 min.

Estimated Total Annual Burden Hours: 22,253,880.

2. Title: Investment Interest Expense Deduction.

OMB Number: 1545–0191.

Form Number: Form 4952.

Abstract: Interest expense paid by an individual, estate, or trust on a loan allocable to property held for investment may not be fully deductible in the current year. Form 4952 is used to compute the amount of investment interest expense deductible for the current year and the amount, if any, to carry forward to future years.

Current Actions: There is no change to the existing collection. However, the estimated number of responses was updated to eliminate duplication of the burden associated with individual respondents captured under OMB control numbers 1545–0074.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 128,500.

Estimated Time per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 192,750.

3. Title: Employee Plans Determination Letter Program.

OMB Control Number: 1545–0197.

Form Number: 5300.

Abstract: Internal Revenue Code sections 401(a) and 501(a) set out requirements for qualification of employee benefit trusts and the tax-exempt status of these trusts. Form 5300 is used to request a determination letter from the IRS for the qualification of a defined benefit or a defined contribution plan and the exempt status of any related trust.

Current Actions: There is no change to the burden previously approved by OMB. This request is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 85,000.

Estimated Time per Respondent: 84 hours, 43 min.

Estimated Total Annual Burden Hours: 7,201,200.

4. Title: Application for Determination for Adopters of Modified Non-Standardized Pre-Approved Plans.

OMB Number: 1545–0200.

Form Number: Form 5307.

Abstract: An adopting employer of a non-standardized pre-approved plan

that has made modifications to the terms of the pre-approved plan that are not extensive, or an adopting employer of any pre-approved plan (either standardized or non-standardized) that amends its pre-approved plan solely to add language to satisfy the requirements of Internal Revenue Code (IRC) sections 415 and 416 due to the required aggregation of plans, use Form 5307 to request a determination letter from the IRS. The IRS uses the information to determine if the adopted plan is qualified under IRC sections 401(a) and 501(a). The form may not be used to request a determination letter for a multiple employer plan.

Current Actions: There are changes to the existing collection. The form was revised to eliminate features of the determination letter program that are of limited utility to plan sponsors in comparison with the burdens they impose. The form was also revised to enable electronic submission on *Pay.gov.*

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 100,000.

Estimated Time per Respondent: 31 hours, 29 minutes.

Estimated Total Annual Burden Hours: 3,151,000.

5. Title: Form 211, Application for Reward for Original Information.

OMB Number: 1545–0409.

Form Number: Form 211.

Abstract: Form 211 is the official application form used by persons requesting rewards for submitting information concerning alleged violations of the tax laws by other persons. Such rewards are authorized by Internal Revenue Code section 7623. The data is used to determine and pay rewards to those persons who voluntarily submit information.

Current Actions: There are no changes being made to form 211 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 15,000.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 11,250.

6. Title: Proceeds From Broker and Barter Exchange Transactions.

OMB Number: 1545–0715.

Form Project Number: Form 1099–B.

Abstract: Internal Revenue Code section 6045 requires the filing of an information return by brokers to report the gross proceeds from transactions and by barter exchanges to report exchanges of property or services. Form 1099–B is used to report proceeds from these transactions to the Internal Revenue Service.

Current Actions: Updates to the estimated number of annual responses for Form 1099–B will increase the overall burden estimate by 1,262,659,912 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business, or other for-profit organization.

Estimated Number of Responses: 4,364,843,800.

Estimated Time per Respondent: 30 Min.

Estimated Total Annual Burden Hours: 2,182,421,900.

7. Title: Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988 and the Redesignation of Certain Other Temporary Elections Regulations.

OMB Number: 1545–1112.

Regulation Project Number: TD 8435.

Abstract: Regulation section 301.9100–8 provides final income, estate and gift, and employment tax regulations relating to elections made under the Technical and Miscellaneous Revenue Act of 1988. This regulation enables taxpayers to take advantage of various benefits provided by the Internal Revenue Code.

Current Actions: There are no changes being made to this regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit organizations, Not-for-profit institutions, and State, Local, or Tribal Governments.

Estimated Number of Respondents: 21,740.

Estimated Time per Response: 17 minutes.

Estimated Total Annual Burden Hours: 6,010.

8. Title: Disabled Access Credit.

OMB Number: 1545–1205.

Form Number: Form 8826.

Abstract: Internal Revenue Code section 44 allows eligible small businesses to claim a credit of 50% of the eligible access expenditures that exceeds $250 but do not exceed $10,000. Form 8826, Disabled Access Credit, is used by eligible small businesses to claim the 50 percent credit eligible access expenditures to comply with the requirements under the Americans with Disabilities Act of 1990. The credit is part of the general business credit. Form 8826 is used to figure the credit and the tax liability limit.

Current Actions: There is no change to the existing collection. However, the estimated number of responses was updated to eliminate duplication of the burden associated with individual and business respondents captured under OMB control numbers 1545–0074 and 1545–0123.

Type of Review: Extension of a currently approved collection.

Affected Public: Private sector.

Estimated Number of Responses: 55.

Estimated Time per Respondent: 5 hours, 7 minutes.

Estimated Total Annual Burden Hours: 281.

9. Title: Income, Gift and Estate Tax.

OMB Number: 1545–1360.

Regulation Project Number: TD 8612.

Abstract: This regulation concerns the availability of the gift and estate tax marital deduction when the done spouse or the surviving spouse is not a United States citizen. The regulation provides guidance to individuals or fiduciaries: (1) For making a qualified domestic trust election on the estate tax return of a decedent whose surviving spouse is not a United States citizen in order that the estate may obtain the marital deduction, and (2) for filing the annual returns that such an election may require.

Current Actions: There are no changes being made to this regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,300.

Estimated Time per Respondent: 3 hours, 30 minutes.

Estimated Total Annual Burden Hours: 6,150.

10. Title: Taxpayer Statement Regarding Refund.

OMB Number: 1545–1384.

Form Number: 3911.

Abstract: Form 3911 is used by taxpayers to notify the IRS that a tax refund previously claimed has not been received. The form is normally completed by the taxpayer as the result of an inquiry in which the taxpayer claims non-receipt, loss, theft, or destruction of a tax refund and IRS research shows that the refund has been issued. The information on the form is needed to clearly identify the refund to be traced.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit

organizations, and not-for-profit institutions.

Estimated Number of Respondents: 200,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 16,600.

11. Title: Requirements for a Qualified Domestic Trust.

OMB Number: 1545–1443.

Regulation Project Number: TD 8686.

Abstract: This document contains final regulations that provide guidance relating to the additional requirements necessary to ensure the collection of the estate tax imposed under IRC section 2056A(b) with respect to taxable events involving qualified domestic trusts (QDOTs) described in IRC section 2056A(a). To ensure collection of the tax, the regulation provides various security options that may be selected by the trust and the requirements associated with each option. Under certain circumstances, the trust is required to file an annual statement with the IRS disclosing the assets held by the trust.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households.

Estimated Number of Responses: 4,390.

Estimated Time per Respondent: 1 hour, 23 minutes.

Estimated Total Annual Burden Hours: 6,070.

12. Title: Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations.

OMB Number: 1545–1478.

Regulation Project Number: TD 8702.

Abstract: The regulation relates to certain transfers of stock or securities of domestic corporations pursuant to the corporate organization, reorganization, or liquidation provisions of the internal Revenue Code. Transfers of stock or securities by U.S. persons in tax-free transactions are treated as taxable transactions when the acquirer is a foreign corporation, unless an exception applies under Code section 367(a). This regulation provides that no U.S. person will qualify for an exception unless the U.S. target company complies with certain reporting requirements.

Current Actions: There are no changes being made to the regulations at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 1,000.

13. Title: New Technologies in Retirement Plans.

OMB Number: 1545–1632.

Regulation Project Numbers: TD 8873, TD 9294, and REG–114666–22.

Abstract: Treasury Regulations section 1.402(f)–1 require that plan administrators and employers provide recipients of certain distributions from qualified retirement plans timely written explanations of certain provisions. This regulation provides that if a full written paper explanation was previously given, a written paper or electronic summary of the explanation may be provided to participants in lieu of the full explanation within the requisite time. Treasury Regulations section 1.411(a)–11 require employers or plan administrators of qualified retirement plans to provide certain notices to and obtain consents and elections from distributees. Treasury Regulations section 1.411(a)–11 requires that a confirmation of the terms of the distribution be provided to each participant who consents to a distribution through an electronic medium.

Current Actions: There are no changes to the regulation or burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 455,625.

Estimated Number of Responses: 11,700,000.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 477,563 hours.

14. Title: Disclosure of Returns and Return Information by Other Agencies.

OMB Number: 1545–1757.

Regulation Project Number: TD 9036.

Abstract: In general, under the regulations, the IRS is permitted to authorize agencies with access to returns and return information under section 6103 of the Internal Revenue Code to re-disclose returns and return information based on a written request and the Commissioner's approval, to any authorized recipient set forth in Code section 6103, subject to the same conditions and restrictions, and for the same purposes, as if the recipient had received the information from the IRS directly.

Current Actions: There are no changes to the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal Government, State, Local, or Tribal Gov't.

Estimated Number of Respondents: 11.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 11.

15. Title: Application To Participate in the IRS Acceptance Agent Program.

OMB Number: 1545–1896.

Form Number: Form 13551.

Abstract: New and current Acceptance Agents use Form 13551 to apply to participate in the IRS Acceptance Agent Program or renew their participation in the program. Acceptance Agents are individuals or entities that have entered into formal agreements with the IRS that permit them to assist alien individuals and other foreign persons with obtaining Tax Identification Numbers (TIN).

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households, Businesses or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal government.

Estimated Number of Responses: 4,422.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,211.

16. Title: Entry of Taxable Fuel.

OMB Number: 1545–1897.

Regulation Project Number: REG–120616–03 (T.D. 9346).

Abstract: The regulation imposes joint and several liabilities on the importer of record for the tax imposed on the entry of taxable fuel into the U.S. and revises definition of ''enterer''.

Current Actions: There are no changes to the regulation or burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 225.

Estimated Number of Responses: 1,125 hours.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 281 hours.

17. Title: Modification of Notice 2005–04; Biodiesel and Aviation-Grade Kerosene.

OMB Number: 1545–1915.

Notice Number: Notice 2005–62.

Abstract: Notice 2005–04 provides guidance on certain excise tax Code

provisions that were added or effected by the American Jobs Creation Act of 2004. The information will be used by the IRS to verify that the proper amount of tax is reported, excluded, refunded, or credited. This notice is modified and expanded by Notices 2005–24, 2005–62, and 2005–80.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, Federal, state, local or tribal governments.

Estimated Number of Responses: 157,963.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 76,190.

18. Title: Procedures for Requesting Competent Authority Assistance Under Tax Treaties.

OMB Number: 1545–2044.

Revenue Procedure Number: 2015–40.

Abstract: Taxpayers who believe that the actions of the United States, a treaty country, or both, result or will result in taxation that is contrary to the provisions of an applicable tax treaty are required to submit the requested information in order to receive assistance from the IRS official acting as the U.S. competent authority. The information is used to assist the taxpayer in reaching a mutual agreement with the IRS and the appropriate foreign competent authority.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business, or other for-profit organizations.

Estimated Number of Respondents: 280.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 8,400.

19. Title: Late Filing of Certification or Notices.

OMB Number: 1545–2098.

Regulation Project Number: Rev. Proc. 2008–27.

Abstract: The IRS needs certain information to determine whether a taxpayer should be granted permission to make late filings of certain statements or notices under sections 897 and 1445. The information submitted will include a statement by the taxpayer demonstrating reasonable cause for the failure to timely make relevant filings under sections 897 and 1445. This revenue procedure provides a simplified method for taxpayers to request relief for late filings under sections 1.897–2(g)(1)(ii)(A), 1.897–2(h)(2), 1.1445–2(d)(2), 1.1445–5(b)(2), and 1.1445–5(b)(4) of the Income Tax Regulations.

Current Actions: There are no changes to the regulation or burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 250.

Estimated Time per Response: 4 hours.

Estimated Total Annual Burden Hours: 1,000 hours.

20. Title: Discharge From or Subordination of Federal Lax Lien.

OMB Number: 1545–2174.

Form Number: Forms 14134 and 14135.

Abstract: Form 14134 is used to apply for a Certificate of Subordination under Internal Revenue Code (IRC) sections 6325(d)(1) and 6325(d)(2) to allow a named creditor to move their junior creditor position ahead of the United States' position for the property named in the certificate. Form 14135 is used to apply for a Certificate of Discharge under IRC section 6325(b) to remove the United States' lien from the property named in the certificate.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Government.

Estimated Number of Responses: 10,362.

Estimated Time per Respondent: 2 hours, 11 minutes.

Estimated Total Annual Burden Hours: 22,665.

21. Title: Affordable Care Act Notice of Rescissions.

OMB Number: 1545–2180.

Regulation Project Numbers: TD 9744.

Abstract: This document contains final regulations regarding grandfathered health plans, preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, coverage of dependent children to age 26, internal claims and appeal and external review processes, and patient protections under the Affordable Care Act.

Current Actions: There are no changes to the regulation or burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,533.

Estimated Time per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 20 hours.

22. Title: PTIN Supplemental Application for Foreign Persons Without a Social Security Number.

OMB Number: 1545–2189.

Form Number: 8946.

Abstract: Form 8946 is used by foreign persons without a social security number (SSN) who want to prepare tax returns for compensation. Foreign persons who are tax return preparers must obtain a preparer tax identification number (PTIN) to prepare tax returns for compensation. Generally, the IRS requires an individual to provide an SSN to get a PTIN. Because foreign persons cannot get an SSN, they must file Form 8946 to establish their identity and status as a foreign person.

Current Actions: There were editorial edits made to the internal only box of form 8946. However, these edits did not affect the burden estimates.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 4,466.

Estimated Time per Respondent: 5.27 hrs.

Estimated Total Annual Burden Hours: 23,536.

23. Title: Foreclosure Sale Purchaser Contact Information Request.

OMB Number: 1545–2199.

Form Number: 15597.

Abstract: Form 15597, Foreclosure Sale Purchaser Contact Information Request, is information requested of individuals or businesses that have purchased real property at a third-party foreclosure sale. If the IRS has filed a "Notice of Federal Tax Lien" publicly notifying a taxpayer's creditors that the taxpayer owes the IRS a tax debt, AND a creditor senior to the IRS position later forecloses on their creditor note (such as the mortgage holder of a taxpayers primary residence) THEN the IRS tax claim is discharged or removed from the property (if the appropriate foreclosure rules are followed) and the foreclosure sale purchaser buys the property free and clear of the IRS claim EXCEPT that the IRS retains the right to "redeem" or buy back the property from the foreclosure sale purchaser w/in 120 days after the foreclosure sale. Collection of this information is authorized by 28 U.S.C. 2410 and IRC 7425.

Current Actions: There are no changes to the burden previously approved by OMB.

Type of Review: Extension of a previously approved collection.

Affected Public: Individuals or households, Business or other for-profit groups, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Governments.

Estimated Number of Responses: 150.

Estimated Time per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 613.

24. Title: Certificate of Foreign Contracting Party Receiving Federal Procurement Payments.

OMB Number: 1545–2263.

Form Project Number: Form W–14.

Abstract: Form W–14 is completed by foreign contracting parties and is used to claim an exemption from withholding, in whole or in part, from the 2% tax imposed by section 5000C. Section 5000C imposes a 2% tax on the gross amount of specified Federal procurement payments that foreign persons receive pursuant to certain contracts with the U.S. Government. Form W–14 is completed by foreign contracting parties and is used to claim an exemption from withholding, in whole or in part, from the 2% tax. Form W–14 is provided to the government department or agency that is a party to the contract.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Federal Government.

Estimated Number of Responses: 2,000.

Estimated Time per Respondent: 5 hrs., 55 min.

Estimated Total Annual Burden Hours: 11,840.

25. Title: Application for Security Summit Membership.

OMB Number: 1545–2295.

Form Number: Form 15320.

Abstract: The IRS has joined with representatives of the software industry, tax preparation firms, payroll and tax financial product processors and state tax administrators to combat identity theft refund fraud to protect the nation's taxpayers. The Security Summit consists of IRS, state tax agencies and the tax community, including tax preparation firms, software developers, payroll and tax financial product processors, tax professional organizations and financial institutions. Applicants use Form 15320 to apply for membership.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: State, Local, and Tribal Governments, and business or other for-profit organizations.

Estimated Number of Responses: 62.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 5.

26. Title: Wage and Investment Strategies and Solutions Behavioral Laboratory Customer Surveys and Support.

OMB Number: 1545–2274.

Regulatory Number: N/A.

Abstract: As outlined in the Internal Revenue Service (IRS) Strategic Plan, the Agency is working towards allocating IRS resources strategically to address the evolving scope and increasing complexity of tax administration. In order to do this, IRS must realize their operational efficiencies and effectively manage costs by improving enterprise-wide resource allocation and streamlining processes using feedback from various behavioral research techniques. To assist the Agency is accomplishing the goal outlined in the Strategic Plan, the Wage and Investment Division continuously maintains a ''customer-first'' focus through routinely soliciting information concerning the needs and characteristics of its customers and implementing programs based on the information received. W&I Strategies and Solutions (WISS), is developing the implementation of a Behavioral Laboratory to identify, plan and deliver business improvement processes that support fulfillment of the IRS strategic goals. The collection of information through the Behavioral Laboratory is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with the commitment to improving taxpayer service delivery. Improving agency programs requires ongoing assessment of service delivery. WISS, through the Behavioral Laboratory, will collect, analyze, and interpret information gathered through this generic clearance to identify strengths and weaknesses of current services and make improvements in service delivery based on feedback provided by taxpayers and employees of the Internal Revenue Service.

Current Actions: The IRS will be revising and replacing various surveys. The survey scope is expanded to include burden for surveys associated with all taxpayer segments. This effort represents a continuation of the IRS's strategy to gather taxpayer burden data for all types of tax returns and information reporting documents in order to support Wage and Investment's OMB Improvement Strategy to transition burden estimates for all taxpayers to the preferred RAAS burden estimation methodology. These surveys will allow RAAS to update and validate the IRS Taxpayer Burden Model which will be used to provide estimates for consolidated taxpayer segments, like what is currently done for OMB numbers 1545–0074, 1545–0123, and 1545–0047.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual, Business, or other for-profit organizations.

Estimated Number of Respondents: 150,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 150,000 hours.

27. Title: Clean Hydrogen Production Credit.

OMB Number: 1545–New.

Form Project Number: Form 7210.

Abstract: Section 13204 of the Inflation Reduction Act of 2022 (IRA 2022), Public Law 117–169, created the new clean hydrogen production credit in new Internal Revenue Code section 45V. For 2023 and subsequent years, new Form 7210 will be used to claim the credit. The clean hydrogen production credit provides a per-kilogram (kg) credit for qualified clean hydrogen produced at a qualified clean hydrogen facility. This form is attached to 2023 tax returns.

Current Actions: This is a request for new OMB approval.

Type of Review: New Form.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 50.

Estimated Time per Respondent: 5.47 hours.

Estimated Total Annual Burden Hours: 274.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2024–01882 Filed 1–30–24; 8:45 am]

BILLING CODE 4810–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Alcohol and Tobacco Tax and Trade Bureau Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before March 1, 2024 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

1. Title: Application to Establish and Operate Wine Premises and Wine Bond.

OMB Control Number: 1513–0009.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC), at 26 U.S.C. 5351 through 5357, provides for the establishment of bonded wine cellars, bonded wineries, and taxpaid wine bottling houses and, to establish such wine premises, these IRC sections require the filing of applications and bonds as required by regulations issued by the Secretary of the Treasury. Under those IRC authorities, the Alcohol and Tobacco Tax and Trade Bureau (TTB) has issued TTB F 5120.25, Application to Establish and Operate Wine Premises, to collect information that it uses to determine the qualifications under the IRC of an applicant applying to establish and operate a new wine premises. Proprietors of established wine premises also use TTB F 5120.25 to report changes to certain required information such as location and ownership. Wine premises proprietors use TTB F 5120.36, Wine Bond, to file bond coverage with TTB, unless they are exempt from the bond requirement as described in the IRC at 26 U.S.C. 5551(d). The bond may be secured through a surety company, or it may be secured with collateral (Treasury securities or notes or by cash). The required bond protects the revenue by ensuring payment of delinquent Federal wine excise tax liabilities.

Form: TTB F 5120.25, 5120.36 and 5120.36w.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 5,800.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 5,800.

Estimated Time per Response: 58 minutes.

Estimated Total Annual Burden Hours: 5,600.

2. Title: Brewer's Bond and Brewer's Bond Continuation Certificate; Brewer's Collateral Bond and Brewer's Collateral Bond Continuation Certificate.

OMB Control Number: 1513–0015.

Type of Review: Extension without change of a currently approved collection.

Description: In general, the Internal Revenue Code (IRC) at 26 U.S.C. 5401(b) requires brewers to execute a bond before starting business, subject to the exemptions for certain small brewers that are eligible to pay excise taxes on an annual or quarterly basis as provided under 26 U.S.C. 5551(d) and to regulations issued by the Secretary of the Treasury. Also under that section, brewer's bonds expire every four years, and a brewer must provide a new bond or a continuation certificate extending the terms of an existing bond. Additionally, under the IRC at 26 U.S.C. 7101 and subject to regulations prescribed by the Secretary, a brewer may furnish a surety bond under which a surety company guarantees payment of the proprietor's unpaid tax liabilities, or a brewer may submit a collateral bond backed by United States Treasury securities or notes. Under those IRC authorities, the TTB regulations in 27 CFR part 25 require brewers to file a surety bond using TTB F 5130.22, Brewer's Bond, or a collateral bond backed by U.S. Treasury securities, notes, or cash using TTB F 5130.25, Brewer's Collateral Bond. To continue an existing bond, a brewer may furnish a surety bond continuation certificate using TTB F 5130.23 or a collateral bond continuation certificate using TTB F 5130.27, as appropriate. The collected information is necessary to protect the revenue as the required bonds ensure payment of any delinquent excise tax liabilities.

Form: TTB F 5130.22, 5130.23, 5130.25 and 5130.27.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 150.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 150.

Estimated Time per Response: 54 minutes.

Estimated Total Annual Burden Hours: 134.

3. Title: Drawback on Beer Exported.

OMB Control Number: 1513–0017.

Type of Review: Extension without change of a currently approved collection.

Description: Under the IRC at 26 U.S.C. 5051, all beer produced in or imported into the United States is subject to Federal excise tax, but, under 26 U.S.C. 5053(a), beer exported from the United States is not subject to that tax. As such, under the IRC at 26 U.S.C. 5055, brewers may receive drawback (refund) of the excise tax paid on domestically produced beer when it is subsequently exported or delivered for use as supplies on certain vessels or aircraft if the brewer provides proof of such action as the Secretary requires by regulation. Under the authority of 26 U.S.C. 5055, the TTB regulations in 27 CFR part 28 allow the brewer or their agent to file a claim for drawback (refund) of the excise taxes paid on beer when the beer is exported to a foreign country, delivered to the U.S. Armed Forces for export, delivered for use as supplies on certain vessels or aircraft, or transferred to a foreign trade zone for export. The regulations require such export drawback claims to be made on form TTB F 5130.6. The collected information is necessary to protect the revenue as it allows TTB to verify the accuracy of export drawback claims for beer, which prevents payment of incorrect and fraudulent export drawback claims.

Form: TTB F 5130.6.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 725.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 8,700.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 8,700.

4. Title: Notice of Release of Tobacco Products, Cigarette Papers, or Cigarette Tubes.

OMB Control Number: 1513–0025.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 5704(c) provides for the release of imported tobacco products and cigarette papers and tubes from customs custody, without payment of tax, for delivery to an export warehouse proprietor or a manufacturer of tobacco products or cigarette papers and tubes, while the IRC at 26 U.S.C. 5704(d) provides that tobacco products and cigarette papers and tubes previously exported and then returned to customs custody may be released, without payment of tax, to their original manufacturer or an authorized export warehouse proprietor. In addition, the IRC at 26 U.S.C. 5741 requires manufactures of tobacco products, processed tobacco, or cigarette papers and tubes, importers, and export warehouse proprietors to keep records as the Secretary prescribes by regulation. Under those IRC sections, all such releases and records must be made in accordance with regulations issued by the Secretary of the Treasury. Therefore, under those IRC authorities, the TTB tobacco-related import regulations in 27 CFR part 41 require industry members who do not file customs entries electronically to use TTB F 5200.11 to give notice of release of tobacco products, cigarette papers, or cigarette tubes from customs custody. At importation or return, industry members, TTB, and customs bonded warehouse proprietors or government officials use TTB F 5200.11 to, respectively, request, authorize, and document the release of such products from customs custody, without payment of tax, to a manufacturer or export warehouse proprietor authorized to receive such articles. (The electronic submission of import data and notices of release to TTB through Customs and Border Protection systems is approved under OMB Number 1513–0064, Importer's Records and Reports.)

Form: TTB F 5200.11.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 10.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 60.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 15.

5. Title: Inventory—Manufacturer of Tobacco Products or Processed Tobacco.

OMB Control Number: 1513–0032.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 5721 requires manufacturers of tobacco products and processed tobacco to complete an inventory at the commencement of business, the conclusion of business, and at any other time the Secretary of the Treasury prescribes by regulation. Under the IRC at 26 U.S.C. 5741, such manufacturers are also required to keep records and make them available for inspection in the manner the Secretary prescribes by regulation. Under these authorities, the TTB regulations in 27 CFR part 40 require manufacturers of tobacco products and processed tobacco to provide inventories on TTB F 5210.9 at the commencement of business, the conclusion of business, when changes in business ownership or factory location occur, and at any other time TTB directs. The use of TTB F 5210.9 provides a uniform format for recording those inventories. The collected information is necessary to protect the revenue as it allows TTB to ensure that manufacturers of tobacco products pay the appropriate amount of Federal excise tax, and that processed tobacco, which is not subject to that tax, is not diverted to the illegal manufacture of otherwise taxable tobacco products.

Form: TTB F 5210.9.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 100.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 100.

Estimated Time per Response: 5 hours.

Estimated Total Annual Burden Hours: 500.

6. Title: Signing Authority for Corporate and LLC Officials.

OMB Control Number: 1513–0036.

Type of Review: Extension without change of a currently approved collection.

Description: Under the Internal Revenue Code (IRC) at 26 U.S.C. 6061, any return, statement, or other document required to be submitted under internal revenue laws or regulations ''shall be signed in accordance with forms or regulations'' prescribed by the Secretary of the Treasury. Under that section's authority, TTB provides form TTB F 5100.1, which corporations and limited liability companies (LLCs) may use to identify the specific officials or employees, by name or by position title, authorized by their articles of incorporation, bylaws, or governing officials to act on behalf of or sign documents for the entity in TTB matters. This voluntary information collection allows TTB to identify the corporate and LLC officials or employees authorized to act on an entity's behalf in TTB matters.

Form: TTB F 5100.1.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 2,150.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 2,150.

Estimated Time per Response: 12 minutes.

Estimated Total Annual Burden Hours: 411.

7. Title: Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

OMB Control Number: 1513–0037.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC), at 26 U.S.C. 5066, 5214, and 5362, provides that distilled spirits, denatured spirits, and wines may be withdrawn from bonded premises, without payment of Federal alcohol excise tax, for export, for transfer to a foreign trade zone or a customs bonded warehouse, or for use as supplies on certain vessels or aircraft. These IRC sections also state that such withdrawals are subject to regulations prescribed by the Secretary of the Treasury. Under those IRC authorities, the TTB alcohol export regulations in 27 CFR part 28 require exporters to use TTB F 5100.11 to report and document removals of distilled spirits, denatured spirits, and wines, without payment of tax, for export purposes. Those purposes include direct export to a foreign country or United States armed forces stationed overseas; transfer to a foreign trade zone, a customs manufacturing bonded warehouse, or a customs bonded warehouse for subsequent export; or for use as supplies on international vessels or aircraft. The collected information is necessary to protect the revenue as the information provided on TTB F 5100.11 allows TTB to determine that exporters of spirits and wines withdrawn without payment of tax possess the appropriate bond coverage for any resulting excise tax liabilities, and the form provides certification that the untaxed products in question were, in fact, exported, transferred, or laden on a qualified vessel or aircraft and not diverted into domestic commerce, which is subject to tax.

Form: TTB F 5100.11.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 370.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 7,400.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 3,700.

8. Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond.

OMB Control Number: 1513–0038.

Type of Review: Extension without change of a currently approved collection.

Description: Under provisions of the Internal Revenue Code (IRC) at 26 U.S.C. 5005(c), when a proprietor of a distilled spirits plant (DSP) or an alcohol fuel plant (AFP, a type of DSP) desires to have distilled spirits or denatured spirits transferred to its plant from another domestic DSP, the receiving proprietor must make an application to receive such spirits in bond as the excise tax liability for the transferred spirits passes to the receiving DSP during transit. Under that IRC authority, the TTB regulations in 27 CFR part 19 require the receiving DSP proprietor to file an application for the transfer on TTB F 5100.16, Application for Transfer of Spirits and/or Denatured Spirits in Bond. TTB must approve the application before the transfer may occur. The collected information is necessary to protect the revenue as it allows TTB to ensure that the receiving plant has adequate bond coverage to cover the excise taxes attached to the transferred spirits or, for certain small alcohol excise taxpayers, is exempt from such bond coverage.

Form: TTB F 5100.16.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 505.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 3,030.

Estimated Time per Response: 7 minutes.

Estimated Total Annual Burden Hours: 366.

9. Title: Distilled Spirits Plants—Notices of Alternations and Changes in Production Status, and Alternating Premises Records.

OMB Control Number: 1513–0044.

Type of Review: Extension without change of a currently approved collection.

Description: Under the Internal Revenue Code (IRC) at 26 U.S.C. 5178(a), a distilled spirits plant (DSP) is a delineated place on which only certain authorized activities may be conducted. However, under section 5178(b), the Secretary of the Treasury (the Secretary) may authorize other businesses on a DSP's premises under certain circumstances upon application. Also, under the IRC at 26 U.S.C. 5221, DSP proprietors are required give written notification, in the form and manner as the Secretary prescribes by regulation when they begin, suspend, or resume production of spirits. In addition, the IRC at 26 U.S.C. 5555 requires those liable for any tax imposed by chapter 51 of the IRC to keep such records, submit such returns and statements, and comply with such rules and regulations as the Secretary may prescribe by regulation. Under those IRC authorities, TTB has issued regulations in 27 CFR part 19 requiring DSP proprietors to provide written notification regarding alternations of DSPs between proprietors or for customs purposes, and regarding changes to the production status of distilled spirits. TTB also has issued regulations requiring DSP proprietors to keep alternating premises records when alternating operations at DSPs, including with an adjacent bonded wine cellar, taxpaid wine bottling house or brewery, a manufacturer of eligible flavors, or a general premises.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,560.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 7,800.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 3,900.

10. Title: Registrations and Miscellaneous Requests and Notices for Distilled Spirits Plants; Distilled Spirits Related Requests and Notices for Non-Distilled Spirits Plants.

OMB Control Number: 1513–0048.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC), at 26 U.S.C. 5171 and 5172, provides that an application to register a distilled spirits plant (DSP) must be made in conformity with regulations issued by the Secretary of the Treasury, while 26 U.S.C. 5201 requires DSPs to operate in conformity with such regulations. The IRC at 26 U.S.C. 5312 also authorizes the Secretary to issue regulations regarding the use of distilled spirits by certain educational and scientific institutions for experimental or research use, and that section authorizes the establishment and regulation of experimental DSPs. Under those authorities, the TTB regulations in 27 CFR part 19 prescribe the use of TTB F 5110.41 to register a DSP or to make certain amendments to an existing DSP registration. The TTB regulations in part 19 also require DSP operators to submit various miscellaneous letterhead requests or notices to vary their operations from the requirements of part 19 or to request approval or provide notification of certain changes in DSP activities. In addition, those regulations require persons who are neither registered DSPs nor applicants for registration to submit applications or notices related to certain distilled spirits activities, such as the establishment of an experimental DSP or the use of spirits for research purposes. The required information is necessary to protect the revenue as it assists TTB in determining a person's eligibility to establish and operate a DSP under the IRC, whether a variance from TTB's regulatory requirements or certain activities at a DSP should be approved, and whether non-DSP entities are eligible to engage in certain distilled spirits-related activities.

Form: TTB F 5110.41.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 7,550.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 7,550.

Estimated Time per Response: 1 hour 16 minutes.

Estimated Total Annual Burden Hours: 9,593.

11. Title: Tax Deferral Bond—Distilled Spirits (Puerto Rico).

OMB Control Number: 1513–0050.

Type of Review: Extension without change of a currently approved collection.

Description: Under the Internal Revenue Code (IRC) at 26 U.S.C. 7652, beverage distilled spirits and nonbeverage products containing spirits subject to tax produced in Puerto Rico and brought into the United States are subject to a tax equal to that imposed by the IRC on domestically produced spirits. That section also authorizes the Secretary of the Treasury (the Secretary) to prescribe regulations regarding the mode and time for the collection of such taxes. In addition, the IRC at 26 U.S.C. 7101 and 7102 authorizes the Secretary to issue regulations regarding bonds required under the IRC or its related regulations. Under those IRC authorities, the TTB regulations in 27 CFR part 26 allow respondents who ship taxable distilled spirits products produced in Puerto Rico to the United States to either pay the required tax prior to shipment or to file a bond to defer payment of the tax due until the

submission of the respondent's next excise tax return. Those regulations require respondents who elect to defer tax payment on such shipments to file a bond on TTB F 5110.50 to guarantee payment of the taxes due in case of default. As such, the required information is necessary to protect the revenue.

Form: TTB F 5110.50.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 10.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 10.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 10.

12. Title: Report of Wine Premises Operations.

OMB Control Number: 1513–0053.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 5367 authorizes the Secretary of the Treasury to issue regulations requiring the keeping of records and the filing of returns related to wine cellar and bottling house operations. Section 5555 of the IRC also requires any person liable for tax under chapter 51 of the IRC to keep records, provide statements, and make returns as the Secretary prescribes by regulation. Under those IRC authorities, the TTB wine regulations in 27 CFR part 24 require wine premises proprietors to file periodic operations reports on form TTB F 5120.17. TTB uses the collected information to verify wine excise tax liabilities, ensure that respondents operate wine premises in accordance with applicable Federal law and regulations, and collect raw data for generalized monthly statistical reports on wine operations published on the TTB website.

Form: TTB F 5120.17sm.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 17,000.

Frequency of Response: Monthly, Quarterly, Annually.

Estimated Total Number of Annual Responses: 64,920.

Estimated Time per Response: 1 hour 6 minutes.

Estimated Total Annual Burden Hours: 71,412.

13. Title: Excise Tax Return.

OMB Control Number: 1513–0083.

Type of Review: Extension without change of a currently approved collection.

Description: Under the Internal Revenue Code (IRC) at 26 U.S.C. 5061 and 5703, the Federal alcohol and tobacco excise taxes imposed by chapters 51 and 52 of the IRC are collected on the basis of a return, containing such information and submitted as the Secretary of the Treasury requires by regulation. Under those IRC sections, respondents file such returns on a semi-monthly basis, except for certain small alcohol excise taxpayers that may pay on a quarterly or annual basis depending on certain circumstances. Under those IRC authorities, the TTB regulations in 27 CFR chapter I require alcohol and tobacco excise taxpayers, other than those in Puerto Rico, to report their tax liability using TTB F 5000.24, Excise Tax Return. The collected information is necessary to protect the revenue as it allows TTB to establish a taxpayer's identity, the amount and type of excise taxes due, and the amount of payments made.

Form: TTB F 5000.24.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 20,400.

Frequency of Response: Monthly, Quarterly, Annually.

Estimated Total Number of Annual Responses: 126,480.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 94,860.

14. Title: Marks on Wine Containers.

OMB Control Number: 1513–0092.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 5041 imposes a per gallon Federal excise tax of varying rates on six classes of wine—three classes of still wines (based on alcohol content), two classes of effervescent wines, and one class of hard cider. Under the authority of the IRC at 26 U.S.C. 5368, 5388, and 5662, the TTB regulations in 27 CFR part 24, Wine, require wine premises proprietors to correctly identify wines kept on or removed from their premises by placing certain marks, labels, or other information on all production, storage, and consumer containers of wine. Because of the varying excise tax rates on wines, and because different tax classes of wine may be produced at the same premises, the required information is necessary to protect the revenue as it ensures that wines are correctly identified for excise tax purposes. However, the placement of identifying information on wine containers is a usual and customary business practice carried out by wine premises proprietors, regardless of any regulatory requirement to do so, in order to track their wine production and inventory and inform the public of the content of their products. As a usual and customary business practice, per the OMB regulations at 5 CFR 1320.3(b)(2), this information collection places no annual burden on respondents.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 17,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 17,000.

Estimated Time per Response: None, as this is customary and usual business practice.

Estimated Total Annual Burden Hours: 0.

15. Title: Special Tax Renewal Registration and Return/Special Tax Location Registration Listing.

OMB Control Number: 1513–0113.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 5731 and 5732 requires manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors to pay an annual special (occupational) tax (SOT) for each such premises that they operate, on the basis of a return and under regulations issued by the Secretary of the Treasury. As a service to tobacco industry members, TTB annually sends a SOT return and premises registration form, TTB F 5630.5R, with pre-populated premises data to tobacco industry members that have previously paid SOT. TTB's use of TTB F 5630.5R protects the revenue by facilitating the registration of premises subject to SOT and the timely payment of that tax by businesses subject to it. The information collected on that form is essential to TTB's collecting, processing, and accounting for the SOT imposed on tobacco industry members by the IRC.

Form: TTB F 5630.5R.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 220.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 220.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 55.

16. Title: Usual and Customary Business Records Relating to Wine.

OMB Control Number: 1513–0115.

Type of Review: Extension without change of a currently approved collection.

Description: Under the authority of the Internal Revenue Code (IRC) at 26 U.S.C. 5041, 5362, 5367, 5369, 5370, and 5555, the TTB regulations require wineries, taxpaid wine bottling houses, and vinegar plants to keep certain usual and customary business records. These records include purchase, sales, and other internal records related to their production and processing of wine, and their packaging, storage, and shipping operations. TTB routinely inspects these records to verify proper payment of Federal wine excise taxes on the six tax classes of wine and to ensure that proprietors produce, package, store, ship, and transfer wine in compliance with the applicable Federal statutory and regulatory requirements.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 17,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 17,000.

Estimated Time per Response: None, as this is customary and usual business practice.

Estimated Total Annual Burden Hours: 0.

17. Title: Application, Permit, and Report—Wine and Beer (Puerto Rico); and Application, Permit, and Report—Distilled Spirits Products (Puerto Rico).

OMB Control Number: 1513–0123.

Type of Review: Extension without change of a currently approved collection.

Description: In general, under the Internal Revenue Code (IRC) at 26 U.S.C. 7652, merchandise manufactured in Puerto Rico and shipped to the United States for consumption or sale is subject to a tax equal to the internal revenue tax imposed in the United States upon like articles of merchandise of domestic manufacture. That section also authorizes the Secretary of the Treasury to issue regulations regarding the collection of such taxes, which, as provided in that section, are largely transferred to the treasury of Puerto Rico. Under that IRC authority, the TTB regulations in 27 CFR part 26 require persons who intend to ship alcohol products produced in Puerto Rico to the United States for consumption or sale to file an application and permit to compute the tax on, tax-pay, and withdraw those products for shipment. As such, the TTB regulations prescribe the use of TTB F 5100.21 for beer or wine products, and TTB F 5110.51 for distilled spirits products. The collected information is necessary to protect the revenue. In cases where the respondent makes the shipment taxpaid, TTB uses the required information to verify that the respondent has paid the correct amount of tax. In cases where the respondent is eligible to defer the tax payment, TTB uses the information to ensure that the respondent's bond coverage is adequate to cover the taxes due. If necessary, TTB also uses the collected information to enforce collection of any tax owed to the Federal government on such shipments.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 35.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 35.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 35.

18. Title: Distilled Spirits Bond.

OMB Control Number: 1513–0125.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 5173 and 5181 requires distilled spirits plants (DSPs) and alcohol fuel plants (AFPs), respectively, to furnish a bond unless exempted from doing so under the IRC at 26 U.S.C. 5551(d) or 5181(c)(3). Under those IRC authorities, the TTB regulations in 27 CFR part 19 require proprietors of such plants that are required to submit a bond to use TTB F 5110.56, Distilled Spirits Bond, to file with TTB either a surety bond or a collateral bond using cash or U.S. securities. Using that same form, proprietors also may withdraw coverage for one or more plants, and DSP proprietors may provide operations coverage for adjacent wine cellars. The collected information is necessary to protect the revenue as the required bonds ensure payment of any delinquent Federal alcohol excise tax liabilities.

Form: TTB F 5110.56.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 400.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 400.

Estimated Time per Response: 1 hours.

Estimated Total Annual Burden Hours: 400.

19. Title: Records to Support Tax Free and Tax Overpayment Sales of Firearms and Ammunition.

OMB Control Number: 1513–0128.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 4181 imposes a tax on the sale of firearms and ammunition. However, under the IRC at 26 U.S.C. 4221(a), certain sales may be made tax-free, including sales made for further manufacture, export, or use as supplies on vessels or aircraft, and sales made to a State or local government or to a nonprofit education organization for their exclusive use. In addition, for such sales where the tax has been paid, the tax is considered an overpayment subject to credit or refund under the IRC at 26 U.S.C. 6416(b)(2) and (3). In order to protect the revenue, the TTB regulations in 27 CFR part 53 prescribe that those persons otherwise subject to this tax must maintain records, statements, or certificates containing specified information documenting the tax-free or tax-overpaid nature of such sales. Respondents may use commercial records or self-generated supporting statement or certificates, or, for certain transactions, respondents may use TTB-provided forms, which, when completed, document the required supporting information. The required records, statements, or certificates are maintained by respondents at their business premises, and, to protect the revenue, TTB may examine those documents during field audits.

Form: TTB F 5600.33, 5600.34, 5600.35, 5600.36 and 5600.37.

Affected Public: Businesses or other for-profits and State, Local or Tribal Governments.

Estimated Number of Respondents: 3,500.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 42,000.

Estimated Time per Response: 23 minutes.

Estimated Total Annual Burden Hours: 15,750.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2024–01922 Filed 1–30–24; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal

Advisory Committee Act, 5 U.S.C. ch. 10., that the Advisory Committee on the Readjustment of Veterans will hold a meeting virtually. The meeting will begin, and end as follows:

Date	Time	Open session
March 7, 2024	2:30 p.m. to 3 p.m. eastern standard time (EST).	Yes.

The meeting is open to the public.

The purpose of the Committee is to advise the Department of Veterans Affairs (VA) regarding the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee shall take into account the needs of Veterans who served in combat theaters of operation. The Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment.

The Committee, comprised of 14 subject matter experts, advises the Secretary, through the VA Readjustment Counseling Service, on the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment, specifically taking into account the needs of Veterans who served in combat theaters of operation.

On March 7, 2024, the agenda will include review of the 24th report, a calendar forecast and discussion over subject matter experts to consider presenting at the next full Committee meeting. The Committee will meet from 2:30 p.m.—3:00 p.m. EST, for public members wishing to provide oral comments or join the meeting, please use the following Microsoft Teams link:*https://teams.microsoft.com/l/meetup-join/19%3ameeting_OTgxZGM5OGQtYTJhZi00ZGRlLTk3MjgtZTYzZTQ2YzEzZWEw%40thread.v2/0?context=%7b%22Tid%22%3a%22e95f1b23-abaf-45ee-821d-b7ab251ab3bf%22%2c%22Oid%22%3a%228aa84165-5b4e-40e7-8e32-63a80c0bd33a%22%7d.*

The Committee will also accept written comments from interested parties on issues outlined in the meeting agenda or other issues regarding the readjustment of Veterans. Parties should contact Mr. Richard Barbato via email at *VHARCSStratAnalysis@va.gov,* or by mail at Department of Veterans Affairs, Readjustment Counseling Service (10RCS), 810 Vermont Avenue, Washington, DC 20420. Any member of the public seeking additional information should contact Mr. Barbato at the phone number or email addressed noted above.

Dated: January 25, 2024.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2024–01833 Filed 1–30–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0934]

Agency Information Collection Activity under OMB Review: Department of Veterans Affairs Servicing Purchase (VASP) Program

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link *https://www.reginfo.gov/public/do/PRAMain, select* ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0934.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0934'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 3732 and 38 CFR 36.4320, Refunding of Loans in Default.

Title: Department of Veterans Affairs Servicing Purchase (VASP) Program.

OMB Control Number: 2900–0934.

Type of Review: Extension of a currently approved collection.

Abstract: VA is initiating an expanded program using existing Refund provisions. This option will assist Veterans with VA-guaranteed loans who have defaulted on their mortgage loan and are facing foreclosure. Under this program, VA will exercise its statutory option to purchase the loan from the servicer and VA will hold the loan in VA's own loan portfolio. The servicer will prepare a modification of the loan to increase affordability for the Veteran. Servicers who participate in the program are required to document their efforts to assist the Veteran through a waterfall of existing loss mitigation options and provide that documentation to VA. Information collection is necessary to ensure that Veterans and servicers comply with VA program requirements under VASP that are not already covered by existing, approved information collections for loan servicing and loan refunding.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 82947 on November 27, 2023.

Affected Public: Individuals or Households.

Estimated Annual Burden: 68,231 hours.

Estimated Average Burden per Respondent: 195 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 41,988.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–01870 Filed 1–30–24; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Homeland Security

8 CFR Parts 103, 106, 204,, et al.

U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements; Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 106, 204, 212, 214, 240, 244, 245, 245a, 264, and 274a

[CIS No. 2687–21; DHS Docket No. USCIS 2021–0010]

RIN 1615–AC68

U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: This final rule adjusts certain immigration and naturalization benefit request fees charged by USCIS. This rule also provides additional fee exemptions for certain humanitarian categories and makes changes to certain other immigration benefit request requirements. USCIS conducted a comprehensive biennial fee review and determined that current fees do not recover the full cost of providing adjudication and naturalization services. DHS is adjusting the fee schedule to fully recover costs and maintain adequate service. This final rule also responds to public comments received on the USCIS proposed fee schedule published on January 4, 2023.

DATES: This final rule is effective April 1, 2024. Any benefit request postmarked on or after this date must be accompanied with the fees established by this final rule.

Public Engagement date: DHS will hold a virtual public engagement session during which USCIS will discuss the changes made in this final rule. The session will be held at 2 p,m. Eastern on Feb. 22, 2024. Register for the engagement here: *https://public.govdelivery.com/accounts/USDHSCIS/subscriber/new?topic_id=USDHSCIS_1081.*

USCIS will allot time during the session to answer questions submitted in advance. Please email questions to *public.engagement@uscis.dhs.gov* by 4 p.m. Eastern on Thursday, Feb. 8, 2024, and use ''Fee Rule Webinar'' in the subject link. Please note that USCIS cannot answer case-specific inquiries during the session.

ADDRESSES: *Docket:* To view comments on the proposed rule that preceded this rule, search for docket number USCIS 2021–0010 on the Federal eRulemaking Portal at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Carol Cribbs, Deputy Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Dr., Camp Springs, MD 20746; telephone 240–721–3000 (this is not a toll-free number).

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List of Acronyms and Abbreviations

AAO Administrative Appeals Office
ABC Activity-Based Costing
ACWIA American Competitiveness and Workforce Improvement Act
APA Administrative Procedure Act
APD Advance Parole Documents
ASVVP Administrative Site Visit and Verification Program
BFD Bona Fide Determination
CAA Cuban Adjustment Act of 1966
CBP U.S. Customs and Border Protection
CFO Chief Financial Officer
CFR Code of Federal Regulations
CIS The Office of the Citizenship and Immigration Services
COVID Coronavirus Disease
CPI–U Consumer Price Index for All Urban Consumers
DACA Deferred Action for Childhood Arrivals
DHS Department of Homeland Security
DOD Department of Defense
DOJ Department of Justice
DOL Department of Labor
DOS Department of State
EAD Employment Authorization Document
EB–5 Employment-Based Immigrant Visa, Fifth Preference
EIN Employer Identification Number
E.O. Executive Order
EOIR Executive Office for Immigration Review
FDNS Fraud Detection and National Security Directorate
FOIA Freedom of Information Act
FPG Federal Poverty Guidelines
FR Federal Register
FRFA Final Regulatory Flexibility Analysis
FTE Full-Time Equivalent
FY Fiscal Year
GAO Government Accountability Office
HHS Department of Health and Human Services
HRIFA Haitian Refugee Immigration Fairness Act
ICE U.S. Immigration and Customs Enforcement
IEFA Immigration Examinations Fee Account
IFR Interim final rule
INA Immigration and Nationality Act of 1952
INS Immigration and Naturalization Service
IPO Immigrant Investor Program Office
IRS Internal Revenue Service
ISAF International Security Assistance Forces
IT information technology
IOAA Independent Offices Appropriations Act
LPR Lawful Permanent Resident
NACARA Nicaraguan Adjustment and Central American Relief Act
NAICS North American Industry Classification System
NARA National Archives and Records Administration

NEPA National Environmental Policy Act
NOID Notice of Intent to Deny
NPRM Notice of Proposed Rulemaking
NRC National Records Centers
OAW Operation Allies Welcome
OIG DHS Office of the Inspector General
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
OPT Optional Practical Training
PRA Paperwork Reduction Act of 1995
PRC Permanent Resident Card or Green Card[1]
Pub. L. Public Law
RFA Regulatory Flexibility Act
RFE Requests for Evidence
RIA Regulatory Impact Analysis
SBA Small Business Administration
SEA Small Entity Analysis
Secretary Secretary of Homeland Security
SIJ Special Immigrant Juvenile
SNAP Supplemental Nutrition Assistance Program
SSI Supplemental Security Income
SSN Social Security number
Stat. U.S. Statutes at Large
STEM Science, Technology, Engineering, and Mathematics
TPS Temporary Protected Status
TVPRA William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
UMRA Unfunded Mandates Reform Act of 1995
U.S.C. United States Code
USCIS U.S. Citizenship and Immigration Services
USDA U.S. Department of Agriculture
VAWA Violence Against Women Act
VTVPA Victims of Trafficking and Violence Protection Act of 2000

I. Executive Summary

A. Purpose of the Regulatory Action

DHS is adjusting the fee schedule for U.S. Citizenship and Immigration Services (USCIS) immigration benefit requests.[2] As stated in the proposed rule, USCIS is primarily funded by fees charged to applicants and petitioners for immigration and naturalization benefit requests. Fees collected from individuals and entities filing immigration benefit requests are deposited into the Immigration Examinations Fee Account (IEFA). These fee collections fund the cost of fairly and efficiently adjudicating immigration benefit requests, including those provided without charge to refugee, asylum, and certain other applicants or petitioners. The focus of this fee review is the fees that DHS has established and is authorized by INA section 286(m), 8 U.S.C 1356(m), to establish or change, collect, and deposit into the IEFA, which comprised approximately 96 percent of USCIS' total FY 2021 enacted spending authority; this fee review does not focus on fees that USCIS is required to collect but cannot change. Most of these fees have not changed since 2016 despite increased costs of federal salaries and inflation costs for other goods and services. This rule also revises the genealogy program fees established under INA section 286(t), 8 U.S.C. 1356(t), and those funds are also deposited into the IEFA. Premium processing funds established under INA section 286(u), 8 U.S.C. 1356(u) are also IEFA fees, but premium processing fees do not change in this rule.

In accordance with the requirements and principles of the Chief Financial Officers Act of 1990 (CFO Act), codified at 31 U.S.C. 901–03, and Office of Management and Budget (OMB) Circular A–25, USCIS conducted a comprehensive fee review for the Fiscal Year (FY) 2022/2023 biennial period, refined its cost accounting process, and determined that current fees do not recover the full costs of services provided. DHS determined that adjusting USCIS' fee schedule is necessary to fully recover costs and maintain adequate service. This final rule also increases the populations that are exempt from certain fees and clarifies filing requirements for nonimmigrant workers, requests for premium processing, and other administrative requirements.

B. Legal Authority

DHS's authority is in several statutory provisions. Section 102 of the Homeland Security Act of 2002,[3] 6 U.S.C. 112, and section 103 of the Immigration and Nationality Act of 1952 (INA), 8 U.S.C. 1103, charge the Secretary with the administration and enforcement of the immigration and naturalization laws of the United States. Specific authority for establishing multiple USCIS fees is found in INA sec. 286, 8 U.S.C. 1356, and more specifically section 286(m), 1356(m) (authorizing DHS to charge fees for adjudication and naturalization services at a level to "ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants and other immigrants").[4]

C. Changes From the Proposed Rule

As explained more fully in part II.C. of this preamble, DHS is making several changes in this final rule based on comments received on the proposed rule or in exercising its authority to establish fees, provide fee exemptions, allow fee waivers, provide lower fees, or shift the costs of benefits and services based on adequately funding USCIS, balancing beneficiary-pays and ability-to-pay principles, burdening requestors and USCIS, considering humanitarian concerns, and other policy objectives as supported by data. The changes are as follows:

1. Reduced Costs and Fees

DHS proposed to recover $5,150.7 million in FY 2022/2023 to fulfill USCIS' operational requirements. *See* 88 FR 402, 428 (Jan. 4, 2023). In this final rule, USCIS revises the FY 2022/2023 cost projection to approximately $4,424.0 million. DHS removes approximately $726.7 million of average annual estimated costs by transferring costs to premium processing revenue, reducing the work to be funded by the Asylum Program Fee, and considering the budget effects of improved efficiency measures.

2. Changes in the Asylum Program Fee

DHS proposed a new Asylum Program Fee of $600 to be paid by employers who file either a Form I–129, Petition for a Nonimmigrant Worker, Form I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, or Form I–140, Immigrant Petition for Alien Worker. 88 FR 451. In the final rule, DHS exempts the Asylum Program Fee for nonprofit petitioners and reduces it by half for small employers. *See* 8 CFR 106.2(c)(13). The fee will be $0 for nonprofits; $300 for small employers (defined as firms or individuals having 25 or fewer FTE

[1] DHS uses the informal term "Green Card" interchangeably with or to refer to a Permanent Resident Card, USCIS Form I–551. See, *e.g.,* Green Card, at *https://www.uscis.gov/green-card* (last viewed Dec. 5, 2023).

[2] DHS uses the term "benefit request" throughout this rule as defined in 8 CFR 1.2 to mean any application, petition, motion, appeal, or other request relating to an immigration or naturalization benefit. The term benefit request applies regardless of if the title of the request uses the term petition (*e.g.,* Petition for Nonimmigrant Worker), application (*e.g.,* Application for Naturalization) or request (*e.g.,* Request for Fee Waiver). Accordingly, "requestor" is a synonym for applicant or petitioner. Immigration benefit request or benefit request is also used even if USCIS approval of the request does not result in an immigration benefit, status, visa, or classification, such as requests related to inadmissibility waivers and the USCIS genealogy program. Using the term benefit request reduces the ambiguity and confusion resulting from the repetitive use of application, petition, applicant, and petitioner, and improves readability without substantive legal effect. 76 FR 53764, 53767 (Aug. 11, 2011).

[3] Public Law 107–296, 116 Stat. 2135, 2142–44 (Nov. 25, 2002).

[4] The longstanding interpretation of DHS is that the "including" clause in INA sec. 286(m) does not constrain DHS's fee authority under the statute. The "including" clause offers only a non-exhaustive list of some of the costs that DHS may consider part of the full costs of providing adjudication and naturalization services. *See* INA sec. 286(m), 8 U.S.C. 1356(m); 84 FR 23930, 23932 n.1 (May 23, 2019); 81 FR 26903, 26906 n.10 (May 4, 2016).

employees); and $600 for all other filers of Forms I–129 and I–140. *See* 8 CFR 106.1(f) and 106.2(c)(13).

3. Changes to Employment-Based Immigrant Visa, Fifth Preference (EB–5) Fees

DHS has updated the USCIS volume forecasts for the EB–5 workload based on more recent and reliable information than what was available while drafting the proposed rule. Increasing the fee-paying receipt forecasts for these workloads conversely increased the estimated revenue generated by EB–5 fees. DHS also revised the USCIS budget to reflect these changes.

4. Changes to H–1B Registration Fees

DHS also revises the USCIS volume forecasts for H–1B registration workload, to 424,400, based on more recent information than was available while drafting the proposed rule, such as the total registrations for the FY 2023 cap year. The proposed rule forecasted 273,990 H–1B registrations. 88 FR 402, 437 (Jan. 4, 2023). This change increases the estimated revenue generated by the H–1B registration fees in the final rule.

5. Online Filing Fees

The proposed rule provided lower fees for some online requests based on estimated costs for online and paper filing. *See* 88 FR 402, 489–491. The fee differences between paper and online filing ranged from $10 to $110. *Id.* This final rule provides a $50 discount for forms filed online with USCIS. *See* 8 CFR 106.1(g). The discount is not applied in limited circumstances, such as when the form fee is already provided at a substantial discount or USCIS is prohibited by law from charging a full cost recovery level fee. *See, e.g.,* 8 CFR 106.2(a)(50)(iv).

6. Adjust Fees for Forms Filed by Individuals by Inflation

The proposed rule included a wide range of proposed fees. In this final rule, (a) DHS holds several fees to the rate of inflation since the previous fee increase in 2016, and (b) if the proposed fee was less than the current fee adjusted for inflation, then DHS sets the fee in this rule at the level proposed. Except for certain employment-based benefit request fees, if proposed fees were less than the rate of inflation, then DHS finalizes the proposed fee or a lower fee. A comparison of current, proposed, and final fees can be found in Table 1.

7. Fee Exemptions and Fee Waivers

The proposed rule included new fee exemptions and proposed to codify existing fee exemptions. *See* 88 FR 402, 459–481 (Jan. 4, 2023). This final rule expands fee exemptions for humanitarian filings. *See* section II.C.; 8 CFR 106.3(b). The final rule also codifies the 2011 Fee Waiver Policy [5] criteria that USCIS may grant a request for fee waiver if the requestor demonstrates an inability to pay based on receipt of a means-tested benefit, household income at or below 150 percent of the Federal Poverty Guidelines (FPG), or extreme financial hardship. *See* 8 CFR 106.3(a)(1).

DHS proposed 8 CFR 106.3(a)(2) to require that a request for a fee waiver be submitted on the form prescribed by USCIS in accordance with the instructions on the form. In the final rule, USCIS will maintain the status quo of accepting either Form I–912, Request for Fee Waiver, or a written request, and revert to the current effective language at 8 CFR 103.7(c)(2) (Oct. 1, 2020).

DHS also decided to modify the instructions for Form I–912 to accept evidence of receipt of a means-tested benefit by a household child as evidence of the parent's inability to pay because the child's eligibility for these means-tested benefits is dependent on household income.

8. Procedural Changes To Address Effects of Fee Exemptions and Discounts

DHS is making five procedural changes in the final rule to address issues that it has experienced with fee-exempt and low-fee filings. First, the final rule provides that a duplicate filing that is materially identical to a pending immigration benefit request will be rejected. *See* 8 CFR 103.2(a)(7)(iv). Second, in the final rule DHS provides that if USCIS accepts a benefit request and determines later that the request was not accompanied by the correct fee, USCIS may deny the request. *See* 8 CFR 103.2(a)(7)(ii)(D)(*1*). Third, if the benefit request was approved before USCIS determines the correct fee was not paid, the approval may be revoked upon notice. *Id.* Fourth, the first sentence of proposed 8 CFR 106.1(c)(2), stated, ''If the benefit request was approved, the approval may be revoked upon notice.'' DHS is revising the first sentence to read, ''If the benefit request was approved, the approval may be revoked upon notice, rescinded, or canceled subject to statutory and regulatory requirements applicable to the immigration benefit request.'' Reference to applicable statutes and regulations is also added to the last sentence of section 106.1(c)(2). Finally, this final rule provides that USCIS may forward an appeal for which the fee is waived or exempt for adjudication without requiring a review by the official who made the unfavorable decision. 8 CFR 103.3(a)(2)(ii).

9. Adjustment of Status (Form I–485) and Family-Based Fees

In this final rule, DHS provides that Form I–485, Application to Register Permanent Residence or Adjust Status, applicants will pay half of the regular Form I–765, Application for Employment Authorization, fee when it is filed with a Form I–485 for which the fee is paid if the adjustment application is pending. *See* 8 CFR 106.2(a)(44)(i). DHS had proposed requiring the full fee for Form I–765, and Form I–131, Application for Travel Document, when filed with Form I–485. *See* 88 FR 402, 491. DHS is setting the filing fee for a Form I–765 filed concurrently with Form I–485 after the effective date at $260. *See* 8 CFR 106.2(a)(44)(i).

The proposed rule also would have ($1,540). *See* 88 FR 402, 494 (Jan. 4, 2023). In the final rule, DHS provides that, when filing with parents, children will pay a lesser fee of $950 for Form I–485. *See* 8 CFR 106.2(a)(20)(ii).

10. Adoption Forms

In the final rule, DHS is providing additional fee exemptions for adoptive families. *See* 8 CFR 106.2(a)(32) and (48). Specifically, DHS will also provide fee exemptions for second extensions, second change of country requests, and duplicate approval notices for both the orphan and the Hague process. These would all be requested using Supplement 3 for either the orphan (Form I–600/I–600A) or Hague (Form I–800A) process. This is in addition to the exemptions that DHS already provides for the Supplement 3 for first extensions and first change of country requests. The final rule also provides that Forms N–600, Application for Certificate of Citizenship, and N–600K, Application for Citizenship and Issuance of Certificate under Section 322, are fee exempt for certain adoptees. *See* 8 CFR 106.2(b)(7)(ii) and (8).

11. Naturalization and Citizenship Fees

This final rule expands eligibility for paying half of the regular fee for Form N–400, Application for Naturalization. An applicant with household income at or below 400 percent of Federal Poverty Guidelines (FPG) may pay half price for

[5] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Policy Memorandum, PM–602–0011.1, ''Fee Waiver Guidelines as Established by the final rule of the USCIS Fee Schedule; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.9, AFM Update AD11–26'' (Mar. 13, 2011), *https://www.uscis.gov/sites/default/files/document/memos/FeeWaiverGuidelines_Established_by_the_Final%20Rule_USCISFeeSchedule.pdf.*

their Application for Naturalization. *See* 8 CFR 106.2(b)(3)(ii).

12. Additional Changes

In the final rule:

• DHS deletes proposed 8 CFR 106.3(a)(5), ''Fees under the Freedom of Information Act (FOIA),'' because it is unnecessary. DHS FOIA regulations at 6 CFR 5.11(k) address the waiver of fees under FOIA, 5 U.S.C. 552(a)(4)(A)(iii).

• Removes the fee exemption for Form I–601, Application for Waiver of Grounds of Inadmissibility, for applicants seeking cancellation of removal under INA 240A(b)(2), 8 U.S.C. 1229b(b)(2), since they cannot use a waiver of inadmissibility to establish eligibility for this type of relief from removal. *Matter of Y–N–P–,* 26 I&N Dec. 10 (BIA 2012); *cf.* proposed 8 CFR 106.3(b)(8)(i).

• Provides a 30-day advance public notification requirement before a payment method will be changed. 8 CFR 106.1(b).

• Provides that an inflation only rule must adjust all USCIS fees that DHS has the authority to adjust under the INA (those not fixed by statute).

D. Summary of Final Fees

The fees established in this rule are summarized in the Final Fee(s) column in Table 1. Table 1 compares the current fees to the fees established in this rule. In addition, the new fees and exemptions are incorporated into the Form G–1055, Fee Schedule, as part of the docket for this rulemaking.

The Current Fee(s) column in Table 1 represents the current fees in effect rather than the enjoined fees from the 2020 fee rule.[6] Throughout this final rule, the phrase ''current fees'' refers to the fees in effect and not the enjoined fees.

In some cases, the current or final fees may be the sum of several fees. For example, several immigration benefit requests require an additional biometric services fee under the current fee structure. The table includes rows with and without the additional biometric services fee added to the Current Fee(s) column. In this final rule, DHS would eliminate the additional biometric services fee in most cases by including the costs in the underlying immigration benefit request fee. As such, the Final Fees(s) column does not include an additional biometric services fee in most cases.

Some other benefit requests are listed several times because in some cases DHS proposes distinct fees based on filing methods, online or paper. DHS will require fees for Form I–131, Application for Travel Document, and Form I–765, Application for Employment Authorization, when filed with Form I–485, Application to Register Permanent Residence or Adjust Status, in most cases. As such, Table 1 includes rows that compare the current fee for Form I–485 to various combinations of the final fees for Forms I–485, I–131, and I–765.

The table excludes statutory fees that DHS cannot adjust or can only adjust for inflation. Instead, the table focuses on the IEFA non-premium fees that DHS is changing in this rule.

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[6] USCIS provides filing fee information on the All Forms page at *https://www.uscis.gov/forms/all-forms.* You can use the Fee Calculator to determine the exact filing and biometric services fees for any form processed at a USCIS Lockbox facility. *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Fee Calculator, *https://www.uscis.gov/feecalculator.* For a complete list of all USCIS fees, see Form G–1055, Fee Schedule, available from *https://www.uscis.gov/g-1055.*

Table 1: Non-Statutory IEFA Immigration Benefit Request Fees

Immigration Benefit Request	Current Fee(s)	NPRM Fee(s)	Final Fee(s)	Current to Final Difference	
I-90 Application to Replace Permanent Resident Card (online filing)	$455	$455	$415	-$40	-9%
I-90 Application to Replace Permanent Resident Card (online filing) (with biometric services)	$540	$455	$415	-$125	-23%
I-90 Application to Replace Permanent Resident Card (paper filing)	$455	$465	$465	$10	2%
I-90 Application to Replace Permanent Resident Card (paper filing) (with biometric services)	$540	$465	$465	-$75	-14%
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$445	$680	$560	$115	26%
I-129 Petition for a Nonimmigrant worker[7]	$460	N/A	N/A	N/A	N/A
I-129 H-1 Classifications	$460	$780	$780	$320	70%
I-129 H-1 Classifications (small employers and nonprofits)[8]	$460	$780	$460	$0	0%
I-129 H-2A - Named Beneficiaries	$460	$1,090	$1,090	$630	137%
I-129 H-2A - Named Beneficiaries (small employers and nonprofits)	$460	$1,090	$545	$85	18%
I-129 H-2A - Unnamed Beneficiaries	$460	$530	$530	$70	15%
I-129 H-2A - Unnamed Beneficiaries (small employers and nonprofits)	$460	$530	$460	$0	0%
I-129 H-2B - Named Beneficiaries	$460	$1,080	$1,080	$620	135%
I-129 H-2B - Named Beneficiaries (small employers and nonprofits)	$460	$1,080	$540	$80	17%
I-129 H-2B - Unnamed Beneficiaries	$460	$580	$580	$120	26%
I-129 H-2B - Unnamed Beneficiaries (small employers and nonprofits)	$460	$580	$460	$0	0%
I-129 Petition for L Nonimmigrant workers	$460	$1,385	$1,385	$925	201%
I-129 Petition for L Nonimmigrant workers (small employers and nonprofits)	$460	$1,385	$695	$235	51%

[7] The Form I-129 fees in this table are for the underlying form. Certain additional fees may be required by other regulations or statutes depending on factors such as the size of the business and the classification of the nonimmigrant beneficiary. *See* 8 CFR 106.2(c).

[8] The H-1B Registration Process Fee must be paid before this form is filed and fee is paid.

Table 1: Non-Statutory IEFA Immigration Benefit Request Fees

Immigration Benefit Request	Current Fee(s)	NPRM Fee(s)	Final Fee(s)	Current to Final Difference	
I-129 Petition for O Nonimmigrant workers	$460	$1,055	$1,055	$595	129%
I-129 Petition for O Nonimmigrant workers (small employers and nonprofits)	$460	$1,055	$530	$70	15%
I-129CW CNMI-Only Nonimmigrant Transitional Worker and I-129 Petition for Nonimmigrant Worker: E, H-3, P, Q, R, or TN Classifications[9]	$460	$1,015	$1,015	$555	121%
I-129CW CNMI-Only Nonimmigrant Transitional Worker and I-129 Petition for Nonimmigrant Worker: E, H-3, P, Q, R, or TN Classifications (with biometric services)[10]	$545	$1,015	$1,015	$470	85%
I-129CW Petition for a CNMI-Only Nonimmigrant Transitional Worker and I-129 Petition for Nonimmigrant Worker: E, H-3, P, Q, R, or TN Classifications (small employers and nonprofits)[11]	$460	$1,015	$510	$50	11%
I-129CW Petition for a CNMI-Only Nonimmigrant Transitional Worker and I-129 Petition for Nonimmigrant Worker: E, H-3, P, Q, R, or TN Classifications (small employers and nonprofits) (with biometric services)[12]	$545	$1,015	$510	-$35	-6%
I-129F Petition for Alien Fiancé(e)	$535	$720	$675	$140	26%
I-130 Petition for Alien Relative (online filing)	$535	$710	$625	$90	17%
I-130 Petition for Alien Relative (paper filing)	$535	$820	$675	$140	26%
I-131 Application for Travel Document	$575	$630	$630	$55	10%
I-131 Application for Travel Document (with biometric services)	$660	$630	$630	-$30	-5%
I-131 Refugee Travel Document for an individual age 16 or older	$135	$165	$165	$30	22%

[9] Other fees such as the CNMI Education Fund fee and Asylum Program Fee are also required.

[10] Other fees such as the CNMI Education Fund fee and Asylum Program Fee are also required.

[11] Other fees such as the CNMI Education Fund fee and Asylum Program Fee are also required.

[12] Other fees such as the CNMI Education Fund fee and Asylum Program Fee are also required.

Table 1: Non-Statutory IEFA Immigration Benefit Request Fees					
Immigration Benefit Request	Current Fee(s)	NPRM Fee(s)	Final Fee(s)	Current to Final Difference	
I-131 Refugee Travel Document for an individual age 16 or older (with biometric services)	$220	$165	$165	-$55	-25%
I-131 Refugee Travel Document for a child under the age of 16	$105	$135	$135	$30	29%
I-131 Refugee Travel Document for a child under the age of 16 (with biometric services)	$190	$135	$135	-$55	-29%
I-131A Application for Travel Document (Carrier Documentation)	$575	$575	$575	$0	0%
I-140 Immigrant Petition for Alien Workers[13]	$700	$715	$715	$15	2%
I-191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	$930	$930	$930	$0	0%
I-192 Application for Advance Permission to Enter as Nonimmigrant (CBP)	$585	$1,100	$1,100	$515	88%
I-192 Application for Advance Permission to Enter as Nonimmigrant (USCIS)	$930	$1,100	$1,100	$170	18%
I-193 Application for Waiver of Passport and/or Visa	$585	$695	$695	$110	19%
I-212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	$930	$1,395	$1,175	$245	26%
I-290B Notice of Appeal or Motion	$675	$800	$800	$125	19%
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	$435	$515	$515	$80	18%
I-485 Application to Register Permanent Residence or Adjust Status	$1,140	$1,540	$1,440	$300	26%
I-485 Application to Register Permanent Residence or Adjust Status (with biometric services)	$1,225	$1,540	$1,440	$215	18%
I-485 Application to Register Permanent Residence or Adjust Status (under the age of 14 in certain conditions)	$750	$1,540	$950	$200	27%
I-526/526E Immigrant Petition by Standalone/Regional Center	$3,675	$11,160	$11,160	$7,485	204%
I-539 Application to Extend/Change Nonimmigrant Status (online filing)	$370	$525	$420	$50	14%

[13] Other fees such as the CNMI Education Fund fee and Asylum Program Fee are also required.

Table 1: Non-Statutory IEFA Immigration Benefit Request Fees					
Immigration Benefit Request	Current Fee(s)	NPRM Fee(s)	Final Fee(s)	Current to Final Difference	
I-539 Application to Extend/Change Nonimmigrant Status (online filing) (with biometric services)	$455	$525	$420	-$35	-8%
I-539 Application to Extend/Change Nonimmigrant Status (paper filing)	$370	$620	$470	$100	27%
I-539 Application to Extend/Change Nonimmigrant Status (paper filing) (with biometric services)	$455	$620	$470	$15	3%
I-600 Petition to Classify Orphan as an Immediate Relative and I-600A Application for Advance Processing of an Orphan Petition	$775	$920	$920	$145	19%
I-600 Petition to Classify Orphan as an Immediate Relative and I-600A Application for Advance Processing of an Orphan Petition (with biometric services for one adult)	$860	$920	$920	$60	7%
I-600A/I-600 Supplement 3 Request for Action on Approved Form I-600A/I-600[14]	N/A	$455	$455	$455	N/A
I-601 Application for Waiver of Grounds of Inadmissibility	$930	$1,050	$1,050	$120	13%
I-601A Provisional Unlawful Presence Waiver	$630	$1,105	$795	$165	26%
I-601A Provisional Unlawful Presence Waiver (with biometric services)	$715	$1,105	$795	$80	11%
I-612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	$930	$1,100	$1,100	$170	18%
I-687 Application for Status as a Temporary Resident	$1,130	$1,240	$1,240	$110	10%
I-687 Application for Status as a Temporary Resident (with biometric services)	$1,215	$1,240	$1,240	$25	2%
I-690 Application for Waiver of Grounds of Inadmissibility Under Sections 245A or 210 of the Immigration and Nationality Act	$715	$985	$905	$190	27%
I-694 Notice of Appeal of Decision	$890	$1,155	$1,125	$235	26%
I-698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	$1,670	$1,670	$1,670	$0	0%

[14] This form is being created by this rule and did not previously exist.

Table 1: Non-Statutory IEFA Immigration Benefit Request Fees

Immigration Benefit Request	Current Fee(s)	NPRM Fee(s)	Final Fee(s)	Current to Final Difference	
I-698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA) (with biometric services)	$1,755	$1,670	$1,670	-$85	-5%
I-751 Petition to Remove Conditions on Residence	$595	$1,195	$750	$155	26%
I-751 Petition to Remove Conditions on Residence (with biometric services)	$680	$1,195	$750	$70	10%
I-765 Application for Employment Authorization (online filing)	$410	$555	$470	$60	15%
I-765 Application for Employment Authorization (online filing) (with biometric services)	$495	$555	$470	-$25	-5%
I-765 Application for Employment Authorization (paper filing)	$410	$650	$520	$110	27%
I-765 Application for Employment Authorization (paper filing) (with biometric services)	$495	$650	$520	$25	5%
I-800 Petition to Classify Convention Adoptee as an Immediate Relative and Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country	$775	$925	$920	$145	19%
I-800 Petition to Classify Convention Adoptee as an Immediate Relative and Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country (with biometric services)	$860	$925	$920	$60	7%
I-800A Supplement 3, Request for Action on Approved Form I-800A	$385	$455	$455	$70	18%
I-800A Supplement 3, Request for Action on Approved Form I-800A (with biometric services)	$470	$455	$455	-$15	-3%
I-817 Application for Family Unity Benefits	$600	$875	$760	$160	27%
I-817 Application for Family Unity Benefits (with biometric services)	$685	$875	$760	$75	11%
I-824 Application for Action on an Approved Application or Petition	$465	$675	$590	$125	27%
I-829 Petition by Investor to Remove Conditions	$3,750	$9,525	$9,525	$5,775	154%
I-829 Petition by Investor to Remove Conditions (with biometric services)	$3,835	$9,525	$9,525	$5,690	148%

Table 1: Non-Statutory IEFA Immigration Benefit Request Fees

Immigration Benefit Request	Current Fee(s)	NPRM Fee(s)	Final Fee(s)	Current to Final Difference	
I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal (for an individual adjudicated by DHS)	$285	$340	$340	$55	19%
I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal (for an individual adjudicated by DHS) (with biometric services)	$370	$340	$340	-$30	-8%
I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal (for a family adjudicated by DHS)	$570	$340	$340	-$230	-40%
I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal (for a family adjudicated by DHS) (with biometric services for two people)	$740	$340	$340	-$315	-48%
I-910 Application for Civil Surgeon Designation	$785	$1,230	$990	$205	26%
I-929 Petition for Qualifying Family Member of a U-1 Nonimmigrant	$230	$275	$0	-$230	-100%
I-941 Application for Entrepreneur Parole	$1,200	$1,200	$1,200	$0	0%
I-941 Application for Entrepreneur Parole (with biometric services)	$1,285	$1,200	$1,200	-$85	-7%
I-956 Application for Regional Center Designation	$17,795	$47,695	$47,695	$29,900	168%
I-956F Application for Approval of an Investment in a Commercial Enterprise	$17,795	$47,695	$47,695	$29,900	168%
I-956G Regional Center Annual Statement	$3,035	$4,470	$4,470	$1,435	47%
N-300 Application to File Declaration of Intention	$270	$320	$320	$50	19%
N-336 Request for Hearing on a Decision in Naturalization Proceedings Under Section 336 (online filing)	$700	$830	$780	$80	11%
N-336 Request for Hearing on a Decision in Naturalization Proceedings Under Section 336 (paper filing)	$700	$830	$830	$130	19%
N-400 Application for Naturalization (online filing)	$640	$760	$710	$70	11%

Table 1: Non-Statutory IEFA Immigration Benefit Request Fees

Immigration Benefit Request	Current Fee(s)	NPRM Fee(s)	Final Fee(s)	Current to Final Difference	
N-400 Application for Naturalization (online filing) (with biometric services)	$725	$760	$710	-$15	-2%
N-400 Application for Naturalization (paper filing)	$640	$760	$760	$120	19%
N-400 Application for Naturalization (paper filing) (with biometric services)	$725	$760	$760	$35	5%
N-400 Application for Naturalization (applicants with household income below 400 percent of the FPG)	$320	$380	$380	$60	19%
N-400 Application for Naturalization (applicants with household income below 400 percent of the FPG) (with biometric services)	$405	$380	$380	-$25	-6%
N-470 Application to Preserve Residence for Naturalization Purposes	$355	$420	$420	$65	18%
N-565 Application for Replacement Naturalization/Citizenship Document (online filing)	$555	$555	$505	-$50	-9%
N-565 Application for Replacement Naturalization/Citizenship Document (paper filing)	$555	$555	$555	$0	0%
N-600 Application for Certificate of Citizenship (online filing)	$1,170	$1,385	$1,335	$165	14%
N-600 Application for Certificate of Citizenship (paper filing)	$1,170	$1,385	$1,385	$215	18%
N-600K Application for Citizenship and Issuance of Certificate (online filing)	$1,170	$1,385	$1,335	$165	14%
N-600K Application for Citizenship and Issuance of Certificate (paper filing)	$1,170	$1,385	$1,385	$215	18%
USCIS Immigrant Fee	$220	$235	$235	$15	7%
H-1B Registration Process Fee	$10	$215	$215	$205	2,050 %
Biometric Services	$85	$30	$30	-$55	-65%
G-1041 Genealogy Index Search Request (online filing)	$65	$100	$30	-$35	-54%
G-1041 Genealogy Index Search Request (paper filing)	$65	$120	$80	$15	23%
G-1041A Genealogy Records Request (online filing)	$65	$240	$30	-$35	-54%
G-1041A Genealogy Records Request (paper filing)	$65	$260	$80	$15	23%
G-1566 Request for Certificate of Non-Existence	$0	$330	$330	$330	N/A

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E. Summary of Costs and Benefits

The fee adjustments, as well as changes to the forms and fee structures used by USCIS, will result in net costs, benefits, and transfer payments. For the 10-year period of analysis of the rule (FY 2024 through FY 2033), DHS estimates the annualized net costs to the public will be $157,005,952 discounted at 3 and 7 percent. Estimated total net costs over 10 years will be $1,339,292,617 discounted at 3-percent and $1,102,744,106 discounted at 7-percent.

The changes in the final rule will also provide several benefits to DHS and applicants/petitioners seeking immigration benefits. For the government, the primary benefits include reduced administrative burdens and fee processing errors, increased efficiency in the adjudicative process, and the ability to better assess the cost of providing services, which allows for better aligned fees in future regulations. The primary benefits to the applicants/petitioners include reduced fee processing errors, increased efficiency in the adjudicative process, the simplification of the fee payment process for some forms, elimination of the $30 returned check fee, and for many applicants, limited fee increases and additional fee exemptions to reduce fee burdens.

Fee increases will result in annualized transfer payments from applicants/petitioners to USCIS of approximately $887,571,832 discounted at 3 and 7 percent. The total 10-year transfer payments from applicants/petitioners to USCIS will be $7,571,167,759 at a 3-percent discount rate and $6,233,933,135 at a 7-percent discount rate.

Reduced fees and expanded fee exemptions will result in annualized transfer payments from USCIS to applicants/petitioners of approximately $241,346,879 discounted at both 3-percent and 7-percent. The total 10-year transfer payments from USCIS to applicants/petitioners will be $2,058,737,832 at a 3-percent discount rate and $1,695,119,484 at a 7-percent discount rate. The annualized transfer payments from the Department of Defense (DOD) to USCIS for Form N–400 filed by military members will be approximately $197,260 at both 3- and 7-percent discount rates. The total 10-year transfer payments from DOD to USCIS will be $1,682,668 at a 3-percent discount rate and $1,385,472 at a 7-percent discount rate.

Adding annualized transfer payments from fee paying applicants/petitioners to USCIS ($887,571,832) and transfer payments from DoD to USCIS ($197,260), then subtracting transfer payments from USCIS to applicants/petitioners ($241,346,879) yields estimated net transfer payments to USCIS of $646,422,213 at both 3 and 7-percent discount rates, an approximation of additional annual revenue to USCIS from this rule.

F. Effect of the COVID–19 Pandemic on the USCIS Fee Review and Rulemaking

DHS acknowledges the broad effects of the Coronavirus Disease (COVID–19) international pandemic on the United States broadly and the populations affected by this rule. Multiple commenters on the proposed rule wrote that increasing USCIS fees at this time would exacerbate the negative economic impacts that the United States has experienced from the COVID–19 pandemic.

DHS realizes the effects of COVID–19, and USCIS, specifically, is still dealing with the effects of COVID–19 on its workforce and processing backlog. COVID–19 affected the demand for immigration benefits and USCIS services, and, as all employers did, USCIS was required to adjust its workplaces to mitigate the impacts of the disease. DHS has procedures in place to deal with emergency situations as they arise but is no longer providing special accommodations associated with the pandemic.[15] USCIS considered the effects of COVID–19 on its workload volumes, revenue, or costs, along with all available data, when it conducted its fee review. DHS will also consider these effects in future fee rules. However, no changes were made in the fees and regulations codified in this final rule to address the effects of COVID–19. Further, Census data indicates that impacts of COVID–19 showed a dip in estimated sales, revenue, and value of shipments in 2020 followed by a recovery through the fourth quarter of 2021.[16] CDC ended the public health emergency due to the COVID–19 pandemic on May 11, 2023.[17] Although there may be some lingering economic impacts from COVID–19, DHS does not believe these would have an impact on the number of filings by requestors. DHS notes that for certain forms and categories fee waivers may be available for people with financial hardship. *See* 8 CFR 106.3(a); Table 4B.

II. Background

A. History

On January 4, 2023, DHS published a proposed rule in the **Federal Register** (docket USCIS–2021–0010) at 88 FR 402. DHS published a correction on January 9, 2023, at 88 FR 1172.[18] On February 24, 2023, DHS extended the comment period an additional 5 days, to March 13, 2023, for a total comment period of 68 days. *See* 88 FR 11825. USCIS also held a public engagement event on January 11, 2023, and a software demonstration on March 1, 2023, to provide additional avenues for the interested public to hear about and provide feedback on the proposed fee rule.[19] In this final rule, DHS will refer to the initial proposed rule, correction, and extension collectively as the proposed rule.

B. Authority and Guidance

DHS publishes this final rule under the Immigration and Nationality Act (''INA''), which establishes the Immigration Examinations Fee Account (''IEFA'') for the receipt of fees it charges. INA section 286(m), 8 U.S.C. 1356(m). The INA allows DHS to set ''fees for providing adjudication and naturalization services . . . at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants.'' *Id.* The INA further provides that ''[s]uch fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.'' *Id.* DHS also issues this final rule consistent with the Chief Financial Officer Act, 31 U.S.C. 901–03903 (requiring each agency's Chief Financial Officer (CFO) to review, on a biennial basis, the fees imposed by the agency for services it provides, and to recommend changes to the agency's fees).

This final rule is also consistent with non-statutory guidance on fees, the budget process, and Federal accounting principles.[20] DHS uses Office of

[15] *See* USCIS, Immigration Relief in Emergencies or Unforeseen Circumstances available at *https://www.uscis.gov/newsroom/immigration-relief-in-emergencies-or-unforeseen-circumstances* (last reviewed/updated Aug. 16, 2023); USCIS, USCIS Announces End of COVID-Related Flexibilities available at *https://www.uscis.gov/newsroom/alerts/uscis-announces-end-of-covid-related-flexibilities* (last reviewed/updated Mar. 23, 2023).

[16] *See https://www.regulations.gov/comment/USCIS-2021-0010-0706* and *https://www.regulations.gov/comment/USCIS-2021-0010-4141.*

[17] *See* CDC, COVID–19 End of Public Health Emergency, available at *https://www.cdc.gov/coronavirus/2019-ncov/your-health/end-of-phe.html* (last updated May 5, 2023).

[18] The document corrected two typographical errors in Table 1 of the proposed rule.

[19] *https://www.regulations.gov/comment/USCIS-2021-0010-0706* and *https://www.regulations.gov/comment/USCIS-2021-0010-4141.*

[20] *See* 58 FR 38142 (July 15, 1993) (revising Federal policy guidance regarding fees assessed by

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Management and Budget (OMB) Circular A–25 as general policy guidance for determining user fees for immigration benefit requests, with exceptions as outlined in this section. DHS also follows the annual guidance in OMB Circular A–11 if it requests appropriations to offset a portion of Immigration Examinations Fee Account (IEFA) costs.[21]

Finally, this final rule accounts for, and is consistent with, congressional appropriations for specific USCIS programs. In the proposed rule, DHS outlined the effects of appropriations for FY 2021 and FY 2022.[22] As explained in the proposed rule, Congress provided USCIS additional appropriations for very specific purposes in FY 2022.[23] Shortly before publication of the proposed rule, Congress passed a full year appropriation bill for FY 2023. Together, the total FY 2023 appropriations for USCIS were approximately $268.0 million. Congress appropriated USCIS approximately $243.0 million for E-Verify and refugee processing in FY 2023.[24] Approximately $133.4 million of the $243.0 million was for refugee processing, and the remainder was for E-Verify. In addition, Congress appropriated $25 million for the Citizenship and Integration Grant Program, which is available until September 30, 2024, the end of FY 2024. *Id.* This means that USCIS received $5 million more than in FY 2022, and it has 2 years to spend the full $25 million. Because USCIS anticipated appropriated funds for citizenship grants in both FY 2022 and FY 2023, the $20 million in FY 2022 and the $25 million in FY 2023 for citizenship grants are not part of the FY 2022/2023 IEFA fee review budget. For several years, USCIS had the authority to spend no more than $10 million for citizenship grants.[25] Until recently, grant program funding came from the IEFA fee revenue or a mix of appropriations and fee revenue.[26] If USCIS does not receive appropriations for citizenship grants for FY 2024, then it could use any remaining amount from the $25 million appropriation in the Consolidated Appropriations Act, 2023.

In these cases, appropriation laws for FY 2022 and FY 2023 provide that the funds are only to be used for the specified purposes, and DHS is not required to reduce any current IEFA fee.[27] As explained in the proposed rule, these appropriations do not overlap with the fee review budget, which will fund immigration adjudication and naturalization services for future incoming receipts. USCIS cannot and does not presume congressional appropriations, especially given the lack of appropriations in the past. If this fee rule does not account for the possibility of no congressional funding in future years and Congress fails to fund a program, either the program cannot continue or USCIS will be forced to reallocate resources assigned to another part of the agency for this purpose. As such, DHS makes no changes to the final rule based on the appropriations for FY 2022 and FY 2023.

C. Changes From the Proposed Rule

This final rule adopts, with appropriate changes, the regulatory text in the proposed rule published in the **Federal Register** on January 4, 2023. *See* U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements; Proposed rule, 88 FR 402. DHS is making several changes in this final rule based on comments received on the proposed rule or as required by the effects of those changes. As explained throughout this preamble, DHS exercises its discretionary authority to establish fees, provide fee exemptions, allow fee waivers, provide lower fees, or shift the costs of benefits and services based on numerous factors, including adequately funding USCIS operations, balancing beneficiary-pays and ability-to-pay principles, burdening requestors and USCIS, considering humanitarian concerns, and other policy objectives as supported by data. This final rule also relies on the justifications articulated in the proposed rule, except as modified and explained throughout this rule in response to public comments, intervening developments, and new information. As stated in the proposed rule, DHS is not repeating the amendatory instructions and regulatory text for ministerial, procedural, or otherwise non-substantive changes adopted from the 2020 fee rule. 88 FR 421. A description of each change is as follows:

1. Reduced Costs and Fees

DHS has revised the USCIS budget underlying the final rule. In the proposed rule, USCIS projected that its IEFA non-premium cost projections must increase by 36.4 percent from $3,776.3 million in FY 2021 to an average of $5,150.7 million in FY 2022/2023 to fulfill USCIS' operational requirements. *See* 88 FR 402, 428 (Jan. 4, 2023). In this final rule, USCIS revises the FY 2022/2023 cost projection to approximately $4,424.0 million, a $726.7 million or 14.1 percent decrease compared to the proposed rule. *See* Table 2 of this preamble.

Federal agencies for Government services); Federal Accounting Standards Advisory Board Handbook, Version 17 (06/18), ''Statement of Federal Financial Accounting Standards 4: Managerial Cost Accounting Standards and Concepts,'' SFFAS 4, available at *http://files.fasab.gov/pdffiles/handbook_sffas_4.pdf* (generally describing cost accounting concepts and standards, and defining ''full cost'' to mean the sum of direct and indirect costs that contribute to the output, including the costs of supporting services provided by other segments and entities.); *id.* at 49–66 (July 31, 1995); OMB Circular A–11, ''Preparation, Submission, and Execution of the Budget,'' section 20.7(d), (g) (June 29, 2018), available at *https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf* (June 29, 2018) (providing guidance on the FY 2020 budget and instructions on budget execution, offsetting collections, and user fees).

[21] OMB Circulars A–25 and A–11 provide nonbinding internal executive branch direction for the development of fee schedules under IOAA and appropriations requests, respectively. *See* 5 CFR 1310.1. Although DHS is not required to strictly adhere to these OMB circulars in setting USCIS fees, DHS understands they reflect best practices and used the activity-based costing (ABC) methodology supported in Circulars A–25 and A–11 to develop the proposed fee schedule.

[22] *See* 88 FR 402, 415–417 (Jan. 4, 2023); *see also* Consolidated Appropriations Act, 2021 (Dec. 27, 2020), Public Law 116–260, at div. F, tit. IV; Consolidated Appropriations Act, 2022, Public Law 117–103 (Mar. 15, 2022) (''Pub. L. 117–103'') at div. F. tit. 4; Extending Government Funding and Delivering Emergency Assistance Act, 2022, Public Law 117–43 (Sept. 30, 2021) (''Pub. L. 117–43'') at div. C. title V, sec. 2501.

[23] *See* 88 FR 402, 415–416 (Jan. 4, 2023); *see also* Public Law 117–103.

[24] *See* Consolidated Appropriations Act, 2023, Public Law 117–328, div. F, tit. IV (Dec. 29, 2022).

[25] Congress provided $10 million for citizenship and integration grants in FY 2019 (Pub. L. 116–6), FY 2020 (Pub. L. 116–93), and FY 2021 (Pub. L. 116–260).

[26] USCIS received $2.5 million for the immigrant integration grants program in FY 2013 (Pub. L. 113–6) and FY 2014 (Pub. L. 113–76). USCIS did not receive appropriations for the immigrant integration grants program in FY 2015, FY 2016, FY 2017, and FY 2018.

[27] Public Law 117–43, at section 132, states, ''That such amounts shall be in addition to any other funds made available for such purposes, and shall not be construed to require any reduction of any fee described in section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)).'' Likewise, Public Law 117–43, at section 2501, states ''That such amounts shall be in addition to any other amounts made available for such purposes and shall not be construed to require any reduction of any fee described in section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)).'' Similar wording is in Public Law 117–328 in div F. tit. IV. USCIS has a long history of funding citizenship and integration grants from IEFA revenue, appropriations, or a mix of both.

Table 2: FY 2022/2023 Proposed vs. Final FY 2022/2023 Fee Review Cost Projections (Dollars in Thousands)

Type	Proposed Rule Average	Final Rule Average	Difference	Change	Percent of Total Change
Payroll	$3,347,853	$3,186,683	($161,170)	-4.8%	22%
Non-Payroll	$1,802,854	$1,237,348	($565,506)	-31.4%	78%
Total	**$5,150,707**	**$4,424,031**	**($726,676)**	**-14.1%**	**100%**

DHS is authorized by INA section 286(m), 8 U.S.C. 1356(m), to set USCIS fees at a level to recover "the full costs" of providing "all" "adjudication and naturalization services," and "the administration of the fees collected." This necessarily includes support costs, and USCIS' current budget forecasts a deficit based on fully funding all of its operations. DHS must make up that difference either by cutting costs, curtailing operations, or increasing revenue. DHS examined USCIS recent budget history, service levels, and immigration trends to forecast its costs, revenue, and operational metrics in order to determine whether USCIS fees would generate sufficient revenue to fund anticipated operating costs. This increase in funding ensures that USCIS can meet its operational needs during the biennial period.

Table 3: IEFA Non-Premium Cost and Revenue (at FY 2021 Levels)

Dollars in Millions

Point of Comparison	FY 2022	FY 2023	FY 2022/2023 Average
Non-Premium Revenue with Current Fees	$3,280.3	$3,284.8	$3,282.5
Non-Premium Cost Projection	$4,422.0	$4,426.1	$4,424.0
Difference	$1,141.7	$1,141.3	$1,141.5

Reducing the budget allows DHS to finalize some fees that are lower than in the proposed rule and offer additional fee exemptions in response to public comments requesting lower fees. In this final rule, DHS removes approximately $726.7 million of average annual estimated costs by making the following changes:

- Transferring costs to Premium Processing revenue;
- Reducing the estimated marginal costs of the Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers Interim Final Rule to be funded;[28] and
- Including efficiency estimates based on improved efficiency measures.

DHS revises the estimated cost and revenue differential to $1,141.5 million in this final rule. *See* Table 3 of this preamble. DHS issues this final rule to adjust USCIS' fee schedule to recover the full cost of providing immigration adjudication and naturalization services.

a. Transferring Costs to Premium Processing Revenue

DHS has historically excluded premium processing revenue and costs from its IEFA fee reviews and rulemakings to ensure that premium processing funds are available for infrastructure investments largely related to information technology, to provide staff for backlog reduction, and to ensure that non-premium fees were set at a level sufficient to cover the base operating costs of USCIS. This was done because the INA, as amended by the District of Columbia Appropriations Act of 2001 provided that premium processing revenue shall be used to fund the cost of offering premium service, as well as the cost of infrastructure improvements in adjudications and customer service processes. *See* 87 FR 1832. In the proposed rule at 88 FR 420, USCIS outlined its planned uses of premium processing revenue to provide premium processing service, improve information technology infrastructure, and reduce backlogs. Therefore, revenue from premium processing, the costs for USCIS to provide premium processing service, the costs to improve information technology infrastructure, and the costs directed at reducing the backlog were not considered in the proposed fees.

On October 1, 2020, the Continuing Appropriations Act, which included the USCIS Stabilization Act, was signed into law, codifying new section 286(u)(3)(A) of the INA, 8 U.S.C. 1356(u)(3)(A). Among other things, the USCIS Stabilization Act established new premium processing fees and expanded the permissible uses of revenue from the collection of premium processing fees, including improvements to adjudication process infrastructure, responses to adjudication demands, and to otherwise offset the cost of providing adjudication and naturalization services. Then, on March 30, 2022, DHS published a final rule, Implementation of the Emergency Stopgap USCIS Stabilization Act,

[28] 87 FR 18078 (Mar. 29, 2022).

implementing part of the authority provided under the USCIS Stabilization Act to offer premium processing for those benefit requests made eligible for premium processing by section 4102(b) of that law. *See* 87 FR 18227 (premium processing rule).

On December 28, 2023, DHS published a final rule, Adjustment to Premium Processing Fees, effective February 26, 2024, that increased premium processing fees charged by USCIS to reflect the amount of inflation from June 2021 through June 2023 according to the Consumer Price Index for All Urban Consumers (CPI–U). 88 FR 89539 (Dec. 28, 2023). The adjustment increases premium processing fees from $1,500 to $1,685, from $1,750 to $1,965, and from $2,500 to $2,805. 8 CFR 106.4.

The proposed rule did not include changes directly resulting from the USCIS Stabilization Act or premium processing rule, as DHS was still in the early stages of implementation. It stated that DHS would consider including premium processing revenue and costs in the final rule., as appropriate, as DHS would have more information about the revenue collected from premium processing services by the time DHS publishes a final rule. *See* 88 FR 402, 419 (Jan. 4, 2023). As a result of additional information gathered over the passage of time since the proposed rule and the December 28, 2023 Adjustment to Premium Processing Fees final rule, 88 FR 89539, in this final rule, DHS has transferred $129.8 million in costs to premium processing to account for future premium processing revenue projections.

b. Reducing the Work To Be Funded by the Asylum Program Fee.

DHS proposed a new Asylum Program Fee of $600 to be paid by employers who file either a Form I–129, Petition for a Nonimmigrant Worker, or Form I–140, Immigrant Petition for Alien Worker. 88 FR 451. DHS has begun implementation of the Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers (Asylum Processing IFR) (87 FR 18078 Mar. 29, 2022) rulemaking, but full implementation of the IFR is delayed while DHS resolves litigation around the Circumvention of Lawful Pathways rule. *See* 88 FR 31314 (May 16, 2023). Therefore, DHS needs to generate less revenue from the Asylum Program Fee than we estimated was needed in the proposed rule. Accordingly, we have provided a lower fee in this final rule for certain small employers and nonprofits in response to comments requesting lower fees for these groups. Businesses with 25 or fewer full-time equivalent employees will pay a $300 Asylum Program Fee instead of $600, and half of the full fee for Form I–129. Nonprofits will pay $0. How DHS determined which businesses would receive such relief from the full fee is discussed later in this section. DHS estimates the revised Asylum Program Fee will generate approximately $313 million in revenue, compared to the $425 million that was estimated in the proposed rule from charging $600 with no exemptions or discounts.

DHS recognizes that reducing the USCIS budget due to the lower projected revenue from the Asylum Program Fee risks a revenue shortfall if the Asylum Processing IFR is fully implemented and the associated costs incurred. However, DHS's Asylum Processing IFR workload is somewhat flexible because DOJ can share some—though not all—of the workload. On the other hand, if the Asylum Processing IFR is not fully implemented, USCIS still has a significant need for the revenue. Although the amount of the fee was based on the costs of the Asylum Processing IFR, it was proposed ''. . . to fund part of the costs of administering the entire asylum program . . .'' 88 FR 849. USCIS Asylum Division expense estimates are over $400 million a year before adding the costs of the Asylum Processing IFR, and USCIS is regularly adding new asylum offices and capabilities. Thus, DHS projects that the total costs of the asylum program will exceed the revenue from the new fee even before any new capacity is added to implement the Asylum Processing IFR.

Further, DHS notes that USCIS cannot direct the revenue from the Asylum Program Fee precisely to the marginal costs that result from the implementation of the Asylum Processing IFR, as the Asylum Program Fee, like other fees, will be deposited into the general IEFA and not an account specific to the IFR or to the asylum program. In addition, if Asylum Division expenses are greatly reduced or funded by a Congressional appropriation, and USCIS determines the Asylum Program Fee is not needed, USCIS can pause collection of the Asylum Program Fee using the authority in 8 CFR 106.3(c). The costs for administering the asylum program not funded by the revenue collected from the Asylum Program Fee will continue to be funded by other fees.

c. Including Processing Efficiency Estimates Based on Improved Efficiency Measures

USCIS is making progress reducing backlogs and processing times. For example, USCIS committed to new cycle time goals in March 2022.[29] These goals are internal metrics that guide the backlog reduction efforts of the USCIS workforce and affect how long it takes the agency to process cases. As cycle times improve, processing times will follow, and requestors will receive decisions on their cases more quickly. USCIS has continued to increase capacity, improve technology, and expand staffing to achieve these goals.

2. Changes in the Asylum Program Fee

DHS proposed a new Asylum Program Fee of $600 to be paid by employers who file either a Form I–129, Petition for a Nonimmigrant Worker, Form I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, or Form I–140, Immigrant Petition for Alien Worker. *See* 88 FR 402, 451 (Jan. 4, 2023). As explained in the proposed rule, DHS determined that the Asylum Program Fee is an effective way to shift some costs to requests that are generally submitted by petitioners who have more ability to pay, as opposed to shifting those costs to all other fee payers. *See* 88 FR 402, 451–454 (Jan. 4, 2023). DHS arrived at the amount of the Asylum Program Fee by calculating the amount that would need to be added to the fees for Form I–129, Petition for a Nonimmigrant Worker, Form I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, and Form I–140, Immigrant Petition for Alien Worker, to collect the Asylum Processing IFR estimated annual costs. *Id.* The Asylum Program Fee adds a fee, only for Form I–129, I–129CW, and Form I–140 petitioners, in order to maintain lower fees for other immigration benefit requestors than if these asylum costs were spread among all other fee payers. The proposed rule provided examples of alternative Form I–485, Application to Register Permanent Residence or Adjust Status, and I–765, Application for Employment Authorization, proposed fees if those applications were burdened with the Asylum Processing IFR estimated annual costs. *Id* at 452. The proposed fees for Forms I–485, I–765, and others were lower with the shift of asylum program costs to employers through the new fee. If Forms I–129, I–129CW, and I–140 recover more of those

[29] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders'' (Mar. 29, 2022), *https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work.*

costs, then that means other forms need not recover as much, resulting in lower proposed fees for Forms I–485, I–765, and others that recovered more than full cost in the proposed rule. DHS stands by this approach to lower fees for other immigration benefit requestors less able to pay by limiting the Asylum Program Fee to Forms I–129, I–129CW, and I–140.

DHS summarizes and responds to the comments on the Asylum Program Fee in more detail in section IV.G.2.a. of this preamble. After considering public comments, in the final rule, DHS exercises its discretionary authority to establish fees, balancing the beneficiary-pays and ability-to-pay principles, and to address the negative effects that commenters stated would result, by exempting the Asylum Program Fee for nonprofit petitioners and reducing it by half for small employers. *See* 8 CFR 106.2(c)(13).[30] The fee will be $0 for nonprofits; $300 for small employers (defined as firms or individuals having 25 or fewer FTE employees); and $600 for all other filers of Forms I–129, I–129CW, and I–140. *See* 8 CFR 106.1(f) and 106.2(c)(13).

3. Defining Small Employer

DHS did not propose to provide any fee exemptions or discounts based on employer size. Many commenters, however, wrote that the proposed new fees for employment-based immigration benefit requests could make it difficult for small companies to pay the fees or it may hinder their ability to hire the workers they need. Balancing the need to shift the costs of services, adequately fund USCIS operations, and balance the beneficiary-pays and ability-to-pay principles, DHS determined that a discount based on the size of the business is consistent with the ability-to-pay principle that was articulated in the proposed rule. *See* 88 FR 402,424–26 (Jan. 4, 2023).

The final rule defines ''small employer'' as having 25 or fewer full-time equivalent (FTE). *See* 8 CFR 106.1(f). When determining which employers should be considered small, DHS considered what definition could be administered to provide the relief requested by commenters without adding costs to USCIS, additional burden to petitioners, or causing delays in intake and processing of the submitted requests. The volume of forms submitted to USCIS requires that benefit request intake be automated to the extent possible, including the analysis of whether the correct fee has been paid based on if the petitioner meets the criteria for the fee they have submitted with their request. DHS also considered other exemptions provided for the same or similar forms and how the term ''small employer'' is defined in other contexts. DHS reviewed INA section 214(c)(9)(B), 8 U.S.C. 1184(c)(9)(B), which provides that the ACWIA fee is reduced by half for any employer with not more than 25 FTE employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer). Because the ACWIA fee and the Asylum Program fee are both applied to the Form I–129, DHS decided that using a consistent definition was preferable. DHS also determined that defining small employer as 25 or fewer full time equivalent employees was appropriate because: (1) it is consistent with what Congress has provided in statute that it considers small with regard to the applicability of certain fees for employment-based petitions submitted to USCIS; (2) DHS has a long history of administering the ACWIA fee, and (3) determining if the petitioner is eligible for the fee discount requires minimal additional evidence.[31] This definition will be applied to the fee discount and exemption for the Asylum Program Fee and the discount for the Form I–129 fee (discussed later in this section).

4. Defining Nonprofit

DHS did not propose any relief from any fee in the proposed rule for nonprofit entities. Many commenters, however, wrote that the proposed new fees for nonprofits could make it difficult for the nonprofits to pay the fees or it may hinder their ability to hire the workers they need. DHS agrees that the type of organizations that qualify as a nonprofit generally provide a service to the public.[32] Nonprofit organizations may include religious, educational, or charitable organizations and may not be required to pay federal taxes.[33] DHS understands that organizations that do not pursue monetary gain or profit must use funds for USCIS fees that they would otherwise use in pursuit of public and private service. Therefore, balancing the need to shift the costs of services, adequately funding USCIS operations, and the beneficiary-pays and ability-to-pay principles, DHS determined that a discount for nonprofits is consistent with the ability-to-pay principle that was articulated in the proposed rule. *See* 88 FR 402,424–26 (Jan. 4, 2023). DHS acknowledges that allowing this discount for certain large non-profits, such as universities and hospitals, may seem inconsistent with the ability-to-pay principle. However, DHS notes that this treatment is consistent with their tax-exempt status and believes that the public service performed by these entities further justifies the fee discount.

DHS determined that the most appropriate definition for nonprofit is the definition in the Internal Revenue Code (IRC), specifically 26 U.S.C. 501(c)(3) (2023). 8 CFR 106.1(f)(2). As with the definition of small employer, DHS considered costs to USCIS, burden on petitioners, and intake and processing requirements. DHS also considered how the term nonprofit is defined in other contexts. Commenters that requested relief for nonprofits did not suggest an alternative definition for nonprofit than that used for Federal income tax purposes or as provided for the ACWIA fee reduction in 8 CFR 214.2(h)(19)(iv). The INA provides for a reduced ACWIA fee if a petitioner is ''a primary or secondary education institution, an institution of higher education, as defined in section 1001(a) of title 20, a nonprofit entity related to or affiliated with any such institution, a nonprofit entity which engages in established curriculum-related clinical training of students registered at any such institution, a nonprofit research organization, or a governmental research organization.'' INA section 214(c)(9)(A), 8 U.S.C. 1184(c)(9)(A). The INA does *not* define ''nonprofit'' in terms of the IRC and the definitions of ''institution of higher education'' and ''government research organization'' in 8 CFR 214.2(h)(19)(iv)(B) are not tied to the IRC.

For ease of administration, DHS will not require that the petitioner nonprofit

[30] DHS recognizes that many small employers and nonprofits submit USCIS Form I–907, Request for Premium Processing, with their Form I–129. Because premium processing is an optional request for faster processing and not required to obtain an immigration benefit, DHS makes no changes to premium processing fees for those groups.

[31] As noted in the Paperwork Burden Act section of this final rule, and in the final form instructions for Forms I–129 and 140 provided in the docket, DHS will require that petitioners submit the first page of their most recent IRS Form 941, Employer's QUARTERLY Federal Tax Return. We will determine at intake if the petitioner has submitted the lower fee or no fee based on the number indicated in Part 1, question 1, Number of employees who received wages, tips, or other compensation for the pay period.

[32] *See* U.S. Department of the Treasury, U.S. Internal Revenue Service, Exempt Organization Types, *https://www.irs.gov/charities-non-profits/exempt-organization-types* (Page Last Reviewed or Updated: 05–Dec–2023).

[33] Nonprofits may be required to pay certain other taxes. *See,* U.S. Department of the Treasury, U.S. Internal Revenue Service, Federal Tax Obligations of Non-Profit Corporations at *https://www.irs.gov/charities-non-profits/federal-tax-obligations-of-non-profit-corporations.* (Page Last Reviewed or Updated: 05–Dec–2023).

status be limited to research or educational purposes, as in 8 CFR 214.2(h)(19)(iv)(B). DHS has decided that eligibility for fee reductions and fee exemptions for nonprofits provided in this final rule will be limited to nonprofit organizations approved by the Internal Revenue Service as a nonprofit entity under section 501(c)(3) of the IRC or as a government research organization, and that USCIS will not impose the burden on petitioners of demonstrating an educational or research purpose. This approach will ensure that the primary types of organizations eligible for the ACWIA fee reduction in the INA—educational institutions, nonprofit research organizations, and governmental research organizations—will also be eligible for the fee reductions and exemptions under this rule, as will other nonprofit entities with a charitable purpose under section 501(c)(3).

DHS considered including but will not include entities organized under 501(c)(4) and 501(c)(6) of the IRC in the definition of nonprofit in this rule. Tax-exempt organizations under section 501(c)(4) include social welfare organizations and local associations of employees, while tax-exempt organizations under 501(c)(6) include business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues. *See* 26 U.S.C. 501(c)(4) & (6). Both types of entities, unlike public charities under 501(c)(3), may engage in lobbying activities. Although 8 CFR 214.2(h)(19)(iv)(A) includes nonprofit or tax-exempt organizations under 501(c)(3), 501(c)(4), and 501(c)(6) for purposes of the ACWIA fee reduction, this eligibility is further cabined by 8 CFR 214.2(h)(19)(iv)(B), requiring that such entities have been ''approved as a tax-exempt organization *for research or educational purposes* by the Internal Revenue Service'' (emphasis added). As a practical matter, DHS experience indicates that few 501(c)(4) or 501(c)(6) entities are likely to be organized for research or educational purposes *and* meet the definition of ''affiliated or related nonprofit entity'' under 8 CFR 214.2(h)(19)(iii), which requires a close tie to an institution of higher education. Therefore, DHS has determined that in defining eligibility for nonprofit fee reductions and exemptions under this rule, it is appropriate to include 501(c)(3) entities while excluding 501(c)(4) and 501(c)(6) entities. This definition will be applied to the fee discount and exemption for the Asylum Program Fee and the discount for the Form I–129 fee (discussed later in this section).

5. Changes to EB–5 Volume Forecasts

DHS has updated the USCIS volume forecasts for the EB–5 workload based on more recent and reliable information than what was available while drafting the proposed rule. Increasing the fee-paying receipt forecasts for these workloads conversely increased the estimated revenue generated by EB–5 fees. DHS also revised the USCIS budget to reflect these changes.

For the proposed rule, DHS estimated the EB–5 workload based on statistical modeling, immigration receipt data, and internal assessments, like other workload forecasts. 88 FR 402, 432–438. The proposed rule discussed that EB–5 receipts decreased from FY 2016 to FY 2020. 88 FR 402, 509–510. At the time of the proposed rule, DHS had very limited information upon which to base estimates of the new workload required by the EB–5 Reform and Integrity Act of 2022. *See id.* at 557. In this final rule, DHS updated the EB–5 workload estimates to account for the effect of the EB–5 Reform and Integrity Act of 2022. USCIS believes these estimates better represent the EB–5 filing receipts it can expect. Increasing the volume forecasts for EB–5 also increases the amount of revenue generated by the EB–5 workload for the final rule budget. As explained elsewhere, DHS has revised the USCIS budget to accommodate the revenue generated by the fees and volumes in this final rule. Increasing the fee-paying receipt forecasts for these workloads increases the estimated revenue generated by the EB–5 fees in the final rule. 88 FR 72870.

Table 4: EB-5 Workload Forecast

Immigration Benefit Request	Proposed Rule Average Annual Projected Receipts	Final Rule Average Annual Projected Receipts	Difference
I-526 Immigrant Petition by Alien Investor	3,900	4,050	150
I-829 Petition by Investor to Remove Conditions on Permanent Resident Status	3,250	4,500	1,250
I-956 Application for Regional Center Designation	62	400	338
I-956F Application for Approval of Investment in a Commercial Enterprise	N/A	600	600
I-956G Regional Center Annual Statement	728	875	147
I-956H Bona Fides of Persons Involved with Regional Center Program	N/A	2,000	2,000
I-956K Registration for Direct and Third-Party Promoters	N/A	500	500
EB-5 Receipts Forecast	7,940	12,925	9,435

6. Changes to H–1B Registration Fee Volume Forecasts

DHS also revises the USCIS volume forecasts for H–1B registration workload, to 424,400, based on more recent information than was available while drafting the proposed rule, such as the total registrations for the FY 2023 cap year. The proposed rule forecasted 273,990 H–1B registrations. 88 FR 402, 437 (Jan. 4, 2023). The forecast for the proposed rule is close to the 274,237 total registrations in the FY 2021 cap year.[34] However, after the proposed rule was published, a total of 780,884 petitioners registered for an FY 2024 cap-subject H–1B employee. This final rule forecast of 424,400, based on more recent data, is closer to the total registrations for the FY 2023 cap year. Increasing the fee-paying receipt forecasts for these workloads increases the estimated revenue generated by the H–1B registration fees in the final rule. 88 FR 72870.

[34] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, H–1B Electronic Registration Process, *https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process.*

7. Online Filing Fees

The proposed rule provided lower fees for some online requests based on estimated costs for online and paper filing. 88 FR 402, 489–491. The fee differences between paper and online filing ranged from $10 to $110. *Id.* This final rule provides a $50 discount for forms filed online with USCIS. 8 CFR 106.1(g). The discount is not applied in limited circumstances, such as when the form fee is already provided at a substantial discount or USCIS is prohibited by law from charging a full cost recovery level fee. *See, e.g.,* 8 CFR 106.2(a)(50)(iv).

As described in the proposed rule and supporting documentation, the cost savings USCIS experiences from online filing differs from form to form depending on many factors. Many commenters wrote that USIS was penalizing those who still filed on paper by making paper filing more expensive. The commenters misunderstand the policy goal of the online discount because DHS is not increasing the fee for paper filings by shifting costs for online filing to the fee for paper requests as a form of penalty or deterrent. If the online discount was not provided, paper form fees would not decrease accordingly. DHS wants to incentivize online filing, but we proposed fees based on the costs savings calculated in the ABC model.

In response to comments, DHS reevaluated the difference between online and paper fees. In the proposed rule, the proposed fee differences ranged from $0 to $110. In this final rule, DHS again has determined that online filing provides costs savings to USCIS and requestors, increases flexibility and efficiency in adjudications, and those benefits should be reflected in lower fees. However, in the final rule DHS takes the expected savings from online filing and divides it among all online filed forms by establishing that the fees for online filing will be $50 less than for the same request filed on paper.[35] Furthermore, DHS believes that the $50 reduced cost can be reasonably anticipated to be consistent for future USCIS online filing capabilities and has decided to provide that online filing fees will be $50 less than the paper filing fee as additional forms are made available for online filing, unless otherwise noted. *See* 8 CFR 106.1(g). DHS emphasizes it establishes the $50 difference because

[35] DHS applies this discount to USCIS online filings only and does not apply this provision to fees set in this rule for immigration benefit requests that are submitted to either USCIS or CBP when the request is submitted to and fee collected by CBP online. *See, e.g.,* 8 CFR 106.2(a)(13)—(15).

USCIS experiences moderately reduced costs from online filing. Additionally, applying a uniform $50 reduced cost for online filing to all forms will make the reduced fee easier for USCIS to administer and be less confusing to the public when calculating the fee. Although DHS believes that it should encourage online filing as a matter of sound policy, contrary to the suggestions of some commenters, DHS is not increasing the fee for paper filings by shifting costs for online filing to the fee for paper requests as a form of penalty or deterrent. For applicants who experience a lack of access to computers or the internet, paper filing will generally remain an option.[36]

8. Adjust Fees for Forms Filed by Individuals by Inflation

The proposed rule included a wide range of proposed fees. Consistent with past fee rules, DHS used its discretion to limit some proposed fee increases that would be overly burdensome on applicants, petitioners, and requestors if set at ABC model output levels. 88 FR 402, 450–451. The proposed rule also included a provision to adjust fees by inflation in the future. 88 FR 402, 516.

DHS received many comments about the method that USCIS used to calculate how its costs should be dispersed among the requests for which fees are charged. Some commenters wrote that DHS should limit the increase in USCIS fees by the amount of inflation. DHS analyzed the suggestion and determined that from December 2016 (the month FY 2016/2017 fee rule went into effect) to June 2023,[37] the CPI–U increased by 26.37 percent.[38] Using the CPI–U as the measure for cost and fee increases is consistent with statutes that authorize DHS to adjust USCIS fees. *See, e.g.* section 286(u)(3)(C) of the INA, 8 U.S.C. 1356(u)(3)(C) (providing that DHS may adjust the premium fees based on the change in the CPI–U). DHS then calculated what the fees would be if adjusted by 26.37 percent, rounded to the nearest $5 increment, consistent with other fees (and reducing online filing fees by $50 as explained earlier). After considering the amount of the increase, as well as the impacts of the applicable fees on individual filers, DHS determined (1) that the additional revenue that would be generated by increasing the subject forms by inflation would be appropriate for expected revenue from those requests in the final rule, (2) increasing the fees by only inflation as suggested in public comments balanced the need to recover increased USCIS costs with the impacts of the fees on individuals and families, and (3) to the extent that an inflation adjustment did not recover the relative costs of the applicable requests, either other fees could be increased to make up the unrecovered costs using the ability to pay principle or USCIS could reduce its budget. In the final rule, except for certain employment-based benefit request fees, DHS finalized the fees at either the proposed fee level or the current fee adjusted for inflation, whichever was lower. A comparison of current, proposed, and final fees can be found in Table 1.

Some of the proposed fees set to increase less than inflation are the fees for Form N–400, Application for Naturalization, certain adoption-related forms (*e.g.,* Form I–600, Petition to Classify Orphan as an Immediate Relative and Form I–800, Petition to Classify Convention Adoptee as an Immediate Relative), and other immigration benefit requests where DHS limited the proposed fee increase to 18 percent increase (not including biometrics fees), as described in the proposed rule. *See* 88 FR 402, 450–451, 486–487 (Jan. 4, 2023).

This final rule additionally holds several fees to the rate of inflation since the previous fee increase in 2016. For example, DHS adjusts the paper filing fees for Forms I–130, I–485, I–539, and I–751 by inflation.

DHS notes that an increase of a straight 26.37 percent based solely on inflation deviates from the ABC model that OMB Circular A–25 recommends, and the method generally used by DHS in past USCIS fee rules. However, as stated in past fee rules, the proposed rule, and in responses to comments in this rule, DHS is not strictly bound by A–25; nor is it limited to setting fees based on the costs of the service under 31 U.S.C. 9701. For public policy reasons, DHS may use and has used its discretion to limit fee increases for certain immigration benefit request fees that would be overly burdensome on applicants, petitioners, and requestors if set at ABC model output levels. 81 FR 73308 (the 2016 final rule noted that the Application for Naturalization fee has not changed in nearly a decade and was being set at less than it would be if the 2007 fee were simply adjusted for inflation). DHS believes that this combination of limiting certain fee increases for policy reasons, setting fees using the ABC model, and adjusting fees by inflation, in addition to being responsive to public comments, provides a logical, reasonable, and balanced approach. For the proposed rule, and consistent with past fee rules, DHS used its discretion to limit some proposed fee increases that would be overly burdensome on applicants, petitioners, and requestors if set at activity-based costing (ABC) model output levels. 88 FR 402, 450–451. DHS is doing the same in the final rule.

9. Fee Exemptions and Fee Waivers

The proposed rule included new fee exemptions and proposed to codify existing fee exemptions. *See* 88 FR 402, 459–481 (Jan. 4, 2023). This final rule expands fee exemptions for humanitarian filings and adoptions. *See* Tables 5B, 7; 8 CFR 106.3(b). Many commenters requested that DHS provide more fee exemptions for humanitarian related benefit requests. In response to the public comments, DHS reexamined the fees for victim-based or humanitarian requests and other categories and decided to provide more related fee exemptions. Normally, expanding fee waivers or exemptions may increase fees, as explained in the proposed rule. 88 FR 402, 450–451. However, in this final rule, DHS revised the USCIS budget to accommodate the revenue generated by the fees and fee-paying receipts. As such, DHS is implementing these fee exemptions without increasing fees for other benefit requests.

a. No New Fee Waivers

DHS acknowledges the importance of ensuring that individuals who cannot afford filing fees have access to fee waivers. DHS has primarily sought to ease the burden of fee increases by significantly expanding the number of forms that are now fee exempt. *See* 8 CFR 106.3(b). DHS believes it has provided fee waivers for the appropriate forms and categories by emphasizing humanitarian, victim-based, and citizenship-related benefits while changing some fee waivers to fee exemptions. Additional fee waivers

[36] USCIS Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, must be filed online, but no fee is required. See, *https://www.uscis.gov/i-134a,* last Reviewed/Updated: 08/11/2023.

[37] DHS used June 2023 as the end date for the period of inflation to be consistent with the 2023 premium processing fee inflation adjustments. 88 FR 89539. DHS acknowledges that inflation will likely change from the June 2023 CPI–U before the fees in this rule take effect. The time and effort required to calculate the fees for this rule, draft comment responses, prepare supporting documents, perform the regulatory impact analysis, small entity impact analysis, and clear the rule through the necessary channels requires that a reasonable endpoint be selected on which to base the required calculations and move the final rule forward without continuous updates.

[38] DHS calculated this by subtracting the December 2016 CPI–U (241.432) from the June 2023 CPI–U (305.109), then dividing the result (63.677) by the December 2016 CPI–U (241.432). Calculation: $(305.109 - 241.432)/241.432 = .2637 \times 100 = 26.37$ percent.

would require USCIS to increase fees for other forms and requestors to compensate for fewer requests paying fees. DHS has sought to balance the need for the fee waivers and the need to ensure sufficient revenue and does not believe additional fee waivers are appropriate.

b. New Fee Exemptions

Many commenters requested that DHS provide more fee exemptions and free services for humanitarian-related benefit requests. In response to the public comments, DHS reexamined the fees for victim-based or humanitarian requests and other categories and decided to provide fee exemptions for several additional forms. A summary of the current and new exemptions is provided below in Table 5A and 5B. The adoption related fee exemptions are in Table 7. Balancing beneficiary-pays and ability-to-pay and the funding needs of USCIS, DHS has determined that these additional fee exemptions are warranted for the following reasons.

Victims of Severe Form Of Trafficking (T Nonimmigrants)

In the proposed rule, DHS offered a fee exemption for T nonimmigrant status (''T visa'') applicants, T nonimmigrants, and their derivatives for Form I–290B, Notice of Appeal or Motion, only if filed for any benefit request filed before adjusting status or for Form I–485, Application to Register Permanent Residence or Adjust Status. In this final rule, DHS expands the exemption for this category of requestors to include Form I–290B if filed for ancillary forms associated with Form I–485. DHS also exempts the fee for Form I–824, Application for Action on an Approved Application or Petition, for this population in this final rule. As stated in the proposed rule, the T visa program is historically underused and the annual statutory cap of 5,000 has never been reached. *See* 88 FR 460. DHS aims to further encourage participation of eligible victims of trafficking in the T visa program by expanding fee exemptions as provided in this final rule. DHS believes that these expanded fee exemptions advance the humanitarian goals of the T visa program by reducing barriers for this particularly vulnerable population while meeting the agency's funding needs because of the relatively low receipts and cost transfer for these forms.[39] Also, providing these fee exemptions helps to ensure parity of access to immigration relief for T visa applicants, T nonimmigrants, and their derivatives with similarly situated humanitarian categories of requestors. Finally, these additional exemptions will help account for the trauma and financial difficulties that T nonimmigrants may endure long after escaping their traffickers.

Victims of Qualifying Criminal Activity (U Nonimmigrants)

DHS provided fee exemptions in the proposed rule for U nonimmigrant status (''U visa'') petitioners and U nonimmigrants filing Form I–192, Form I–193, Form I–290B, and Form I–539 in limited circumstances. DHS expands these fee exemptions in this final rule such that Form I–192, Form I–193, and Form I–539 are fee exempt when filed by a U visa petitioner or U nonimmigrant at any time, and Form I–290B is also fee exempt if filed for ancillary forms associated with Form I–485. DHS also expands the fee exemption for Form I–765 to include initial, renewal, and replacement requests. Furthermore, DHS provides additional fee exemptions for Form I–131, Form I–485, Form I–601, Form I–824 and Form I–929 for this population. Providing these fee exemptions helps to ensure parity of access to immigration relief for U nonimmigrants with similarly situated humanitarian categories of requestors. These additional fee exemptions are provided in this final rule for the reasons stated in Section IV.F of this preamble where DHS responds to the public comments provided on the fees proposed for U nonimmigrants.

VAWA Form I–360 Self-Petitioners and Derivatives

DHS offered fee exemptions in the proposed rule for VAWA self-petitioners and derivatives filing Forms I–131, I–212 and I–601 depending on whether Forms I–360 and I–485 are filed concurrently or currently pending adjudication. Additionally, exemptions were proposed for Forms I–290B and I–485 when the Form I–485 is filed concurrently with the Form I–360, and for initial filers of I–765 for VAWA self-petitioners and derivatives. For the reasons stated in Section IV.F of this preamble in response to the public comments provided on VAWA self-petitioners, this final rule expands fee exemptions to include when Form I–360 and Form I–485 are filed separately and for some ancillary forms, when the I–485 is not pending. DHS also expands the fee exemption for Form I–290B filed by VAWA self-petitioners to include any benefit request filed before adjusting status or for Form I–485 and associated ancillary forms. Additionally, this final rule provides VAWA self-petitioners fee exemptions for Form I–601A, Form I–824, and Form I–765 renewal and replacement requests. Providing these fee exemptions helps to improve parity of access to immigration relief for VAWA self-petitioners with similarly situated humanitarian categories of requestors. On balance, the reduction of barriers to immigration relief for VAWA self-petitioners when compared with the relatively low transfer payment from the government to other benefit requestors supports DHS's decision to provide these fee exemptions.[40]

Conditional Permanent Residents filing an application for a waiver of the joint filing requirement based on battery or extreme cruelty.

For conditional permanent residents (CPRs) seeking a waiver of the Form I–751 joint-filing requirement based on battery or extreme cruelty, DHS provides an additional fee exemption in this final rule. DHS believes that CPRs filing under this exception are similarly situated to other VAWA requestors, for whom DHS has created new fee exemptions in the proposed rule and final rule. As the proposed rule noted with regards to VAWA self-petitioners, *see* 88 FR 402, 461 (Jan. 4, 2023), abused CPRs may still be living with their abuser or have recently fled their abusive relationship when filing Form I–751. Abusers often maintain control over financial resources to further the abuse, and victims may have to choose between staying in an abusive relationship and poverty and homelessness. *Id.* Therefore, CPRs who are victims of abuse may lack financial resources or access to their finances. DHS acknowledges that the proposed rule stated that it could not provide this fee exemption because Form I–751 petitioners can seek a joint-filing waiver on multiple grounds at once. *Id.* at 462. Upon reconsideration, however, DHS sees no reason that providing the fee exemption for CPRs who also request

[39] From FY 2018 through FY 2022, T nonimmigrants filed a five-year annual average of 311 Forms I–290B and a five-year annual average of 4 Forms I–824. *See* RIA, Table 47. Based on these annual average receipts, the transfer payment from the government to benefit requestors is calculated to be $171,672 for Form I–290B and $2,242 for Form I–824. *See* RIA, Table 48. This represents 0.09% and 0.001%, respectively, of the grand total transfer payments. *See* RIA, Table 48.

[40] From FY 2018 through FY 2022, VAWA self-petitioners filed an annual average of 1,273 Forms I–290B and an annual average of 314 Forms I–824. *See* RIA, Table 47. Based on these annual average receipts, the transfer payment from the government to benefit requestors is calculated to be $1,550,128 for Form I–290B and $36,769 for Form I–824. *See* RIA, Table 48. This represents 0.09% and 0.001%, respectively, of the grand total transfer payments. *See* RIA, Table 48.

multiple waivers would be infeasible operationally. DHS further notes that CPRs requesting abuse waivers are a relatively small population, *id.;* RIA Table 47; so even without the budget reductions described earlier, this additional fee exemption would have minimal effect on USCIS revenue and other fees.

Abused Spouses and Children Adjusting Status Under CAA and HRIFA

In the proposed rule, DHS proposed a fee exemption for abused spouses and children adjusting status under CAA and HRIFA for Form I–290B only if filed for any benefit request filed before adjusting status or for Form I–485. In this final rule, DHS expands this exemption for this category of requestors to include Form I–290B if filed for ancillary forms associated with Form I–485. DHS also exempts the fee for Form I–824 for this population. DHS has determined that these new exemptions are warranted because these applicants can face many of the ongoing financial obstacles as other VAWA requestors, as discussed earlier. These additional fee exemptions, which DHS has extended to one or most of the categories listed in Table 5B, improve the parity of fee exemptions amongst humanitarian and protection-based immigration categories. Given the very low number of applicants for these two populations (*see* 88 FR 402, 462, Jan. 4, 2023), DHS anticipates that these additional fee exemptions will have a negligible impact on its budget.

Abused Spouses and Children Seeking Benefits Under NACARA and Abused Spouses and Children of LPRs or U.S. Citizens Under INA sec. 240A(b)(2)

For abused spouses and children seeking benefits under NACARA as well as abused spouses and children of LPRs or U.S. citizens under INA sec. 240A(b)(2), DHS proposed fee exemptions for Form I–765 initial requests submitted under 8 CFR 274A.12(c)(10). In this final rule, DHS expands these fee exemptions to include Form I–I–765 renewal and replacement requests, as well as Form I–824 for both categories of requestors. DHS determined that these new exemptions are warranted because abused NACARA applicants may face many of the ongoing financial obstacles as other VAWA requestors, as discussed previously. These additional fee exemptions, which DHS has extended to one or most of the categories listed in Table 5B, improve the parity of fee exemptions amongst humanitarian and protection-based immigration categories.

Special Immigrant Afghan or Iraqi translators or interpreters, Iraqi nationals employed by or on behalf of the U.S. Government, or Afghan nationals employed by or on behalf of the U.S. Government or employed by the ISAF and their derivative beneficiaries.

DHS proposed fee exemptions in the proposed rule for Special Immigrant Afghan or Iraqi translators or interpreters, Iraqi nationals employed by or on behalf of the U.S. Government, or Afghan nationals employed by or on behalf of the U.S. Government or employed by the ISAF and their derivative beneficiaries filing Form I–290B for any benefit request filed before adjusting status or Form I–485 and Form I–765 initial requests. In this final rule, DHS expands these fee exemptions for this category of requestors to include Form I–290B if filed for ancillary forms associated with Form I–485 and Form I–765 replacement and renewal requests. DHS also exempts the fee for Form I–824 for this population. DHS echoes the reasoning provided in the proposed rule as to why this population merits additional fee exemptions. *See* 88 FR 463. DHS believes that it is an inefficient use of USCIS resources to adjudicate individual fee waiver requests for this group when such requests will likely be granted. DHS also believes that the time saved in the adjudication process for these individuals will demonstrate the agency's ''full and prompt cooperation, resources, and support'' for this population as directed by the President.[41] Also, DHS experience indicates that many in the OAW population move often, and have experienced challenges in securing employment authorization documents (EADs) that have resulted in USCIS receiving many EADs back as undeliverable (for example, needing to relocate after being resettled in the United States, or not having their initial EAD properly transferred to their new address), which would have required them to submit additional requests such as Form I–765 with the fee to request a replacement EAD. DHS acknowledges that these challenges faced by this population result from circumstances beyond their control, and therefore provides expanded fee exemptions to improve their access to immigration benefits for which they are eligible.

Special Immigrant Juveniles (SIJs)

In the proposed rule, DHS proposed a fee exemption Form I–290B filed by SIJs for any benefit request filed before adjusting status or for Form I–485. In this final rule, DHS expands this fee exemption to include Form I–290B if filed for ancillary forms associated with Form I–485. DHS also provides a fee exemption for SIJs filing Form I–601A and Form I–824. Notwithstanding that SIJs adjust status in the United States and do not generally need to use Form I–601A, some individuals in this category do file the form. Given the very small number of receipts, DHS provides a fee exemption for SIJs filing Form I–601A. DHS believes that these expanded fee exemptions align with the reasoning for exempting fees for this population given in the proposed rule (*see* 88 FR 463) and improves the parity of fee exemptions among similarly situated humanitarian and protection-based immigration categories.

Current and Former U.S. Armed Forces Service Members, Including Persons Who Served Honorably on Active Duty in the U.S. Armed Forces filing under INA sec. 101(a)(27)(K)

For current and former U.S. Armed Forces service members, including persons who served honorably on active duty in the U.S. Armed Forces filing under INA sec. 101(a)(27)(K), 8 U.S.C. 1101(a)(27(K), DHS proposed a fee exemption for Form I–765 initial requests for the service member in the proposed rule. DHS expands this fee exemption in the final rule to include Form I–765 renewal and replacement requests for the service member. DHS provides these additional fee exemptions in furtherance of our commitment to reduce barriers and improve access to immigration benefits for individuals who served in the U.S. Armed Forces, as described in the proposed rule.[42] DHS also believes that providing a fee exemption for this population for Form I–765 renewal and replacement requests improves parity with similarly situated immigration categories like special immigrant Afghan and Iraqi translators and interpreters.

1. Summary Tables of Fee Exemption Changes in the Final Rule

Tables 5A, 5B, and 5C compare fee exemptions and fee waiver eligibility at three points in time: those currently in effect, those provided in the proposed

[41] *See* Memorandum on the Designation of the Department of Homeland Security as Lead Federal Department for Facilitating the Entry of Vulnerable Afghans into the United States, Aug. 29, 2021.

[42] *See* 88 FR 465 (noting DHS's involvement in the initiative to support service members, veterans, and their immediate family members in recognition of their commitment and sacrifice).

rule, and those provided in this final rule. These tables include fee exemptions and fee waivers that are required under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7), and other immigration categories for which DHS is providing additional fee exemptions and waivers. These tables do not include all USCIS benefit requests or groups for which DHS currently provides or will provide a fee exemption or waiver in this rule or by policy.[43]

- Table 5A illustrates the fee exemptions and fee waiver eligibility existing before the effective date of this final rule (''current'').
- Table 5B lists forms eligible for fee waivers as provided in the proposed rule, additional fee exemptions provided in the proposed rule, and additional fee exemptions provided in this final rule.
- Table 5C summarizes the available fee exemptions and fee waiver eligibility as of the effective date of this final rule, which includes currently available fee exemptions and the additional fee exemptions provided in the proposed rule.

[43] For all other fee exemptions and fee waiver eligibility, *see* 8 CFR 106.2, 106.3.

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Table 5A: Current[44] Forms Eligible for Fee Waivers and Fee Exemptions

Category	Current Fee Exemptions	Current Fee Waiver Eligibility
Victims of severe form of trafficking (T nonimmigrants)[45]	• Form I-914 • Form I-914, Supplement A • Form I-914, Supplement B • Form I-765 (initial 8 CFR 274a.12(a)(16) fee exempt for principals only)[46]	• Form I-90 • Form I-131 • Form I-192 • Form I-193 • Form I-290B[47] • Form I-485 • Form I-539 • Form I-601 • Form I-765 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Victims of qualifying criminal activity (U nonimmigrants)[48]	• Form I-918 • Form I-918, Supplement A • Form I-918, Supplement B • Form I-765 (initial 8 CFR 274a.12(a)(19) fee exempt for principals only and (c)(14) fee exempt for principals and derivatives)[49]	• Form I-90 • Form I-131 • Form I-192 • Form I-193 • Form I-290B • Form I-485 • Form I-539 • Form I-601 • Form I-765 • Form I-929 • Form N-300

[44] "Current" refers to fee exemptions and forms eligible for fee waiver in effect before the effective date of this final rule.

[45] *See* INA sec. 101(a)(15)(T); 8 U.S.C. 1101(a)(15)(T) (T nonimmigrant status for victims of severe forms of trafficking in persons).

[46] No initial fee for principals who receive an EAD incident to status.

[47] In general, USCIS may waive the fee for Form I-290B, Notice of Appeal or Motion, under 8 CFR 103.7(c) if the noncitizen shows an inability to pay and (1) the appeal or motion is from a denial of an immigration benefit request for which no fee was required, or (2) the fee for the underlying application or petition could have been waived.

[48] *See* INA sec. 101(a)(15)(U); 8 U.S.C. 1101(a)(15)(U) (U nonimmigrant status for victims of qualifying criminal activity).

[49] There is no initial fee for principals who receive an EAD incident to status. *See* Form G-1055, Fee Schedule, available at *https://www.uscis.gov/g-1055*. There is also no fee associated with initial (c)(14) EADs issued based on a bona fide determination for principals and derivatives when the Form I-765 is filed. USCIS, "USCIS Policy Manual," Vol. 3, "Humanitarian Protection and Parole," Part C, "Victims of Crimes," Chp. 5, "Bona Fide Determination Process," available at *https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5* (last visited Oct. 27, 2023).

Table 5A: Current[44] Forms Eligible for Fee Waivers and Fee Exemptions		
Category	**Current Fee Exemptions**	**Current Fee Waiver Eligibility**
		• Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
VAWA Form I-360 self-petitioners and derivatives[50]	• Form I-360 • Form I-765 (initial category (c)(31) generally fee exempt for principals only)[51]	• Form I-90 • Form I-131 • Form I-212 • Form I-290B • Form I-485 • Form I-601 • Form I-765 • Form I-824 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
CPRs filing a waiver of the joint filing requirement based on battery or extreme cruelty[52]	None	• Form I-90 • Form I-751 • Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K

[50] This category includes VAWA self-petitioners and derivatives as defined in INA sec. 101(a)(51)(A) and (B) and those otherwise self-petitioning for immigrant classification under INA sec. 204(a)(1). *See* INA secs. 101(a)(51), 204(a); 8 U.S.C. 1101(a)(51), 1154(a).

[51] Currently, VAWA self-petitioners may check a box on Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, requesting a category (c)(31) EAD upon approval of the self-petition. This EAD is currently fee exempt. If the self-petitioner does not check this box, they must file a Form I-765 to request employment authorization under 8 CFR 274a.12(c)(14) designation or under 8 CFR 274a.12(c)(9) if applicable. The self-petitioner may also file a Form I-765 to request a category (c)(31) EAD if not initially requested on the Form I-360. All self-petitioners and derivatives filing a renewal or replacement request must file a Form I-765 with a fee or fee waiver request.

[52] *See* INA secs. 101(a)(51)(C) and 216(c)(4)(C) and (D); 8 U.S.C. 1101(a)(51)(C) and 1186a(c)(4)(C) and (D).

Table 5A: Current[44] Forms Eligible for Fee Waivers and Fee Exemptions		
Category	**Current Fee Exemptions**	**Current Fee Waiver Eligibility**
Abused spouses and children adjusting status under CAA and HRIFA[53]	None	• Form I-90 • Form I-131 • Form I-212 • Form I-290B • Form I-485 • Form I-601 • Form I-765 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused spouses and children seeking benefits under Nicaraguan Adjustment and Central American Relief Act (NACARA)[54]	None	• Form I-90 • Form I-601 • Form I-765 • Form I-881 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused spouses and children of LPRs or U.S. citizens under INA sec. 240A(b)(2)[55]	None	• Form I-90 • Form I-601 • Form I-765 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K

[53] *See* INA sec. 101(a)(51)(D) and (E), 8 U.S.C. 1101(a)(51)(D) and (E). The proposed fee exemption for Form I-765 for these categories includes all initial, renewal, and replacement EADs filed through final adjudication for adjustment of status.

[54] *See* INA sec. 101(a)(51)(F), 8 U.S.C. 1101(a)(51)(F). The proposed fee exemption for Form I-765, Application for Employment Authorization, for this category includes all initial, renewal, and replacement EADs filed through final adjudication for adjustment of status.

[55] Also includes children of battered spouses and children of an LPR or U.S. citizen and parents of battered children of an LPR or U.S. citizen under INA sec. 240A(b)(4), 8 U.S.C. 1229b(b)(4).

Table 5A: Current[44] Forms Eligible for Fee Waivers and Fee Exemptions		
Category	**Current Fee Exemptions**	**Current Fee Waiver Eligibility**
Abused Spouses of A, E-3, G, and H Nonimmigrants[56]	• Form I-765V[57]	Not Applicable
Special Immigrant Afghan or Iraqi translators or interpreters, Iraqi nationals employed by or on behalf of the U.S. Government, or Afghan nationals employed by or on behalf of the U.S. Government or employed by the International Security Assistance Forces (ISAF) and their derivative beneficiaries	• Form I-130 (for certain Special Immigrant Afghans)[58] • Form I-290B (if filed to appeal Form I-360) • Form I-360 • Form I-485 (for certain Special Immigrant Afghans)[59] • Form I-765 (initial filing for certain Afghans)[60] • Form I-601 (for certain Special Immigrant Afghans)[61] • Form I-824 (for certain Special Immigrant Afghans)[62]	• Form I-90 • Form I-131 • Form I-212 • Form I-290B • Form I-485 • Form I-601 • Form I-765 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
SIJs	• Form I-360	• Form I-90 • Form I-131 • Form I-290B • Form I-485

[56] *See* INA sec. 106; 8 U.S.C. 1105a. The proposed fee exemption for Form I-765 for these categories includes all initial, renewal, and replacement EADs. If the abused spouses of A, E-3, G, and H Nonimmigrants can file under another eligible category, the applicant may be eligible for a fee waiver.

[57] The fee exemption for Form I-765V, Application for Employment Authorization for Abused Nonimmigrant Spouse, for this category includes all initial, renewal, and replacement EADs.

[58] Filed with USCIS in the United States on behalf of any Afghan national (beneficiary) with a visa immediately available. Available through September 30, 2023.

[59] Afghan nationals and their derivative beneficiaries paroled into the United States on or after July 30, 2021, and applying to adjust status to permanent residence based on classification as Afghan special immigrants. Available through September 30, 2023.

[60] Afghan nationals and their derivative beneficiaries who were paroled into the United States on or after July 30, 2021 (eligibility category (c)(11)). Available through September 30, 2023.

[61] Afghan nationals and their derivative beneficiaries paroled into the United States on or after July 30, 2021, who file Form I-601, Application for Waiver of Grounds of Inadmissibility, associated with Form I-485, Application to Register Permanent Residence or Adjust Status, if filing as an Afghan Special Immigrant or any Afghan national with an approved Form I-130, Petition for Alien Relative, with a visa immediately available. Available through September 30, 2023.

[62] Filed for an Afghan holding a Special Immigrant Visa.

Table 5A: Current[44] Forms Eligible for Fee Waivers and Fee Exemptions		
Category	**Current Fee Exemptions**	**Current Fee Waiver Eligibility**
		• Form I-601 • Form I-765 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
TPS[63]	• Form I-765 (initial TPS applicant, under 14 and over 65 who is requesting an initial EAD.)[64] • Form I-821 (no fee for re-registration)	• Biometrics Fee • Form I-131 • Form I-290B • Form I-601 • Form I-765 • Form I-821
Asylees	• Form I-131 (Only if an asylee applying for a Refugee Travel Document or advance parole filed Form I-485 on or after July 30, 2007, paid the Form I-485 application fee required, and Form I-485 is still pending.) • Form I-589 • Form I-602 • Form I-730 • Form I-765 (initial request by asylees and initial request by asylum applicants with a pending Form I-589)	• Form I-90 • Form I-290B • Form I-485 • Form I-765 (renewal request) • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Refugees	• Form I-590 • Form I-485 • Form I-602 • Form I-730 • Form I-765 (initial request)	• Form I-90 • Form I-290B • Form I-765 • Form N-300 • Form N-336 • Form N-400

[63] *See* INA secs. 244 and 245(l)(7); 8 U.S.C. 1254a and 1255(l)(7). This category includes applicants for and recipients of TPS.

[64] Note the fee exemption for Form I-765 initial EAD requests filed by initial TPS applicants under age 14 and over age 65 is removed by this rule.

Table 5A: Current[44] Forms Eligible for Fee Waivers and Fee Exemptions		
Category	**Current Fee Exemptions**	**Current Fee Waiver Eligibility**
		• Form N-470 • Form N-565 • Form N-600 • Form N-600K
Current and former U.S. armed forces service members, including persons who served honorably on active duty in the U.S. armed forces filing under INA sec. 101(a)(27)(K)[65]	• Form N-400 (if eligible for naturalization under INA 328 or INA 329) • Form N-336 (if eligible for naturalization under INA 328 or INA 329) • Form N-600 • Form I-131 (for service members filing concurrently with an N-400)	• Form I-90 • Form N-300 • Form N-470 • Form N-565 • Form N-600K • Form I-765

Table 5B: Additional Categories of Requestors and Related Forms Eligible for Fee Waivers and Fee Exemptions[66]			
Category	**Proposed Additional Fee Exemptions, Proposed Rule[67]**	**Additional Fee Exemptions, Final Rule**	**Proposed Fee Waivers, Proposed Rule[68]**
Victims of severe form of trafficking (T	• Form I-131 • Form I-192 • Form I-193 • Form I-290B (only if filed for any benefit request filed before	• Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485 and	• Form I-90 • Form I-290B[71] • Form N-300 • Form N-336 • Form N-400 • Form N-470

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[65] These applicants are eligible for naturalization under INA sec. 328, 8 U.S.C. 1439. Most military applicants are eligible for naturalization without lawful permanent residence under INA sec. 329, 8 U.S.C. 1440.

[66] This table includes exemptions and fee waivers that are required under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7) and other categories of immigrants for which DHS is proposing additional fee exemptions. This table includes only those exemptions that DHS is required to provide under this statute, and it does not include all USCIS benefit requests or groups for which DHS currently provides or is proposing to provide an exemption in this rule or by policy. See regulatory text for all other fee exemptions and fee waivers.

[67] This column lists the additional fee exemptions that were provided in the proposed rule. all of which are maintained in the final rule. In addition, DHS will maintain all the current fee exemptions.

[68] This column lists the forms eligible for fee waivers from the proposed rule. The final rule exempts the fee for some of these forms, and the rest remain as fee waivers. There are no additional fee waivers in the final rule.

[71] Fee waivable for other forms including naturalization and citizenship related forms.

Table 5B: Additional Categories of Requestors and Related Forms Eligible for Fee Waivers and Fee Exemptions[66]

Category	Proposed Additional Fee Exemptions, Proposed Rule[67]	Additional Fee Exemptions, Final Rule	Proposed Fee Waivers, Proposed Rule[68]
nonimmigrants)[69]	adjusting status or for Form I-485) • Form I-485 • Form I-539 • Form I-601 • Form I-765[70]	associated ancillary forms) • Form I-824	• Form N-565 • Form N-600 • Form N-600K
Victims of qualifying criminal activity (U nonimmigrants)[72]	• Form I-192 (only if filed before Form I-485 is filed) • Form I-193 (only if filed before Form I-485 is filed) • Form I-290B (only if filed before Form I-485 is filed) • Form I-539 (only if filed before Form I-485 is filed) • Form I-765 (initial 8 CFR 274a.12(a)(20) and initial (c)(14) fee exempt for principals and derivatives only if filed before Form I-485)	• Form I-131 • Form I-192 • Form I-193 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485 and associated ancillary forms) • Form I-485 • Form I-539 • Form I-601 • Form I-765[73] (initial, renewal, and replacement request) • Form I-824 • Form I-929	• Form I-90 • Form I-131 • Form I-192 (only if filed with or after Form I-485 is filed) • Form I-193 (only if filed with or after Form I-485 is filed) • Form I-290B (only if filed with or after Form I-485 is filed) • Form I-485 • Form I-601 • Form I-765 (renewal and replacement requests) • Form I-929 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
VAWA Form I-360 self-	• Form I-131 (only when Form I-360 and Form I-485 are	• Form I-131 • Form I-212 • Form I-290B (only if filed for any	• Form I-90 • Form I-131 • Form I-212 • Form I-290B

[69] *See* INA sec. 101(a)(15)(T); 8 U.S.C. 1101(a)(15)(T) (T nonimmigrant status for victims of a severe form of trafficking in persons).

[70] The proposed fee exemption for T nonimmigrants filing Form I-765 includes all initial, renewal, and replacement EADs filed at the nonimmigrant and adjustment of status stages.

[72] *See* INA sec. 101(a)(15)(U); 8 U.S.C. 1101(a)(15)(U) (U nonimmigrant status for victims of qualifying criminal activity).

[73] The proposed fee exemption for U nonimmigrants or applicants for U not filing Form I-765 includes all initial, renewal, and replacement EADs filed at the nonimmigrant and adjustment of status stages.

Table 5B: Additional Categories of Requestors and Related Forms Eligible for Fee Waivers and Fee Exemptions[66]			
Category	**Proposed Additional Fee Exemptions, Proposed Rule[67]**	**Additional Fee Exemptions, Final Rule**	**Proposed Fee Waivers, Proposed Rule[68]**
petitioners and derivatives[74]	concurrently filed or pending) • Form I-212 (only when Form I-360 and Form I-485 are concurrently filed or pending) • Form I-290B (if filed with a standalone Form I-360, then fee exempt if filed to motion or appeal Form I-360) • Form I-290B (if Form I-360 and Form I-485 are concurrently filed, then fee exempt if filed for any benefit request filed before adjusting status or for Form I-485) • Form I-485 (only if filed concurrently with Form I-360) • Form I-601 (only when Form I-360 and Form I-485 are concurrently filed or pending) • Form I-765 (initial 8 CFR 274a.12(c)(9), initial 8 CFR 274a.12 (c)(14), and initial category	benefit request filed before adjusting status or for Form I-485 and associated ancillary forms) • Form I-485 • Form I-601 • Form I-601A[76] • Form I-765 (renewal, and replacement request) • Form I-824	• Form I-485 • Form I-601 • Form I-765 (renewal and replacement requests) • Form I-824 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K

[74] This category includes VAWA self-petitioners and derivatives as defined in INA sec. 101(a)(51)(A) and (B) and those otherwise self-petitioning for immigrant classification under INA sec. 204(a)(1). *See* INA sec. 101(a)(51), 204(a), 8 U.S.C. 1101(a)(51), 1154(a).

[76] Note that while it is theoretically possible for a VAWA self-petitioner to use Form I-601A, Application for Provisional Unlawful Presence Waiver, it would be highly unlikely. Form I-601A is used by noncitizens pursuing consular processing, usually because they are ineligible for adjustment of status since they have not been "inspected and admitted or paroled" or are subject to the adjustment bars of INA sec. 245(c), 8 U.S.C. 1255(c). However, Congress has provided exceptions to both statutory provisions for VAWA applicants, and so they typically choose to adjust status.

Table 5B: Additional Categories of Requestors and Related Forms Eligible for Fee Waivers and Fee Exemptions[66]

Category	Proposed Additional Fee Exemptions, Proposed Rule[67]	Additional Fee Exemptions, Final Rule	Proposed Fee Waivers, Proposed Rule[68]
	(c)(31) fee exempt for principals and derivatives)[75]		
CPRs filing a waiver of the joint filing requirement based on battery or extreme cruelty[77]	• Form I-290B (only when filed for Form I-751)	• Form I-751	• Form I-90 • Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused spouses and children adjusting status under CAA and HRIFA[78]	• Form I-131 • Form I-212 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485) • Form I-485 • Form I-601 • Form I-765	• Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485 and associated ancillary forms) • Form I-824	• Form I-90 • Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused spouses and children seeking benefits under NACARA[79]	• Form I-765 (submitted under 8 CFR 274a.12(c)(10) initial request) • Form I-881 • Form I-601	Form I-765 (renewal and replacement request) Form I-824	• Form I-90 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K

[75] Under this proposed rule, the category (c)(31) EAD provided through Form I-360 will continue to be fee exempt. In addition, all Form I-765s filed for an initial 8 CFR 274a.12(c)(9), 8 CFR 274a.12(c)(14), and an initial category (c)(31) EAD will also be fee exempt for both self-petitioners and derivatives.

[77] *See* INA secs. 101(a)(51)(C) and 216(c)(4)(C) and (D), 8 U.S.C. 1101(a)(51)(C) and 1186a(c)(4)(C) and (D).

[78] *See* INA sec. 101(a)(51)(D) and (E), 8 U.S.C. 1101(a)(51)(D) and (E). The proposed fee exemption for Form I-765 for these categories includes all initial, renewal, and replacement EADs filed through final adjudication of adjustment of status.

[79] *See* INA sec. 101(a)(51)(F), 8 U.S.C. 1101(a)(51)(F). The proposed fee exemption for Form I-765 for this category includes all initial, renewal, and replacement EADs filed through final adjudication of adjustment of status.

Table 5B: Additional Categories of Requestors and Related Forms Eligible for Fee Waivers and Fee Exemptions[66]			
Category	**Proposed Additional Fee Exemptions, Proposed Rule[67]**	**Additional Fee Exemptions, Final Rule**	**Proposed Fee Waivers, Proposed Rule[68]**
Abused spouses and children of LPRs or U.S. citizens under INA sec. 240A(b)(2)[80]	• Form I-601[81] • Form I-765 (initial 8 CFR 274a.12(c)(10) only)	• Form I-765 (renewal, and replacement request) • Form I-824	• Form I-90 • Form I-765 (renewal and replacement requests) • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Special Immigrant Afghan or Iraqi translators or interpreters, Iraqi nationals employed by or on behalf of the U.S. Government, or Afghan nationals employed by or on behalf of the U.S. Government or employed by the ISAF and their derivative beneficiaries	• Form I-131 • Form I-212 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485) • Form I-485 • Form I-601 • Form I-765 (initial)	• Form I-765 (renewal, and replacement request) • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485 and associated ancillary forms) • Form I-824	• Form I-90 • Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
SIJs	• Form I-131 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485) • Form I-485 • Form I-601	• Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485 and associated ancillary forms)	• Form I-90 • Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600

[80] Also includes children of battered spouses and children of an LPR or U.S. citizen and parents of battered children of an LPR or U.S. citizen under INA sec. 240A(b)(4), 8 U.S.C. 1229b(b)(4).

[81] This proposed fee exemption has been removed from the final rule.

Table 5B: Additional Categories of Requestors and Related Forms Eligible for Fee Waivers and Fee Exemptions[66]

Category	Proposed Additional Fee Exemptions, Proposed Rule[67]	Additional Fee Exemptions, Final Rule	Proposed Fee Waivers, Proposed Rule[68]
	• Form I-765 (initial, renewal, and replacement).	• Form I-601A[82] • Form I-824	• Form N-600K
TPS[83]	Not applicable	none	• Biometrics Fee • Form I-90 • Form I-131 • Form I-290B • Form I-601 • Form I-765 • Form I-821
Asylees	Not Applicable	none	• Form I-90 • Form I-290B • Form I-485 • Form I-765 (renewal request) • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Refugees	• Form I-765 (renewal and replacement request) • Form I-131 • Form I-131A	none	• Form I-90 • Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Current and former U.S. Armed Forces service	• Form I-131 • Form I-360 • Form I-485	• Form I-765 (renewal, and replacement	• Form I-90 • Form N-300 • Form N-470

[82] Although SIJs do not need to use Form I-601A, some do file the form. Form I-601A is typically used by noncitizens pursuing consular processing, usually because they are ineligible for adjustment of status since they have not been "inspected and admitted or paroled" or are subject to the adjustment bars of INA sec. 245(c), 8 U.S.C. 1255(c). However, Congress has provided exceptions to both statutory provisions as well as certain inadmissibility grounds for SIJs, and as a result, SIJs adjust status in the United States and do not file Form I-601A.

[83] *See* INA secs. 244 and 245(l)(7); 8 U.S.C. 1254a and 1255(l)(7). This category includes applicants and recipients of TPS.

Table 5B: Additional Categories of Requestors and Related Forms Eligible for Fee Waivers and Fee Exemptions[66]			
Category	**Proposed Additional Fee Exemptions, Proposed Rule[67]**	**Additional Fee Exemptions, Final Rule**	**Proposed Fee Waivers, Proposed Rule[68]**
members, including persons who served honorably on active duty in the U.S. Armed Forces filing under INA sec. 101(a)(27)(K)[84]	• Form I-765 (initial request for service member)	request for service members)	• Form N-565 • Form N-600K

Table 5C: Forms Eligible for Fee Waivers and Fee Exemptions, as of Effective Date of this Final Rule		
Category	**Fee Exemptions**	**Fee Waiver Eligibility**
Victims of severe form of trafficking (T nonimmigrants)[85]	• Form I-914 • Form I-914, Supplement A • Form I-914, Supplement B • Form I-131 • Form I-192 • Form I-193 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485 and associated ancillary forms) • Form I-485 • Form I-539 • Form I-601	• Form I-90 • Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K

[84] These applicants are eligible for naturalization under INA sec. 328, 8 U.S.C. 1439. Most military applicants are eligible for naturalization without lawful permanent residence under INA sec. 329, 8 U.S.C. 1440.

[85] *See* INA sec. 101(a)(15)(T); 8 U.S.C. 1101(a)(15)(T) (T nonimmigrant status for victims of severe forms of trafficking in persons).

Table 5C: Forms Eligible for Fee Waivers and Fee Exemptions, as of Effective Date of this Final Rule		
Category	**Fee Exemptions**	**Fee Waiver Eligibility**
	• Form I-765 (initial, renewal and replacement requests)[86] • Form I-824	
Victims of qualifying criminal activity (U nonimmigrants)[87]	• Form I-131 • Form I-918 • Form I-918, Supplement A • Form I-918, Supplement B • Form I-192 • Form I-193 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485 and associated ancillary forms) • Form I-485 • Form I-601 • Form I-539 (only if filed before Form I-485 is filed) • Form I-765 (initial, renewal, and replacement request)[88] • Form I-929 • Form I-824	• Form I-90 • Form N-300 • Form N-336 • Form I-290B • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
VAWA Form I-360 self-petitioners and derivatives[89]	• Form I-360 • Form I-131 • Form I-212 • Form I-290B (only if filed for any benefit request	• Form I-90 • Form I-290B • Form N-300 • Form N-336 • Form N-400

[86] The proposed fee exemption for T nonimmigrants filing Form I-765 includes all initial, renewal, and replacement EADs filed at the nonimmigrant and adjustment of status stages.

[87] *See* INA sec. 101(a)(15)(U); 8 U.S.C. 1101(a)(15)(U) (U nonimmigrant status for victims of qualifying criminal activity).

[88] The proposed fee exemption for T nonimmigrants filing Form I-765 includes all initial, renewal, and replacement EADs filed at the nonimmigrant and adjustment of status stages.

[89] This category includes VAWA self-petitioners and derivatives as defined in INA sec. 101(a)(51)(A) and (B) and those otherwise self-petitioning for immigrant classification under INA sec. 204(a)(1). *See* INA sec. 101(a)(51), 204(a); 8 U.S.C. 1101(a)(51), 1154(a).

Table 5C: Forms Eligible for Fee Waivers and Fee Exemptions, as of Effective Date of this Final Rule		
Category	**Fee Exemptions**	**Fee Waiver Eligibility**
	filed before adjusting status or for Form I-485 and associated ancillary forms) • Form I-485 • Form I-601 • Form I-601A • Form I-765(initial, renewal, and replacement request) (8 CFR 274a.12(c)(9), 8 CFR 274a.12 (c)(14), and (c)(31) fee exempt for principals and derivatives)[90] • Form I-824	• Form N-470 • Form N-565 • Form N-600 • Form N-600K
CPRs filing a waiver of the joint filing requirement based on battery or extreme cruelty[91]	• Form I-290B (only when filed for Form I-751) • Form I-751	• Form I-90 • Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused spouses and children adjusting status under CAA and HRIFA[92]	• Form I-131 • Form I-212 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485 and associated ancillary forms) • Form I-485 • Form I-601	• Form I-90 • Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K

[90] Under this proposed rule, the category (c)(31) EAD provided through Form I-360 will continue to be fee exempt. In addition, all Form I-765s filed for an initial 8 CFR 274a.12(c)(9), 8 CFR 274a.12(c)(14), and an initial category (c)(31) EAD will also be fee exempt for both self-petitioners and derivatives.

[91] *See* INA secs. 101(a)(51)(C) and 216(c)(4)(C) and (D); 8 U.S.C. 1101(a)(51)(C) and 1186a(c)(4)(C) and (D).

[92] *See* INA sec. 101(a)(51)(D) and (E), 8 U.S.C. 1101(a)(51)(D) and (E). The proposed fee exemption for Form I-765 for these categories includes all initial, renewal, and replacement EADs filed through final adjudication for adjustment of status.

Table 5C: Forms Eligible for Fee Waivers and Fee Exemptions, as of Effective Date of this Final Rule		
Category	**Fee Exemptions**	**Fee Waiver Eligibility**
	• Form I-765(initial, renewal, and replacement request) • Form I-824	
Abused spouses and children seeking benefits under NACARA[93]	• Form I-765 (initial, renewal, and replacement request) (submitted under 8 CFR 274a.12(c)(10)) • Form I-881 • Form I-601 • Form I-824	• Form I-90 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused spouses and children of LPRs or U.S. citizens under INA sec. 240A(b)(2)[94]	• Form I-765 (initial, renewal, and replacement request) (8 CFR 274a.12(c)(10)) • Form I-824	• Form I-90 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused Spouses of A, E-3, G, and H Nonimmigrants[95]	• Form I-765V[96]	Not applicable
Special Immigrant Afghan or Iraqi translators or interpreters, Iraqi nationals employed by or on behalf of the U.S. Government, or Afghan nationals employed by or	• Form I-131 • Form I-212 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485 and associated ancillary forms)	• Form I-90 • Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600

[93] *See* INA sec. 101(a)(51)(F), 8 U.S.C. 1101(a)(51)(F). The proposed fee exemption for Form I-765 for this category includes all initial, renewal, and replacement EADs filed through final adjudication for adjustment of status.

[94] Also includes children of battered spouses and children of an LPR or U.S. citizen and parents of battered children of an LPR or U.S. citizen under INA sec. 240A(b)(4), 8 U.S.C. 1229b(b)(4).

[95] *See* INA sec. 106, 8 U.S.C. 1105a. The proposed fee exemption for Form I-765 for these categories includes all initial, renewal, and replacement EADs. If the abused spouses of A, E-3, G, and H Nonimmigrants can file under another eligible category, the applicant may be eligible for a fee waiver.

[96] The fee exemption for Form I-765V for this category includes all initial, renewal, and replacement EADs.

Table 5C: Forms Eligible for Fee Waivers and Fee Exemptions, as of Effective Date of this Final Rule		
Category	**Fee Exemptions**	**Fee Waiver Eligibility**
on behalf of the U.S. Government or employed by the ISAF and their derivative beneficiaries	• Form I-360 • Form I-485 • Form I-765 (initial, renewal, and replacement request) • Form I-601 • Form I-824	• Form N-600K
SIJs	• Form I-131 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485 and associated ancillary forms) • Form I-360 • Form I-485 • Form I-601 • Form I-765 (initial, renewal, and replacement request) • Form I-824	• Form I-90 • Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
TPS[97]	• Form I-821 (only re-registration)	• Biometrics Fee • Form I-131 • Form I-290B • Form I-601 • Form I-765 • Form I-821
Asylees	• Form I-131 (Only if an asylee applying for a Refugee Travel Document or advance parole filed Form I-485 on or after July 30, 2007, paid the Form I-485 application fee required, and Form I-485 is still pending.) • Form I-589 • Form I-602 • Form I-730	• Form I-90 • Form I-290B • Form I-485 • Form I-765 (renewal request) • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K

[97] *See* INA secs. 244 and 245(l)(7); 8 U.S.C. 1254a and 1255(l)(7). This category includes applicants for and recipients of TPS.

Table 5C: Forms Eligible for Fee Waivers and Fee Exemptions, as of Effective Date of this Final Rule

Category	Fee Exemptions	Fee Waiver Eligibility
	• Form I-765 (initial request by asylees and initial request by asylum applicants with a pending Form I-589)	
Refugees	• Form I-131 • Form I-131A • Form I-485 • Form I-590 • Form I-602 • Form I-730 • Form I-765 (initial, renewal, and replacement request)	• Form I-90 • Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Current and former U.S. armed forces service members, including persons who served honorably on active duty in the U.S. armed forces filing under INA sec. 101(a)(27)(K)[98]	• Form I-131 • Form I-360 • Form I-485 • Form I-765 (initial, renewal, and replacement request for service member) • Form N-336 (if eligible for naturalization under INA 328 or INA 329) • Form N-400 (if eligible for naturalization under INA 328 or INA 329) • Form N-600	• Form I-90 • Form N-300 • Form N-470 • Form N-565 • Form N-600K

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c. Codifying Fee Waiver Eligibility Criteria

The proposed rule specified that discretionary waiver of fees requires that a waiver based on inability to pay be consistent with the status or benefit sought, including benefits that require demonstration of the applicant's ability to support himself or herself, or individuals who seek immigration status based on a substantial financial investment. *See* 88 FR 402, 593 (proposed 8 CFR 106.3(a)(1)(ii)). The final rule removes this regulatory text because it is redundant and unnecessary, as the forms eligible for fee waiver are enumerated at 8 CFR 106.3(a)(3). The final rule codifies that a person demonstrates an inability to pay the fee by establishing at least one of the following criteria:

• Receipt of a means-tested benefit as defined in 8 CFR 106.1(f)(3) at the time of filing;

• Household income at or below 150 percent of the Federal Poverty Guidelines at the time of filing; or

• Extreme financial hardship due to extraordinary expenses or other circumstances that render the individual unable to pay the fee.

See 8 CFR 106.3(a).

This change codifies the 2011 Fee Waiver Policy criteria that USCIS may grant a request for fee waiver if the requestor demonstrates an inability to pay based on receipt of a means-tested benefit, household income at or below 150 percent of the FPG, or extreme financial hardship.[99] While not a change

[98] These applicants are eligible for naturalization under INA sec. 328; 8 U.S.C. 1439. Most military applicants are eligible for naturalization without lawful permanent residence under INA sec. 329; 8 U.S.C. 1440.

[99] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Policy Memorandum, PM–602–0011.1, ''Fee Waiver Guidelines as Established by the final rule of the USCIS Fee

to fee waiver eligibility criteria, DHS believes that codifying these criteria in this final rule will provide consistency and transparency that is responsive to the concerns of many commenters.

d. No Mandatory Use of Form I–912

In the proposed rule, 8 CFR 106.3(a)(2) stated, ''*Requesting a fee waiver.* A person must submit a request for a fee waiver on the form prescribed by USCIS in accordance with the instructions on the form.'' In this final rule, USCIS will maintain the status quo of accepting either Form I–912 or a written request. The final rule will revert to the current effective language at 8 CFR 103.7(c)(2) (Oct. 1, 2020), which states, ''Requesting a fee waiver. To request a fee waiver, a person requesting an immigration benefit must submit a written request for permission to have their request processed without payment of a fee with their benefit request. The request must state the person's belief that he or she is entitled to or deserving of the benefit requested, the reasons for his or her inability to pay, and evidence to support the reasons indicated. There is no appeal of the denial of a fee waiver request.''

After considering public comments in response to the proposed requirement to submit Form I–912, DHS agrees with multiple points made by commenters. DHS acknowledges that requiring submission of Form I–912 could create an additional burden on certain requestors. *See* 88 FR 402, 458 (Jan. 4, 2023). Due to the multiple ways of establishing one's inability to pay, *see* 8 CFR 106.3(a)(1), Form I–912 may be complex for some requestors. DHS also recognizes that some requestors, particularly those who are struggling financially, may face difficulty accessing printing and internet services. DHS believes that flexibility is important in dealing with these populations, and allowing requestors to seek fee waivers via written request will improve access to immigration benefits consistent with E.O. 14012, 86 FR 8277 (Feb. 5, 2021). Because less than one percent of fee waivers are requested by written request instead of Form I–912, continuing to allow written requests will not significantly impact USCIS operations. *See* 88 FR 402, 458 (Jan. 4, 2023). For these reasons, this final rule maintains the current effective regulation that allows requestors to obtain a fee waiver by written request without filing Form I–912.

e. Child's Means-Tested Benefit Is Evidence of Parent's Inability To Pay

After considering the comments on the proposed rule DHS has decided to modify the instructions for Form I–912 to accept evidence of receipt of a means-tested benefit by a household child as evidence of the parent's inability to pay because eligibility for these means-tested benefits is dependent on household income. Such benefits would include public housing assistance, Medicaid, SNAP, TANF, and SSI, although DHS is not codifying specific means-tested benefits and will implement those as examples in guidance through the updated Form I–912 instructions. DHS has decided to limit this policy to household spouses and children because other household members' eligibility for certain means-tested benefits may not reflect the financial need of the fee waiver requestor. For example, for SSI purposes an individual's deemed income only includes the income of their spouse and parents with whom they live and their Form I–864 sponsor.[100] USCIS retains the discretion to determine whether any requestor is eligible for a fee waiver, including whether the means-tested benefit qualifies as provided in 8 CFR 106.1(f) and the Form I–912 instructions.

10. Procedural Changes To Address Effects of Fee Exemptions and Discounts

DHS is making procedural changes in the final rule to address issues that it has experienced with fee-exempt and low fee-filings. DHS appreciates the concerns of commenters and is making changes to address those concerns by lowering many fees below the amount that was proposed, establishing discounts for small employers and nonprofits, and adding multiple fee exemptions. However, to provide the requested changes, DHS must make some adjustments to codified procedural requirements to mitigate some of the unintended consequences of providing limited discounts and free services and some of the actions for which those changes may provide an incentive.

a. Duplicate Filings

The final rule provides that a duplicate filing that is materially identical to a pending immigration benefit request may be rejected. *See* 8 CFR 103.2(a)(7)(iv). DHS did not initially propose to prohibit multiple filings of identical requests to deter multiple filings of requests that have no or minimal fee, to reduce backlogs, and to improve processing times.

DHS is concerned that the new fee exemptions listed above will lead to the filing of multiple or simultaneous filing of requests that could create jurisdictional conflicts between DHS offices or individual immigration service officers who adjudicate the same types of requests. For example, filing multiple Forms I–290B, Notice of Appeal or Motion, may lead to the filing of multiple motions, multiple appeals, or the simultaneous filing of motions and appeals that would create jurisdictional conflicts between the Administrative Appeals Office (AAO) and other DHS offices. USCIS must intake the request, process or reject the request, and incur the associated costs for each duplicate, multiple or original request even when no fee is required. Multiple filings increase costs to USCIS to reject or process and it may exacerbate backlogs because free services or those with minimal fees do not provide revenue that can be used to fund new processing capacity. Requesters who file multiple requests consume excessive USCIS resources to the detriment of those who file one legitimate request.

Although it seems self-evident that USCIS can reject a materially identical filing of the exact same form while a previous request for the same benefit for the same person is still pending, that authority is not codified. Historically, USCIS has accepted duplicate filings of certain forms assuming the fee would cover the duplicate adjudication effort, if any. USCIS experience in administering OAW, U4U, the processes for Cubans, Haitians, Nicaraguans, and Venezuelans, and FRP has found that applicants submit multiple parole requests when they are fee exempt (as they are for OAW), as well as multiple Forms I–134A, Online Request to be a Supporter and Declaration of Financial Support, for the same prospective beneficiary. USCIS also receives duplicate Forms I–730, Refugee/Asylee Relative Petition, and Forms I–918, Petition for U Nonimmigrant Status, which do not have a filing fee. For some of these cases USCIS will adjudicate the initial and duplicate petitions on the merits, increasing costs to USCIS. Others are administratively closed, rejected, or consolidated with the duplicate request. All of these actions take time away from processing other requests. DHS is concerned that the reduction of fees for the additional

Schedule; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.9, AFM Update AD11–26'' (Mar. 13, 2011), *https://www.uscis.gov/sites/default/files/document/memos/FeeWaiverGuidelines_Established_by_the_Final%20Rule_USCISFeeSchedule.pdf.*

[100] Soc. Sec. Admin., ''Understanding Supplemental Security Income, What Is Income?'' (2023), *https://www.ssa.gov/ssi/text-income-ussi.htm* (last visited Aug. 21, 2023).

forms provided in this rule, *see* Table 5B, will in the same way cause applicants to submit multiples of the same request.

This change is necessitated by DHS's decision to provide the additional free services in the fee rule as requested by commenters. As explained above, USCIS experience is that when a full cost recovery fee is charged, duplicate, identical filings are very uncommon, but when the request is free or minimal (such as with the $10 H–1B Registration Fee) they are submitted more frequently. Because this problem results from fee exempt filings, and this rule provides additional fee exemptions as requested by commenters, codifying this restriction as a related change to offset the possible negative effects of the relief is a logical outgrowth of the proposed rule.[101] USCIS already rejects or administratively closes a request that is materially identical to a request that is being adjudicated because a requester generally cannot receive two or more identical immigration statuses, classifications, visas, or benefits. Individuals generally do not have a substantive right to receive multiple issuances of identical immigration benefits, which by their nature are only of value at first issuance (*e.g.,* two green cards or two travel documents). Thus, DHS will only approve document replacement requests under certain circumstances such as when the document is lost, stolen, or destroyed. In addition, after employees have already processed one request and made a decision, requiring the same or another agency employee to process the same request all over again, while a backlog of requesters remain waiting for attention, is not an efficient use of agency resources, especially when the request has no fee. This minor change to USCIS intake procedures is procedural in nature and does not alter the substantive rights of individuals. DHS is codifying this practice to ameliorate unintended consequences that may logically flow from the actions we are taking to provide more fee relief in this rule. These changes are made in the final rule as a procedural change and thus public comment is not required. *See* 5 U.S.C. 553(b)(A). Therefore, DHS is adding new 8 CFR 103.2(a)(7)(iv) to provide that a request that is materially identical to a pending request may be rejected.

[101] An agency may make changes that follow logically from or reasonably develop the rules the agency proposed. *See, Air Transport Ass'n of America* v. *C.A.B.,* 732 F.2d 219 (D.C. Cir. 1984).

b. Revocations

The final rule changes to a minor extent the handling of an approved benefit request if an incorrect fee is submitted or if the fee payment instrument is dishonored. *See* 8 CFR 103.2(a)(7)(ii)(D)(*1*) and 106.1(c)(2).

DHS is authorized to charge fees and inherent in that authority is the authority to enforce the payment of the fee and sanction failure to pay the fee. Payment of a codified fee is a fundamental eligibility criterion for any immigration benefit request. Failure to pay the correct fee by falsifying or misrepresenting eligibility for a fee waiver, exemption, or discount, as well as a dishonored check, stop payment, credit card dispute, or closed account, renders the requester ineligible for the approved benefit. Without enforcement capability, failure to pay fees would have no ramifications and possibly cause considerable damage to the ability of USCIS to fund its operations. Regarding the fee discounts, DHS foresees the situation where a petitioner may submit a lower fee for which they may not qualify and USCIS may not catch that error at intake. For example, in the five fiscal years preceding the FY 2016/2017 fee rule, an average of 231 petitions per year were submitted with a Request for Premium Processing Service, Form I–907, accompanied by a check that was dishonored by the remitting bank. 81 FR 73292, 73314. For fiscal year 2023, as of July 15, 2023, USCIS received between 30 to 43 dishonored payments per month that were associated with a Form I–129 filing, with approximately 10 of those being dishonored for stop-payment. If a benefit approved under these circumstances is not revoked, petitioners would have the incentive to request premium processing services in order to receive a swift approval, knowing they would not face any consequences once the bank dishonors the premium processing payment. *Id.*

Accordingly, balancing the need to provide relief to those requesters who have less ability to pay with the need to fully fund DHS, in the final rule DHS provides that if USCIS accepts a benefit request and determines later that the request was not accompanied by the correct fee, USCIS may deny the request. *See* 8 CFR 103.2(a)(7)(ii)(D)(*1*). This change will insulate USCIS against the falsification of fee discount eligibility and the negative revenue impacts that would cause. Further, many of the discounted fee requests will include a request for premium processing and USCIS may approve them in a few days. The alternative to revocation on notice would be for USCIS to hold each benefit request until the financial instrument used to pay the fee has finally cleared or been rejected. In the interest of administrative efficiency and prompt processing of benefit requests, DHS has rejected that alternative. Thus, if the benefit request was approved before USCIS determines the correct fee was not paid, the approval may be revoked upon notice. *Id.* Sending a Notice of Intent to Revoke (NOIR) will be more effective than billing for the unpaid fee because the requestor may simply ignore the bill while confident that it would cost USCIS more to attempt collection through litigation or other means. In most cases, the NOIR will be cured by payment of the correct amount.

The first sentence of proposed 8 CFR 106.1(c)(2), stated, ''If the benefit request was approved, the approval may be revoked upon notice.'' DHS is revising 106.1(c)(2) to clarify that if the benefit request was approved, the approval may be revoked upon notice, rescinded, or canceled subject to statutory and regulatory requirements applicable to the immigration benefit request. 8 CFR 106.1(c)(2). DHS does not in all cases have authority to revoke an approval upon notice. For example, DHS cannot administratively revoke naturalization and must use proceedings in a Federal district court following INA section 340(a), 8 U.S.C. 1451(a). Similarly, cancellation under INA section 342, 8 U.S.C. 1453, is the only route to pursue revocation if a certificate of citizenship or naturalization has already been issued. Accordingly, while these authorities already exist in statute and rulemaking is not required to implement them, in the final rule DHS is revising 8 CFR 106.1(c)(2) to explicitly acknowledge that USCIS' right to revoke an approval upon notice in cases where a fee payment is not honored may be subject to statutory limitations.

c. No Initial Field Review for Fee Exempt Form I–290B

When an affected party files an appeal of an initial USCIS decision, the USCIS officer who made the initial decision reviews the appeal case and decides whether the case warrants favorable action. *See* 8 CFR 103.3(a)(2)(ii). During their review, the officer decides whether the case warrants favorable action and if warranted, may reverse the initial unfavorable decision. If the officer determines that favorable action is not warranted, he or she must ''promptly'' forward the appeal to the AAO. *See* 8 CFR 103.3(a)(2)(iv). DHS did not propose exceptions to 8 CFR

103.3(a)(2)(ii) in the proposed rule. However, as outlined previously in this section, the final rule makes Form I–290B, Notice of Appeal or Motion, fee exempt for several new populations. *See* Table 48, in Section P. Fee Exemptions of RIA. To avoid fee exempt requests consuming excessive USCIS resources, in the case of a fee waived or fee exempt appeal under 8 CFR 106.3, this rule provides that USCIS may forward the appeal for adjudication without requiring a review by the official who made the unfavorable decision. *See* 8 CFR 103.3(a)(2)(ii) (providing that USCIS may forward the appeal for adjudication without a review by the official who made the unfavorable decision).

As stated previously in this section, free services do not provide revenue that can be used to fund new processing capacity. In addition, making an immigration benefit request free may increase the volume of those filings. The review by the official who made the unfavorable decision is a step in the appeal process that costs USCIS time and money and exacerbates backlogs by requiring officers to review already decided cases. To minimize the workload on USCIS officers who are required to review a denied request after appeal that may be caused by free appeals, DHS is eliminating the regulatory requirement to review appeals before forwarding them to the AAO if the appeal was fee exempt or the fee was waived. Elimination of mandatory field review is likely to decrease appeal processing times. Based on the FY 2017 average time for the AAO to receive an appeal from the field, the elimination of mandatory field review could save up to 113 days in processing time, on average, for cases requiring AAO review. This change will expedite the appeals process and provide the affected party a quicker decision. This change is both a logical outgrowth of the proposed rule and a logical extension of changes made in the final rule at the request of commenters. In addition, affected parties would not incur costs from this change because it is a procedural matter of internal agency management. DHS does not anticipate any cost savings for USCIS from this change, as any savings will be offset by a full appellate review at the AAO.

11. Adjustment of Status (Form I–485) and Family-Based Fees

a. Bundling of Fees for Form I–765 and I–131

In this final rule, DHS provides that Form I–485, Application to Register Permanent Residence or Adjust Status, applicants will pay half of the regular Form I–765, Application for Employment Authorization, fee when it is filed with a Form I–485 for which the fee is paid if the adjustment application is pending. *See* 8 CFR 106.2(a)(44)(i). DHS had proposed requiring the full fee for Form I–765, and Form I–131, Application for Travel Document, when filed with Form I–485. *See* 88 FR 402, 491. Instead, DHS is setting the filing fee for a Form I–765 filed concurrently with Form I–485 after the effective date at $260. *See* 8 CFR 106.2(a)(44)(i). Applicants will pay the same fee to renew their Employment Authorization Document (EAD) while their Form I–485 is pending. *Id.* DHS is unbundling the forms to make USCIS processing times more efficient by eliminating Forms I–765 filed for individuals who are not in need of employment authorization or Forms I–131 for individuals who have no intention of traveling outside the United States. Bundling Forms I–765, I–131, and I–485 transfers the cost of fees not paid by these applicants and results in other applicants paying for forms in a bundle they may not need.

Nevertheless, after considering the public comments DHS decided to provide the half price Form I–765 to reduce the burden on low, middle-income, or working-class requesters. DHS acknowledges that many prospective applicants for lawful permanent resident (LPR) status may lack work authorization and therefore struggle to pay the filing fee for Form I–765. An applicant may request a fee waiver for Form I–765. *See* 8 CFR 106.3(a)(3)(ii)(F). In addition, Forms I–131 and I–765 are fee exempt for certain categories of applicants. *See* 8 CFR 106.3(b).

b. Child Discount for Form I–485

DHS initially proposed that children filing Form I–485 with their parents pay the same fee as adults, $1,540. 88 FR 402, 494 (Jan. 4, 2023). In the final rule, DHS provides that, when filing with parents, children will pay $950 for Form I–485. *See* 8 CFR 106.2(a)(20)(ii). The current $750 fee went into effect in December 2016 and the new $950 fee is based on the increase in the CPI–U (the amount of inflation) between December 2016 and June 2023, like other inflation adjusted fees in this rule. DHS agrees with many of the points made by commenters, including that the increased fee may be burdensome to filers and affect family reunification, and that there may be a cost basis for distinguishing a Form I–485 filed by a child in conjunction with a parent from other Form I–485s. DHS also understands the social benefit of family immigration and the potential impacts the proposed fee could have on children and families. Therefore, after reviewing the comments, DHS is reducing the fee for applicants under age 14 who file concurrently with a parent to $950. Additionally, children under 14 who have properly filed the Form I–485 with a fee on or after July 30, 2007, and before the effective date of the final rule are not required to pay additional fees for the Form I–765 and Form I–131. *See* 8 CFR 106.2(a)(7)(iv), (44)(ii)(A).

12. Adoption Forms Changes

After considering public comments, in the final rule DHS is providing additional fee exemptions for adoptive families. *See* 8 CFR 106.2(a)(32) and (48). Specifically, DHS will also provide fee exemptions for:

- Second extensions.
- Second change of country requests.
- Duplicate approval notices for both the orphan and the Hague process.

These would all be requested using Supplement 3 for either the orphan (Form I–600/I–600A) or Hague (Form I–800A) process. This is in addition to the exemptions that DHS already provides for the Supplement 3 for first extensions and first change of country requests. Providing a second free extension will provide another 15 months of suitability approval validity at no additional cost to the applicants. DHS recognizes that intercountry adoptions may take an increasing amount of time because of factors outside the control of adoptive families, such as country conditions, and believes this will help reduce related burdens on adoptive families.

The final rule fee for the Supplement 3 for the orphan and Hague process will be $455. Petitioners will pay less under the final rule for most scenarios where they request action on a suitability application for the orphan or Hague process. Therefore, DHS believes the fees and new fee exemptions properly align with the needs of the adoption community while not unnecessarily shifting the USCIS adoption program costs by increasing fees for others.

13. Naturalization and Citizenship Fees

a. Half Fee for Form N–400

In the proposed rule, applicants with household incomes not more than 200 percent of the Federal Poverty Guidelines (FPG) would be eligible for the reduced fee for Form N–400, Application for Naturalization. *See* 88 FR 402, 487–488 (Jan. 4, 2023). However, DHS notes that in recent years only one third of new lawful permanent residents (LPR) naturalized within 6

years of obtaining LPR status,[102] and stakeholders have identified the fee for Form N–400 as a significant obstacle to naturalization.[103]

In response to public comments and additional stakeholder feedback, and in recognition of the financial gains immigrants obtain with naturalization and the benefits that the United States obtains from new naturalized citizens, this final rule expands eligibility for paying half of the regular fee for Form N–400. An applicant with household income at or below 400 percent of FPG may pay half price for their Application for Naturalization. *See* 8 CFR 106.2(b)(3)(ii). DHS believes that this change will provide additional relief to longtime residents who struggle to pay naturalization fees without requiring further fee increases for other forms to offset the cost. The increased income threshold for a reduced naturalization fee will also enable the United States to further benefit from newly naturalized citizens, including their greater civic involvement and tax revenues.[104]

b. Fee Exemption for Adoption Related Form N–600

The final rule provides that Forms N–600, Application for Certificate of Citizenship and N–600K, Application for Citizenship and Issuance of Certificate under Section 322, are fee exempt for certain adoptees. *See* 8 CFR 106.2(b)(7)(ii) and (8).

Multiple commenters asked USCIS to provide Certificates of Citizenship for all children immigrating based on adoption at no additional cost, as the fee would be an unfair burden on adoptive families. Commenters opposed the increase to the filing fees for adoptive families whose children enter the United States on certain types of visas, reasoning that the certificate should be provided at no additional cost, once all the necessary legal steps have been completed, just as it is provided at no cost for adopted children who enter on a different type of visa for children with final adoptions (IR–3 and IH–3 visas). Commenters indicated that if a Certificate of Citizenship is not obtained at the time of adoption, this becomes a further burden for adoptees.

USCIS already provides Certificates of Citizenship to certain adopted children who come to the United States with a final adoption (children with an IR–3 or IH–3 visa)[105] and meet the conditions of INA sec. 320, 8 U.S.C. 1431, without them having to file a Form N–600 and without paying a fee. USCIS can do this because children with an IR–3 or IH–3 visa generally automatically acquire U.S. citizenship upon their admission to the United States as lawful permanent residents and USCIS can make a citizenship determination based on their underlying immigration petition approval (Form I–600 or Form I–800) without any additional evidence. In addition, these children are in visa categories that are only for adopted children who generally automatically acquire citizenship upon admission, and therefore USCIS can easily identify these children based on their visa category. USCIS is not able to provide Certificates of Citizenship without a Form N–600 for other categories of children, because USCIS cannot make a citizenship determination without additional evidence or cannot identify the children based on their visa category. For example, USCIS cannot issue Certificates of Citizenship without a Form N–600 for children immigrating based on adoption who do not have final adoptions (IR–4s and IH–4s) because they do not automatically acquire citizenship upon their admission and need to submit additional evidence of a full and final adoption for a subsequent citizenship determination. USCIS also cannot automatically issue Certificates of Citizenship to adopted children who are issued IR–2 visas, because stepchildren are also issued IR–2 visas but do not automatically acquire U.S. citizenship upon their admission. USCIS cannot automatically determine which children in these visa categories automatically acquire citizenship and which do not, and thus additional evidence submitted with the N–600 application is required. DHS recognizes the unique vulnerability of adopted children and the overall costs that adoptive families face and wishes to reduce the burden on adoptive families. DHS also notes a passport is available to obtain proof of citizenship without filing Form N–600 for adopted children who automatically acquire or derive citizenship. If adoptive families wish to seek a Certificate of Citizenship, DHS cannot eliminate the requirement to file a Form N–600 for additional categories of adopted children (such as IR–2, IR–4, and IH–4). However, after considering many comments requesting a free N–600 or N–600K for adopted children, DHS will exempt individuals who are the subject of a final adoption for immigration purposes and meet (or met before age 18) the definition of child under section 101(b)(1)(E), (F), or (G) of the INA from Form N–600 filing fees. 8 CFR 106.2(b)(7). This will include adoptees who are over age 18 at the time of filing or adjudication of the N–600, but who met the definition of child under section 101(b)(1)(E), (F), or (G) of the INA before turning 18. DHS will also exempt children who are the subject of a final adoption for immigration purposes and meet the definition of child under section 101(b)(1)(E), (F), or (G) of the Act from Form N–600K filing fees.

DHS realizes that this exemption seems to favor adopted over biological children in allowing the filing without a fee. DHS did not take this perception lightly when considering whether adopted children should be able to file a fee exempt Form N–600/600K. In the end, DHS reasoned that many adoptive families have already paid USCIS fees for the Form I–600A/I–600, Form I–800A/I–800, or Form I–130, Petition for Alien Relative, whereas the Form N–600 fee may be the only USCIS fee that families of biological children would pay if they acquired citizenship under INA 301 or 309. DHS also recognizes that families may also choose to apply for a passport to document their child's citizenship in cases where a biological child automatically acquired citizenship. The exemption fits logically within the structure of this rule, and results in a minimal loss of revenue from adoptee/adopted child Form N–600 and N–600K fees. Thus, DHS has decided to respond favorably to the request of many commenters and exempt certain adoptees from the N–600 fee and adopted children from the N–600K fee. 8 CFR 106.2(b)(7) and (8).

14. Additional Changes

In the final rule DHS:

- Deletes proposed 8 CFR 106.3(a)(5), ''Fees under the Freedom of Information Act (FOIA),'' because it is unnecessary. DHS FOIA regulations at 6 CFR 5.11(k) address the waiver of fees under FOIA, 5 U.S.C. 552(a)(4)(A)(iii).
- Removes the fee exemption for Form I–601, Application for Waiver of Grounds of Inadmissibility, for applicants seeking cancellation of removal under INA 240A(b)(2), 8 U.S.C. 1229b(b)(2), since they cannot use a

[102] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Trends in Naturalization Rates: FY 2018 Update'' (Sept. 2021), *https://www.uscis.gov/sites/default/files/document/reports/Trends_In_Naturalization_Rates_FY18_Update_Report.pdf*.

[103] *See, e.g.,* Comment Submitted by CASA, May 19, 2021, *https://www.regulations.gov/comment/USCIS-2021-0004-7122*.

[104] *See* Holly Straut-Eppsteiner, Cong. Research Servs., R43366, ''U.S. Naturalization Policy,'' (May 2021), *https://crsreports.congress.gov/product/pdf/R/R43366.*

[105] See U.S. Citizenship & Immigr. Servs, U.S. Dep't of Homeland Security, ''Your New Child's Immigrant Visa,'' *https://www.uscis.gov/adoption/bringing-your-internationally-adopted-child-to-the-united-states/your-new-childs-immigrant-visa/your-new-childs-immigrant-visa* (last updated Dec. 15, 2021), for visa categories for adopted children.

waiver of inadmissibility to establish eligibility for this type of relief from removal. *Matter of Y–N–P-,* 26 I&N Dec. 10 (BIA 2012); *cf.* proposed 8 CFR 106.3(b)(8)(i). Therefore, the form is not filed by that population, so the exemptions was not needed making the text superfluous.

• Codifies that USCIS will provide 30-day advance public notification before a currently acceptable payment method will be changed. 8 CFR 106.1(b). Commenters requested that advance notice be provided when a payment method is changed. As explained more fully in the responses to the comments on the subject, DHS is codifying this procedural requirement.

• Revises proposed 8 CFR 106.2(d)(2) to provide that all USCIS fees that DHS has the authority to adjust under the INA (those not fixed by statute) may be increased by the rate of inflation by final rule. The change is limited only to clarify that all fees not fixed by statute are increased simultaneously. This change is explained more fully in the response to the public comments on this subject.

• Amends 8 CFR 204.5(p)(4)(ii) in this final rule by removing the clause ''but not to exceed the period of the alien's authorized admission'' so that the provision once again states that ''Employment authorization under this paragraph may be granted solely in 1-year increments.'' The last clause in § 204.5(p)(4)(ii), which is being removed in this final rule, was added in the 2020 Fee Rule in a revision that was intended to remove ''8 CFR 103.7(b)(1)'' and replace it with ''8 CFR 106.2.'' 85 FR 46922; 84 FR 62364. In neither the 2020 Fee Rule nor in the January 4, 2023, proposed rule did DHS explain why the rule added or retained the last clause, respectively. Although the proposed rule proposed to retain this clause, DHS has determined that the clause is unnecessary and potentially confusing. As explained in the 2016 final rule that created § 204.5(p), the 1-year grant of employment authorization is meant to be a stopgap measure for nonimmigrants facing compelling circumstances and, if granted, provides a period of authorized stay.[106]

D. Corrections

DHS notes multiple non-substantive errors in the proposed rule as follows:

• The preamble to the proposed rule states, ''However, as to Forms *N–565* and N–600K, both the current fees and the proposed fees are less than the estimated cost (fee-paying unit cost) for each naturalization form.'' 88 FR 402, 485–486 (Jan. 4, 2023) (emphasis added). ''However, for Forms *N–565* and N–600K, the proposed fees are below the estimated cost from the ABC model, thus DHS proposes no discount for online filing of the N-forms.'' *Id.* at 486 (emphasis added). These statements were incorrect as to the Form N–565, Application for Replacement Naturalization/Citizenship Document, because the proposed fee was higher than its fee-paying unit cost. This error is immaterial to the final rule because the current N–565 fee is being increased by the rate of inflation as previously explained.

• DHS proposed to remove text from Form I–485, Supplement A, Supplement A to Form I–485, Adjustment of Status Under Section 245(i), regarding the statutory exemptions to the required INA sec. 245(i) statutory sum when the applicant is an unmarried child under 17 or the spouse or the unmarried child under 21 of an individual with lawful immigration status and who is qualified for and has applied for voluntary departure under the family unity program. *See* 88 FR 402, 494 (Jan. 4, 2023). However, Form I–485, Supplement A, does not contain the language DHS proposed to remove. DHS further stated that it was unnecessary to codify the exemptions from the required INA sec. 245(i) sum into the CFR, but the proposed regulatory text did include the exemptions.

• The proposed regulatory text for 8 CFR 212.19(e) stated: ''An alien seeking an initial grant of parole or re-parole will be required to submit biometric information. An alien seeking re-parole may be required to submit biometric information.'' The second sentence was included in error and has been removed from the final rule.

E. Status of Previous USCIS Fee Regulations

DHS issued a final rule to adjust the USCIS fee schedule on August 3, 2020, at 85 FR 46788. The rule was scheduled to become effective on October 2, 2020. However, that rule was preliminarily enjoined. *Immigrant Legal Res. Ctr.* v. *Wolf,* 491 F. Supp. 3d 520 (N.D. Cal. 2020); *Nw. Immigrant Rights Project* v. *USCIS,* 496 F. Supp. 3d 31 (D.D.C. 2020). Consequently, USCIS has not implemented the fees set out in the 2020 fee rule and is still using the fees set in the 2016 fee rule unless an intervening rulemaking has codified a different fee.[107] DHS discussed the effects of the injunctions and their relationship to this rule in detail in the proposed rule. *See* 88 FR 402, 420 (Jan. 4, 2023). This preamble discusses substantive changes that refer to the requirements of the regulations that existed before October 2, 2020.[108] Likewise, the regulatory impact analysis (RIA) for this proposed rule analyzes the impacts of the changes between the pre-2020 fee rule regulations that DHS is following under the injunctions and those codified in this rule.[109]

F. Severability

In the approach that DHS adopts in this final rule, the new fees allow USCIS to recover full cost given projected volumes and all policy considerations. However, if DHS were prohibited from collecting any new fee for any reason, DHS believes this rule is structured so that a stay, injunction or vacatur of a fee set by this rule could be narrowly tailored to remedy the specific harm that a court may determine exists from the specific fee or fees challenged. USCIS would be able to continue operations, perhaps at a reduced level or by shifting resources in the absence of the fee until DHS is able to conduct new rulemaking to re-set fees and correct the deficiencies that resulted in the court order. Operating without one or a few of the new fees would be preferable to an invalidation of all the new fees, which would great disruption and deterioration of USCIS operations.

DHS believes that the provisions in this rule can function independently of each other. For example, the H–1B Registration Fee, Asylum Program Fee, and genealogy fees could be stalled while a new rule is undertaken without affecting all other fees generally. This would reduce USCIS projected revenue, carryover balances and require realignment of the USCIS budget and a reassessment of spending priorities. *See*

[106] See Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers Final Rule, 81 FR 82398, 82424–82425) (Nov. 18, 2016).

[107] *See* 86 FR 7493 (Jan. 29, 2021) (announcing that DHS is complying with the terms of the orders, not enforcing the regulatory changes set out in the 2020 rule, and accepting fees that were in place before October 2, 2020).

[108] As explained in the proposed rule, the effects of the injunction of the 2020 fee rule, intervening rules, and the codification but ineffectiveness of the 2020 fee rule may result in the standard of citing to the CFR print edition date being inaccurate because title 8 was amended by a number of rules in and since calendar year 2020. 88 FR 421. Therefore, regulations that existed on October 1, 2020 are followed by that date, and provisions that were codified by the 2020 fee rule are followed by the effective date of the 2020 fee rule, October 2, 2020.

[109] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, FY 2022–2023 Fee Review Regulatory Impact Analysis (Jan. 4, 2023), *https://www.regulations.gov/document/USCIS-2021-0010-0031.*

88 FR 402, 517 (Jan. 4, 2023). However, USCIS constantly assesses its budget and spending to avoid a deterioration in service considering its fees have not been increased since 2016. Additionally, the statutory authority for this rule provides that ''fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services'' and does not require that DHS *must* recover full costs. INA section 286(m), 8 U.S.C. 1356(m). Therefore, to protect the goals for which this rule is being proposed, DHS is codifying our intent that the provisions be severable so that, if necessary, the regulations overall can continue to function should a particular provision be stricken. *See* 8 CFR 106.6.

III. Related Rulemakings and Policies

DHS is engaging in multiple rulemaking actions that are in various stages of development.[110] DHS realizes that policy and regulatory changes can affect staffing needs, costs, fee revenue, and processing times. DHS has considered each of these other rules for peripheral, overlapping, or interrelated effects on this rule, and has analyzed the potential effects of rules that may impact or substantively overlap with this proposal, if any. *See* 88 FR 402, 432 n.78 (Jan. 4, 2023).

DHS has also, to the extent possible, considered the effects, if any, on this rule of all intervening or future legislation and policy changes of which USCIS is aware. Immigration policy changes frequently, and initiatives may come about without being incorporated in a proposed and final rule simply due to the time required for rule development and finalization. DHS, therefore, does not and cannot assert that it knows and has considered every policy change that is planned or that may occur at all levels and agencies of the U.S. Government that may directly or indirectly affect this rule. However, DHS believes that it has examined and considered all relevant aspects of the problems that this rulemaking solves, responded to all substantive public comments, articulated a satisfactory analysis and reasoned explanation for each change and the rule, and not relied on factors which Congress has not intended us to consider. Specific recent and planned DHS rules and major policy changes and their effects on this rule are as follows:

A. New Processes

1. Uniting for Ukraine (U4U)

On April 21, 2022, the United States announced a key step toward fulfilling President Biden's commitment to welcome Ukrainians fleeing Russia's invasion.[111] Uniting for Ukraine (U4U) provides a pathway for Ukrainian citizens and their immediate family members who are outside the United States to come to the United States and stay temporarily for a 2-year period of parole. Ukrainians participating in U4U must have a supporter in the United States who agrees to provide them with financial support for the duration of their stay in the United States.

2. Operation Allies Welcome

On August 29, 2021, President Biden directed DHS to lead and coordinate ongoing efforts across the Federal Government to support vulnerable Afghans, including those who worked alongside the U.S. government in Afghanistan for the past 2 decades, as they safely resettle in the United States. USCIS is and has been responsible for large portions of the implementation of Operation Allies Welcome (OAW).[112]

3. Processes for Cubans, Haitians, Nicaraguans, and Venezuelans

Over the last year, DHS has implemented processes through which nationals of designated countries and their immediate family members may request to come to the United States in a safe and orderly way. DHS used emergency processing when implementing Uniting for Ukraine as well as new parole processes for certain Cubans,[113] Haitians,[114] Nicaraguans,[115] and Venezuelans.[116] Under these processes, qualified beneficiaries who are outside the United States and lack U.S. entry documents may be considered, on a case-by-case basis, for advanced authorization to travel and a temporary period of parole for urgent humanitarian reasons or significant public benefit.

4. Family Reunification Parole Processes

DHS also used emergency processing when establishing new family reunification parole (FRP) processes for certain Colombians,[117] Ecuadorians,[118] Salvadorans,[119] Guatemalans,[120] and Hondurans [121] and implementing procedural changes to the previously established Cuban [122] and Haitian [123] Family Reunification Parole processes. These FRP processes are available to certain petitioners who filed an approved Form I–130, Petition for Alien Relative, on behalf of a principal beneficiary who is a national of Colombia, Cuba, El Salvador, Guatemala, Haiti, or Honduras, and their immediate family members. These processes allow an eligible beneficiary to be considered, on a case-by-case basis, for advanced authorization to travel and a temporary period of parole for urgent humanitarian reasons or significant public benefit.

B. Effects of Temporary or Discretionary Programs and Processes

As stated elsewhere, and in the proposed rule, Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS) country designations are both administrative exercises of discretion that may be granted on a case-by-case basis for certain periods. *See* 88 FR 402, 447 (Jan. 4, 2023). DACA grants are subject to intermittent renewal, extension, or termination at DHS's discretion. TPS country designations must be periodically reviewed and are subject to termination if the conditions for the designation no longer exist. Likewise, OAW, U4U, and processes for Cubans, Haitians, Nicaraguans, and Venezuelans are temporary processes established to address exigent circumstances. The FRP processes require that the petitioner first receive an invitation to be able to initiate the process. The invitation requirement allows DHS to adjust the number of invitations issued based on the resources available to process requests and to achieve desired policy objectives. Given that these processes are temporary by definition or may be paused at the discretion of DHS, USCIS excluded the associated costs and workload from the fee review and did not propose to allocate overhead and other fixed costs to these workloads.[124]

[110] *See* Office of Information and Regulatory Affairs, ''Fall 2023 Unified Agenda of Regulatory and Deregulatory Actions,'' *https://www.reginfo.gov/public/do/eAgendaMain* (last visited December 29, 2023).

[111] *See* USCIS, Uniting for Ukraine, at *https://www.uscis.gov/ukraine* (last visited Aug. 24, 2023).

[112] *See* U.S. Dep't of Homeland Sec, Operation Allies Welcome, *https://www.dhs.gov/allieswelcome* (last updated Nov. 27, 2023).

[113] 88 FR 1266 (Jan. 9, 2023); *see also* 88 FR 26329 (Apr. 28, 2023).

[114] 88 FR 1243 (Jan. 9, 2023); *see also* 26 FR 327 (Apr. 28, 2023).

[115] 88 FR 1255 (Jan. 9, 2023).

[116] 87 FR 63507 (Oct. 19, 2023); *see also* 88 FR 1279 (Jan. 9, 2023).

[117] 88 FR 43591 (July 10, 2023).

[118] 88 FR 78762 (Nov. 16, 2023).

[119] 88 FR 43611 (July 10, 2023).

[120] 88 FR 43581 (July 10, 2023).

[121] 88 FR 43601 (July 10, 2023).

[122] 88 FR 54639 (Aug. 11, 2023).

[123] 88 FR 54635 (Aug. 11, 2023).

[124] USCIS has considered the number of immigration benefit requests it will receive from noncitizens from Afghanistan who will stay permanently and safely resettle in the United States over the fee review period.

Excluding these initiatives or processes that are temporary from the fee review mitigates an unnecessary revenue risk, by ensuring that USCIS will have enough revenue to recover full cost regardless of DHS's discretionary decision to continue or terminate these initiatives. This allows DHS to maintain the integrity of its activity-based cost (ABC) model, ensure recovery of full costs, and mitigate revenue risk from unreliable sources. While the operational costs of adjudicating requests associated with these policies are carefully considered on a day-to-day basis, the proposed rule and this final rule exclude from the ABC model the costs and revenue associated with these processes.

C. Lawful Pathways Rule

DHS and the U.S. Department of Justice (DOJ) recently published a final rule, Circumvention of Lawful Pathways. *See* 88 FR 31314 (May 16, 2023). Under the final rule, certain noncitizens who cross the southwest land border or adjacent coastal borders without authorization, and without having availed themselves of existing lawful, safe, and orderly pathways are presumed ineligible for asylum unless they meet certain limited exceptions. *See id* at 31449–52. The rule is projected to increase USCIS costs for operating the asylum program. *See* 88 FR 11704 (Feb. 23, 2023). While the costs of this rule were not considered in the proposed rule, DHS believes that USCIS' budget may be sufficient to cover these costs in the near term. Much of the cost for the Circumvention of Lawful Pathways rule will occur beyond the 2-year study cycle for the fee revenue required to be generated by this rule. Future fee rules will use more recent information and estimates, when available.

D. Premium Processing—Emergency Stopgap USCIS Stabilization Act

As explained in the proposed rule, on October 1, 2020, the Continuing Appropriations Act, 2021, and Other Extensions Act (Continuing Appropriations Act) was signed into law. Public Law 116–159 (Oct. 1, 2020). The Continuing Appropriations Act included the Emergency Stopgap USCIS Stabilization Act (USCIS Stabilization Act), which allows USCIS to establish and collect additional premium processing fees and to use premium processing funds for expanded purposes. *See* Public Law 116–159, secs. 4101 and 4102, 134 Stat. 739 (Oct. 1, 2020); 8 U.S.C. 1356(u). Then, on March 30, 2022, DHS published a final rule, Implementation of the Emergency Stopgap USCIS Stabilization Act, implementing part of the authority provided under the USCIS Stabilization Act to offer premium processing for those benefit requests made eligible for premium processing by section 4102(b) of that law. *See* 87 FR 18227 (premium processing rule).

The proposed rule did not include changes directly resulting from the USCIS Stabilization Act or premium processing rule and stated that DHS will consider including premium processing revenue and costs in the final rule. *See* 88 FR 402, 419 (Jan. 4, 2023). In this final rule, DHS has transferred $129.8 million in costs to premium processing because of premium processing revenue projections. *See* section II.B of this preamble.

E. Premium Processing Inflation Adjustment

On December 28, 2023, DHS published a final rule, Adjustment to Premium Processing Fees, effective February 26, 2024, that increased premium processing fees charged by USCIS to reflect the amount of inflation from June 2021 through June 2023 according to the Consumer Price Index for All Urban Consumers (CPI–U). 88 FR 89539 (Dec. 28, 2023). The adjustment increases premium processing fees from $1,500 to $1,685, from $1,750 to $1,965, and from $2,500 to $2,805. 8 CFR 106.4. The total projected revenue to be collected from the new premium processing fees established by the final rule premium processing rule is too attenuated to be considered for this rule without placing USCIS at risk of revenue shortfalls if that revenue did not materialize. However, as noted earlier, this final fee rule transfers additional costs to premium processing revenue. Premium revenue will be considered in future fee studies.

F. EB–5 Reform and Integrity Act of 2022 and Related Rules

As stated in the proposed rule, on March 15, 2022, the President signed the EB–5 Reform and Integrity Act of 2022, which repealed the Regional Center Pilot Program and authorized a new Regional Center Program.[125] *See* 88 FR 402, 420 (Jan. 4, 2023). (EB–5 stands for Employment-Based Immigrant Visa, Fifth Preference.) The EB–5 Reform and Integrity Act of 2022 requires DHS to conduct a fee study not later than 1 year after the date of the enactment of this Act and, not later than 60 days after the completion of the study, set fees for EB–5 program related immigration benefit requests at a level sufficient to recover the costs of providing such services, and complete the adjudications within certain time frames. *See* Public Law 117–103, sec. 106(b). DHS has begun the fee study required by the EB–5 Reform and Integrity Act of 2022 and has initiated a working group to begin drafting the rule. However, that effort is still in its early stages. How the EB–5 Reform and Integrity Act of 2022 and the fee study it requires relate to this rule and the fees it sets are explained in section IV.G.2.b. of this preamble in responses to comments on those fees and related polices.

G. Modernizing H–1B Requirements, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers

On October 23, 2023, DHS proposed to amend its regulations governing H–1B specialty occupation workers. 88 FR 72870. The rule proposed to modernize and improve the efficiency of the H–1B program by amending several requirements for the subject nonimmigrant classifications, including to improve the integrity of the H–1B program. *Id.* Specifically, that rule proposes that USCIS would select registrations by unique beneficiary rather than by individual registration to reduce the potential for gaming the H–1B cap system and make it more likely that each beneficiary would have the same chance of being selected, regardless of how many registrations are submitted on their behalf. If that proposal is finalized as proposed, the actual number of H–1B Registrations may not be as high as projected in this rule. For example, the proposed rule forecasted 273,990 H–1B registrations. 88 FR 402, 437 (Jan. 4, 2023). The forecast for the proposed rule was similar to the 274,237 total registrations in the FY 2021 cap year.[126] This final rule revises the H–1B registrations forecast to 424,400 based on more recent data, such as the total registrations for the FY 2023 cap year. The effect of modernizing H–1B requirements may result in a different H–1B registration volume than we forecast here. If that occurs, DHS will address the resulting revenue shortfall in a future fee rule, or in a separate rulemaking that directly addresses the H–1B Registration Fee and the changes made by the Modernizing rule, the H–1B registration process, and the need to recover the costs of USCIS.

[125] Div. BB of the Consolidated Appropriations Act, 2022, Public Law 117–103.

[126] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, H–1B Electronic Registration Process, *https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process.*

H. Citizenship and Naturalization and Other Related Flexibilities

DHS expects to soon publish a notice that will propose amendments of its regulations governing citizenship and naturalization.[127] The notice will propose changes to naturalization eligibility regulations and other immigration benefit provisions that affect naturalization and acquisition of citizenship, remove outdated provisions, and amend provisions that are inconsistent with intervening laws. DHS has not incorporated any changes in this final rule because the Citizenship and Naturalization notice has not yet been adopted, and whether USCIS needs to update form fees due to the changes would not be determined until after implementation. Future fee rules will consider the effects of the changes if the notice becomes final.

I. 9–11 Response and Biometric Entry-Exit Fee for H–1B and L–1 Nonimmigrant Workers (Pub. L. 114–113 Fees)

Congress requires the submission of an additional fee of $4,000 for certain H–1B petitions and $4,500 for certain L–1A and L–1B petitions in section 402(g) of Div. O of the Consolidated Appropriations Act, 2016 (Pub. L.114–113) enacted December 18, 2015.[128] DHS proposed to republish the regulatory text that existed immediately before the 2020 fee rule. *See* 88 FR 402, 516. DHS did not receive any comments on this proposal. As such, this final rule republishes the proposed text for these fees. *See* 8 CFR 106.2(c)(8) and (9). However, DHS is proposing to address the 9–11 Response and Biometric Entry-Exit Fees for H–1B and L–1 Nonimmigrant Workers language in a separate rulemaking in the future.[129]

[127] *See* Office of Info. and Regulatory Affairs, Office of Mgmt. and Budget, Exec. Office of the President, ''Fall 2023 Unified Agenda of Planned Regulatory Actions,'' RIN 1615–AC80, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1615-AC80* (last viewed Jan. 16, 2024).

[128] Section 402(g) of Div. O of Public Law 114–113 added a new section 411 to the Air Transportation Safety and System Stabilization Act, 49 U.S.C. 40101 note. Section 411 provided that the fees collected thereunder would be divided 50/50 between general Treasury and a new ''9–11 Response and Biometric Exit Account,'' until deposits into the latter amounted to $1 billion, at which point further collections would go only to general Treasury. Deposits into the 9–11 account are available to DHS for a biometric entry-exit screening system as described in 8 U.S.C. 1365b.

[129] See Department of Homeland Security, Fall 2023 Regulatory Agenda, *9–11 Response & Biometric Entry-Exit Fees for H–1B and L–1 Visas, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1651-AB48* (last visited Dec. 20, 2023).

IV. Response to Public Comments on the Proposed Rule

A. Summary of Comments on the Proposed Rule

DHS provided a 65-day comment period following publication of the proposed rule. DHS received 7,973 public comment submissions in docket USCIS–2021–0010 in response to the proposed rule. Of the 7,973 submissions, 5,417 were unique submissions, 2,393 were form letter copies, 113 were duplicate submissions, 45 were not germane to the rule, and 5 contained comments and requests that were entirely outside of the scope of the rule. Most submissions [130] were anonymous or from individuals, schools or universities, advocacy groups, lawyers or law firms, legal assistance providers, community or social organizations, businesses, State and Federal elected officials, research organizations, religious organizations, local governments or tribes, unions, and business or trade associations. Some commenters expressed total support for the proposed rule or supported one or more specific provisions of the proposed rule without recommending changes. Most commenters opposed the rule and expressed unqualified opposition or opposition to one or more provisions without recommending changes. Many commenters provided mixed comments of both support for and opposition to various provisions of the proposed rule, provided general support with suggested revisions, provided general opposition with suggested revisions, or were unclear on whether the comment supported or opposed the proposed rule.

DHS reviewed all the public comments received in response to the proposed rule and addressed relevant comments in this final rule, grouped by subject area.

DHS also received several comments on subjects unrelated to the proposed fees that are outside of the proposed rule's scope. DHS has not individually responded to these comments but has summarized out of scope comments and provided a general response in Section IV.I of this preamble.

B. General Feedback on the Proposed Rule

1. General Support for the Proposed Rule

Comment: Several commenters expressed general support for the proposed rule. Some commenters expressed general support for the rule without providing additional rationale. Commenters expressed support for the rule reasoning that the fee adjustments would:

- Reduce processing times, increase staff, and reduce the backlog or wait times for decisions.
- Decrease fraud.
- Reflect USCIS' adjudication burden and need for sufficient financing to support effective processing of its vital services.
- Reduce USCIS' funding and operational issues that are caused by its status as a fee-funded agency.

A commenter urged USCIS to move forward with the proposed rule and respond forcefully to organizations that fail to acknowledge USCIS management has improved efficiencies despite lacking sufficient funds to sustain operations. The commenter stated that USCIS is capable of increasing efficiencies in a short period but said that it needs more congressional funding. Another commenter suggested that USCIS further increase its fees.

Response: DHS appreciates these commenters' support for the proposed rule and did not make any changes in this final rule based on them.

2. General Opposition to the Proposed Rule

Many commenters stated their general opposition to the proposed fees, the magnitude of the fee adjustments, charging fees in general, and specific proposed policy changes in the proposed rule. DHS summarizes and responds to these public comments in the following sections:

a. Immigration Policy Concerns

Comment: Many commenters opposed the proposed fee adjustments based on the burdens they would create. Commenters stated that the proposed fees would:

- Be a financial obstacle or prohibitively expensive, discourage people from immigrating to the United States, and be detrimental for the United States and immigrant communities.
- Encourage illegal immigration by creating significant barriers to and discouraging legal immigration.
- Strain resources with which immigrants can integrate into the United States.

Response: DHS's fee rule is not intended to reduce or limit immigration. These fee adjustments reflect DHS's best effort to balance access, affordability, equity, and benefits to the national interest while providing USCIS with the funding necessary to maintain adequate

[130] The term ''submission'' refers to an entire submission letter submitted by a commenter. The term ''comments'' refers to parts or excerpts of the submission based on subject matter.

services. Recognizing that fees impose a burden on fee-paying requestors and their communities, DHS is shifting its fee-setting approach away from sole emphasis on the beneficiary-pays principle toward the historical balance between the beneficiary-pays and ability-to-pay principles. *See* 88 FR 402, 424–26 (Jan. 4, 2023). Nonetheless, USCIS filing fees are necessary to provide the resources required to perform the work associated with such filings. When fees do not fully recover costs, USCIS cannot maintain sufficient capacity to process requests. Inadequate fees may cause significant delays in immigration request processing which can burden requestors, as well as their families, communities, and employers.

In this final rule, USCIS has made multiple adjustments to its budget to limit the extent of fee increases. Ordinarily, any decrease in the fee adjustments would require a decrease in USCIS' budget and a commensurate decrease in service levels. Rather than decrease service levels, in this final rule USCIS has shifted a portion of its budget from IEFA non-premium revenue to the IEFA premium processing revenue, in addition to current levels of premium processing in the overall USCIS budget. USCIS has also revised staffing estimates based on improved efficiency measures, which allowed a further reduction to the budget. Through these adjustments, DHS seeks to recover the full cost of the services provided by USCIS.

This final rule limits fee increases for several forms, including the Form I–130, Petition for Alien Relative, Form I–485, Application to Register Permanent Residence or Adjust Status, and Form I–765, Application for Employment Authorization, to an inflation-based increase. *See* Table 1. For reasons explained earlier in section II.C. of this preamble, the final rule also creates lower fees for certain small employers and nonprofits. Businesses with 25 or fewer employees will pay a $300 Asylum Program Fee instead of the $600 fee that larger businesses will pay, and nonprofits will pay no Asylum Program Fee. *See* 8 CFR 106.2(c)(13). In addition, many categories of Form I–129, Petition for Nonimmigrant Worker, now allow for half-price fees for businesses with 25 or fewer employees and nonprofits. *See* 8 CFR 106.2(a)(3)(ix); Table 1. The final rule also expands the number of forms that qualify for fee exemptions. *See* 8 CFR 106.3(b); Table 5B. Regarding integration concerns, the final rule increases the household income threshold to 400 percent of the FPG to enable more naturalization applicants to qualify for a reduced fee for Form N–400, Application for Naturalization. *See* 8 CFR 106.2(b)(3)(ii). These changes do not represent a change in fee policy or requirements. They are a continuation of the discretion that DHS typically exercises in setting USCIS fees. *See, e.g.,* 81 FR 73292, 73296–73297 (Oct. 24, 2016); 75 FR 58962, 58969–58970 (Sept. 24, 2010).

In addition to these changes in the final rule, DHS reiterates the steps it has taken to mitigate the burden of fee increases on fee-paying requestors. DHS has maintained some current fees and limited the increases for many others to levels at or below inflation. *See* Table 1. DHS includes a separate Asylum Program Fee to mitigate the scope of fee increases for individual requestors. *See* 8 CFR 106.2(c)(13); *see also* 88 FR 402, 451–454 (Jan. 4, 2023). For humanitarian immigration categories, DHS has expanded the availability of fee exemptions and waivers to ensure that the most vulnerable applicants are able to access protection-based relief. *See* 8 CFR 106.3; Table 5B; preamble sections IV.E. and IV.F. DHS is mindful that departures from the standard USCIS fee-setting methodology result in lower fees for some and higher fees for others. However, it believes that these fees balance access, affordability, equity, and benefits to the national interest while providing USCIS adequate funding.

DHS disagrees that the proposed fee increases are likely to incentivize irregular migration because the financial costs and other risks of irregular migration tend to be higher than USCIS fees,[131] and the economic benefits of lawful migration outweigh USCIS fees.[132] DHS believes that the consequences of not pursuing full cost recovery (processing delays, backlogs, and otherwise inadequate services) may be more likely to discourage lawful migration, since wait times may tend to have a stronger influence than financial costs on one's decision to pursue unlawful pathways of migration.[133] DHS further notes that it focuses fee exemptions and waivers on humanitarian and protection-based immigration forms, where requestors are at a greater risk of pursuing irregular forms of migration. *See* 8 CFR 106.3; Table 5B.

Comment: Other commenters stated that the proposed rule would:

• Undermine U.S. national values.
• Be anti-immigrant, ''tantamount to a threat to American democracy,'' unfair, or unethical.
• Unduly place the burden of funding USCIS on immigrants.
• Isolate the United States internationally, reflect poorly on Americans, harm U.S. relations with other countries, and lead to other countries increasing their fees.

Response: DHS strongly disagrees that this fee rule represents a departure from U.S. values or is anti-immigrant, unfair, or unethical. DHS recognizes that increased fees create burdens for fee-paying requestors and their communities. However, it would not be more fair, ethical, pro-immigrant, or consistent with U.S. values to maintain current fee levels if this results in decreases in USCIS productivity. Because DHS does not receive congressional appropriations for the great majority of its operations, DHS must charge fees for the services it provides to ensure that those seeking to live and work in the United States can efficiently receive their benefits. Since 1990, the INA has specified that the government may set immigration adjudication and naturalization fees at a level that will ensure full cost recovery,[134] and past fee rules have consistently followed this approach.[135] By shifting its fee-setting approach away from the beneficiary-pays principle toward the historical balance of ability-to-pay and beneficiary-pays principles, DHS has sought to reduce barriers and promote accessibility to immigration benefits. *See* 88 FR 402, 424–25 (Jan. 4, 2023). As noted in the prior response, DHS has limited the increases in many forms and instituted new fee waivers and exemptions to reduce financial barriers to U.S. immigration benefits.

DHS does not believe that this final fee schedule poses significant consequences for foreign relations. Commenters failed to cite any examples of other countries raising immigration fees or otherwise retaliating in response

[131] *See, e.g.,* U.N. Office on Drugs & Crime, ''Smuggling of Migrants: The Harsh Search for a Better Life,'' *https://www.unodc.org/toc/en/crimes/migrant-smuggling.html#:~:text=The%20fees%20charged%20for%20smuggling,pay%20as%20much%20as%20%2410%2C000.* (last visited Sept. 5, 2023) (noting smuggling fees ranging from $2,000–$10,000 depending on point of origin).

[132] *See, e.g.,* California Immigrant Data Portal, ''Median Hourly Wage,'' available at *https://immigrantdataca.org/indicators/median-hourly-wage* (last visited Sept. 7, 2023) (noting that ''the median hourly wage for naturalized immigrants was $24, compared to $19 for lawful residents, and $13 for undocumented immigrants'').

[133] *See, e.g.,* David J. Bier, '''Why Don't They Just Get in Line?' Barriers to Legal Immigration,'' Testimony, CATO Institute, Apr. 28, 2021, *https://www.cato.org/testimony/why-dont-they-just-get-line-barriers-legal-immigration* (identifying wait times as a primary driver of unlawful migration).

[134] *See* Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, 1991, Public Law 101–515, 104 Stat 2101 (1990).

[135] *See* 72 FR 4888, 4896 (Feb. 1, 2007); 75 FR 33446, 33472 (June 11, 2010); 81 FR 26904, 26905 (May 4, 2016); 88 FR 62280, 62282 (Nov. 14, 2019).

to fee increases by USCIS or the former Immigration and Naturalization Services (INS). DHS notes that other countries regularly charge fees for visas and other immigration benefits,[136] and only one foreign government entity submitted a comment on the proposed rule.[137] Unlike nonimmigrant visa fees set by the U.S. Department of State (DOS), the principle of reciprocity does not factor into USCIS fees. *Cf.* INA sec. 281, 8 U.S.C. 1351; 9 FAM 403.8.

Comment: A commenter stated USCIS should terminate ''unlawful'' special parole programs, as the creation of these unauthorized and unappropriated programs diverts agency resources from legitimate visa programs, resulting in fee increases and increased delays for many benefit requestors. The commenter stated that DHS should return to interpreting parole authority on a case-by-case basis to enhance DHS's ability to focus its resources on processing immigration benefits Congress has authorized and increase access to such benefits without unreasonable delays.

Response: DHS disagrees that the parole programs identified by this commenter are unlawful and believes that the legal authority for those programs has been adequately presented in their respective rules.[138] As stated earlier, the special parole processes mentioned by the commenter are necessary to address urgent humanitarian events and aid in the United States' ongoing efforts to engage hemispheric partners to increase their efforts to collaboratively manage and reduce irregular migration that could have worsened without timely action by the United States. *See, e.g.,* 88 FR 1243 (Jan. 9, 2023); *see also* 88 FR 26327 (Apr. 28, 2023). DHS acknowledges that, apart from International Entrepreneur Parole, the special parole processes require the use of limited USCIS budget resources. However, the case-by-case parole into the United States of noncitizens under special parole processes aids in the United States' effort to deter irregular migration from those countries by providing lawful, safe, orderly pathways to travel to the United States. *Id.* Also, unlike many noncitizens who irregularly migrate, noncitizens who are paroled into the United States through these processes are immediately eligible to apply for employment authorization throughout the duration of their parole period, allowing them to support themselves and contribute to the U.S. economy through labor, taxes, consumption of goods, and payment of rent and utilities in their new U.S. communities.[139]

As stated in the proposed rule, DHS excluded Form I–941, Application for Entrepreneur Parole, from this rule. *See* 88 FR 402, 424 n.47. The fee for Form I–941 will remain at $1,200, the level previously set to recover its anticipated processing costs to DHS and will not impact fees or processing times for other immigration benefit requests. 82 FR 5238, 5280 (Jan. 17, 2017).

b. Impact on Specific Benefit Categories

Comment: Multiple commenters stated that the proposed fees would be discriminatory, disproportionately burdensome, or otherwise harmful toward the following immigration categories:

- Undocumented individuals.
- Applicants pursuing legal residency and citizenship.
- Nonimmigrants such as foreign artists.
- Family-based immigration. Commenters stated that the proposed rules would be a hindrance to family unity, and would have a large impact on families and U.S. citizens sponsoring immigrant relatives, children, partners, fiancées, or spouses.
- Vulnerable and humanitarian immigrants, including refugees, survivors, and victims of crime escaping violence.

Response: DHS recognizes the burden that immigration fees may pose for certain requestors. Nonetheless, USCIS filing fees are necessary to provide the resources required to do the work associated with such filings. When fees do not fully recover costs USCIS cannot maintain sufficient capacity to process requests. Inadequate fees may cause significant delays or other lapses in immigration request processing, which can result in additional burdens to requestors.

In general, the fees in this final rule are set to ensure full cost recovery for USCIS. With limited exceptions, as noted in the proposed rule and this final rule, DHS establishes its fees at the level estimated to represent the full cost of providing adjudication and naturalization services, including the cost of relevant overhead and similar services provided at no or reduced charge to asylum applicants or other immigrants. This approach is consistent with DHS's legal authorities. *See* INA sec. 286(m), 8 U.S.C. 1356(m). In this final rule, USCIS reduced the fee review budget, as explained earlier in section II.C of this preamble.

In certain instances, DHS establishes fees that do not represent the estimated full cost of adjudication in the proposed rule. *See* 88 FR 402, 450–451. In many cases, this is a result of DHS's refocus on balancing the beneficiary-pays principle with the ability-to-pay principle, whereby DHS has reduced or limited fee increases where a full cost increase would be particularly burdensome for requestors. By limiting many of the final fees to an inflation-based adjustment of the current fee, DHS addresses some of these comments.

Regarding individuals seeking to naturalize or obtain proof of citizenship, DHS has maintained the fees for common forms like Form N–400, Form N–336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA), and Form N–600, Application for Certificate of Citizenship, at levels below full cost recovery (*See* Table 1; 88 FR 402, 486 (Table 14), Jan. 4, 2023), and expanded the availability of reduced fee N–400s, *see* 8 CFR 106.2(b)(3)(ii). Regarding family-based residency, DHS has limited the increase for common family-based forms such as Form I–130 and Forms I–129F, Petition for Alien Fiancé(e), to levels at or below inflation. *See* Table 1. Regarding artists and other employment-based nonimmigrants, the final rule limits the fee increase for Form I–129s to a level below inflation for many small-employer and nonprofit petitioners, *see* Table 1, eliminates the Asylum Program fee for nonprofit petitioners, and halves the Asylum Program fee for small-employer petitioners, *see* 8 CFR 106.2(c)(13).

In addition, this final rule expands fee exemptions and fee waivers for certain humanitarian categories including survivors, victims of crime, and refugees. *See* 8 CFR 106.3; Table 5B; *see also* 88 FR 402, 459–482 (Jan. 4, 2023). The new exemptions created by this rule include exemptions for T and U nonimmigrants, VAWA self-petitioners, Special Immigrant Juveniles (SIJs), and other benefit requestors. 8 CFR 106.3(b). Also, the Director of USCIS may,

[136] *See* Duncan Madden, ''The World's Most Expensive Passports and Visas,'' Forbes, July 10, 2023, available at *https://www.forbes.com/sites/duncanmadden/2023/07/10/travel-expenses-the-cheapest-and-most-expensive-passports-and-visas/?sh=5e5de6ff6f1e* (last visited Sept. 5, 2023).

[137] *See Regulations.gov*, Comment Submitted by ARTS, *https://www.regulations.gov/comment/USCIS-2021-0010-7354.*

[138] *See* 88 FR 21694 (Apr. 11, 2023); 88 FR 1266 (Jan. 9, 2023); 88 FR 1243 (Jan. 9, 2023); 88 FR 1255 (Jan. 9, 2023); 88 FR 1279 (Jan. 9, 2023).

[139] *See generally, e.g.,* National Academies of Sciences, Engineering, and Medicine, ''The Economic and Fiscal Consequences of Immigration,'' (2017), *https://nap.nationalacademies.org/catalog/23550/the-economic-and-fiscal-consequences-of-immigration;* Chair Cecilia Rouse et al., The White House Blog: ''The Economic Benefits of Extending Permanent Legal Status to Unauthorized Immigrants,'' (Sept. 17, 2021) *https://www.whitehouse.gov/cea/blog/2021/09/17/the-economic-benefits-of-extending-permanent-legal-status-to-unauthorized-immigrants/.*

consistent with applicable law, authorize additional fee exemptions when in the public interest, such as when necessary to address incidents such as an earthquake, hurricane, or other natural disasters affecting localized populations. *See* 8 CFR 106.3(c).

c. Impact on Specific Demographic Characteristics

Comment: Several commenters wrote that certain proposed fees are discriminatory, disproportionately burdensome, or otherwise harmful to people based on:

• Race, ethnicity, skin color, national origin, country of birth, or country of citizenship.
• Gender.
• Sexual orientation or gender identity.
• Age.
• Disability.
• Language.

Response: DHS did not design this fee schedule with any intent to deter requests from or discriminate against any group of people. The final fees are set to ensure full cost recovery while accounting for filers' ability to pay, irrespective of their membership in one of the groups identified by the commenters. As stated in the proposed rule, where DHS has determined that a fee in this rule may inequitably impact those who may be less able to afford it, DHS sets the fees below the ABC model output. *See* 88 FR 402, 426 (Jan. 4, 2023). In addition, we codify the fee waiver eligibility guidance that took effect in 2010 and expand fee exemptions for vulnerable or low-income populations, as described elsewhere in this preamble.

Comment: Some commenters wrote that the proposed fees would be particularly burdensome for low-income or economically disadvantaged people. Several commenters stated that, due to low wages of many immigrants, higher fees would create a high burden for benefit requestors and contribute to their economic insecurity, forcing them to choose between applications and other necessities. Commenters stated that the proposed fees would create hardship for some applicants and their families, threaten immigrants' ability to pay for rent, food, and necessities, and potentially cause some to go into debt. Commenters also stated that, to pay fees, low-income applicants may become victims of predatory loan schemes that offer high interest loans. An advocacy group expressed concern that increased fees could cause immigrants to remain or become uninsured.

Response: DHS is aware of the potential impact of fee increases on low-income and economically disadvantaged individuals and is sympathetic to these concerns. As discussed in the proposed rule and consistent with past practice, USCIS has limited fee adjustments for certain benefit requests. DHS recognizes that immigration application fees may be burdensome for these filers, and that those who choose to finance application fees through debt may be responsible for additional interest. With these types of concerns in mind, DHS has shifted its fee-setting approach away from the beneficiary-pays principle that guided the 2019/2020 fee rule and more toward the ability-to-pay principle. *See* 88 FR 402, 424–26 (Jan. 4, 2023). To keep many common forms affordable, DHS has kept their fees at or below full cost recovery or the rate of inflation. *See* Table 1. The rule codifies USCIS' guidance on fee waivers for individuals who are unable to pay. *See* 8 CFR 106.3(a). It also expands the number of forms that are eligible for fee exemptions and waivers, *see* Table 5B, and includes several policy adjustments designed to make fee waivers more readily accessible. *See* 88 FR 402, 458 (Jan. 4, 2023). For naturalization applicants who do not meet the requirements for a full fee waiver, DHS has made N–400 fee reductions more available by increasing the income threshold to 400 percent of the FPG. *See* 8 CFR 106.2(b)(3)(ii). DHS focuses fee exemptions on vulnerable populations and waiver availability on those with an inability to pay. *See* 8 CFR 106.3; Table 5B. DHS recognizes that that there are many forms for which fee exemptions or fee waivers are not available but notes that it is limited by congressional expectation that many immigrants and nonimmigrants would possess means of self-support. *See* INA sec. 212(a)(4), 8 U.S.C. 1182(a)(4). DHS believes that this rule substantially mitigates many of commenters' concerns while ensuring that USCIS can recover full costs and fund its ongoing operations. DHS also recognizes that the immigration process can be complex, and that benefit requestors may still risk becoming victims of scams or fraud. We encourage requestors to use the information on the USCIS website to avoid becoming victims of common scams, fraud, or misconduct.[140]

[140] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Scams, Fraud, and Misconduct,'' available *at https://www.uscis.gov/scams-fraud-and-misconduct/scams-fraud-and-misconduct* (last visited Sept. 25, 2023).

d. Impact Based on Geography

Comment: Several commenters stated that the proposed rule and certain form fees would have a disproportionate effect on benefit requestors and communities in various parts of the country, including:

• Rural areas or small towns, where individuals may lack access to technology.
• High cost-of-living areas, where individuals are forced to choose between meeting basic needs and pursuing immigration benefits.
• Particular states and cities that have large immigrant populations or high poverty rates, where immigrants have less access to technology, or where nonprofits may be burdened by COVID–19 and recent natural disasters.

Response: DHS recognizes that certain individuals may experience more difficulty paying filing fees partly due to the area of the country in which they live and that this may have secondary effects on their communities. This rule is in no way intended to limit access to immigration benefits based on geography. Like past rules, this fee rule generally does not factor requestors' geographic locations in setting fees. Geography is only one of many factors that affect an individual's ability to pay, and geography may impact on individual's ability to pay differently depending on their profession, family, and other factors. For example, individuals living in high-cost areas may also benefit from higher wages, whereas individuals living in low-cost areas may face more limited job prospects. DHS considers it more effective to accommodate filers' ability to pay in the manners described earlier in this preamble. See section IV.E.3.a. of this preamble for a discussion of using the U.S. Department of Housing and Urban Development's (HUD) Mean Family Income (MFI), which accounts for the costs of living in different parts of the country, to determine eligibility for fee waivers.

e. Impact on Economy/Employers

Comment: Some commenters stated that raising immigration fees would:

• Hamper U.S. population growth and the country's ability to innovate in technology and culture.
• Deter workers.
• Have negative effects on the labor market by discouraging employers from hiring foreign workers.
• Create problems for retail, agriculture, construction, manufacturing, hospitality, and the labor pool in general.

Response: DHS disagrees that these fees will negatively affect the labor

market or other sectors described in the comment. With previous fee increases in 2010 and 2016, DHS has continued to see a steady increase in filing and has not seen a reduction in filing based on fee increases. It is possible that USCIS observes no price response to past fee increases because the value of immigration benefits is greater than the fees USCIS assesses to recover costs. DHS has no data that would indicate the fees would limit employers' ability to hire foreign workers or negatively impact the labor market. In fact, H–1B receipts have grown by over 225,000 from FY 2010 through FY 2022. Growing demand in the period immediately after the 2010 and 2016 fee increases reveals that, in setting fees at levels to recover only USCIS costs, all applicants enjoyed some cost savings or surplus relative to what the immigration benefit was truly worth to them. USCIS has discussed related issues in depth in the supplemental RIA (see Section 5: Price Elasticity) and SEA. While DHS appreciates that an increase in prices for immigration benefits affects some individuals' choices to pursue or not pursue those benefits, DHS notes that demand may also decrease due to declines in service quality when USCIS programs are not properly funded. Lastly, DHS reiterates that this final rule lowers the Asylum Program Fee and certain Form I–129 fees for small employers and nonprofits. *See* 8 CFR 106.2(a)(3)(ix), (c)(13); Table 1. These changes further mitigate any risk that these fees will negatively impact the labor market or other sectors of the economy.

Comment: Multiple commenters stated that the proposed fees are disproportionately burdensome, or otherwise harmful to the following types of petitioners:

- Smaller and midsized businesses and organizations, by further increasing labor costs associated with hiring immigrants.
- Nonprofits.
- Religious organizations.

Response: DHS recognizes that the impacts that increased fees can have on smaller and midsized firms, as well as nonprofit and religious institutions. *See* Small Entity Analysis. However, DHS notes that these organizations are also impacted by delayed processing times, backlogs, and other lapses in service that result if USCIS' operations are not adequately funded. Mindful of the difficulties that smaller and midsized firms and nonprofits (including religious institutions) may face, DHS has discounted the proposed fee increases of the requests that many such entities submit in this final rule, as discussed in section II.C of this preamble. For small-employer and nonprofit petitioners, this final rule limits the fee increases for Form I–129. *See* 8 CFR 106.2(a)(3); Table 1. In addition, the final rule reduces the Asylum Program Fee by $300 for small employers and eliminates the Asylum Program Fee for nonprofit petitioners. *See* 8 CFR 106.2(c)(13).

Comment: Commenters also stated that the proposed fees would be harmful to nonprofit legal service providers and other organizations that serve immigrant communities. A commenter specified that the increased fees would result in case-handling delays for their immigration clients, which will divert resources from other casework and advocacy priorities.

Response: DHS recognizes the value of legal service providers and other groups that assist individuals in navigating its regulations and forms, and that fee increases can impact their ability to serve their clients. However, DHS believes that inadequate funding for USCIS (resulting in processing delays, backlogs, and otherwise inadequate service) would also impact these organizations' ability to deliver timely and effective legal services for their clients. As discussed earlier in this rule, the final rule contains several provisions that make immigration fees more affordable to the immigrant communities (often indigent and disadvantaged) that nonprofits serve.

Comment: Multiple commenters stated that the proposed rules would exacerbate the negative economic effects of:

- The COVID–19 pandemic (*e.g.,* job loss, inability to pay rent, labor shortages).
- Inflation.
- The war in Ukraine.

Response: DHS acknowledges that the last few years have been difficult on immigrant communities due to the COVID–19 pandemic, inflation, and various international crises including the war in Ukraine. However, these events have impacted USCIS' financial stability as well.[141] Without increased fees to adequately fund services, USCIS will inevitably experience decreases in the quality of its services, and it will be in a substantially worse position to manage future crises of these sorts when they arise. DHS notes that, during the COVID pandemic, USCIS implemented many policy changes to accommodate requestors.[142] Also, the fee increases in this final rule will help fund USCIS' Uniting for Ukraine program, as well as other zero-fee or fee-exempt programs that address international, humanitarian crises, including refugee and asylum processing and DHS's FRP processes. Applicants continue to have fee waivers available for specific forms where they can demonstrate an inability to pay. *See* 8 CFR 106.3(a).

Comment: A commenter stated that the increased fees further enhance the control that corporations and employers have over foreign workers, as any worker would require their employer's assistance to be able to afford the fees.

Response: USCIS disagrees with the comment's premise that the beneficiary's ability to pay is a relevant factor in determining the appropriate fee for most employment-based visa petitions. In general, for employment-based petitions such as Form I–129 and some Form I–140s, it is the employing petitioner's decision whether to file a petition on any beneficiary's behalf, and the petitioner is generally expected to pay the fees associated with the filing of the petition. In some instances, the petitioning employer is required to pay certain fees and/or is precluded from charging the beneficiary certain fees.[143] To the degree that the commenter is concerned that employers may place abusive conditions on their decision to file employment-based visa petitions, DHS encourages foreign workers to report any illegal practices. DHS and USCIS are committed to helping protect the rights of foreign workers in the United States.[144]

[141] 88 FR 402, 426–429 (Jan. 4, 2023); *see also* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Uniting for Ukraine,'' *https://www.uscis.gov/ukraine* (last updated Sept. 20, 2023); U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''I–134A, Online Request to be a Supporter and Declaration of Financial Support,'' *https://www.uscis.gov/i-134a* (last updated Nov. 15, 2023) ($0 filing fee).

[142] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''USCIS Response to COVID–19,'' *https://www.uscis.gov/archive/uscis-response-to-covid-19* (last updated Mar. 6, 2023).

[143] For example, employers are prohibited from charging job placement fees as a condition of employment for H–2 nonimmigrants, and H–2B beneficiaries are not permitted to pay any H–2B filing or Fraud Prevention and Detection fees. *See* 8 CFR 214.2(h)(5)(xi)(A), (6)(i)(B)–(D). Also, in some contexts, the employer is not authorized to deduct certain employer-related expenses, such as those related to preparation and filing of the Form I–129 petition, from the beneficiary's compensation. *See, e.g.,* 20 CFR 655.731(c)(9) (prohibiting H–1B petitioning employers from making certain wage deductions, such as deductions for employer-related fees associated with the preparation and filing of an H–1B petition). Finally, some fees are required by statute to be paid by the petitioning employer. *See* section 214(c)(9) of the INA, 8 U.S.C. 1184(c)(9) (imposing a fee on certain employers filing H–1B petitions).

[144] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Report Labor Abuses,'' *https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-*

f. Other General/Mixed Feedback on the Rule

Comment: Multiple commenters expressed concerns regarding the timing of the rule. Some commenters suggested delaying the increase given the current economic situation. One commenter asked how the proposal would affect current immigration benefit requests. Another suggested that the fees only apply to those who have not yet initiated any immigration process to accommodate individuals currently affected by USCIS' backlog. Other commenters stated DHS should give 4 to 6 months' notice before the new fees go into effect.

Response: DHS declines to delay effectiveness of this rule beyond the 60 days announced in the proposed rule. Because the proposed rule was published on January 4, 2023, DHS believes that interested parties will have received adequate notice of the forthcoming changes before their effective date. The new fees apply to any immigration benefit request postmarked on or after the effective date of this rule and do not affect any benefit requests that have already been submitted.[145] USCIS may accept the prior fee for benefit requests postmarked before the new fees take effect.

While the fees in this final rule generally affect customers who apply on or after the effective date, there are some special circumstances for Forms I–485, Application to Register Permanent Residence or Adjust Status, I–765, Application for Employment Authorization, and I–131, Application for Travel Document, as explained in the proposed rule. *See* 88 FR 402, 492 (Jan. 4, 2023). Specifically, individuals who filed a Form I–485 after July 30, 2007, (the FY 2008/2009 fee rule) and before this final rule takes effect will continue to be able to file Form I–765 and Form I–131 without additional fees while their Form I–485 is pending. *See* 8 CFR 106.2(a)(7)(iv), (44)(iv)(A). Those who filed Form I–485 before the FY 2008/2009 fee rule, or on or after the effective date of this final rule, would pay separate fees for the interim benefits. The final rule implements a reduced fee of $260 for those applicants that must pay a fee for Form I–765 while their adjustment of status application is pending. *See* 8 CFR 106.2(a)(44)(i). Applicants for Form I–131 will pay the full fee of $630. *See* 8 CFR 106.2(a)(7)(iii).

DHS disagrees with the commenter's recommendation to apply the new fees only to those who have not initiated any immigration processes before the rule's effective date. While DHS appreciates the commenter's concerns regarding backlogs, the commenter's proposal could apply indefinitely for individuals who choose to delay certain steps in the immigration process, such as adjusting from nonimmigrant to LPR status or filing for naturalization. Furthermore, DHS calculated the fees assuming that they would generally apply to all forms filed after the rule's effective date, so the commenter's proposal would require further fee increases to account for the numerous filers who would continue to pay the prior fees.

As for upcoming filing periods for petitions that are subject to annual numerical limitations, the 60-day effective date of this rule should provide a sufficient period for petitioners to adjust to the new fees and form versions. The H–1B cap petition filing period generally begins on April 1 of each year. USCIS has not announced the specific H–1B registration dates for FY 2025, but it is expected to be a roughly 14-day period in early- to mid-March. Neither date is affected by this rule.

C. Basis for the Fee Review

DHS received comments on the legal authority or rationale of the rule, the need for it, and its general approach, which we address in the following subsections.

Comment: Regarding full cost recovery and use of the ''ability to pay'' and ''beneficiary pays'' principles, commenters stated:

- The proposed rule violates 8 U.S.C. 1356(m) by waiving fees for some beneficiaries and shifting the cost of those services to other beneficiaries.
- Only Congress, not DHS, has the legal authority to create waivers and exemptions.
- Congress did not authorize USCIS to raise fees by 40 percent, update fees based on inflation, or shift the cost of programs.
- Federal law and policy do not require USCIS to recover full costs through fees, and these costs should not be the only basis for determining fees.
- A commenter disagreed with the suppression of fees for benefits not explicitly exempted by law, and suggested adjusting fees based on the actual cost of the service and providing only those exemptions and waivers that are statutorily mandated.
- USCIS has arbitrarily decided which applicants bear the fee burden.
- USCIS suppresses fees for certain immigration benefits based on political preference.

However, other commenters stated:

- USCIS must consider the public good that arises from applicants receiving immigration benefits and whether they are affordable for applicants when setting fees.
- Disregarding the ability-to-pay considerations would be ''arbitrary and capricious'' under the Administrative Procedure Act (APA).

Other commenters wrote that USCIS' proposed ability-to-pay model violates the CFO Act, 31 U.S.C. 9701(b), which requires fees charged by agencies to be uniform and based on actual costs. They stated that adjusting fees based on ability-to-pay violates the statute. They stated that DHS lacks the legal discretion to provide discounts and shift costs except when explicitly directed by Congress.

Other comments on the fee-setting approach supported USCIS' proposal to shift away from the beneficiary-pays principle toward an ability-to-pay principle balanced with a beneficiary-pays approach. Some stated that USCIS should further shift funding toward immigration services for lower income applicants who do not qualify for fee waivers or exemptions but nevertheless are unable to afford fee increases. Others stated that USCIS did not strike an appropriate balance between ability-to-pay and the beneficiary-pays principles. Some commenters stated USCIS should rely even more heavily on the beneficiary-pays model. For example, one stated that fees should be based on the cost of the provided service, and costs for subsidized services should be spread across all fee-paying beneficiaries.

Response: As stated in the proposed rule, DHS is permitted but not required by law to recover all USCIS operating costs through fees. DHS has broad discretion to set USCIS fees to recover costs, and we generally adhere to longstanding guidance in setting fees. The U.S. Government Accountability Office (GAO) guidance for federal user fees, like USCIS immigration benefit request fees, states that agencies must balance efficiency, equity, revenue

employees/report-labor-abuses (last updated Mar. 13, 2023).

[145] USCIS permits FedEx, UPS, DHL and USPS to deliver paper benefit requests. Generally, USCIS records the receipt date as the actual date it physically receives a request at the correct filing location. 8 CFR 103.2(a)(7). However, when USCIS issues new fees, it generally considers the postmark on the package as the date the request was filed or submitted. The shipping date printed on the shipping label will be considered the postmark date. If there is no shipping date on the label, USCIS considers the date you printed the label to be the postmark date. If the label does not have a shipping date or print date, USCIS will assume that the postmark date is 10 days before it received the package.

adequacy, and administrative burden.[146] When discussing equity, GAO explains two different ways to ensure everyone pays their fair share. *Id.* As described by the GAO, under the beneficiary-pays principle, the beneficiaries of a service pay for the cost of providing that service. *Id.* Under the ability-to-pay principle, those who are more capable of bearing the burden of fees pay more for the service than those with less ability to pay. *Id.* A GAO audit of the 2007 fee rule found that the rule clearly described the trade-off between these two principles.[147]

In prior years, USCIS fees have given significant weight to the ability-to-pay principle. IEFA fee exemptions, fee waivers, and reduced fees for low-income households adhere to this principle. Applicants, petitioners, and requestors who pay a fee cover the cost of processing requests that are fee exempt, fee-waived, or fee-reduced. For example, if only 50 percent of a benefit request workload is fee-paying, then those who pay the fee will pay twice as much as they would if everyone paid the fee. By paying twice as much, they pay for their benefit request and the cost of the same benefit request that someone else did not pay for. *See* 84 FR 62280, 62298 (Nov. 14, 2019). As we noted in the proposed rule, DHS appreciates that application of the ability-to-pay principle in immigration benefit fees may appear arbitrary because it results in certain fee payers funding the costs of USCIS-administered programs to which they receive no direct benefit. 88 FR 453. However, DHS determined that the fees did not result in a significant impact on a substantial number of small entities who file a request with USCIS. *Id.*

The final rule reverses some aspects of the 2020 fee rule. *See* 88 FR 402, 424–426 (Jan. 4, 2023). One change is a return to focusing fee-setting away from the beneficiary-pays principle back toward the historical balance between the beneficiary-pays and ability-to-pay principles. *See* 88 FR 402, 425 (Jan. 4, 2023). Under the ability-to-pay principle, those who are more capable of bearing the burden of fees should pay more for the service than those with less ability to pay. IEFA fee exemptions, fee waivers, and reduced fees for low-income households adhere to this principle. Requestors who pay a fee cover the cost of processing requests that are fee exempt, waived, or reduced. This approach is consistent with previous fee rules, comments on the 2020 fee rule, current injunctions, Executive Order (E.O.) 14012,[148] and public feedback. *See* 88 FR 402, 425–426 (Jan. 4, 2023).

DHS is not publishing this rule or setting USCIS fees under the authority of 31 U.S.C. 9701(b).[149] While the Independent Offices Appropriations Act (IOAA), codified at 31 U.S.C. 9701, grants broad authority to Federal agencies to assess user fees, the fees collected under that law are deposited in the general fund of the U.S. Treasury and are not directly available to the agency. USCIS fees are not required to be tied to the costs or value of services provided, and the revenue from the IEFA fees are available to USCIS until expended and are not deposited in the general fund of the U.S. Treasury. As explained in the proposed rule, ''In that regard, in INA sec. 286(m), 8 U.S.C. 1356(m), Congress imposed on DHS an additional obligation—to recover the full cost of USCIS operations—over and above the advice in OMB Circular A–25 concerning the direct correlation or connection between costs and fees.'' 88 FR 402, 418 (Jan. 4, 2023). In 2010 DHS also stated in a fee rule that, ''Additional values are considered in setting IEFA fees that could not be considered in setting fees under the IOAA.'' 75 FR 33449 (June 11, 2010) (internal cites omitted). The 2016 USCIS fee schedule proposed rule also described DHS latitude to set USCIS fees and such fees not being limited to the costs of the service. *See* 81 FR 26906–26907.

As for DHS using the ability-to-pay or beneficiary-pays principles in setting USCIS fees, INA sec. 286(m), 8 U.S.C. 1356(m), does not prescribe a precise framework, methodology, or philosophy for DHS to follow in setting USCIS fees, except to recover costs. DHS endeavors to set fees in a manner that is rational, fair, and based on the recommendations of fee setting experts. To that end, DHS generally adheres to OMB Circular A–25 and has followed the Activity-Based Costing (ABC) method. DHS has also considered the recommendations of the GAO, as described earlier.

DHS is authorized to recover the full cost of immigration adjudication and naturalization services, including similar services provided without charge to asylum applicants or other immigrants, through IEFA fees. *See* INA sec. 286(m), 8 U.S.C. 1356(m). There is a long history of using the ability-to-pay principle in USCIS fee-setting, as explained in the proposed rule. *See* 88 FR 402, 424–426 (Jan. 4, 2023). Other fee rules did not always use the term ability-to-pay but it has been a part of DHS and fee rules for a long time. For example, USCIS grants fee waivers based on demonstrated inability to pay, which is based on the ability-to-pay principle. *See* 8 CFR 103.7(c) (Oct. 1, 2020). In this final rule, DHS provides more fee exemptions, increases the income level for the reduced fee for Form N–400, Application for Naturalization, provides discounts for Form I–129, Petition for Nonimmigrant Worker, fees and the Asylum Program Fee, and exempts nonprofits from the Asylum Program Fee, all based on the ability-to-pay principle. *See new* 8 CFR 106.1(f), 106.2(a)(3), and 106(c)(13). Nothing in the DHS fee setting statute precludes DHS from providing discounts and shifting costs in such a manner.

Comment: DHS summarizes comments regarding the funding for the Fraud Detection and National Security Directorate (FDNS) as follows:

- General support for USCIS improving service levels and deterring fraud for nonimmigrant benefits.
- FDNS funding violates fiscal law principles and the APA.
- FDNS activities were delegated to Immigration and Customs Enforcement (ICE) and funded by specific congressional appropriations.
- Revenue should be used solely for adjudications and not for investigation functions more appropriate for ICE and U.S. Customs and Border Protection (CBP).
- Appropriated funding for ICE has increased by 150 percent while funding for immigration services has only increased modestly.
- While Congress gave USCIS limited investigative responsibilities when it created FDNS, its mission has expanded without statutory authority.
- Moving enforcement functions out of USCIS and into ICE and CBP would allow USCIS to redirect FDNS expenses into its core adjudicatory functions, improving efficiency, and reducing proposed fee increases.
- FDNS could be more efficient, for example, by curtailing frivolous referrals.

[146] *See* GAO, ''Federal User Fees: A Design Guide'' (May 29, 2008), *https://www.gao.gov/products/GAO-08-386SP,* at 7–12.

[147] *See* GAO, ''Federal User Fees: Additional Analyses and Timely Reviews Could Improve Immigration and Naturalization User Fee Design and USCIS Operations'' (Jan. 2009), *https://www.gao.gov/assets/gao-09-180.pdf,* at 12–15.

[148] Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans, 86 FR 8277 (Feb. 5, 2021).

[149] The statute cited by the commenters also permits discounts and shifting costs based on considerations of public policy or interests served and other relevant facts and does not require that fees charged by agencies be uniform and not deviate from actual costs. *See* 31 U.S.C. 9701(b)(2)(C)–(D).

• Most FDNS cases and investigations involve already adjudicated petitions, resulting in adjudicating H–1B petitions again.

• Requested clarification of whether administrative site visits that arise from premium processing cases are paid out of the general budget or the premium processing budget.

Response: USCIS appreciates the general support from the commenters who favored improving service levels and deterring fraud for nonimmigrant benefits. USCIS manages three fee accounts: (1) The IEFA (which includes premium processing revenues); (2) The Fraud Prevention and Detection Account, INA secs. 214(c)(12)–(13), 286(v), 8 U.S.C. 1184(c)(12)–(13), 1356(v); and (3) The H–1B Nonimmigrant Petitioner Account, INA secs. 214(c)(9), (11), 286(s), 8 U.S.C. 1184(c)(9), (11), 1356(s). The Fraud Prevention and Detection Account and the H–1B Nonimmigrant Petitioner Account are funded by statutorily set fees and divided among USCIS (for fraud detection and prevention), the National Science Foundation, and the Department of Labor (DOL). DHS does not have authority to adjust fees for these accounts; therefore, DHS cannot increase the fees to meet changing needs or costs. DHS interprets 8 U.S.C. 1356(v)(2)(B) as providing supplemental funding to cover activities related to fraud prevention and detection and not prescribing that only those funds may be used for that purpose. FDNS is funded from both the IEFA and the Fraud Prevention and Detection Account. The fees deposited in the Fraud Prevention and Detection Account that are fixed by statute are insufficient to cover the full costs of FDNS.

DHS disagrees that ensuring a petitioner is compliant with the terms and conditions of their petition through site visits or other FDNS workload is frivolous, a second adjudication, or duplicated by other DHS components. FDNS's work does not fall into ''intelligence'' and/or ''investigations'' work that the INA assigned to ICE. The Homeland Security Act of 2002 granted the Secretary of Homeland Security the authority to administer and enforce provisions of the INA, as amended, INA sec 101, 8 U.S.C. 1101 *et seq.* The Secretary, in Homeland Security Delegation No. 0150.1, delegated certain authorities to USCIS. One of many authorities delegated to USCIS in administering and enforcing immigration laws was the authority to ''investigate alleged civil and criminal violations of the immigration laws, including but not limited to alleged fraud with respect to applications or determinations within the USCIS and make recommendations for prosecutions, or other appropriate action when deemed advisable.'' FDNS's activities fall squarely within this delegation. FDNS was established in 2004 in response to a congressional recommendation to establish an organization ''responsible for developing, implementing, directing, and overseeing the joint USCIS-Immigration and Customs Enforcement (ICE) anti-fraud initiative and conducting law enforcement/background checks on every applicant, beneficiary, and petitioner before granting immigration benefits.'' [150] FDNS fulfills the USCIS mission of enhancing both national security and the integrity of the legal immigration system by: (1) identifying threats to national security and public safety posed by those seeking immigration benefits; (2) detecting, pursuing, and deterring immigration benefit fraud; (3) identifying and removing systemic vulnerabilities in the process of the legal immigration system; and (4) acting as USCIS' primary conduit for information sharing and collaboration with other governmental agencies. FDNS also oversees a strategy to promote a balanced operation that distinguishes USCIS' administrative authority, responsibility, and jurisdiction from ICE's criminal investigative authority. The Secretary, in Homeland Security Delegation No. 0150.1, delegated several relevant authorities to USCIS, including the following:

• Authority under section 103(a)(1) of the INA, as amended, 8 U.S.C. 1103(a)(1), to administer the immigration laws (as defined in section 101(a)(17) of the INA).

• Authority to investigate alleged civil and criminal violations of the immigration laws, including but not limited to alleged fraud with respect to applications or determinations within the BCIS and make recommendations for prosecutions, or other appropriate action when deemed advisable.

• Authority to register and fingerprint aliens in the United States, and exercise other functions relating to registration and change of address, as provided by sections 262–266 of the INA, 8 U.S.C. 1302–06.

• Authority to place noncitizens in removal proceeding by issuance of a Notice to Appear, and to cancel such Notice before jurisdiction vests with the Executive Office for Immigration Review of the Department of Justice (EOIR).

• Authority to approve bonds issued under the immigration laws, to determine whether such bonds have been breached, and take appropriate action to protect the interests of the United States with respect to such bonds.

• Authority to interrogate noncitizens and issue subpoenas, administer oaths, take and consider evidence, and fingerprint and photograph noncitizens under section 287(a), (b), and (f) of the INA, 8 U.S.C. 1357, and under section 235(d) of the INA, 8 U.S.C. 1225(d).

• Authority under the immigration laws, including but not limited to section 310 and 341 of the INA (8 U.S.C. 1421 and 1452), to grant applications for naturalization and certificates of citizenship (and revoke such naturalization), including administration of oaths, issuance of certificates, provision of citizenship materials and services to public schools to prepare naturalization candidates, supervision of courts designated under section 310 of the INA to administer oaths, and any other rights and responsibilities relating to the naturalization or citizenship of noncitizens.

• Authority under the immigration laws, including but not limited to sections 204 and 214 of the INA (8 U.S.C. 1154 and 1184), to accept and adjudicate nonimmigrant and immigrant visa petitions (whether family based, employment-based, or other), including collection of appropriate fees, conduct of interviews, and appellate review of the BCIS decisions that do not fall within the jurisdiction of EOIR.

• Authority to investigate suspected fraud by Regional Center and related entities and to take other actions to ensure the integrity of the Immigrant Investor (EB–5) Program.

• Authority under immigration laws to extend and change nonimmigrant status and to adjust the status of noncitizens to lawful residents (on a temporary or permanent basis) and to revoke such status, including determination of admissibility of noncitizens, authority to grant waivers of inadmissibility and permission to reapply for entry, and authority to conduct interviews (or waive interviews) regarding an alien's eligibility for an immigration benefit.

In 2017, the Secretary, in Homeland Security Delegation No. 15002, delegated the following certain law enforcement authorities to USCIS:

[150] *See* Conference Report to accompany H.R. 4567 [Report 108–774], ''Making Appropriations for the Department of Homeland Security for the Fiscal Year Ending September 30, 2005,'' p. 74, *available at http://www.gpo.gov/fdsys/pkg/CRPT-108hrpt774/pdf/CRPT-108hrpt774.pdf.*

• In matters under the jurisdiction of USCIS, to protect the national security and public safety, to conduct law enforcement activities, including accessing internet and publicly available social media content using a fictitious account or identity, provided that such activities shall only be conducted by properly trained and authorized officers, and in a manner consistent with the Reservations set forth in DHS Delegation Number 0150.1 and consistent with the Department's obligations to protect privacy and civil rights and civil liberties.

Regarding the Administrative Site Visit and Verification Program (ASVVP), DHS explained in the proposed rule how USCIS collects information on the costs associated with ASVVP and assigns the distinct costs for these site visits to Forms I–129, I–360, Petition for Amerasian, Widow(er), or Special Immigrant, and I–829, Petition by Investor to Remove Conditions on Permanent Resident Status. *See* 88 FR 402, 496 (Jan. 4, 2023). Those costs are not paid directly from premium processing revenue.

Therefore, DHS has determined that the commenters misunderstand the nature of FDNS in USCIS. FDNS efforts are integral to determining an applicant's eligibility for a benefit, and to maintain the integrity of the immigration system. DHS makes no changes to these final fees as a result.

1. Background and Fee Review History

Comment: Many commenters requested that DHS formally withdraw the previously enjoined 2020 fee rule to ensure that USCIS fees and policies would default to the current fee schedule rather than the 2020 fee structure, should the proposed rule be found unlawful. Many commenters stated that USCIS should sever the 2020 fee rule from the remainder of the currently proposed rule to not jeopardize the withdrawal. Other commenters requested that DHS formally withdraw the 2020 fee rule, reasoning that the current proposal reflects a considered policy judgment on the part of USCIS that those features of the 2020 Fee Schedule are undesirable as a policy matter and are inconsistent with the goals of Federal immigration laws.

Response: DHS understands the concerns of the commenters because the fees in the 2020 fee rule have been codified for at least 2 years. However, as explained in the proposed rule, DHS is operating under two preliminary injunctions related to the 2020 fee rule. *See* 88 FR 402, 420 (Jan. 4, 2023). DHS continues to comply with the terms of those orders and is not enforcing the regulatory changes set out in the 2020 fee rule. There is also a separate injunction related to fee waiver changes in 2019. *Id.* USCIS continues to accept the fees that were in place before October 2, 2020, and to follow the fee waiver guidance in place before October 25, 2019. DHS and the parties in *Immigrant Legal Resource Center* v. *Wolf, NWIRP, City of Seattle,* and the related cases agreed to, and the courts have approved, a stay of those cases while the agency undertook this fee review and prepared the proposed rule. These rulings did not vacate the 2020 fee rule as having been codified in contravention of the law; they only preliminarily enjoin them. Thus, to remove the 2020 fees from the Code of Federal Regulations, DHS must engage in notice and comment rulemaking. Because, as stated in this rule, DHS needs a new USCIS fee schedule forthwith, we have determined that it was more efficient to focus on replacing and revising the 2020 fee regulations than to expend the additional effort required to revert the 2020 fees back to the October 1, 2020, fees in a separate rulemaking. DHS makes no changes to the rule based on these comments.

Comment: Commenters stated that USCIS' pattern of doubling the percentage increase of previous rules in each subsequent fee rule is not sustainable.[151] They stated that fees have already been raised enough and there should be a ceiling to USCIS' previous, current, or proposed fee structures. One commenter stated that USCIS filing fees continue to increase over time and there is no stopgap or ceiling in mind to maintain the affordability of these benefits.

Response: DHS examined each fee in the proposed rule and the proposed fees represent DHS's best effort to balance access, affordability, equity, and the national interest while providing USCIS with the funding necessary to maintain adequate services. As the cost of employees, services, buildings, and supplies increase, so must our fees. However, several public comments stated that the proposed fee increases greatly exceeded the rate of inflation, and others wrote that they could understand the need for USCIS to keep up with inflation.[152] After considering the applicable comments, DHS has decided to reduce many fees in this rule from what were proposed and adopt the recommendations of commenters to increase the current fees only by the amount of inflation since the date those fees were established.

As stated in this rule and the proposed rule, DHS has generally adhered to ABC and cost reallocation to determine USCIS fees and has not adjusted IEFA non-premium fees by inflation since 2005. *See* Adjustment of the Immigration Benefit Application Fee Schedule, 70 FR 56182 (Sept. 26, 2005). After considering public comments, the amount inflation since the FY 2016/2017 fee rule, and the size of the fee increases, DHS has decided that adjusting certain fees by the rate of inflation strikes a balance between the need to increase revenue to recover USCIS costs and maintain affordability for some immigration benefit requests.[153]

2. Fee-Setting Approach

Comment: A commenter stated that recovering costs should not include USCIS having a ''carryover balance'' that exceeded the revenue necessary to adjudicate petitions.

Response: USCIS is primarily fee-funded, which means it must use carryover, or the unobligated or unexpended fee revenue accumulated from previous fiscal years, to continue operating at the beginning of each fiscal year or when costs otherwise exceed revenue. The INA authorizes DHS to set fees at a level to recover ''the full costs'' of providing ''all'' ''adjudication and naturalization services,'' and ''the administration of the fees collected.'' 8 U.S.C. 1356(m). Many USCIS administered immigration benefit requests, such as H–2B and H–1B petitions, see significant seasonal fluctuations in filings, which can result in seasonal fluctuations in USCIS revenue and spending. As GAO acknowledges, fee-funded agencies may need to designate funds as operating reserves to weather periods when

[151] One commenter compared the weighted average increase in the proposed rule with prior fee rules (in 2010 and 2016) and stated that these double every fee rule.

[152] Notwithstanding these comments, as discussed later in this preamble, other commenters wrote that they opposed DHS codifying authority to adjust fees based on the amount of inflation as measured by the difference in the CPI–U. 8 CFR 106.2(d).

[153] DHS used June 2023 as the end date for the period of inflation to be consistent with the 2023 premium processing fee inflation adjustments. 88 FR 88 FR 89539 (Dec. 28, 2023). DHS acknowledges that inflation will likely change from the June 2023 CPI–U before the fees in this rule take effect. The time and effort required to calculate the fees for this rule, draft comment responses, prepare supporting documents, perform the regulatory impact analysis, small entity impact analysis, and clear the rule through the necessary channels requires that a reasonable endpoint be selected on which to base the required calculations and move the final rule forward without continuous updates.

revenue collections are lower than costs.[154]

The proposed rule explained how USCIS uses and estimates carryover balances. *See* 88 FR 402, 417, 426–427 (Jan. 4, 2023); *see also* IEFA Non-Premium Carryover Projections in the supporting documentation included in the docket to this rulemaking. Most Federal programs are financed by discretionary appropriations that receive an annual Treasury warrant, which establishes a cash balance in their accounts after enactment of appropriations.[155] USCIS' IEFA has permanent or indefinite warrant authority that allows for immediate access to carryover balances and revenue collections subject to the annual spending limits established by Congress. *Id.*

Carryover balances give USCIS and other fee-funded agencies flexibility throughout the fiscal year if costs exceed revenues. Historically, fee revenue in the first quarter of the fiscal year is low due to seasonal filing patterns. Therefore, USCIS requires carryover funds to pay Federal salaries and award certain contracts at the beginning of the fiscal year. USCIS manages its fee accounts to ensure that adequate carryover balances are generated and retained to:

• Cover the cost of processing immigration benefit requests that are pending adjudication at the end of the fiscal year.

• Serve as contingency funding in the event of an unexpected decline in fee collections.

• Cover the start-up costs of new or expanded programs before sufficient fee revenues from such programs are collected (if a fee is to be collected).

• Cover other valid contingencies.

DHS declines to make changes based on this comment, except for budget and operational changes described elsewhere in this final rule, which may affect the forecast for carryover balances.

D. FY 2022/2023 IEFA Fee Review

1. Projected Costs, and Revenue

Comment: A commenter asked USCIS to explain and justify how the percentage increase or change for each fee was calculated. Another commenter stated that the proposed rule provided no data point(s) on the cost of resource usage about each form category and reasoned that without establishing effort estimates, an increase in fees would be arbitrary. A few commenters wrote that USCIS' projected costs and revenue are not credible.

Response: In the proposed rule, DHS provided information on how it calculated the budget and revenue and estimated costs for the fee review. *See* 88 FR 402, 426–432 (Jan. 4, 2023). DHS described the methodology it uses to assign those estimated costs in an ABC model. *See* 88 FR 402, 432–451 (Jan. 4, 2023); *see also* FY 2022/2023 IEFA Fee Review Supporting Documentation (supporting documentation), and FY 2022/2023 IEFA Fee Schedule Documentation (fee schedule documentation) both included in the docket as numbers USCIS–2021–0010–0028 and USCIS–2021–0010–0029 respectively for review and comment. DHS described how it assesses and proposed fees based on the ABC model results or policy decisions to maintain some current fees or limit some fee increases. *See* 88 402, FR 450–451. DHS describes changes to the fee review budget in sections II.C. and II.F. of this preamble.

Throughout the proposed rule, DHS referenced ABC model results, often called the model output, when discussing proposed fees. *See, e.g.,* 88 FR 402, 485–487, 503, 515–516 (Jan. 4, 2023). DHS included supplemental information associated with the FY 2022/2023 fee review results and corresponding proposed rule in the docket. The supporting documentation provided a functional overview of the fee review process and results. It includes estimated total cost and unit costs for each immigration benefit request in the fee review.[156] USCIS also demonstrated the ABC model software used for the fee review during the public comment period.[157]

DHS provides revised versions of the supplemental documents based on budget, staffing, or operational changes described elsewhere in this preamble but declines to make any other changes based on these comments.

DHS notes that fees do not merely cover the cost of adjudication time because USCIS incurs costs that are not directly associated with adjudication. The fees also cover the resources required for intake of immigration benefit requests, customer support, fraud detection, accounting, human capital, legal counsel, training, and other administrative requirements.[158]

2. Methodology

Many commenters wrote with general concerns that the proposed increases to fees lack substantive support and transparency on how the agency calculates fee amounts based on workload and metrics used to review and adjust fees. More detailed comments on the methodology are in the following subsections.

a. Completion Rates (Average Hours per Adjudication of an Immigration Benefit Request)

Comment: Commenters expressed concern with growing adjudication times and increases in completion rates for forms and certain applications. Some commenters divided current or proposed fees by completion rates (average hours per adjudication of an immigration benefit request) to calculate hourly rates for immigration benefits. Commenters expressed concern with increasing hourly rates of their own determination, citing various forms. Commenters stated:

• USCIS' data shows a significant increase in completion rates without any corresponding change in statutory or regulatory requirements.

• Many forms have an increase in completion rates from 49 percent to 218 percent, despite the lack of statutory or regulatory changes.

• Many forms with increased completion rates show substantial proposed fee increases.

• They are concerned about completion rates for selected forms and suggested that USCIS work to eliminate or reduce inefficiencies.

• USCIS notes that they used pre-pandemic values for some, but not all, of the data used to project completion rates, and the lack of clarity on these differences raises questions about the validity of the data used in the ABC model.

• Most of the Form I–129F, Petition for Alien Fiancé(e), filings do not require applicant interviews or otherwise take up extreme officer

[154] *See* GAO, ''Federal User Fees: Fee Design Options and Implications for Managing Revenue Instability,'' (Sept. 30, 2013), *https://www.gao.gov/assets/gao-13-820.pdf* (last visited May 3, 2023).

[155] *See generally* U.S. Department of the Treasury, Bureau of the Fiscal Service, ''Treasury Financial Manual,'' ''Chapter 2000.'' Available at *https://tfm.fiscal.treasury.gov/v1/p2/c200* (last viewed Aug. 27, 2023).

[156] For example, see Appendix Table 3: Projected Total Cost by Immigration Benefit Request in the supporting documentation for the proposed rule available at *https://www.regulations.gov/document/USCIS-2021-0010-0028.*

[157] A transcript of the software demonstration is available at *https://www.regulations.gov/comment/USCIS-2021-0010-4141.*

[158] In the supporting documentation for the proposed rule, see appendix tables 4–7 for details on how DHS proposed fees based on the ABC model results and results by fee review activity. Pages 10–12 define the activities in the appendix tables. *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, *FY 2022/2023 IEFA Fee Review Supporting Documentation* (Jan. 2023), *https://www.regulations.gov/document/USCIS-2021-0010-0028.*

resources that would justify this substantial of an increase.

• Touch times for Form I–539 have increased even though USCIS has reinstated concurrent processing of H1/H4/Employment Authorization Document (EAD) and L1/L2/EAD applications, which should result in gains in process efficiency.

• Changes brought about by recent litigation should have reduced touch times for many forms, but instead touch times have increased.

• How touch time would be tracked and calculated using the costing model and if USCIS includes FDNS activity in its calculation of touch time.

• Increased form length is a major reason why USCIS adjudicators are spending 3.3 million additional hours reviewing petitions and USCIS must stop requiring unnecessary renewals of work permits.

• Commenters provided recommendations for reducing completion rates.

• Some applicants are paying ‘‘over $1,000+/hour’’ despite an adjudication burden of only a few hours for completion.

• USCIS' ‘‘effective hourly rate’’ is four times the prevailing wage for an attorney.

Response: USCIS used the best completion rate data available at the time to conduct the FY 2022/2023 fee review. In its last four fee rules, DHS has used USCIS completion rates to assign costs from the Make Determination activity to individual cost objects (*i.e.,* forms). USCIS continued this approach in the FY 2022/2023 fee review. As explained in the proposed rule, USCIS relied on completion rates before the pandemic to remove this effect from the fee review. *See* 88 FR 402, 446. USCIS used online filing data that included pandemic months. *See* 88 FR 402, 490. The mix of two time periods for two different data points should not affect the results of the ABC model. When online filing is available, USCIS often uses the same case management system to adjudicate both online and paper filings. As such, USCIS used the same completion rates for both online and paper filings.

DHS limited many of the proposed fee increases (*i.e.,* adoption-related form fees, Forms I–290B, Notice of Appeal or Motion, I–360, Petition for Amerasian, Widow(er), or Special Immigrant, N–400, Application for Naturalization, etc.), as done in previous fee rules. *See* 88 FR 402, 450–451 (Jan. 4, 2023). In other cases, DHS proposed to maintain the current fee (*i.e.,* Forms I–90 when filing online, I–131A, N–565, etc.). *See* 88 FR 402, 451 (Jan. 4, 2023). Some other fees do not use completion rates (*i.e.,* I–131A, H–1B Registration Fee, USCIS Immigrant Fee, etc.). *See* 88 FR 402, 446–447 (Jan. 4, 2023). As explained elsewhere in this rule, many of the final fees are lower than in the proposed rule. For example, DHS limits the fee increase to inflation since the 2016 rule for Forms I–130, Petition for Alien Relative, I–485, Application to Register Permanent Residence or Adjust Status, I–765, Application for Employment Authorization, etc.

DHS appreciates the commenters' concerns about increased form length, timely service, and higher fees. USCIS continually strives to minimize the burden on requesters, meet timely adjudication goals while balancing security, eligibility analysis, and integrity in the immigration system. The proposed rule highlighted areas where USCIS may be able to increase efficiency or reduce adjudication time or staffing. *See* 88 FR 402, 529 (Jan. 4, 2023). However, it may be too early for USCIS to see results from these planned changes or recently implemented changes. Future fee rules may use more recent completion rates, which may include efficiencies or reduced adjudication times. As noted previously, fees do not merely cover the cost of adjudication time because USCIS incurs costs that are not directly associated with adjudication. The hourly adjudication rates calculated by some commenters must fund the cost of relevant administrative costs, technical and technological facilitation, and similar services provided at no or reduced charge that are not recovered from other fees. By limiting many of the final fees to an inflation-based adjustment of the current fee, rather than one calculated based on a completion rate, DHS addresses the concerns of the commenters who disagree with fees being based on completion rates and the relative complexity of the adjudication. With this approach, USCIS may continue to improve efficiency and adjudication times without overburdening customers with fees that are higher than inflation for family-based and humanitarian workloads, in most cases.

b. Other Comments on Methodology (*e.g.,* ABC Software/Models, Age of Data)

Comment: Multiple commenters also stated that the ABC model is flawed, or the documentation is insufficient for the following reasons:

• Documentation of the fee review methodology and inputs does not provide a comprehensive understanding of the study's execution.

• USCIS chose not to use actual cost values and instead relied on projections, and it could not identify information in the documentation that either explained with specificity how the projected values were determined or addressed potential observational errors that may have impacted cost projections.

• Documents provided to the public did not provide the insight necessary to ascertain how the data in the model was compared across the FYs that USCIS examined.

• The ABC model has underestimated the number of petitions that will be filed and therefore underestimated the impact on small and seasonal American businesses, farmers, and the public.

• Because USCIS is proposing that employment-based applications cover the cost for other benefits, underestimation of H–2B and H–2A filings shows that other employment filings are also off, and the proposed fees and cost offsets need to be further reviewed with more adequate data.

• USCIS should be more transparent on USCIS' ABC model and into calculation and review of fee levels.

• USCIS should provide a public forum whereby it describes to stakeholders how the methodology and data used in the ABC model allowed it to reach its conclusions.

• USCIS does not provide the public with the information that went into the ABC model and consequently the public cannot determine whether its conclusions are justified or reasonable.

Response: The INA authorizes DHS to recover the costs of USCIS by collecting fees and the CFO Act requires us to do a fee review every 2 years. Neither statute requires use of any particular methodology. As stated in the proposed rule and this rule, DHS strives to follow OMB Circular A–25, as appropriate for the programs we administer. In doing so, DHS strives to allocate fees using activity-based costing, adjust fees using considerations of public policy, interests served, and other relevant facts, and consider the recommendations of GAO regarding beneficiary-pays and ability-to-pay principles to shift costs and set our final fees. Our adopted methodology results in some requests paying no fee, others paying more, and others paying less. DHS tries to be fair, precise, transparent, and thoughtful within reasonable margins of accuracy and precision. Nonetheless, the commenter's assertion that our calculations or fee determination is incorrect is misplaced. DHS explains in the supporting documentation in the docket for this rule how each fee in the proposed rule and this rule were calculated. DHS

engages in discretionary cost shifting and adjusts before arriving at a final fee schedule. DHS outlined how the ABC model works in the proposed rule preamble and supporting documentation, consistent with previous fee rules. In addition, it shared model and fee schedule documentation in the docket. USCIS also provided a demonstration of the model, as requested, and placed a transcript of the demonstration in the docket.[159] During the demonstration, USCIS often referred to information in the docket to show how the model uses it. The information used to calculate specific fees is the best and most complete information available at the time of the fee review. Requests that were only developed or authorized relatively recently (*e.g.,* separate fees for Form I–129; Employment Based Immigrant Visa, Fifth Preference (EB–5) workloads; Asylum Processing IFR costs) may have limited data, not be fully implemented, or require assumptions for the new fees. USCIS will be able to refine this data in the future as programs mature or data collection begins, which will be used for future fee reviews. Some fee changes in the proposed rule and this final rule are outside of the ABC model, as discussed in the preamble and fee schedule documentation. *See, e.g.,* 88 FR 402, 450–454 (Jan. 4, 2023).

Information provided in the ABC model includes the cost projections, volume, and completion rates discussed in the preamble. *See, e.g.,* 88 FR 402, 426–452 (Jan. 4, 2023). The supporting documentation discussed additional information, such as staffing levels, fee review activities, and a functional overview of ABC in general and the USCIS ABC model. The model documentation provided functional and technical details on how the model works. It included diagrams, screenshots, lists, and tables for various aspects of the ABC model. Thus, DHS believes that we have explained and justified our calculations of the fees in this final rule.

As for the filing volume estimates, USCIS uses a volume projection committee (VPC) with statistical and analytical experts who systematically examine filing volumes to produce forecasts used in fee studies. The VPC examines past trends, forecasts, and varying models, and USCIS has found that the VPC reliably minimizes forecast errors that might occur if forecasting were left to self-interested parties. The VPC projects filing volume several years ahead. USCIS has reviewed the comments from H–2A and H–2B employers that misunderstood the 25 named beneficiaries per petition requirement as a limit on the overall number of beneficiaries and argued the ratio of initial to continuing requests to be a superior basis for modeling annual growth of at least 15 percent in both H–2A and H–2B volumes, in perpetuity. USCIS agrees with one commenter that nature is unpredictable and demand for seasonal agricultural workers is volatile but disagrees with unsupported arguments that higher H–2A and H–2B volumes and thus revenues are self-evident. In the event less likely volumes did occur, commenters overlook that this would cause changes in the activities driving ABC model estimates of average costs and impact the revenue the fee would generate. Thus, USCIS must take care to neither over nor underestimate future, unknowable volumes without bias.

3. TPS and DACA (*e.g.,* Exclusion From Cost Model, I–821, I–765 Exemption for Certain TPS Applicants, and DACA Rulemaking)

Comment: Commenters provided the following comments on how the proposed rule would affect DACA requests, fees, and grantees:

- Increased fees would create hardship for DACA students required to renew their paperwork every 2 years.
- Higher fees increase the vulnerability of DACA recipients by raising the costs to maintain their documentation.
- USCIS should set DACA application fees at current or lower levels to address financial disparities faced by immigrant communities and working families.
- DACA recipients already pay a filing fee that other protected groups do not, and fee waivers are not a solution to the proposed increase.
- Maintain current DACA fees because DACA recipients were not considered in the financial modeling for the proposed rule.
- Some disagreed with the exclusion of DACA recipients from filing fee relief regardless of their potential financial hardship.
- The DACA program diverts agency resources from lawful immigrant programs, resulting in fee increases and longer processing times for applicants to other visa programs.
- USCIS should increase processing fees for DACA because the fee is lower than other requests, yet the burden is higher.
- DACA requestors broke the law so their fees should be punitive.
- DACA recipients should be able to request advance parole based on any grounds and be allowed to request a fee waiver.

Response: This rule makes no changes to DACA, the validity period for approved DACA renewals or how often DACA must be renewed, policies regarding DACA recipients' ability to request advance parole, or any DACA-specific fees. As explained in the proposed rule, DACA is a temporary act of enforcement discretion, may be terminated at any time, and thus it is a source of revenue on which DHS does not want the fiscal condition of USCIS to depend. *See* 88 FR 402, 454–455 (Jan. 4, 2023).

To request DACA, an individual must file Form I–821D, Consideration of Deferred Action for Childhood Arrivals, which has an $85 filing fee. The applicant must also file Form I–765, Application for Employment Authorization, together with Form I–821D for the DACA request to be complete. Form I–765 is a general form used by millions outside of the DACA population. It has a filing fee of $410, which increases in this final rule to $470 when filed online or $520 when filed on paper. All Form I–765 applicants pay the same fee, unless they are fee exempt or request a fee waiver. DHS found no differences in the burden of adjudicating Form I–765 for DACA than for any other Form I–765 and we have no policy reasons for capping their fee at a lower amount. In DHS's 2022 DACA rule, the total fee to submit a DACA request of $495 ($85 plus $410) was a reasonable proxy for the Government's costs of processing these forms. *See* 87 FR 53152, 53278 (Aug. 30, 2022).[160] However, that rule also stated that DHS planned to propose new USCIS fees in a separate rulemaking, and that the fee for Form I–765, may need to be adjusted because it has not changed since 2016. *Id.*

In DHS's 2022 DACA rule, DHS considered allowing fee waivers or fee exemptions for DACA requestors. *See* 87 FR 53152, 53237–53238. In that rule DHS recognized that some DACA

[159] *See* USCIS, ''USCIS Fee Rule Software Demonstration,'' Mar. 1, 2023, available at *https://www.regulations.gov/comment/USCIS-2021-0010-4141.*

[160] On Sept. 13, 2023, the U.S. District Court for the Southern District of Texas issued a decision finding the DACA rule unlawful and expanding the original July 16, 2021 injunction and order of vacatur to cover the final rule. *See Texas* v. *United States,* No. 1:18–CV–00068 (S.D. Tex. Sept. 13, 2023), *appeal pending,* No. 23–40653 (5th Cir. filed Nov. 9, 2023); *see also* USCIS, ''Important Update on Deferred Action for Childhood Arrivals,'' available at *https://www.uscis.gov/newsroom/alerts/important-update-on-deferred-action-for-childhood-arrivals* (last reviewed/updated Sept. 18, 2023).

requestors may face economic hardship that affects their ability to pay the required fees. However, it noted that DACA, as an exercise of prosecutorial discretion that allows DHS to focus limited resources on higher priority cases, is not an immigration benefit or associated filing for which DHS is required to allow a request for a fee waiver under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7), and that it is appropriate for beneficiaries of this enforcement discretion to cover the cost of adjudication. *Id.* DHS declines to reverse that decision in this rule. This final rule sets fees for Form I–765 that are increased only by the rate of inflation since they were last established, and less than the proposed fees, as explained elsewhere in in section II.C.8 of this rule's preamble.

Comment: A commenter wrote that USCIS could allocate more resources to TPS based on how much an applicant paid in fees, and that TPS could receive faster processing if they paid more.

Response: As explained in the proposed rule, DHS excludes projected revenue from expiring or temporary programs in setting the fees required to support baseline operations due to the uncertainty associated with such programs. *See* 88 FR 402, 454 (Jan. 4, 2023). DHS realizes that USCIS has processing backlogs for Form I–821, Application for Temporary Protected Status, and we are working to reduce those backlogs and approve requests quickly. DHS is precluded from charging more for faster processing of the Form I–821 by INA sec. 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B), which caps the TPS registration fee at $50. While USCIS has implemented premium processing for some Form I–765 categories in March 2023, a TPS related Form I–765 was not one of them.[161] USCIS may offer premium processing for TPS-related Form I–765 filings as provided in 8 CFR 106.4 in the future as we develop more capacity to offer premium service to more requests. Meanwhile, DHS makes no changes to this rule based on this comment.

4. Processing Time Outlook and Backlogs

Comment: Many of the commenters opposed fee increases because of delays in processing times and dissatisfaction with customer service. Commenters wrote:

- Conditional support for the fee increases if such increases will improve or not cause any backlogs and only if USCIS can process cases quickly or accelerate processing.
- USCIS should improve efficiency and achieve long term structural improvements without increasing fees, should focus first on improving efficiency and service provision as opposed to raising fees, include a processing time guarantee, establish a ''binding'' processing timeframe with each fee increase, reverse the fee increases if USCIS fails to meet specific processing times, and USCIS has no accountability with maintaining regular processing times and has not demonstrated the ability to reduce these timelines. Commenters questioned what mechanisms would hold USCIS to higher efficiency standards.
- USCIS should clear the backlog and decrease processing times, the current backlog and long processing times are not reasonable, processing times are getting longer without any justifying policy or legal changes, USCIS has ''record-high'' processing delays and backlogs and is not meeting legal guidelines for processing times, processing times increased over the last 6 years by as much as 218 percent.
- USCIS has no accountability with maintaining regular processing times and has not demonstrated the ability to reduce these timelines. Commenters stated the growing length of USCIS forms is a ''major contributor'' to the backlog.
- Applicants are not responsible for the backlog and should not carry its burden, the backlog is harmful for low-income applicants awaiting permanent residency or naturalization, and immigrant and nonimmigrant fees should bear the burden of cost for the backlog rather than U.S. citizens or noncitizen relatives.
- The backlog has a negative impact on many non-immigrant workers, DACA recipients, TPS holders, and other EAD applicants seeking to maintain their employment status in their current jobs and seeking USCIS services, and applicants from higher education seeking employment or other opportunities.
- Raising fees and hiring additional staff would be a ''band-aid'' solution to a flawed processing model that has created the current backlog crisis.
- Processing delays may deter many touring artists from performing in the United States and processing delays force some petitioners to pay the premium fees for international artists, particularly given the specific timing demands of performing arts schedules.
- USCIS should improve processing so fewer applicants need to pay for premium processing.
- USCIS requires some dependents of long-term temporary workers to file extensions of status separate from the worker, contributing to the backlog.
- USCIS should reduce Requests for Evidence (RFE) as unnecessary complications that cause delays in processing, publish RFE issuance rates by adjudicator, and establish stricter requirements for responding to evidence and issuing RFEs.
- Recent RFE reductions by USCIS should be considered in the proposed filing fees.
- In response to the statement in the proposed rule that part of the 2022 congressional appropriations would be used to reduce current backlogs and delays, USCIS has not shown the capacity to quickly address developing backlogs and USCIS should not rely solely on yearly appropriations.
- Recommendations of several means of reducing backlog, including requesting annual appropriations if needed and adjusting fees annually based on staffing factors.
- The processing times and backlogs for the Form I–600A and I–600 series and Form I–800A and I–800 series should be reduced, and adjudication of adoption cases should be prioritized.
- Concerns about specific forms, including Form I–129 processing times are three to five times longer than mandated by statute for L–1 petitions.
- Form I–539 processing times have ballooned despite process changes that should have streamlined adjudication, for Form I–485, USCIS should promise a period of fewer than 6 months to process the form and its underlying petitions; applicants must file concurrent Forms I–485, I–131, and Form I–765, given the increasing processing times.
- These delays increase backlogs for Form I–129F. Because the processing time has increased in recent years, USCIS should not propose to significantly increase fees for the fiancé and spousal applications.
- Lengthy processing times for Form I–131, result in increased congressional inquiries, Ombudsman's inquiries, and expedite requests, all of which create greater inefficiencies.
- Further, processing delays make it difficult for students to anticipate their start dates on their applications and are not warranted given that the Form I–765 duplicates information that USCIS has already collected.

[161] USCIS, ''USCIS Announces Premium Processing; New Online-Filing Procedures for Certain F–1 Students Seeking OPT or STEM OPT Extensions,'' available at *https://www.uscis.gov/newsroom/news-releases/uscis-announces-premium-processing-new-online-filing-procedures-for-certain-f-1-students-seeking-opt* (last reviewed/updated Mar. 6, 2023).

• For Form I–824, the simple purpose of this form should not necessitate processing times of 2–4 years.

• Form N–400 commenters recommended a case processing goal of 4–6 months and stated that increased vetting policies have increased processing times, despite stable rates of approval of applications.

• USCIS has a 1-to-3-month processing time for O–1 petitions (although the statutory requirement for adjudication is 14 days), so USCIS should refund the filing fee if processing takes longer.

• For K–1 visa holders applying for Adjustment of Status, processing time varies greatly depending on the applicant's location of residency and review of interim benefit requests for such applicants should be shorter given that those applicants' relationships and backgrounds have already been reviewed.

• Processing delays for F–1 student visas impede registrations from international students, which can diminish the students' contribution to U.S. innovation and limits revenue streams for U.S. colleges and universities.

• Lengthy J–1 waiver approval processing has caused interruptions in income or necessitated priority processing.

• DHS should avoid any Form N–400 fee increase by pursuing greater efficiencies and cost savings using technology.

• USCIS should refund the higher proposed fees if the agency does not process the following forms within its processing time goal: I–290B, I–800A, I–824, I–140, N–400, I–526, I–102, I–130, I–129F, I–360, I–129, I–90, I–539, I–131, I–765, I–485.

• Increased processing times and the need to hire new employees are problems of USCIS' own making through unnecessary RFEs, biometrics, in-person interviews, site visits, audits, and failure to take advantage of technological advances that could lead to more streamlined and cost-effective procedures. It is prudent for USCIS to increase fees because it has been 6 years since the last increase and the United States is experiencing widespread inflation, but USCIS should ensure that any increase improve the efficiency of its services and customer support.

Response: USCIS appreciates that its processing backlogs have a negative impact on many stakeholders who submit and rely on immigration benefit requests. USCIS is committed to timely processing goals and reducing its backlog. DHS acknowledges that since it last adjusted fees in FY 2016, USCIS has experienced elevated processing times compared to the goals established in the 2007 fee rule. *See* 72 FR 29858–29859. Processing delays have contributed to case processing backlogs. USCIS total pending caseload has grown from approximately 4.7 million cases in December 2016, when DHS last adjusted IEFA non-premium fees, to approximately 8.9 million cases at the end of June 2023.[162] On top of these preexisting strains on USCIS, the COVID–19 pandemic constrained USCIS adjudication capacity by limiting the ability of USCIS to schedule normal volumes of interviews and biometrics appointments while maintaining social distancing standards. *See* 88 FR 402, 455 (Jan. 4, 2023). COVID flexibilities likely increased the time to respond to an RFE, as well as processing times.[163] Further, USCIS believes that the growing complexity of case adjudications in past years, including prior increases in the number of interviews required and RFE volumes, at the time contributed to higher completion rates and growing backlogs. *Id.*

USCIS is making progress reducing backlogs and processing times. For example, USCIS committed to new cycle time goals in March 2022.[164] These goals are internal metrics that guide the backlog reduction efforts of the USCIS workforce and affect how long it takes the agency to process cases. As cycle times improve, processing times will follow, and requestors will receive decisions on their cases more quickly. USCIS has continued to increase capacity, improve technology, and expand staffing in an effort to achieve these goals by the end of FY 2023. DHS automatically extended some EADs to help prevent renewal applicants from experiencing a lapse in employment authorization or documentation while their applications remain pending. *See* 87 FR 26614 (May 4, 2022). Automatic extension of employment authorization or documentation allows some immigrants, including asylees, refugees, and TPS holders, to maintain their employment status in their current jobs. *Id* at 26615–26617. To highlight other efforts toward reducing the backlog and processing times, USCIS published a progress report to demonstrate both how backlog reduction and humanitarian services were successfully supported by appropriations by Congress in FY 2022.[165] USCIS reduced the backlog for naturalization and the wait time for employment authorization, while expanding humanitarian efforts.[166] USCIS already delivered on one of the commitments in the progress report by implementing premium processing for all employer Form I–140 petitions for immigrant workers.[167] Since publishing the report, USCIS also announced that premium processing is available for certain students seeking Optional Practical Training (OPT) or Science, Technology, Engineering, and Mathematics (STEM) OPT extensions, as well as certain changes or extensions of nonimmigrant status.[168]

DHS appreciates the operational suggestions submitted by commenters regarding interviews, RFEs, online filing, prioritization of certain requests, USCIS office staffing, and other steps to address the USCIS processing backlog. As explained in the proposed rule, USCIS is reviewing its adjudication and administrative policies to find

[162] *See* USCIS, ''Number of Service-wide Forms by Fiscal Year to Date, Quarter and Form Status 2017,'' available at *https://www.uscis.gov/sites/default/files/document/data/ECN_1893_-_Quarterly_-_All_Forms_FY17Q1_Final.pdf* (last visited Sep. 29, 2023). USCIS, ''Number of Service-wide Forms By Quarter, Form Status, and Processing Time, April 1, 2023—June 30, 2023,'' available at *https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2023_q3.pdf* (last visited Sep. 29, 2023).

[163] *See, e.g.,* USCIS, ''USCIS Extends COVID–19-related Flexibilities'' available at *https://www.uscis.gov/newsroom/alerts/uscis-extends-covid-19-related-flexibilities-1* (last revised/updated Jan. 24, 2023).

[164] See USCIS, ''USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders,'' *https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work* (last visited Feb. 8, 2023).

[165] See USCIS, ''USCIS Releases New Data on Effective Reduction of Backlogs, Support for Humanitarian Missions, and Fiscal Responsibility,'' *https://www.uscis.gov/newsroom/news-releases/uscis-releases-new-data-on-effective-reduction-of-backlogs-support-for-humanitarian-missions-and* (last visited Feb. 7, 2023).

[166] See USCIS, ''Fiscal Year 2022 Progress Report,'' Dec. 2022, available at *https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf* (last visited Feb. 8, 2023).

[167] See USCIS, ''USCIS Announces Final Phase of Premium Processing Expansion for EB–1 and EB–2 Form I–140 Petitions and Future Expansion for F–1 Students Seeking OPT and Certain Student and Exchange Visitors,'' *https://www.uscis.gov/newsroom/alerts/uscis-announces-final-phase-of-premium-processing-expansion-for-eb-1-and-eb-2-form-i-140-petitions* (last visited Feb. 7, 2023).

[168] See USCIS, ''USCIS Announces Premium Processing; New Online-Filing Procedures for Certain F–1 Students Seeking OPT or STEM OPT Extensions,'' *https://www.uscis.gov/newsroom/news-releases/uscis-announces-premium-processing-new-online-filing-procedures-for-certain-f-1-students-seeking-opt* (last visited Mar. 6, 2023); USCIS, ''USCIS Expands Premium Processing for Applicants Seeking to Change into F, M, or J Nonimmigrant Status,'' *https://www.uscis.gov/newsroom/alerts/uscis-expands-premium-processing-for-applicants-seeking-to-change-into-f-m-or-j-nonimmigrant-status* (last visited June 12, 2023).

efficiencies, while strengthening the integrity of the immigration system. *See* 88 FR 402, 455 (Jan. 4, 2023). This entails evaluating the utility of interview requirements, biometrics submission requirements, RFEs, deference to previous decisions, and other efforts that USCIS believes may, when implemented, reduce the amount of adjudication officer time required, on average, per case. *Id.* Any improvements in these completion rates would, all else equal, reduce the number of staff and financial resources USCIS requires. Furthermore, USCIS is actively striving to use its existing workforce more efficiently, by investigating ways to devote a greater share of adjudication officer time to adjudications, rather than administrative work. All else being equal, increasing the average share of an officer's time spent on adjudication (that is, utilization rate) would increase the number of adjudications completed per officer and reduce USCIS' overall staffing and resource requirements.

USCIS based its fee review largely on existing data that do not presume the outcome of these efficiency initiatives. USCIS cannot assume significant efficiency gains in this rule in advance of such efficiency gains being measurably realized. Establishing more limited fees to account for estimated future efficiency could result in deficient funding, and USCIS would not be able to meet its operational requirements. USCIS also cannot refund fees if it does not meet its processing time goals as commenters suggest without incurring significant harm to its fiscal position, which would in turn only exacerbate backlogs. In contrast, if USCIS ultimately receives the resources identified in this rule and subsequently achieves significant efficiency gains, this could result in backlog reductions and shorter processing times. Those efficiency improvements would then be considered in future fee reviews, as indicated in the proposed rule. *See* 88 FR 402, 529–530 (Jan. 4, 2023).

Finally, regarding the current USCIS processing time for O–1 petitions, and the commenter's suggestion that USCIS should refund filing fees for O–1 petitions that take more than 14 days to adjudicate, DHS disagrees with the commenter's assertion that there is a generally applicable requirement to process O–1 petitions within 14 days. Rather, the statute and regulations refer to a non-binding 14-day processing time, after USCIS receives an advisory opinion, in the limited context where USCIS requests an advisory opinion from an appropriate labor organization. *See* 8 U.S.C. 1184(c)(6)(D); 8 CFR 214.2(o)(5)(i)(F). DHS will not adopt the commenter's suggestion to refund O–1 petition filing fees in cases that take longer than 14 days to adjudicate. As with other filing fees, the O–1 petition filing fee is due at time of filing and is nonrefundable.

In sum, DHS understands the need for timely service, system improvements, and customer support. USCIS continually strives to meet timely adjudication goals while balancing security, eligibility analysis, and integrity in the immigration system. Fees have not been adjusted since 2016. Meanwhile, USCIS expanded its humanitarian efforts, often without appropriations or revenue to offset the additional cost.[169] This fee rule is intended to address such shortfalls and provide resources necessary to ensure adequate service. USCIS would be unable to adequately perform its mission if DHS allowed fee levels to remain insufficient while USCIS continued to explore and implement options for additional efficiencies.

Comment: Many of the commenters suggested operational improvements which they felt would reduce processing times or improve customer service. Commenters wrote:

- USCIS should add more electronic filing.
- USCIS should use interview waivers, evidence of employment authorization, the creation of a trusted filer program, remote interviews, phone appearances, grandfathering, penalty fees, extend validity periods of visas, and recapture and issue Green Card numbers that have gone unused to reduce costs and the backlog.
- Applicants should be given the name and email of their adjudicator to establish more transparent and efficient communication.
- USCIS should increase adjudicator hiring rates and training, and provide better training combined with managerial oversight and review of adjudications.
- USCIS should transparently include planned process improvements in its costing model.
- Form I–130, commenters recommended a simplified registration system to prevent USCIS from spending resources managing applications during lengthy waiting periods.
- USCIS should stop requiring unnecessary renewals of work permits, citing research that such renewals compose 20 percent of the case backlog.
- USCIS should stop printing Green Cards, and EAD cards for applicants who already have a Green Card.
- DHS should offer premium processing fees to alleviate long processing times for VAWA applicants coming from difficult situations.
- Combining the forms, fees, and adjudications for Forms N–400 and N–600 would save both families and USCIS considerable time and money.
- Effort to process Form I–751 has fallen by 11 percent over the past 6 years but processing time is increasing dramatically and does not comply with statutory timeframes. Fees for I–751 filers should be used to improve I–751 processing times and not for other higher priority forms.

Response: DHS appreciates the operational suggestions submitted by commenters regarding processing times, process improvement, customer service, interviews, streamlined filings, online filing, prioritization of certain requests, training, and other steps to address the USCIS processing backlog. As explained in the proposed rule, USCIS is reviewing its adjudication and administrative policies to find efficiencies, while strengthening the integrity of the immigration system. *See* 88 FR 402, 455 (Jan. 4, 2023). DHS considered these recommendations but declines to make changes in this rule. DHS may consider these changes again in future rulemakings.

E. Fee Waivers

1. General Comments

Comment: Multiple commenters expressed general support for the fee waiver provisions in the proposed rule, some without explanation and others for the following reasons:

- Fee waivers are important for immigration relief because they help families improve their stability, financially support themselves, and fully integrate into the workforce.
- The proposed rule would replace the enjoined 2019/2020 changes, which severely limited immigrants' access to fee waivers including the reduced fee option for low-income naturalization applicants. The proposed rule would revert to the inability to pay model for establishing eligibility for fee waivers, and avoid other issues in prior proposed fees.
- Many individuals apply for naturalization or a Certificate of Citizenship with a fee waiver.
- The proposed rule continues to allow fee waivers for forms associated with certain types of humanitarian benefits. The United States has a moral and legal obligation to protect persons fleeing persecution.

[169] For example, as described in section III.C. DHS established new parole processes for certain Cubans, Haitians, Nicaraguans, and Venezuelans, and new family reunification parole processes for certain Colombians, Salvadorans, Guatemalans, and Hondurans.

• The proposed rule would preserve existing fee waiver eligibility for low-income and vulnerable populations and ensure that the fee changes would not disproportionately impact people who are struggling financially. Fee waivers provide an opportunity for low-income individuals to become citizens of the United States and participate in the democratic process. Without fee waivers, many low-income individuals would not have an equal opportunity to access the pathway to citizenship.

• Many of the changes DHS proposed will prevent meritorious fee waiver requests from being denied on arbitrary bases, as is often now the case.

• Strengthening of fee waivers supports union efforts to uplift the rights and status of those in need of increased agency in the labor market.

Response: DHS agrees with commenters regarding the importance of fee waivers and will maintain their availability as explained in the proposed rule.

2. Eligible Categories and Forms

Comment: Several commenters asked USCIS to balance fee increases by significantly expanding fee waiver eligibility. One commenter stated that DHS should expand the categories of applications eligible for fee waivers without specifying which additional categories should receive fee waivers. Another commenter encouraged USCIS to expand fee waivers to further ensure that all vulnerable noncitizens who cannot afford to pay filing fees are able to obtain a fee waiver and access immigration benefits without unreasonable delay or undue difficulty. Another commenter requested that USCIS allow for individual determinations as to whether a fee waiver should be granted for all applications. The commenter reasoned that categorical restrictions placed on fee waivers for certain applications combined with the increase in fees proposed will pose obstacles for many immigrants, resulting in the delay of immigrants' ability to apply for immigration relief.

Response: DHS acknowledges the importance of ensuring that individuals who cannot afford filing fees have access to fee waivers. DHS has primarily sought to ease the burden of fee increases by significantly expanding the number of forms that are now fee exempt. *See* 8 CFR 106.3(b); Table 5B. DHS believes that these expanded fee exemptions offer more certainty to those who are unable to pay application fees and create less burden because they do not require filing or processing of a fee waiver request. In addition, DHS is maintaining the household income level for assessing a requestor's ability to pay at 150 percent of the FPG instead of the 2019/2020 fee rule's lower threshold of 125 percent of the FPG. 8 CFR 106.3(a)(1)(i)(B). This fee rule also retains the authority for the Director of USCIS to provide exemptions from or waive any fee for a case or specific class of cases, if the Director determines that such action would be in the public interest and the action is consistent with other applicable law. *See* 8 CFR 106.3(c). DHS believes it has provided fee waivers for the appropriate forms and categories by emphasizing humanitarian, victim-based, and citizenship-related benefits. Additional fee waivers would limit USCIS' ability to fund necessary activities and would lead to additional backlogs and delays. Otherwise, USCIS would need to increase fees for other forms and requestors to compensate for fewer requests paying fees. DHS has sought to balance the need for the fee waivers and the need to ensure sufficient revenue and does not believe additional fee waivers are appropriate.

Comment: Multiple commenters wrote that USCIS should make additional family-related immigration benefits eligible for fee waivers. One commenter expressed concern that some Form I–129F petitioners and beneficiaries would have to go into debt to get married and recommended that DHS allow low-income individuals to request a waiver of the Form I–129F. Another commenter expressed opposition to the rule because fees cannot be waived for Forms I–130 and I–751.

Response: Contrary to the commenter's assertion, the fee for Form I–751, Petition to Remove Conditions on Residence, can be waived. 8 CFR 106.3(a)(3)(i)(C). In general, however, DHS does not consider Form I–129F, Petition for Alien Fiancé(e), and Form I–130, Petition for Alien Relative, appropriate for fee waivers because the petitioning U.S. citizen or LPR relative is statutorily required to demonstrate their ability to financially support the noncitizen beneficiary at the time of their admission as an LPR. *See* INA secs. 212(a)(4)(C)(ii) and 213A, 8 U.S.C. 1182(a)(4)(C)(ii) and 1183a. DHS does not believe that these USCIS fees represent an inordinate financial burden compared to the financial commitment required to fully support an immigrant relative.

Comment: A commenter expressed concern that the fee for Form I–539 is not waivable for T and U nonimmigrants when the form is filed concurrently with Form I–485. The commenter remarked that this would cause significant financial burden to victims filing U-visa and T-visa based Form I–485 applications, who often cannot hire a private attorney to help them file an I–485 in timely fashion, and the additional I–539 fee would further delay the ability of survivors in this situation to reconcile their expired status with the filing of a *nunc pro tunc* Form I–539 and Form I–485 application.

Response: In the proposed rule, DHS proposed to fully exempt the fee for a Form I–539, Applicant to Extend/Change Nonimmigrant Status, filed by applicants who have been granted T nonimmigrant status or are seeking to adjust status under INA sec. 245(l), 8 U.S.C. 1255, regardless of whether the form is filed before or concurrently with Form I–485, Application to Register Permanent Residence or Adjust Status. *See* 88 FR 402, 594 (Jan. 4, 2023) (proposed 8 CFR 106.3(b)(2)(vi)). DHS has maintained this fee exemption in the final rule. 8 CFR 106.3(b)(2)(vi); Table 5C. Furthermore, in response to comments, DHS has decided to extend the fee exemption for Form I–539 to include applicants who have been granted U nonimmigrant status or are seeking to adjust status under INA sec. 245(m), 8 U.S.C. 1255(m), regardless of whether the form is filed before or concurrently with Form I–485. 8 CFR 106.3(b)(5)(vi). That limited, additional fee exemption did not increase the fees for other fee payers. As explained elsewhere, DHS revised the USCIS budget to accommodate the revenue generated by the fees and volumes in this final rule. These fee exemptions will enable the vulnerable population of U nonimmigrants to maintain their nonimmigrant status while applying to adjust to LPR status.

Comment: A commenter stated that fee waivers and exemptions should be extended to other critical forms for asylees, reasoning that asylees are just as vulnerable and meet the same legal definition as refugees. The commenter did not identify specific forms that should be eligible for a fee waiver but asserted that the following forms should be fee exempt: Form I–485 for asylees, Form I–765 renewal and replacement for asylees and asylum applicants, and Form I–290B for asylees and refugees when filed for Forms I–730 or I–485.

Response: All the forms identified by this commenter are eligible for a fee waiver. 8 CFR 106.3(a)(3)(ii)(D), (F), (iv)(C); Table 5B. Comments concerning fee exemptions are addressed later in the Section IV.F of this preamble.

Comment: Commenters stated that the proposed fee changes would unfairly categorize athletes as a classification

that can afford the fee increases and requested that a broader spectrum of forms, including the Form I–129 and Form I–140 when not filed by an employer, be eligible for fee waivers or reductions. Another commenter encouraged USCIS to consider a waiver option for O and P petitions, combined with a tiered structure (possibly based on maximum planned venue size), which the commenter reasoned would benefit all interests without jeopardizing potential U.S. revenue streams and the socioeconomic contributions of small- and medium-sized artists.

Response: DHS recognizes commenters' concerns regarding the affordability of Form I–129, Petition for a Nonimmigrant Worker, and Form I–140, Immigrant Petition for Alien Workers, and that not all athletes or artists are wealthy. As further discussed in Section II. C of this preamble, in response to public comments and stakeholder feedback, DHS is codifying a discounted Form I–129 fee for small employer and nonprofit filers in this final rule. 8 CFR 106.2(a)(3)(ix). However, while DHS recognizes the economic and cultural contributions made by O and P nonimmigrants and I–140 self-petitioners, DHS does not believe that these factors justify fee-waiver eligibility or fee exemptions for Form I–129 and Form I–140 petitions. USCIS can only allow a limited number of forms to be eligible for fee waivers, or else it would require even further increases in fees to offset lost revenue. DHS has chosen to prioritize fee waivers for humanitarian and protection-related immigration forms where the beneficiary may not have a reliable income or their safety or health is an issue, and naturalization and citizenship-related forms to make naturalization accessible to all eligible individuals.[170] DHS notes that the process for assessing fee-waiver eligibility is generally designed for individuals, not organizational petitioners for O and P nonimmigrants because their ability to pay cannot be assessed under those guidelines (*e.g.,* receipt of a means-tested benefit, or household income below 150% of the FPG). *See* 8 CFR 106.3(a)(1)(i).

Comment: A commenter expressed concerns about the increasing frequency of fee waivers because it is possible for some applicants to obtain fee waivers through different forms and multiple filings. The commenter also asserted that applicants abuse fee waivers, reasoning that some individuals file multiple application types and request a fee waiver for each application to avoid paying fees. Considering these concerns, the commenter recommended that no fee waivers be given for Forms N–400 and N–600.

Response: DHS believes the commenter's concern is unfounded. As discussed in Section IV.E.7 of this preamble, fees waiver requests, approvals, and foregone revenue have remained consistent over the last 10 years, and they are currently well below levels in FY 2015–17. *See* Table 6. DHS disagrees that an applicant seeking multiple fee waivers for different applications constitutes ''abuse'' because each subsequent form is required to be accompanied by its own fee waiver request, and each fee waiver request is considered on its own merits. Multiple fee waiver requests may reflect an ongoing inability to pay due to legitimate reasons such as low income or disability, which must be documented in each request.

Comment: A commenter stated that fee waivers should not be available for naturalization-related applications because U.S. citizenship is a privilege, not a right.

Response: DHS disagrees with the premise of this comment. The INA provides for the statutory, nondiscretionary right to apply for naturalization. *See* INA secs. 316, 319, 328, and 329; 8 U.S.C. 1427, 1430, 1439, and 1440. DHS acknowledges the advantages that new citizens obtain with naturalization, but also recognizes the significant benefits that the United States obtains from the naturalization of new citizens.[171] In maintaining fee waivers and reduced fees for naturalization-related applications, DHS seeks to promote naturalization and immigrant integration.[172] Because applicants may be unable to pay at the time of naturalization, USCIS believes that continuing to allow naturalization applicants to request fee waivers is in the best interest of the program and consistent with the statute.

Comment: One commenter stated there should be no full fee waivers for individuals who are not asylum, VAWA, T visa, or U visa-based requesters. The commenter expressed support for reduced fees but reasoned that it would cause USCIS to continue dedicating extra time and resources to verify and review the request for reduced fees. The commenter suggested that, if USCIS must keep fee waiver options for forms like the N–400 then it should temporarily cancel the option for 1 year to see if it results in a decrease in filings. The commenter reasoned that, if there were a decrease, this would allow USCIS time to adjudicate current backlogs and recoup the full amount of fees for all new filings, and if there was a minimal decrease, it would inform future discussion of minimizing fee waivers.

Response: DHS disagrees with the commenter's proposal to limit full fee waivers to certain humanitarian categories and exclude others. DHS believes that there are equally deserving humanitarian categories, including refugees, Cuban Adjustment Act (CAA) and Haitian Refugee Immigration Fairness Act (HRIFA) adjustment applicants, Special Immigrant Afghans and Iraqis, SIJs, and TPS recipients. Furthermore, in recognition of the benefits that the United States receives when immigrants naturalize, DHS believes that waived and reduced fees should be available to all naturalization applicants regardless of class of admission. DHS disagrees with the commenter's rationale for temporarily suspending Form N–400, Application for Naturalization, fee waivers because this would arbitrarily burden immigrants who have recently become eligible for naturalization but do not have the funds to pay the fee. In FY 2021, USCIS waived 39,738 fees for Form N–400s and approved 2,606 reduced-fee requests, so DHS anticipates that a similar number of applicants would be prevented from applying for naturalization were it to temporarily suspend fee waivers and reductions for the Form N–400. Instead of limiting fee waivers for Form N–400, DHS has decided to raise the income threshold to 400 percent of the FPG. *See* 8 CFR 106.2(b)(3)(ii). As for the commenter's assertion that suspending fee waivers and reductions would allow USCIS to decrease its backlog, we believe this would only result in a surge of Form N–400 filings once fee waivers and reductions were reinstituted. The commenter is correct that USCIS dedicates time and resources to review requests for fee waivers or reduced fees, but that effort is necessary and valuable for enabling low-income applicants to access immigration benefits, while also ensuring that only those who meet the requirements have their fees waived. On March 29, 2022, USCIS announced new actions to reduce backlogs, and announced that the Form N–400 cycle time goal is 6 months.[173] In FY 2023,

[170] *See* E.O. 14012, 86 FR 8277 (Feb. 5, 2021).

[171] *See* Holly Straut-Eppsteiner, Cong. Research Servs., R43366, ''U.S. Naturalization Policy,'' (May 2021), *https://crsreports.congress.gov/product/pdf/R/R43366.*

[172] This is also consistent with E.O. 14012, 86 FR 8277 (Feb. 5, 2021).

[173] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''USCIS Announces New Actions to Reduce Backlogs, Expand Premium

USCIS greatly improved Form N–400 processing times to 6.3 months from 11.5 months in FY 2021.[174]

3. Eligibility

a. Means-Tested Benefits

Comment: Noting that the proposed rule would accept a child's receipt of public housing assistance as evidence of the parent's eligibility for a fee waiver when the parent resides in the same residence, commenters wrote that the proposal is limiting and requested that USCIS include a child's receipt of other means-tested benefits, including Medicaid, Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and Supplemental Security Income (SSI) as acceptable evidence. A couple of these commenters stated that all other qualifying means-tested benefits programs similarly screen for financial hardship and inquire about assets and income for the applicant's household, and therefore any household member's receipt of a means-tested benefits should have the same probative value as a child's receipt of public housing assistance for fee waiver eligibility. One commenter said broadening the criteria for fee-waiver eligibility based on means-tested benefits will save USCIS time and effort adjudicating fee waiver requests and training staff, as evidence of receipt of means-tested benefits is often simpler to review than evidence of an entire household's income or financial hardship. Another commenter concluded that DHS has not provided a reasoned explanation of its choice to treat various public benefits differently. One commenter stated that in many cases only the applicant's child meets the criteria for a public benefit.

Response: After considering the comments on the proposed rule, DHS has decided to modify the instructions for Form I–912 to accept evidence of receipt of a means-tested benefit by a household child as evidence of the parent's inability to pay because eligibility for these means-tested benefits is dependent on household income. That would entail public housing assistance, Medicaid, SNAP, TANF, and SSI, although DHS is not codifying specific means-tested benefits and will implement those as examples in guidance through the updated Form I–912 instructions. DHS has decided to limit this policy to household spouses and children because other household members' eligibility for certain means-tested benefits may not reflect the financial need of the fee waiver requestor. For example, for SSI purposes an individual's deemed income only includes the income of their spouse and parents with whom they live and their Form I–864 sponsor.[175] USCIS retains the discretion to determine whether any requestor is eligible for a fee waiver, including whether the means tested benefit qualifies as provided in 8 CFR 106.1(f) and the Form I–912 form instructions.

Comment: A commenter recommended that USCIS expand evidence of receipt of means-tested benefits to include a benefits card, in lieu of the current requirements for a formal letter, notice, or other official documents. The commenter said this change would alleviate the administrative burden to those who would have to otherwise spend hours struggling to obtain a formal notice of receipt.

Response: DHS already accepts a benefits card as evidence of a means-tested benefit if the card shows the name of the benefit recipient, the name of the agency granting the public benefit, the type of benefit, and that the benefit is currently being received.[176] While it is unfortunate that not all benefit cards provide information about dates of receipt for the benefit, DHS believes that without this information a benefits card is not sufficient evidence that the fee waiver requestor currently receives the benefit.

b. Household Income at or Below 150 Percent FPG, and Suggested Income Levels

Comment: Some commenters wrote that they supported that DHS will continue to use the FPG to determine income thresholds for fee waiver purposes because it is a recognized national standard also used by other Federal programs.

Response: DHS appreciates the support and will continue to use the FPG as one means of assessing inability to pay.

Comment: Some commenters generally stated that the income eligibility limit for a fee waiver at 150 percent of FPG is too low or should be reconsidered. Multiple commenters suggested that USCIS increase the income threshold to establish an inability to pay to at or below 200 percent of the FPG, with some providing the following rationale:

- This would expand eligibility for those who earn too much to qualify for a fee waiver but too little to be able to afford the proposed fees.
- This would more accurately reflect the realities of low-income individuals, particularly as this rule seeks significant increases for fees for integral applications, such as employment authorization, permanent residence, and family petitions.
- This would impact a significant portion of the community of low-income immigrants. In 2019, immigrants who were at 150 percent to 199 percent of the Federal poverty level constituted one-third, or 4,503,000, of all low-income immigrants in the country.
- This would take into consideration applicants in states such as California, where cost of living and the poverty threshold for public benefit programs are higher.
- Survivors of domestic violence, sexual assault, and human trafficking may have a household income that puts them over 150 percent of the FPG, but they may face economic obstacles due to their victimization that impede their ability to pay immigration filing fees.
- This would be consistent with the income guidelines that federally funded legal aid agencies use per the Legal Services Corporation's regulations.

Other commenters recommended that DHS increase the eligibility threshold to at or below at least 300 percent of FPG. The commenters said there are people who would not qualify under the proposed rule's criteria and examples for ''financial hardship'' and are excluded from waived or reduced fees because they make a little more than 200 percent of FPG, despite their

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Processing, and Provide Relief to Work Permit Holders'' Mar. 29, 2022, *https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work.*

[174] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year,'' *https://egov.uscis.gov/processing-times/historic-pt* (last visited Aug. 18, 2023).

[175] Soc. Sec. Admin., ''Understanding Supplemental Security Income, What Is Income?'' (2023), *https://www.ssa.gov/ssi/text-income-ussi.htm* (last visited Aug. 21, 2023).

[176] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Additional Information on Filing a Fee Waiver,'' *https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver* (last updated Oct. 31, 2023); *see also* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Policy Memorandum, PM–602–0011.1, ''Fee Waiver Guidelines as Established by the final rule of the USCIS Fee Schedule; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.9, AFM Update AD11–26'' (Mar. 13, 2011), *https://www.uscis.gov/sites/default/files/document/memos/FeeWaiverGuidelines_Established_by_the_Final%20Rule_USCISFeeSchedule.pdf;* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Form I–912, Instructions for Request for Fee Waiver 5 (Sept. 3, 2021), *https://www.uscis.gov/sites/default/files/document/forms/i-912instr.pdf.*

economic struggles and bona fide ''inability to pay'' for current immigration fees, let alone the proposed fee increases for citizenship, adjustment of status, and other benefit requests.

Response: DHS acknowledges that certain individuals may continue to face difficulty paying immigration fees despite having a household income that is above 150 percent of the FPG. However, DHS declines to further raise the income limit for fee waivers because increasing the number of requests that do not pay fees would require even greater fee increases for other fee-paying individuals, many of whom already face significant increases in fees with this new rule. Otherwise, USCIS' ability to maintain services and improve backlogs would be limited. However, DHS notes that the current fee rule contains several provisions that lessen the burdens for low-income filers. First, there are other ways of demonstrating inability to pay besides household income. An individual may demonstrate inability to pay if they or their spouse or child living in the same household are currently receiving a means-tested benefit, despite having household income over 150 percent of the FPG. *See* 8 CFR 106.3(a)(1)(i)(A). DHS fee waiver guidance provides that USCIS will accept Federal, State, or locally funded mean-tested benefits. Income limits for certain means-tested benefits vary by State and account for different costs of living.[177] DHS also accepts various forms of financial hardship as evidence of inability to pay. *See* 8 CFR 106.3(a)(1)(i)(C). In addition, DHS has significantly expanded the forms that are now fee exempt, which includes benefits for victims of trafficking, violent crimes, and domestic violence. *See* Table 5B. These requestors will not be required to request a fee waiver for certain forms. Finally, as explained in section II.C.13 of this preamble, DHS has significantly expanded the income limit under which N–400 applicants qualify for a reduced fee from the originally proposed 200 percent limit to 400 percent of the FPG. *See* 8 CFR 106.2(b)(3)(ii).

Comment: Some commenters recommended adopting the Department of Housing and Urban Development (HUD)'s measure of Median Family Income (MFI) instead of the FPG to assess fee waiver eligibility based on household income. The commenters said HUD's approach is more realistic and equitable in determining who has an inability to pay because it considers how an individual's geographic location impacts their cost of living, whether they live in real poverty, and, ultimately, their ability to afford an immigration benefit. The commenters disagreed with DHS's rationales for using the FPG: (1) having a consistent national standard, (2) maintaining consistency between fee waiver eligibility and other Federal programs, and (3) avoiding confusion. Commenters asserted that having a consistent national standard ''is not a justification but instead a reason for questioning its use;'' that the MFI is consistent with HUD's Federal programs and benefits; that receipt of means-tested HUD benefits can demonstrate inability to pay under DHS's other criteria; and that any potential confusion of switching to MFI could be addressed through training and public education campaigns.

Other commenters did not specifically advocate for MFI, but generally stated that USCIS should assess inability to pay based on a requestor's location and the high cost of living in certain areas of the country. Another commenter stated that USCIS should use more accurate means-tested standards without identifying why the current standards are inaccurate or recommending specific alternative standards.

Response: DHS recognizes that the cost of living in certain areas of the country is greater than in others, and therefore people with equal household incomes may face varying difficulty paying immigration fees due to their geographic location. However, DHS believes that this concern is mitigated by allowing receipt of a means-tested benefit to show inability to pay since, as commenters note, the income thresholds for some means-tested benefits vary by State and locality. Therefore, individuals who qualify for a means-tested benefit due to their higher cost of living may still qualify for a fee waiver, even if their household income is above 150 percent of the FPG. This concern is also mitigated for residents of Alaska and Hawaii, who have unique FPG charts.[178]

DHS believes that the benefits of using FPG outweigh those of HUD's median family income (MFI) when assessing an individual's ability to pay. Despite comments to the contrary, DHS believes it is important to have a consistent national standard for the income threshold. Relying on a single, uniform standard reduces administrative costs in comparison to HUD's MFI, which would require requestors, legal service providers, and adjudicators to calculate fee waiver eligibility based on geographic area. Requestors often change their geographic location between filing for immigration benefits, and a consistent national standard would avoid potentially complicated inquiries into which geographic location is more appropriate in assessing their ability to pay. A consistent national standard also removes the incentive to misrepresent one's address to obtain a fee waiver. While DHS recognizes that MFI is used effectively for administering HUD's Federal programs and benefits, Department of Health and Human Services' (HHS) FPG is used more broadly throughout the Federal Government.[179] Using FPG also promotes internal consistency within USCIS since this measure is statutorily required for other eligibility determinations. *See* INA secs. 204(f)(4)(A)(ii) and 213A(h), 8 U.S.C. 1154(f)(4)(A)(ii) and 1183a(h). While DHS acknowledges that it is possible to mitigate confusion through training and public engagement, a more complicated legal determination will still tend to result in a higher rate of erroneous or lengthy filings and adjudications. Noting that many low-income requestors may lack access to legal assistance and face additional barriers to properly filing immigration forms, DHS believes that this population is better served by keeping the fee waiver process simple by using the FPG. Finally, DHS notes that using HUD MFI by State or county would not guarantee equitable results, since the cost of living can vary greatly within individual States and counties.

Comment: A commenter asked USCIS to begin using the Supplemental Poverty Measure (SPM) instead of the Federal Poverty Level (FPL) to determine who qualifies for a fee waiver, without explaining why the SPM is preferable. The commenter recommended that fee waivers be made available to any household earning less than 200 percent of the SPM.

Response: DHS declines to adopt the SPM for assessing eligibility for fee waivers because the SPM was not designed as a tool for assessing individual eligibility for public benefits. ''The SPM is considered a research

[177] *See, e.g.,* Am. Council on Aging, ''Medicaid Eligibility Income Chart by State'', July 2023, *https://www.medicaidplanningassistance.org/medicaid-eligibility-income-chart/* (last updated July 10, 2023).

[178] U.S. Dept of Health & Human Servs., ''HHS Poverty Guidelines for 2023,'' *https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines* (last visited Aug. 21, 2023).

[179] *See, e.g.,* Inst. for Research on Poverty, ''What Are Poverty Thresholds And Poverty Guidelines?,'' *https://www.irp.wisc.edu/resources/what-are-poverty-thresholds-and-poverty-guidelines/* (last visited Aug. 14, 2023).

measure, because it is designed to be updated as techniques to quantify poverty and data sources improve over time, and because it was not intended to replace either official poverty statistics or eligibility criteria for anti-poverty assistance programs.'' [180] Determining whether a particular individual falls above or below the SPM would require a complex calculation of numerous factors that would increase administrative costs and be susceptible to error.[181]

Comment: A commenter noted that even though there is no requirement that an individual submit their taxes, USCIS routinely denies fee waivers based on applicants' statements, where taxes are unavailable, or where the taxes indicate the applicant is under the poverty threshold. Another commenter similarly stated that, in practice, fee waivers are mostly denied when sending in pay stubs or W–2 forms. The commenter further remarked that fee waiver adjudicators routinely request only a tax return be submitted to establish income. The commenter stated that the rule should more explicitly clarify that there is no requirement to submit a tax return to document fee waiver eligibility.

Response: DHS declines to modify the rule as recommended by the commenter because it is unnecessary. Per the revisions to Form I–912 published with this rule, an individual requesting a fee waiver may establish their household income through different forms of documentation, including Federal income tax returns, a W–2, or paystubs. USCIS denies fee waiver requests that are incomplete and does not issue RFEs for Form I–912. In FY 2022, USCIS approved 84 percent of fee waiver requests (448,702 out of 532,417). *See* Table 6.

c. Financial Hardship

Comment: A commenter remarked that fee waivers are ''almost impossible'' to obtain based on hardship, regardless of the quality or amount of documentation submitted to support such a request. Another commenter stated that requests for fee waivers based on ''financial hardship'' for low-income and no-income individuals have been universally denied, without clarity provided as to the specific reasons for denial or what evidence would be considered sufficient.

Response: Although USCIS does not have approval or rejection data related to the specific criteria for fee waivers, DHS notes that in FY 2022, USCIS approved 84 percent of fee waiver requests (448,702 out of 532,417). *See* Table 6. To help prevent erroneous denials of fee waiver requests based on financial hardship, the revised Form I–912 contains a non-exhaustive list of examples of causes of financial hardship. DHS intends to issue guidance clarifying that the burden of proof for inability to pay is a preponderance of the evidence, and that an officer may grant a request for fee waiver so long as the available documentation supports that the requestor is more likely than not unable to pay the fee. USCIS regularly trains its staff to avoid erroneous denials of fee waiver requests.

Comment: A commenter supported the proposal to provide USCIS officers a larger, non-exhaustive list of circumstances that may constitute a financial hardship. The commenter stated that its staff often receive fee waiver denials despite having provided evidence that clearly points to a significant financial hardship. The commenter said that, by adding such obvious forms of hardship as ''significant loss of work hours and wages,'' ''natural disaster,'' and ''victimization,'' DHS will provide much-needed guidance to both applicants and USCIS officers. In addition, the commenter stated that the proposal to include a catch-all category of hardship for ''[s]ituations that could not normally be expected in the regular course of life events'' will also provide applicants a more reliable basis on which to demonstrate that a particular event has led to hardship.

Another commenter also supported the proposed rule's suggested evidence of financial hardship, including an affidavit from a religious institution, nonprofit, hospital, or community-based organization verifying the person is currently receiving some benefit or support from that entity and attesting to the requestor's financial situation. The commenter recommended that such affidavits include those from legal aid agencies serving low-income populations, documenting their assessment that a requestor is low-income with minimal assets and consequently eligible for their free legal services. In addition, the commenter said the term ''support services'' should be understood to include such legal services, as many legal aid agencies provide holistic services, which include helping clients access public benefits, health care, and housing. Moreover, the commenter said including legal services as ''support services'' would lead to more consistent adjudication of fee waiver requests for low-income applicants.

Response: DHS notes that, the current, proposed, and final instructions for Form I–912 permit that an affidavit describing the person's financial situation from a legal aid agency serving low-income populations may be acceptable evidence of a requestor's financial situation if they lack income. *See* 88 FR 402, 458 (Jan. 4, 2023) (''If the requestor is receiving support services, an affidavit from a religious institution, nonprofit, hospital, or community-based organization verifying the person is currently receiving some benefit or support from that entity and attesting to the requestor's financial situation.'').

Comment: One commenter suggested that mental or physical illness impacting an applicant's ability to work and pay the filing fee be explicitly included as a factor or incorporated into the proposed factors of ''victimization'' or ''situations that could not normally be expected in the regular course of life events.'' Otherwise, the rule could be read to exclude illnesses causing serious financial hardship and inability to pay filing fees if they are not an ''emergency or catastrophic.''

Response: Upon further review, DHS has incorporated this recommendation into the revised Form I–912 instructions. DHS believes that a mental or physical illness that impacts an individual's ability to work may amount to a similar level of financial hardship (depending on the individual's household income, financial assets, and other factors) as other examples listed in the form instructions, and therefore may qualify as a financial hardship with documentation of inability to work and information on income.

d. Other/General Comments on Criteria and Burden of Proof

Comment: Several commenters stated that there are many people who do not qualify for fee waivers and do not have the financial means to afford the fees. Another commenter said, at a minimum, USCIS should offset the proposed fee increases by raising the eligibility threshold for fee waivers, and then provide means-tested fee waivers. Additionally, an individual commenter stated that underprivileged families

[180] Joseph Dalaker, Cong. Research Serv., R45031, ''The Supplemental Poverty Measure: Its Core Concepts, Development, and Use,'' (July 19, 2022), *https://crsreports.congress.gov/product/pdf/R/R45031#:~:text=The%20Supplemental%20Poverty%20Measure%20(SPM,a%20specified%20standard%20of%20living.*

[181] *See generally* Joseph Dalaker, Cong. Research Serv., R45031, ''The Supplemental Poverty Measure: Its Core Concepts, Development, and Use,'' (July 19, 2022), *https://crsreports.congress.gov/product/pdf/R/R45031#:~:text=The%20Supplemental%20Poverty%20Measure%20(SPM,a%20specified%20standard%20of%20living.*

should only have to pay a reduced fee or be given a fee waiver.

Response: DHS acknowledges commenters' concerns and believes that this final rule contains multiple provisions that increase the availability of fee waivers and reductions for those unable to pay. The rule codifies DHS policy guidance that a requestor will generally be found unable to pay if they receive a means-tested benefit, have a household income below 150 percent of the FPG, or are experiencing financial hardship. *See* 8 CFR 106.3(a)(1)(i). As discussed above, this rule broadens the ways that a requestor can establish eligibility through a fee waiver by allowing a household child's receipt of certain means-tested public benefits to demonstrate the parent's inability to pay. The final rule reduces the N–400 fee for applicants whose household income is less than or equal to 400 percent of the FPG. *See* 8 CFR 106.2(b)(3)(ii). The revised Form I–912 offers additional guidance on the types of evidence of financial hardship, which DHS believes will provide flexibility and reduce the burden for individuals seeking fee waivers. The form also clarifies when certain household members' income will not be considered in assessing whether a requestor is unable to pay. The final rule further addresses individuals' inability to pay by increasing the number of forms that are fee exempt. *See* Table 5B.

Comment: A couple of commenters supported DHS continuing to base inability to pay on a "range of evidentiary standards," including means-tested benefits, household income using the FPG, or financial hardship, but said such standards should not be applied categorically and must come with adequate guidance. The commenters said the current regulation provides insufficient guidance regarding evidence, given that many applicants for fee waivers are unlikely to have significant evidence, or the type of evidence USCIS requests to prove lack of income (as proving lack of income involves proving a negative). They said DHS should continue to allow officers to grant a request for a fee waiver in the absence of some of this documentation so long as the available documentation supports that the requestor is more likely than not unable to pay the fee, as allowed under the preponderance of the evidence standard. One of these commenters said more guidance should be provided regarding documentation, including training officers in the types of situations that, while they may not lend to written evidence that can be submitted to USCIS, support the need for a fee waiver as well as the underlying humanitarian claim. The commenter said DHS should not only provide a list of possible evidence that includes both common proofs of financial need, such as taxes, pay stubs, and bills, but also informal types of acceptable evidence, such as written letters from roommates, affidavits from social or legal services organizations that condition services on lack of income, handwritten bills, and the like. Moreover, the commenter said DHS should also provide clear instructions that an officer can or should waive a fee upon a sworn statement from the applicant that they are a victim of abuse or exploitation. Another commenter said the rule should specify preferred and alternative types of evidence rather than mandatory evidence. Another commenter suggested USCIS clarify in the form instructions and guidance that these documents are non-exhaustive and that USCIS will consider other relevant evidence. A commenter stated fee waivers should be readily accessible with reasonable documentary requirements but did not specify what requirements they recommend.

Response: Under the current fee rule and USCIS policy, no type of evidence is categorically required to show eligibility for a fee waiver. The rule provides three different means of establishing inability to pay, *see* 8 CFR 106.3(a)(1)(i), and the Form I–912 instructions offer multiple examples of evidence that can be submitted in support of a fee waiver request. USCIS guidance will clarify that individuals seeking a fee waiver only have to establish eligibility by a preponderance of the evidence. *See* 88 FR 402, 458 (Jan. 4, 2023). However, DHS declines to adopt the commenter's recommended language that certain required documents are non-exhaustive, as this would be inappropriate for certain ways of proving inability to pay. For example, to confirm receipt of a means-tested benefit, a requestor is required to submit documentation that they are currently receiving a means-tested benefit that includes their name, the agency granting the benefit, type of benefit, and indication that the benefit is currently being received.

Comment: A couple of commenters wrote that they supported the implementation of more descriptive guidelines for the information collection requirements for the Form I–912. One commenter remarked that the new requirements are more realistic and flexible for applicants, reasoning that lower income applicants run into challenges when collecting documentation to support their fee waiver, for example by lacking a safe place to store confidential information. The commenter further remarked that, coupled with the preponderance of the evidence standard, evidentiary guidance will also help potential applicants understand upfront whether they qualify for a fee waiver. Another commenter agreed with DHS broadening the list of documents that are sufficient to show that a person does not have any income—a circumstance that is frequently difficult to document—because it will reduce the documentary burden on applicants in the most precarious financial situations, while also reducing the burden on USCIS to review repeated fee waiver requests after denials.

Response: DHS appreciates the commenters' feedback.

Comment: A commenter stated that, while USCIS may waive the fee for certain immigration benefit requests when the individual requesting the benefit is unable to pay the fee, the rules provide no certainty even when the applicant provides the very types of inability-to-pay information identified in the regulations—applicants are merely "eligible" for a fee waiver if they meet the criteria. The commenter asked USCIS to modify the rule to clarify that "evidence of any of the three grounds is conclusive proof of eligibility for a fee waiver."

Response: DHS understands that the commenter wants more certainty for when a requestor will or will not have their fee waived, but we decline to adopt the commenter's proposal to treat any evidence of one of the three grounds as conclusive proof.

Even though the fee statute does not mention fee waivers, DHS has interpreted the discretion it vests in the agency to allow fee exemptions or waivers subject to certain conditions or criteria. Section 245(l)(7) of the INA requires DHS to permit certain requestors (those applying "for relief through final adjudication of the adjustment of status for a VAWA self-petitioner and for relief under sections 1101(a)(15)(T), 1101(a)(15)(U), 1105a, 1229b(b)(2), and 1254a(a)(3) of [Title 8]") to "*apply for*" fee waivers. 8 U.S.C. 1255(l)(7) (emphasis added). The statute, however, does not specify any standard for approving applications for such discretionary waivers.

In this rule, discretionary waivers of fees are limited to situations where the party requesting the benefit is unable to pay the prescribed fee. 8 CFR 106.3(a)(1)(i). A person can demonstrate an inability to pay the fee by establishing receipt of a means-tested benefit at the time of filing, household income at or below 150 percent of the

FPG at the time of filing, or extreme financial hardship due to extraordinary expenses or other circumstances that render the individual unable to pay the fee. 8 CFR 106.3(a)(1)(i). Finally, a person must submit a request for a fee waiver on the form prescribed by USCIS in accordance with the instructions on the form. 8 CFR 106.3(a)(2).

USCIS generally applies a burden of proof of preponderance of the evidence for the information provided with immigration benefit requests.[182] While DHS has increased the availability of fee waivers and clarified their requirements in this rule, it remains the requestor's burden to establish that they are more likely than not eligible for a fee waiver. *See* 88 FR 458. Because the fee statute does not specify any standard for approving applications for such discretionary waivers, DHS will retain the ability to determine that an individual who meets the eligibility requirements for a fee waiver does not merit a waiver in the exercise of discretion. *See* 8 CFR 106.3(a).

Comment: Commenters stated that DHS should modify its rules so that a fee waiver request would be automatically approved if not decided within 45 days.

Response: DHS declines to impose the commenter's deadline on USCIS adjudication of fee waiver requests. Imposing an arbitrary deadline on fee waiver reviews would require USCIS to allocate limited resources to prioritize fee waiver requests above most other adjudicative actions to prevent lost revenue and risk its ability to maintain adequate service levels. USCIS must retain the flexibility to assign resources where they are needed. Although USCIS received 532,417 fee waivers in FY 2022, an average of over 2,000 per workday, most fee waivers are adjudicated within 8 to 10 days at the Lockboxes and 90 percent are completed within 15 days. DHS acknowledges that some fee waiver requests took longer to adjudicate during the COVID–19 pandemic, but DHS is working diligently to deliver timely service.

Comment: Multiple commenters said fee waiver eligibility based on the stipulated bases should be incorporated into the regulatory text. A commenter said the preamble recites the current three grounds for fee waivers since 2010 but the actual proposed code section only refers to inability to pay and does not specify these specific grounds. To prevent future confusion or interpretations, the commenter said the three grounds should be mentioned in the code itself since the preamble is not legally enforceable. Likewise, another commenter recommended that USCIS include the standards in the final rule so that they are codified and less susceptible to being modified by a future administration. The commenter said doing so would also formalize the adoption of such standards, which have been in use for over a decade. A commenter asked USCIS to incorporate the eligibility criteria into the Policy Manual at Volume 1, Part B, Chapter 4, as well as the proposed regulations.

Response: After considering the public comments, DHS has decided to codify the three means of demonstrating eligibility for a fee waiver at 8 CFR 106.3(a)(1)(i). USCIS intends to update the Policy Manual to reflect this when the final rule takes effect. However, while meeting any of the three criteria will make a requestor presumptively eligible for a fee waiver, USCIS will still retain the discretion to approve or deny a fee waiver. Denial of a fee waiver will result in rejection of a benefit request and neither the fee waiver denial nor the rejection may be appealed.

Comment: A commenter suggested that USCIS include receipt of financial aid through the Free Application for Federal Student Aid (FAFSA) as an additional way to prove eligibility for a fee waiver.

Response: DHS declines to adopt the commenter's proposal because there are many types of student financial aid obtainable by filing the FAFSA that do not reflect significant financial need and may not meet the definition of means-tested benefit as stated in this final rule, *see* 8 CFR 106.1(f)(3), such as grants, merit scholarships, and student loans.[183]

Comment: Multiple commenters recommended that USCIS adopt an appeals or formal review process for fee waiver denials.

Response: DHS also declines to adopt an appeals process for fee waiver denials because this would compound the time and costs of adjudicating fee-waivers and require that additional costs be transferred to fee-paying requestors. Those who believe that their fee waiver request was wrongfully denied may refile their request.

4. Authority

Comment: One commenter recommended that USCIS limit the Director of USCIS' discretion to authorize additional fee waivers, as put forth in the 2019/2020 fee rule. The commenter remarked that limiting such discretion is necessary to limit ''politically motivated abuse'' of fee waiver eligibility policies and protect fee-paying applicants from unfair cost increases to cover such abuse.

Response: This rule retains the feature of the prior 2019/2020 fee rule that permits the USCIS Director to delegate the discretionary fee waiver authority only to the USCIS Deputy Director.[184] USCIS declines to adopt the additional restrictions on discretionary waiver authority that were contained in the 2019/2020 fee rule. The commenter did not cite any past examples of ''politically motivated abuse'' of this discretionary authority. DHS believes that maintaining the authority for this extraordinary relief with the leaders of USCIS, coupled with the requirement that the authority only be exercised when consistent with the law, will ensure that it is administered consistently, timely, and responsibly.

5. Requiring Submission of Form I–912

Comment: Multiple commenters expressed concern that requiring the Form I–912 and not allowing applicants to make the request for a fee waiver via a written request would create an additional burden for applicants. One commenter requested that fee waivers remain expansive such that any written requests remain permitted. Some commenters asserted that, if an individual can successfully demonstrate the need for the fee waiver via a written request, USCIS should continue to accept them, and that requiring Form I–912 reduces flexibility for applicants with special circumstances. One commenter asserted that there would be a substantial time burden to complete the Form I–912 in lieu of an affidavit regarding their client's income and expenses, while another commented referred to fee waiver process as long and difficult.'' Another commenter said that printing, translating, completing, and sending the form requires additional costs that applicants who are in financial need likely do not have. Another commenter added that certain requestors may lack access to printers, internet services, or other infrastructure. The commenter also stated that the proposed Form I–912 is a complex nine-page form, with eleven pages of

[182] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''USCIS Policy Manual,'' Vol. 1, ''General Policies and Procedures,'' Part E, ''Adjudications,'' Chp. 4, ''Burdens and Standards of Proof,'' *https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-4* (last updated Nov. 8, 2023).

[183] *See* U.S. Dep't of Educ., ''Federal Student Aid, Types of Financial Aid: Loans, Grants, and Work-Study Programs,'' *https://studentaid.gov/understand-aid/types* (last visited Aug. 15, 2023).

[184] *Compare* 8 CFR 106.3(c), *with* 8 CFR 106.3(b) (Oct. 2, 2020).

instructions, and several of the form's questions may not apply to the requestor or require significant additional explanation that is better suited for an affidavit. The commenter added that requiring Form I–912 creates an unnecessary burden on pro se survivors, survivors with limited English proficiency, and high caseload service providers. A different commenter said the proposal places an undue burden especially on the most vulnerable groups who would otherwise qualify for immigration benefits. Other commenters said that requiring Form I–912 would disproportionally affect pro se applicants and those with limit English skills, and therefore allowing fee waiver requests without Form I–912 would align more closely with the ''inability to pay'' standard. Another commenter predicted that the proposed rule would require USCIS to scan and review extra pages of the Form I–912, and that USCIS would incur significant mailing costs due to rejections resulting from confusion around the complex form. One commenter asserted that allowing individuals to request a fee waiver via written request instead of Form I–912 would address the burden of COVID–19 on undocumented and immigrant communities that require access to forms to receive USCIS benefits.

Response: After considering public comments in response to the proposed requirement to submit Form I–912, DHS will continue to allow written statements in lieu of submitting Form I–912. DHS acknowledges that requiring submission of Form I–912 could create an additional burden on certain requestors, particularly those struggling financially. *See* 88 FR 402, 458 (Jan. 4, 2023).

DHS also recognizes that some requestors may experience an extra burden due to that printing, translating, completing, and sending the form requires additional costs that applicants, particularly those who are struggling financially. DHS also recognizes these applicants may need additional flexibilities, which may improve access to immigration benefits consistent with E.O. 14012, 86 FR 8277 (Feb. 5, 2021). Because less than one percent of fee waivers currently are requested by written request instead of Form I–912, it is unlikely that continuing to allow written requests will significantly impact USCIS operations. *See* 88 FR 402, 458 (Jan. 4, 2023). For these reasons, this final rule maintains the current effective regulation that allows requestors to obtain a fee waiver by written request without filing Form I–912.

Comment: In response to the proposed rule's statement that more than 99 percent of fee waiver requested are submitted with Form I–912, multiple commenters stated it is preferable that the remaining requestors receive an RFE instead of a denial. These commenters suggested that these RFEs be accompanied by information related to the Form I–912 ''as a means of proactively addressing potential confusion'' regarding eligibility criteria. The commenters stated that this would be more consistent with E.O. 14012 and better facilitate access to immigration benefits.

Response: For the reasons noted previously, this final rule allows submission of fee waiver requests via written request instead of using Form I–912. However, DHS will not issue RFEs in response to insufficient fee waiver requests. Holding and monitoring cases where an RFE was sent for a timely response would add burden to what is an already burdensome process for USCIS. USCIS will continue to review training and decision notices to improve adjudications of fee waivers and provide additional information for requestors.[185]

Comment: Multiple commenters recommended improvements to the Form I–912. One commenter stated that the form is inefficient and suggested reducing the number of unused pages by making them attachments rather than sections. Another commenter recommended that USCIS eliminate questions on the Form I–912 that are not relevant to fee waiver eligibility and ensure that supporting documentation is considered liberally. For example, the commenter suggested two questions be eliminated: Part 1, Question 2, which requests the applicant's immigrant or non-immigrant status; and Part 2, Question 6, which requests the applicant's Social Security number.

Response: DHS appreciates commenters' feedback regarding the length of Form I–912, Request for Fee Waiver. Depending on their ground of eligibility, as indicated on the form and instructions, requestors do not need to fill out every section of Form I–912. However, DHS does not believe that these unused sections, which can be easily skipped, create a substantial paperwork burden for requestors. Requiring requestors to locate and attach a separate addendum depending on their ground of eligibility could create a greater paperwork burden. DHS notes that immigration status is relevant to eligibility because, for example, some fee waivers are specific to the requestor's immigration status. USCIS is revising the USCIS Form I–912 to reduce the time and cost burden to respondents. The Social Security number data field will be removed as part of those edits. DHS believes that a requestor's Social Security number no longer serves a purpose because Internal Revenue Service (IRS) tax return and tax account transcripts redact the filer's Social Security number. For further information on compliance with the Paperwork Reduction Act, see Section V.J of this preamble.

Comment: Another commenter wrote that low-income naturalization applicants who currently require a fee waiver are barred from applying for naturalization online because the Form I–912 cannot be filed online. The commenter stated as a matter of equity, both online and paper filings should be available to everyone, regardless of their income status. The commenter concluded that without an option for online filing of the Form I–912, paper filings for the Form N–400 would continue to cause inefficiencies.

Response: USCIS continues to work on incorporating Form I–912 and all forms into its online filing platforms.

Comment: A commenter stated that the Form I–912 is not statutorily required. The commenter further remarked that USCIS does not point to evidence that requiring Form I–912 for fee waiver requests produce more consistent results or relevant evidence in assisting fee waiver determinations.

Response: For the reasons noted previously, this final rule allows submission of fee waiver requests via written request instead of using Form I–912. With regards to the assertions made by the commenter, DHS notes the following: The INA authorizes the Secretary to ''prescribe such forms of [...] papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority.'' INA sec. 103(a)(3), 8 U.S.C. 1103(a)(3). The Form I–912 and other USCIS forms are used to solicit information relevant to benefit requests and facilitate standardized adjudication in a timely manner. As previously indicated, most requestors submit Form I–912 to request fee waivers. A 2019 paper showed that standardization of the fee waiver for citizenship applications in 2010 raised naturalization rates among low-income immigrants, and these gains were particularly sizable among those

[185] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Additional Information on Filing a Reduced Fee Request,'' *https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-reduced-fee-request* (last updated Oct. 31, 2023).

immigrants who typically face higher hurdles to accessing citizenship.[186]

Comment: A commenter recognized the need to create a more uniform policy for adjudicating requests for fee waivers. However, the commenter expressed concern that the list of expenses outlined in the Form I–912 fails to take into consideration necessary expenses often incurred by their clients and does not fairly represent their ''inability to pay'' the filing fees required. The commenter did not indicate what additional expenses should be included on the form.

Response: DHS interpreters this comment to refer to Part 6, Item 3 (''Total Monthly Expenses and Liabilities'') of Form I–912. DHS notes that the list of expenses includes a check box for ''other,'' and additional lines where requestors can list expenses not included in the list. Requestors can also include additional information about expenses in Part 11 (''Additional Information'').

6. Evidence for VAWA, T, and U Requestors

Comment: Multiple commenters wrote in support of fee waivers for VAWA self-petitioners, as well as for T and U nonimmigrant status requestors. One commenter wrote that fee waivers help remove forms of coercion and control by human traffickers and abusive individuals by providing life-saving opportunities for victims of crime to escape these situations and access long-term stability. The commenter remarked that these benefits allow victims of crime to support law enforcement investigations that help prevent and punish serious crimes. Another commenter stated the importance of fee waivers as a tool for survivors to recover from financial abuse and that fee waivers make it possible for survivors to ensure their safety or necessities when applying for immigration relief.

Response: DHS agrees that the availability of fee waivers and fee exemptions for vulnerable populations is important. DHS remains committed to the goals of its humanitarian programs and to providing fee waivers and fee exemptions for these populations as outlined in this final rule. *See* 8 CFR 106.3.

Comment: One commenter expressed support for USCIS' proposed clarification that an applicant is eligible for a fee waiver where they demonstrate inability to pay by a preponderance of the evidence. However, the commenter asked USCIS to adjudicate fee waiver requests for immigration benefits associated with or based on a pending or approved petition or application for VAWA benefits or T or U nonimmigrant status under the ''any credible evidence'' standard. The commenter concluded that the evidentiary standard for receipt of a fee waiver should not be more stringent than the evidentiary standard for the legal protections Congress created for survivors under VAWA and the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA).

Response: DHS acknowledges the difficulties that VAWA, T, and U requestors may face in obtaining evidence in support of fee waiver requests, which is why DHS has increased the number of fee-exempt forms for these groups in the final rule. *See* Table 5B; 8 CFR 106.3(b). For these fee-exempt requests, VAWA, T, and U requestors do not need to sustain any burden of proof to avoid paying a fee, which is consistent with the VTVPA. However, DHS believes that ''preponderance of the evidence'' remains the appropriate standard for adjudicating other fee waiver requests by VAWA, T, and U requestors. Most USCIS fee waiver requests involve naturalization and citizenship-based applications (N-Forms), which are filed multiple years after the requestor has received their protection-based form of relief and obtained LPR status. Mindful of the difficulties that victim-based categories may continue to face in obtaining evidence to support fee waiver requests, DHS has provided flexibilities for VAWA, T, and U populations in requesting fee waivers. For example, the revised Form I–912 instructions issued with this rule provide that if a household member is an abuser or human trafficker, then their income will not be included in measuring the requestor's household income. In addition, the instructions also list victimization as an example of financial hardship causing a requestor to be unable to pay. Further, if a VAWA, T, or U requestor is unable to obtain documentation, they can explain why and submit other evidence to demonstrate their eligibility as provided in the Form I–912 instructions. However, the burden of proof remains on the individual who is requesting a fee waiver and DHS will not presume that a benefit request that is not already exempt from a fee should automatically receive a fee waiver.

7. Cost of Fee Waivers

Comment: One commenter stated that, in recent years, USCIS has transferred significant costs to fee-paying applicants and beneficiaries as the result of an overbroad fee waiver policy, and estimated foregone revenue has increased significantly. The commenter said that, in this proposed rule, DHS did not report how much revenue USCIS anticipates foregoing because of fee waiver projections.

Response: DHS believes that continued fee waivers for certain populations provides a crucial avenue for those who would have otherwise not been able to submit a request. Table 6 below summarizes historical fee waiver volume. Contrary to the commenter's assertion, waived fees as a proportion of IEFA revenue has been stable over time, and current levels are significantly below those in FYs 2015–2017. This does not demonstrate an overbroad fee waiver policy where waived fees have increased significantly.

[186] Vasil Yasenov, et al., ''Standardizing the fee-waiver application increased naturalization rates of low-income immigrants,'' 116 (34) Proc. Nat'l Acad. Sci. U.S. 16768 (2019).

Table 6. USCIS Fee Waiver Request Receipts, Approvals, and Denials, FY 2013 – FY 2022.[187]

FY	Receipts	Approvals	Denials	Waived Fees Estimate[188]	Percentage of IEFA Revenue
2013	541,329	403,227	138,063	$222,833,915	9%
2014	572,835	457,576	115,163	$248,726,775	10%
2015	638,793	518,777	119,935	$283,162,095	10%
2016	753,402	627,959	125,118	$344,293,760	12%
2017	684,675	588,732	95,200	$367,914,465	11%
2018	535,412	460,821	74,616	$293,494,715	9%
2019	481,068	410,485	70,583	$254,200,885	8%
2020	406,112	329,571	76,543	$207,677,895	6%
2021	441,184	369,948	71,241	$229,415,245	6%
2022	532,417	448,702	83,616	$246,603,960	7%

Comment: A commenter requested that USCIS ensure that fee-paying applicants do not bear the costs of immigration benefit requests where fee waivers are inappropriate or unnecessary. The commenter recommended that USCIS adopt a different approach, consistent with the ''beneficiary-pays'' principle, that considers whether a fee waiver is either statutorily required or otherwise appropriate given the nature of the immigration benefit sought, particularly whether such beneficiaries are subject to the public charge ground of inadmissibility. The commenter wrote that INA sec. 286(m), 8 U.S.C. 1356(m), does not require that DHS provide any services without charge, but that the TVPRA requires DHS to permit fee waivers for certain applications. The commenter stated that USCIS should limit fee waivers to immigration benefits for which USCIS is required by law to consider a fee waiver, as was put forth in the 2019/2020 fee rule. They added that USCIS could allow fee waivers for humanitarian programs and applicants not subject to the public charge ground of inadmissibility or affidavit of support requirements under INA sec. 213A, 8 U.S.C. 1183a, including petitioners and recipients of Special Immigrant Juvenile (SIJ) classification and those classified as Special Immigrants based on an approved Form I–360. The commenter stated that USCIS should continue to preclude fee waivers from individuals that are required to have financial means for the status or benefit sought. Another commenter asserted that it is unfair that one out of eight petitions receive a fee exemption or waiver, and that humanitarian goals should be funded by Congress or DHS general appropriations rather than shifting lost revenue to other program fees.

Response: For reasons discussed in the proposed rule, *see* 88 FR 402, 424–426 (Jan. 4, 2023), and in section IV.C.4 of this preamble, DHS has decided to shift away from the beneficiary-pays model that was the primary objective of the 2019/2020 fee rule, and more toward the ability-to-pay approach that has historically guided USCIS fee schedules. While INA sec. 286(m), 8 U.S.C. 1356(m), does not require that DHS provide any services without charge, the statute contemplates that DHS would regularly do so for asylees and similarly situated classes of applicants. DHS considers this to be the more equitable approach in setting fees. In deciding which forms should be eligible for a fee waiver, DHS considered whether each waiver is statutorily required or otherwise appropriate given the nature of the immigration benefit sought, including whether the requestor would be subject to the public charge ground of inadmissibility. A fee waiver is unavailable in the case of immigration benefit requests that require demonstration of the applicant's ability to support themself, or that are based on a substantial financial investment by the petitioner.[189] Most fee-waivable forms involve humanitarian immigration categories in recognition of the financial difficulties faced by members of these groups.[190] DHS has generally made citizenship and naturalization forms eligible for waived and reduced fees in recognition of the social and economic benefits that the United States receives from new citizens.

[187] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Use of Fee Waivers, Fiscal Year 2023 Report to Congress'' (June 20, 2023), *https://www.dhs.gov/sites/default/files/2023-08/23_0727_uscis_use_of_fee_waivers_q1.pdf.* Not all fee waiver applications are adjudicated in the same fiscal year that they are received. Likewise, not all approvals and denials occur in the same fiscal year in which a fee waiver request is filed. Thus, the number of approvals and denials does not equal fee waiver request receipts.

[188] Note that the budgetary impact of fee waivers is less than the total amount of waived fees, as it would be unreasonable to expect the same volume of filings absent the availability of fee waivers. Available USCIS fee waiver data lack the granularity necessary to delineate waived fees in cases of forms with multiple filing fees. The higher fee is assumed to estimate the waived fees. Additionally, the fee schedule change in December 2016 and the timing of fee waiver approvals may slightly skew FY 2017 waived fee estimates because of fee waiver adjudication timeframes (see footnote 16). Finally, automatic biometric services fee waivers associated with underlying forms that require biometrics are not captured adequately and are underreported.

[189] In 2007, regulations considerably limited which application types could apply for fee waivers from almost all of them to roughly one-third of them. *See* 72 FR 29851, 29874 (May 30, 2007). DHS made no changes to the types of applications that could apply for fee waivers in the 2010 and 2016 fee rules.

[190] While fee waivers are not generally available in employment-based cases, due to the unique circumstances present in the CNMI, an exception is Form I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, for an employer to petition on behalf of CW–1 nonimmigrant beneficiaries in the Commonwealth of the Northern Mariana Islands (CNMI). *See* 74 FR 55094, 55098 (Oct. 27, 2009).

8. Other Comments on Fee Waivers

Comment: A few commenters stated that the fee waiver process is lengthy or difficult. One commenter said that DHS should simplify the process for obtaining fee waivers to remove unnecessary barriers, without specifying how the process should be simplified or what barriers should be removed. Another commenter stated that the process of obtaining the requisite documentation to file a fee waiver request is difficult and delays the process of submitting applications by weeks or months. They also wrote that ability to work is often contingent upon obtaining certain immigration benefits, which creates financial hardship for applicants. Another commenter stated that fee waivers are not automatic and often add more time to an application, which negatively impacts immigrants in desperate situations.

Response: DHS acknowledges that obtaining a fee waiver requires the submission of evidence demonstrating the inability to pay that some requestors may find burdensome. Nevertheless, approving fee waivers without evidence of inability to pay would pose a fiscal risk to USCIS. Thus, DHS has decided that it will not approve fee waivers without determining the applicant is eligible under the fee waiver regulations. In this final rule, DHS has provided additional fee exemptions, *see* Table 5B, and updates to the Form I–912 for additional efficiencies and to minimize its burden, *see* 88 FR 402, 458 (Jan. 4, 2023). Form I–912 has an estimated time completion of one hour and ten minutes. USCIS strives to continually improve its case processing so that fee waivers can be adjudicated in a timely, effective manner while balancing access, affordability, and financial sustainability.

Comment: Multiple comments expressed concerns about the effect of denied fee waiver requests on application filing dates. One commenter recommended that USCIS treat the date that forms are received together with a fee waiver request as the official filing date ''for the Motion, Appeal or Case.'' The commenter asserted that current procedures and practices can result in denial of due process to indigent and low-income immigrants who seek fee waivers and recommended that USCIS should allow the applicant to recapture the initial filing date if they pay the required fee within 30 days of a fee waiver denial, which is similar to State courts' approach in civil or family cases. The commenter asserted that the USCIS' current approach violates VAWA confidentiality protections under 8 U.S.C. 1367 for immigrant crime victims because their cases are not logged as protected cases in USCIS systems until their fee waiver is granted. Another comment stated that USCIS' policy of not retaining a filing date for an application with a rejected fee waiver leads to low-income individuals facing difficult situations in which the only way to ensure an application will be filed before a relevant deadline is to pay a fee that they are financially unable to afford. Some commenters stated that denied Form I–730 petitioners often file the Form I–290B to seek reconsideration of erroneous denials. If the fee waiver for the Form I–290B is denied and the individual is unable to pay the fee, the individual is effectively denied the opportunity to contest the denial of the Form I–730, and the delay in process may result in the petitioner losing the option to resubmit the Form I–730 within the 2-year deadline.

Response: DHS considered all the suggestions made by these commenters but declines to adopt a policy of treating a denied fee waiver request as establishing a filing date for the underlying form for similar reasons that it does not accept an improperly filed Form I–130 or I–140 as establishing a priority date. *See* 8 CFR 204.1(b), 204.5(d). Were DHS to adopt such a policy, it would encourage the early filing of improperly completed forms to capture an advantageous filing or priority date. DHS regulations provide that the receipt date is the actual date of physical receipt at the location designated for filing such benefit request, with proper fee or approvable fee waiver request. 8 CFR 103.2(a)(7)(i). DHS disagrees that the regulation violates due process or 8 U.S.C. 1367 for a denied fee waiver request. In this final rule, DHS has further expanded the number of VAWA, T, and U-related forms that are fee exempt, *see* Table 5B, for which there will be no delay in applying protections under 8 U.S.C. 1367. For the remainder of VAWA, T, and U-related requests, the requestor should already be listed in USCIS systems as protected under 8 U.S.C. 1367. In the case of a Motion to Reopen for a denied Form I–730, Refugee/Asylee Relative Petition, if the original, timely-filed Form I–290B, Notice of Appeal or Motion, is rejected due to a denied fee waiver request, USCIS may exercise its discretion to accept a subsequent, untimely Motion to Reopen. *See* 8 CFR 103.5(a)(1)(i). However, in the case of a Motion to Reconsider for a denied Form I–730, if the original, timely-filed Form I–290B is rejected due to a denied fee waiver request, USCIS lacks discretion to accept a subsequent, untimely Motion to Reconsider. *See* 8 CFR 103.5(a)(1)(i).

Comment: Several commenters expressed concern over USCIS fee waiver denials, stating the following:

• Denials generally give no specific information as to why the applicant's evidence was deemed insufficient and is accompanied by boilerplate lists of evidence that may be submitted, even when the individual has submitted such evidence.

• Clearer fee waiver denials would decrease the volume of fee waiver requests and help with backlog and efficiency.

• Regulations should require fee waiver denials to provide some reasoning to specifically describe why the submitted evidence was not considered sufficient and what additional evidence would be deemed adequate for the application.

• Denials task the applicant with the impossibility of proving a negative by reiterating that tax filings and paystubs are proof of income, yet individuals with no income may have no income tax filings due to earning less than the IRS income tax filing threshold, nor paystubs during the period of unemployment.

Response: DHS acknowledges commenters' concerns that fee waiver denials do not receive a detailed, individualized denial letter. However, DHS must weigh this against the additional costs of individualized fee waiver denials and has decided to limit this cost in favor of the general expansion of fee exemptions and waivers contained in this rule. *See* Table 5B. As stated previously, USCIS receives over 2,000 fee waiver requests per workday and approves 84 percent of them. The current Form I–912 instructions allow requestors to provide evidence of lack of income by describing the situation that qualifies them for a fee waiver. The instructions also state that, if available, requestors may submit affidavits (*e.g.,* from religious institutions, nonprofits, community-based organizations, or similarly recognized organizations) indicating that the requestor is currently receiving some benefit or support from the organization verifying (or attesting) to their situation. DHS will continue to review the fee waiver process for areas that may be improved. In general, if a fee waiver request is denied, the form may be resubmitted without prejudice with additional documentation in support of the fee waiver or with the fees.

Comment: A few commenters said there is a lack of knowledge around fee

waiver eligibility and around the existence of fee waivers as a possibility for low-income individuals, which presents a barrier for those who are interested in applying for immigration benefits. The commenters stated that USCIS should accompany the proposed rule with public education efforts aimed at prospective applicants with clear, culturally sensitive, and multilingual information on fee waivers and the grounds for eligibility. The commenters further suggested USCIS include efforts used in the Interagency Strategy for Promoting Naturalization that was developed in E.O. 14012. Another commenter stated that creating more categories and avenues by which one can show proof for fee waivers does little if basic access and understanding on how to navigate forms is not there for the communities that need it most.

Response: DHS agrees that it is important to alert potential requestors to the existence of fee waivers. Every form instruction for which a fee waiver is possible notifies the requestor of their ability to request a fee waiver. USCIS is removing the option for a written request in this rule for the reasons stated earlier. However, USCIS will continue to provide information about fee waivers for all its forms and the reduced fee for Form N–400 on our website,[191] at stakeholder and public engagements and using other public education efforts. For example, USCIS routinely hosts local and virtual engagements on naturalization, in which we discuss fee waivers and the reduced N–400 fee.[192] The Form G–1055, Fee Schedule, also identifies which USCIS forms are eligible for a fee waiver.

Comment: A commenter asked USCIS to discontinue the different treatment of applications submitted with fees and with fee waivers. The commenter reasoned that their clients who request fee waivers often must wait noticeably longer than applicants who pay the filing fees to receive the receipt notices for their application. Moreover, the commenter stated, the delays in receipt notices has impeded their ability to timely seek prosecutorial discretion for clients in removal proceedings based on their pending applications for relief before USCIS. The commenter concluded that this different treatment causes harm to their most vulnerable clients.

Response: USCIS strives to issue receipt notices in a timely manner for all forms. As discussed earlier in Section IV.E.4. of this preamble, USCIS adjudicates most fee waiver requests within days of receipt. However, it takes longer to issue a receipt for a form that is accompanied by a fee waiver request because fee payments clear almost immediately, while adjudicating the fee waiver request requires additional time to review the waiver request. This different treatment of fee waiver requests is justified by the additional processing steps that they require.

Comment: Commenters stated that USCIS should improve the fee waiver process by training adjudicators on fee waivers and otherwise addressing erroneous rejections and delays in issuing receipts.

Response: USCIS currently provides guidance and training to its officers on fee waivers. USCIS strives to continuously improve its training to reduce erroneous rejections and delays in receipts. DHS believes that codifying the rules for fee waiver eligibility and modifying the Form I–912 instructions will help to reduce erroneous rejections and delays.

F. Fee Exemptions

As discussed in the Changes from the Proposed Rule section, many commenters requested that DHS provide more fee exemptions and free services for humanitarian related benefit requests and DHS is providing more fee exemptions in the final rule. A summary of the current and new exemptions is provided above in Table 5A, 5B, and 5C.

1. Codification of Benefit Categories/Classifications With Exemptions/No Fees

Comment: In the proposed rule DHS proposed to include several fee exemptions that are provided in guidance or form instructions or statute in the Code of Federal Regulations, although that action was not necessary for the exemptions to continue in effect. A couple of commenters generally expressed support for USCIS' proposal to codify fee exemptions in regulations without providing rationale to support this position. Another commenter wrote that the proposed codification of benefit requests with no fees and exemptions is in line with DHS's ''best effort'' to include the ''benefits to the national interest'' when considering the fee schedule changes. Another commenter stated that codifying exemptions promotes stability and ease of access for applicants. One commenter further expressed appreciation for Tables 13A, B, and C in the proposed rule and suggested they be included in the final rule.

Some commenters welcomed the proposal to codify the fee exemption of Form I–360 for SIJs. The commenters reasoned that this population is particularly vulnerable, has no ability to work, and, therefore, lacks the financial means to pay fees for immigration benefit applications. The commenters further remarked that this codification would align with Congress' goal to protect vulnerable children when it created the SIJ classification.

A few commenters welcomed the codification of longstanding fee exemptions for those seeking humanitarian relief, including those applying for asylum, asylees, and refugees. Other commenters said the proposal to codify exemptions for these groups would be consistent with U.S. humanitarian values, as well as legal obligations under U.S. and international law to protect persons fleeing persecution. Multiple commenters welcomed DHS's proposal to codify in the regulations that there is no fee for Form I–589, Application for Asylum and for Withholding of Removal. A commenter wrote that they support the proposed codification, reasoning that it recognizes the importance of access to the asylum system, regardless of a person's financial situation. A couple of commenters stated that the codification would ensure that the United States remains among most parties to the 1951 Refugee Convention and 1967 Refugee protocol who do not charge a fee to apply for asylum. A few commenters wrote that the codification was welcome after the proposal to introduce a $50 asylum fee in the 2020 fee rule. A commenter stated that the previously proposed fee would have deterred those seeking protections afforded by Congress while creating vulnerabilities to trafficking and exploitation.

Response: DHS appreciates the commenters' support of the codification of fee exemptions in regulations and did not make any changes in this final rule based on these comments.

Comment: Several commenters welcomed DHS's plan to continue to provide a fee exemption for the initial filing of Form I–765 for asylees and those with pending asylum applications. One commenter agreed with DHS's determination that requiring a fee for the initial employment

[191] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Additional Information on Filing a Fee Waiver,'' *https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver* (last updated Oct. 31, 2023); U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Fact Sheet: Request for Fee Waivers for Form N–400,'' *https://www.uscis.gov/sites/default/files/document/fact-sheets/FactSheetI-912RequestforFeeWaiverForFormN-400.pdf* (last visited Oct. 10, 2023).

[192] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''USCIS Past Training Seminars,'' *https://www.uscis.gov/citizenship/resources-for-educational-programs/register-for-training/uscis-past-training-seminars* (last updated Sept. 20, 2023).

authorization application would be unduly burdensome and would prevent some asylum seekers from obtaining lawful employment. Another commenter further reasoned that this approach aligns with the 1951 Convention Relating to the Status of Refugees, which requires ''sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals . . . .'' This commenter additionally wrote that providing fee-exempt access to employment authorization affords asylum seekers crucial opportunities to recover from trauma, pay for future immigration benefit fees, and access identification for physical and economic mobility. Another commenter further reasoned that access to employment authorization promotes children's health and well-being by providing protection from unsafe working conditions and exploitation as well as access to basic services.

Similarly, a couple of commenters expressed support for continued fee exemptions for persons admitted or paroled as refugees, including the proposed exemptions for EAD renewal and replacement, Form I–131, Application for Travel Document, and Form I–590, Registration for Classification as Refugee. One of the commenters agreed with DHS's reasoning that continuing to facilitate access to employment authorization and travel documents for those admitted or paroled as refugees is consistent with the 1951 Convention and 1967 Protocol. The commenter further reasoned that making travel documents accessible, which is not an overly costly or burdensome process for USCIS, reflects the reality of refugees who have a need to travel outside the United States for work or other purposes that support U.S. interests, but cannot do so if they unable to obtain a passport from the country from which they sought refuge.

Response: DHS appreciates the commenters' support of the codification of fee exemptions for refugee and asylees in regulation in this final rule.

Comment: A commenter wrote that Form G–1055 contains a typographical error that, if left uncorrected, would lead U nonimmigrants to erroneously believe they are fee exempt from an initial Form I–765 based on a concurrently filed or pending Form I–485. Specifically, the proposed Form G–1055 states that U nonimmigrants seeking to adjust status under INA sec. 245(m) will pay a $0 fee for an initial Form I–765 under category (c)(9), which the commenter said does not reflect the proposed regulation and preamble.

Response: Principal U nonimmigrants who are in the United States are exempt from fees associated with employment authorization when it is issued incident to status, and they are not required to file Form I–765, Application for Employment Authorization, to receive an EAD. *See* 88 FR 460; 8 CFR 214.14(c)(7). Principal U nonimmigrants who are outside the United States are fee exempt for fees associated with employment authorization issued incident to status once they enter the United States and file Form I–765 (initial request under 8 CFR 274a.12(a)(19) and (20)). *See* 88 FR 460. In the proposed rule, DHS proposed to expand fee exemptions for persons seeking or granted U nonimmigrant status for all forms filed before filing Form I–485, Application to Register Permanent Residence or Adjust Status. *See* 88 FR 460–461. As explained in section II.C.9 of this rule's preamble, DHS further expands fee exemptions in this final rule for persons seeking or granted U nonimmigrant status for all forms related to the U nonimmigrant status or adjustment of status under INA sec. 245(l), 8 U.S.C. 1255(l), including an initial Form I–765 for an EAD based on having a pending Form I–485. *See* 8 CFR 106.3(b)(5); Table 5B. DHS believes that these additional fee exemptions, as well as the publication of a final rule Form G–1055 Fee Schedule, mitigate the commenter's concerns.

Comment: A commenter discussed the current economic benefits of TPS, such as the tax revenue generated by TPS holders, and commended codifying the exemption for Form I–821 to secure the continuation of those benefits.

Response: DHS appreciates the commenter's support of the codification of the fee exemption for Form I–821, Application for Temporary Protected Status, when filed by a TPS holder seeking re-registration, *see* 8 CFR 106.2(a)(50)(ii), and did not make any changes in this final rule based on these comments.

2. Proposed Fee Exemptions

a. General Support of Proposed Exemptions

Comment: Some commenters expressed general support for the proposed expansion of fee exemptions for certain humanitarian programs without further rationale.

Response: DHS maintains the fee exemptions as listed in the proposed rule and provides additional fee exemptions for certain humanitarian populations in this final rule. *See* Table 5B.

Comment: Many commenters expressed broad support for the various proposed fee exemptions for VAWA self-petitioners, U nonimmigrant status petitioners and T nonimmigrant status applicants, petitioners for SIJ classification, and other vulnerable populations. One commenter reasoned that the proposed exemptions would increase access to immigration relief for low-income survivors, and thus more completely achieve the goals of humanitarian programs to provide stability and safety from abuse.

Another commenter agreed with USCIS' assessment in the proposed rule that survivors of violence often experience financial abuse and have limited resources, even once they flee from their abusers. The commenter went on to cite research from DOJ, the Bureau of Justice Statistics (BJS), the Borgen Project, and others describing the relationship between domestic violence and financial hardship. Another commenter similarly cited research on the mental, psychological, financial, and legal challenges that survivors of violence face and stated that ensuring survivors' access to immigration benefits is essential to help them escape abusive situations and gain self-sufficiency following victimization.

Citing the INA and the legislative history of VAWA and T and U nonimmigrant status, a commenter said the expanded fee exemptions would align with legislative trends and congressional intent in creating protections for certain victims of crime. The commenter added that expanded access to fee exemptions is consistent with E.O. 14012. Another commenter wrote that the proposed exemptions would align with congressional intent while citing an October 11, 2000, statement from Senator Hatch and TVPRA. Another commenter similarly suggested that the proposed exemptions would align with congressional actions to protect victims of trafficking and abuse and asked USCIS to retain the exemptions in the final rule.

Response: DHS agrees that these populations are particularly vulnerable as victims of abuse or violence, and that, because of this victimization, many will lack the financial resources or employment authorization needed to pay for fees related to immigration benefits. DHS has maintained the proposed fee exemptions and provided additional fee exemptions for certain humanitarian populations in this final rule. *See* 8 CFR 106.3(b); Table 5B.

Comment: Numerous commenters agreed that expanded fee exemptions would eliminate the need for groups that disproportionately experience

financial hardship, and therefore already require a fee waiver, to apply for such waivers. One commenter added that the proposed exemptions would reduce the length of time that applicants for survivor-specific forms of relief would have to wait for a fee waiver to be adjudicated and a receipt notice issued.

Many commenters further reasoned that applying for fee waivers places undue burdens on vulnerable and pro se applicants to produce evidence and meet the filing requirements to obtain a favorable decision and access protections. For example, one commenter stated that many T nonimmigrant applicants lack evidence to support their fee waiver application, including tax forms, pay stubs, and bills in their own name. The commenter also described the harms for victims associated with waiver denials for failing to file proper forms or submit the desired evidence. Another commenter wrote that SIJs without LPR status do not qualify for means-tested benefits, and obtaining proper documentation of the receipt of benefits can be challenging for non-English-speaking populations navigating complex systems. The commenter added that, while fee waiver applications cost legal services providers time and resources to prepare and resubmit when needed, exemptions free up capacity for legal practitioners to prepare the merits of the immigration benefit case and assist more individuals seeking protections. Another commenter further stated that, particularly for vulnerable children who are almost always found eligible for a fee waiver, requesting a fee waiver is an unnecessary step that adds uncertainty to the application process. Another commenter reasoned that fee exemptions would ensure that vulnerable noncitizens do not forgo the opportunity to apply for humanitarian forms of relief.

One commenter, citing a 2016 Citizenship and Immigration Services (CIS) Ombudsman report on inconsistent fee waiver adjudications, said that the exemptions would avoid ''arbitrary'' fee waiver decisions that disproportionately affect vulnerable immigrant populations. Another commenter wrote that, in addition to reducing burdens associated with fee waivers, fee exemptions provide clarity for applicants and their families and allow them to better anticipate the costs of applying for protections. Multiple commenters wrote that eliminating the need to apply for a fee waiver through exemptions would in turn reduce administrative burdens and resources expended for USCIS to adjudicate applications or engage in litigation arising from waiver rejections. Some commenters suggested that these efficiencies would allow USCIS to redirect staff resources away from processing and reviewing fee waiver requests toward adjudicating applications for humanitarian protection, and the resulting decrease in administrative burden to USCIS would mitigate erroneous denials and subsequent delays for survivors.

Response: DHS notes that this final rule maintains and codifies the 2011 Fee Waiver Policy criteria that USCIS may grant a request for fee waiver if the requestor demonstrates an inability to pay based on receipt of a means-tested benefit, household income at or below 150 percent of the FPG, or extreme financial hardship. *See* 8 CFR 106.3(a)(3). While not a change to fee waiver eligibility criteria, DHS believes that codifying these criteria in this final rule will provide consistency and transparency that is responsive to the commenters' concerns.

DHS agrees that there are costs to USCIS in adjudicating fee waivers beyond foregone revenue (*i.e.,* the total fees that fee-waived or fee-exempt requestors would have paid if they had paid the fees). DHS believes that replacing fee waivers with additional fee exemptions removes barriers for applicants who are similarly situated in terms of financial resources and employment prospects. In the proposed rule, DHS proposed fee exemptions for humanitarian populations, including VAWA self-petitioners and requestors for T and U nonimmigrant status, without reducing fee waiver availability. In this final rule, DHS provides additional fee exemptions for these populations as explained in section II.C.9.b. of this preamble.

DHS likewise expects a decrease in administrative burden associated with the processing of requests for fee waivers for categories of requestors that would no longer require a fee waiver because they will be fee exempt. DHS has not quantified the cost savings to USCIS associated with processing fee waiver requests, namely Form I–912. Furthermore, DHS's Regulatory Impact Analysis (RIA) estimates that the fee exemptions and reduction in fee waiver requests will result in quantifiable annual transfer payments from USCIS to the public and opportunity cost savings to the public from not completing and submitting a fee waiver request. *See* Regulatory Impact Analysis 3.P.

In general, where DHS has determined that immigration fees would inequitably impact the ability of those who may be less able to afford the proposed fees to seek an immigration benefit for which they may be eligible, DHS has maintained fee exemptions, waivers, and reduced fees, and provided new fee exemptions to address accessibility and affordability. *See* 88 FR 402, 460–81 (Jan. 4, 2023).

b. T Nonimmigrants

Comment: A few commenters expressed support for the proposed change to exempt fees for all forms for T visa applicants, T nonimmigrants, and their derivatives through adjustment of status. One commenter agreed with USCIS' assessment that the proposal would help more victims of trafficking pursue immigration relief afforded to them by Congress. Another commenter wrote that the proposed rule would align with congressional intent under the TVPRA and international obligations under the Palermo Protocol.

Response: DHS appreciates the commenters' support of the proposed fee exemptions for T visa applicants, T nonimmigrants, and their derivatives, and finalizes these fee exemptions in this final rule. *See* 8 CFR 106.3(b)(2); Table 5C.

c. U Nonimmigrants

Comment: Commenters expressed support for expanded fee exemptions for petitioners for U nonimmigrant status because the combined associated fees to obtain protection prohibit many otherwise eligible petitioners from pursuing U nonimmigrant status. The commenters said the proposed rule would allow petitioners to pursue U nonimmigrant status more expeditiously while saving nonprofit agencies' time.

Other commenters wrote that they had concerns about the effects on U-nonimmigrants, specifically:

- U-nonimmigrants applying for adjustment of status should also be eligible for the same fee exemptions as T and VAWA adjustment applicants.
- U nonimmigrants are similarly situated to T nonimmigrants and VAWA self-petitioners because U nonimmigrants are vulnerable and have suffered similar harm and abuse, which impacts their physical, mental, and financial health due to ongoing trauma. The increased I–485 fee will be even more difficult for U nonimmigrants to cover.
- The higher volume of petitioners for U nonimmigrant status did not justify fewer fee exemptions because both groups remain vulnerable populations, and there are many more refugees than either U visa petitioners or T visa applicants, and it undermines DHS's ability-to-pay philosophy and

perpetuates barriers for vulnerable applicants for humanitarian relief.

- The fees would be prohibitively expensive for U nonimmigrants and VAWA self-petitioners, and total filing fees (I–485, I–765, and I–131) for a family of four would be more than 25 percent of the median annual household income ($44,666), not counting the cost of medical exams or attorney fees.
- Requiring U nonimmigrants and VAWA self-petitioners to pay the filing fees or submit fee waiver requests would be a significant drain on USCIS' limited staff and resources. Providing additional fee exemptions only for certain categories of vulnerable populations is ''arbitrary'' or ''unjustified.''
- A maximum of 10,000 U–1 nonimmigrants become eligible to file Form I–485 each year, and therefore fee exemptions for U nonimmigrant adjustment of status applications would have a minimal impact when considering all the fee generating cases filed each year with USCIS.
- The longer period of employment authorization available to U nonimmigrants compared to T nonimmigrants did not justify their disparate treatment because U nonimmigrants may be unable to work because of trauma and physical injuries.
- USCIS should provide further explanation as to why U nonimmigrants would be treated differently than T nonimmigrants and VAWA self-petitioners with regards to adjustment of status fees.
- DHS has not provided information on the level of the costs that would need to be shifted to other paying applicants if Form I–485 were fee exempted for U nonimmigrants, or the policy considerations counseling against such a shift of costs.
- U nonimmigrants who are victims of domestic abuse may lack income or savings after leaving the abusive situation and may only be able to obtain employment in low-wage positions with no benefits due to language barriers, lack of education and work experience, and the impact of trauma.
- Most petitioners for U nonimmigrant status cannot afford the Form I–485 filing fee despite a bona fide determination (BFD) or a grant of U nonimmigrant status, particularly those adjusting as whole family groups (U–1 and derivatives).
- Not all U nonimmigrant petitioners receive employment authorization through the BFD process, and the absence of a BFD process for T nonimmigrant status applicants, contrary to the T nonimmigrant status regulations, does not support the failure to extend similar fee exemptions to U nonimmigrants.
- T visa holders may qualify for ''continuous presence,'' which allows for employment authorization, and they may receive refugee services from resettlement agencies.
- Even after obtaining employment authorization, U visa victims experience barriers to securing long term employment and earning capacity to pay for adjustment of status fees, and that the criminal proceedings tied to a U visa holder's victimization may not be completed within the 15-year wait between the receipt of employment authorization and the ability to adjust status. Participation in the labor force does not guarantee a rise out of poverty, according to a 2022 study from the Migration Policy Institute finding that more than half of the low-income immigrants of prime working age who worked full-time, year-round earned less than $25,000 a year in 2019.
- Fee waivers are an insufficient substitute for fee exemptions because the small amount of money saved by USCIS limiting fee exemptions in this respect would not be worth the harm imposed on applicants. U nonimmigrant applicants will also lack the evidence needed for fee waivers. Fee waivers will endanger victims and their children by delaying access to the confidentiality protections victims receive when cases are considered filed and given an 8 U.S.C. 1367 flag in the Central Index System, which does not occur until the fee waiver has been adjudicated.
- Requiring U nonimmigrants to file a fee waiver increases the time that pro bono attorneys must dedicate to their cases.
- Adjudicating fee waivers increases administrative burden on USCIS, and fee waivers for U nonimmigrants and their children applying for adjustment of status ignores dynamics of domestic violence, sexual assault, coercion, and child abuse.
- Victims experience physical, economic, and psychological abuse years after leaving their abuser, including during the adjustment of status stage.

Response: DHS acknowledges that T and U nonimmigrants are both vulnerable populations that merit special consideration. After considering the comments, comparing these two victim populations, and weighing options to recover the costs of USCIS, DHS has decided to no longer treat T and U nonimmigrants differently with regard to fee exemptions in this final rule. In addition, DHS has expanded fee exemptions for U petitioners and U nonimmigrants to include Forms I–131, I–192, I–193, I–290B, I–485, I–539, I–601, I–765 (adding renewal and replacement requests), I–824, and I–929. *See* 8 CFR 106.3(b)(5); Table 5B.

Although U nonimmigrants may possess employment authorization for a longer time than T nonimmigrants (88 FR 402, 461, Jan. 4, 2023) the impact of victimization can be lasting and far-reaching, even after the events giving rise to U nonimmigrant status eligibility have concluded.[193] Due to victimization, T and U nonimmigrants face similar employment and financial challenges, which justify similar fee exemptions. Expanding fee exemptions for U nonimmigrants could have resulted in higher fees to other fee payers because of the large number of U nonimmigrants who file Form I–485 and related forms.[194] However, rather than increase fees further than in the proposed rule, DHS revised the USCIS budget to accommodate the revenue generated by the fees and volumes in this final rule. DHS has determined that the humanitarian nature of these programs warrants special consideration when weighed against the transfer of costs to other petitioners and applicants. DHS acknowledges the administrative burden placed on U petitioners and U nonimmigrants, as well as USCIS, by requiring fee waiver requests for this sizeable population, of whom a significant portion may be eligible for fee waivers but struggle to produce supporting documentation due to circumstances resulting from victimization.[195] The changes made in this final rule account for the similar financial circumstances of T and U nonimmigrants, the likelihood that U nonimmigrants would qualify for fee waivers, and the burden reduction in providing fee exemptions to U

[193] However, DHS disagrees with the commenter's characterization of the results of the 2022 study from the Migration Policy Institute (MPI). The commenter wrote that in 2019 more than half of the low-income immigrants of prime working age who worked full-time, year-round earned less than $25,000 a year. However, the MPI report showed that 20 percent of full-time, year-round working immigrants made less than $25,000 a year. *See* Gelatt, et. al, ''A Profile of Low-Income Immigrants in the United States,'' Figure 11, Migration Policy Institute (Nov. 2022) available at *https://www.migrationpolicy.org/sites/default/files/publications/mpi_low-income-immigrants-factsheet_final.pdf.*

[194] The fiscal year limit of 10,000 U visas only applies to U–1 principals and not to derivatives. *See* INA sec. 214(p)(2)(B), 8 U.S.C. 1184(p)(2)(B).

[195] However, with regards to certain forms, such as Form I–485, DHS disagrees that fee waivers may delay confidentiality protections for victims of crimes, since the applicant's protection will already be recognized in USCIS systems following approval of their Form I–918, Petition for U Nonimmigrant Status, or Form I–929.

nonimmigrants for Form I–485 and related forms.

d. VAWA Self-Petitioners

Comment: A commenter expressed support for maintaining fee waivers for survivors seeking adjustment of status such as VAWA self-petitioners who are not filing concurrent I–360s and I–485s and conditional residents seeking waivers of joint filing requirements based on battery or extreme cruelty. Similarly, another commenter expressed support for streamlining the application process for vulnerable populations by providing fee exemptions.

Commenters expressed support for DHS's proposal to exempt certain VAWA-related application fees. A commenter expressed support for the expanded fee exemptions for VAWA self-petitioners for all forms associated with the Form I–360 filing through final adjudication of the adjustment of status application. The commenter said this proposal would allow more abused spouses to obtain LPR status. Another commenter expressed support for the expanded fee exemptions for VAWA self-petitioners for all forms associated with the Form I–360 filing through final adjudication of the adjustment of status application. The commenter said this proposal would allow more abused spouses to obtain LPR status.

However, some commenters wrote of concerns about fee exemptions and waivers for VAWA-based applications as follows:

- USCIS should exempt VAWA applicants from all fees through adjustment of status, regardless of whether Form I–485 was filed concurrently with Form I–360.
- USCIS should provide consistent fee exemptions for Forms I–485, I–212, I–601, and I–131 because this would reduce the significant burden on immigrant survivors who may face risks in having to gather the documents needed to support fee waivers.
- The proposed categories of exemptions were arbitrary and would create confusion, especially amongst pro se applicants who may be unaware of their ability to file concurrently.
- The proposed I–485 fees would be prohibitively expensive for VAWA self-petitioners who file their I–485 separately, and paying the fees could leave them vulnerable to debt and victimization.
- Some VAWA self-petitioners are ineligible to file their I–485 concurrently with the I–360, including self-petitioning spouses and children of LPRs who do not have current priority dates. As a result, this population of self-petitioners would be unable to access a fee exemption for the I–485.
- Other situations exist where a VAWA self-petitioner may be unable to file or face difficulty filing their I–485 concurrently, including certain noncitizens who are in removal proceedings or have an outstanding order of removal; those with derivative children who will age out soon; those who need to file the I–360 quickly to obtain financial independence; or those whose I–130 was converted to a I–360 self-petition.
- It ''strains logic'' to deny fee exemptions and instead require fee waivers for VAWA self-petitioners where most will qualify for fee waivers.
- VAWA self-petitioners, VAWA cancellation of removal applicants, and battered spouse waiver applicants are amongst the victim cases that receive the most fee waivers and the fewest exemptions, and VAWA self-petitioner and derivative children should receive the same access to fee exemptions as SIJ children.
- Foreign-born spouses and children experience higher rates of abuse when the abuser is a U.S. citizen or LPR.
- Requiring some VAWA self-petitioners to pay the filing fees or submit fee waiver requests for form I–485 would drain USCIS' limited resources to investigate the status of the underlying I–360 to determine whether each form I–485 is fee exempt or if the application includes the proper filing fee or a fee waiver request.

Response: DHS acknowledges that VAWA self-petitioners are a particularly vulnerable population as victims of abuse who may not have the financial resources or access to their finances needed to pay for fees when initially filing for immigrant classification, adjustment of status, and associated forms.

DHS also acknowledges that for some VAWA self-petitioners, the ability to file Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, and Form I–485 concurrently is beyond their control. As noted by the commenters, some VAWA self-petitioners are limited by visa priority dates, some are in removal proceedings or have an outstanding order of removal, and some may be the beneficiary of a Form I–130, Petition for Alien Relative, petition that was converted to a Form I–360 self-petition. DHS also acknowledges that in some situations the individual's need for safety puts them in a difficult position of deciding whether to pursue immigration benefits when they may not qualify for a fee exemption because they are not able to file Form I–360 and Form I–485 concurrently. Additionally, VAWA self-petitioners may face challenges in obtaining evidence in support of fee waiver requests, adding a greater burden to the requestor in filing Form I–912. This burden to requestors, combined with the administrative burden to USCIS in processing a high volume of requests for these individuals, many of whom would qualify for a fee waiver, justify exempting VAWA self-petitioners from fees. Considering the benefit to VAWA self-petitioners and USCIS, as well as the humanitarian nature of this program, DHS has codified the fee exemptions in the proposed rule and incorporated additional fee exemptions in the final rule to include applications for adjustment of status and associated ancillary forms, regardless of whether they are filed concurrently with the VAWA Form I–360 self-petition. *See* 106.3(b)(6); Table 5B.

Comment: A commenter expressed concern that, under the new regulation, there would be no fee exemption for Form I–765s filed by a VAWA I–485 applicant. The commenter stated that, under current Form I–360 processing times, VAWA self-petitioners would have to wait 2 years and 8 months to obtain a fee exempt EAD. The commenter emphasized that these documents are often essential for a domestic violence survivor's recovery and future.

Response: DHS acknowledges the commenter's concerns regarding the availability employment authorization. For reasons discussed earlier, DHS has provided additional fee exemptions for VAWA self-petitioners in this final rule, including Form I–765 renewal and replacement requests after Form I–485 is filed. *See* 8 CFR 106.3(b)(6); Table 5B.

Comment: One commenter raised concerns that a fee exemption for Form I–601 Waiver of Inadmissibility in VAWA cases would only be available if the form is filed concurrently with Form I–485.

Response: DHS acknowledges the commenter's concerns regarding the availability of a fee exemption for Form I–601 for VAWA self-petitioners. As explained in section II.C.9 of this preamble, DHS expands fee exemptions in this final rule for VAWA self-petitioners to include Form I–601 filed by individuals who did not concurrently file Form I–360 and Form I–485. *See* 8 CFR 106.3(b)(6); Table 5B.

e. Iraqi and Afghan Special Immigrants

Comment: A commenter wrote that they supported fee exemptions for Iraqi and Afghan special immigrant visa (SIV) and military applicants. Another commenter welcomed the expanded fee

exemptions for Special Immigrant Afghan or Iraqi translators or interpreters, Iraqi nationals employed by or on behalf of the U.S. Government, or Afghan nationals employed by or on behalf of the U.S. Government or employed by the ISAF to all forms associated with filings from initial status filing through final adjudication of the adjustment of status application. The commenter reasoned that Afghans face financial hardships that prevent them from accessing the benefits that Congress intended to provide this population. The commenter further wrote that the exemptions would reduce the burdens on those who support Afghans, including military, veteran, faith, and other communities.

Response: DHS appreciates the support for fee exemptions for Iraqi and Afghan SIV and military applicants. As explained in section II.C.9 DHS further notes that in this final rule it has expanded fee exemptions for this group to include Form I–765 (renewal, and replacement request); Form I–290B (only if filed for any benefit request filed before adjusting status or for Form I–485 and in associated ancillary forms) and Form I–824. *See* Table 5B and 8 CFR 106.3(b)(3).

On August 29, 2021, President Biden directed the DHS to lead implementation of ongoing efforts across the government to support vulnerable Afghan nationals, including those who worked alongside the U.S. government in Afghanistan for the past two decades, as they safely resettle in the United States. These coordinated efforts are known as OAW, now transitioning to Operation Enduring Welcome (OEW). CBP has exercised its discretion to parole many Afghan nationals, on a case-by-case basis, into the United States for urgent humanitarian reasons. Further, the Department of State (DOS) continues to coordinate the travel of Afghan nationals to the United States. Many Afghan nationals are also applying to USCIS for immigration benefits such as parole, employment authorization, Afghan special immigrant status, lawful permanent residence, waivers of inadmissibility, asylum, TPS, and family-based petitions.

As we transition into OEW, helping Afghan nationals who are now U.S. citizens and LPRs bring their family members who are still in grave danger in Afghanistan out and into safety is an Administration priority. USCIS will continue to support family reunification by exempting certain fees and using the funds Congress appropriated for efforts under OAW and OEW.

Form I–824 is used to request further action on a previously approved application or petition. A spouse or unmarried child younger than 21 years following to join a principal immigrant may receive the same special immigrant classification as a principal Afghan special immigrant. Some the Afghan LPRs who adjusted status as Afghan special immigrant (SIV LPRs) under the OAW effort are now seeking follow-to-join immigration benefits for their spouse and eligible children outside the United States. To permit a spouse and eligible children to apply for an immigrant visa with DOS, an Afghan SIV LPR must file a Form I–824 asking USCIS to notify DOS of the principal Afghan special immigrant's adjustment of status in the United States.

USCIS is legally required to exempt this fee for Afghan SIVs under section 602(b)(4)(C) of the Afghan Allies Protection Act (8 U.S.C. 1101 note), which prohibits any fees ''in connection with an application for, or issuance of, an [Afghan SIV].'' DHS believes allowing a fee exemption for all Afghan SIV LPRs' Form I–824 filing fee will also help the continuing resettlement efforts and reunite separated family members under OAW and OEW.

f. Special Immigrant Juveniles (SIJs)

Comment: A few commenters expressed support for the proposed exemptions for all forms associated with SIJ classification through final adjudication of the adjustment of status application. Citing obligations under international agreements, one commenter concluded that the proposed exemptions would represent a crucial step toward upholding international best practices related to neglected, abused, or exploited children who lack the necessary permanence, benefits, and protections to thrive. Another commenter wrote that SIJs are court-dependent; that they have experienced abuse, neglect, or abandonment; and that such exemptions would help youth achieve stability and self-sufficiency. Finally, the commenter recommended that USCIS make it clear that the rule would eliminate SIJs' application fees for any forms filed by SIJ petitioners or recipients before adjustment of status, in the event of future changes to immigration law and policy.

Response: DHS appreciates the support for fee exemptions for SIJs. As DHS explains in section II.C.9, it has expanded fee exemptions for this group to include Form I–290B (if filed for any ancillary forms associated with Form I–485). *See* Table 5B; 8 CFR 106.3(b)(3). DHS believes these regulations as written address the commenter's concerns, but we note that this rule does not preclude any future changes to immigration law and regulations. This rule therefore also does not prevent changes based on future changes in law or regulations.

Comment: Multiple commenters expressed support for the proposed fee exemptions for SIJ petitioners and SIJ classified noncitizens, but also recommended extending the fee exemption to any Form I–765 filed by an SIJ petitioner, even if not associated with a pending application to adjust status. The commenters stated that this would help children who have been granted SIJ-based deferred action who apply for or renew employment authorization under the (c)(14) category while awaiting visa availability. A commenter also stated that this would help mitigate delays and reduce burden on USCIS.

Response: DHS appreciates commenters' feedback regarding the rule's fee exemptions for those seeking or granted SIJ classification, but believes these comments are based on a misreading of the proposed rule. The proposed and final rule exempts fees for any Form I–765 filed by a person seeking or granted SIJ classification, regardless of whether they have filed a Form I–485. *Compare* 8 CFR 106.3(b)(1)(v), *with* proposed 8 CFR 106.3(b)(1)(v). DHS believes that the rule, as drafted, makes this sufficiently clear and has therefore not made any changes in this final rule.

g. Asylees and Refugees

Comment: Commenters expressed appreciation for the proposed fee exemptions for refugees submitting Form I–131 and for refugees submitting Form I–765 to renew or replace their EAD because such exemptions are consistent with the 1951 Refugee Convention and Congress's recognition that refugees are more likely than other immigrant populations to lack economic security and require support on their path to self-sufficiency. Another commenter similarly expressed support for USCIS' proposed fee exemptions for Form I–131 for persons admitted or paroled as refugees. Another commenter wrote that the cost burden should not be shifted to account for additional exemptions, and DHS should eliminate the refugee fee exemption for Form I–131, because a refugee with an ability to travel internationally can pay for Form I–131. The commenter also wrote that there is less justification for the I–131 fee exemption for refugees because those who possess the means to travel internationally should be able to pay the I–131 fee.

Response: DHS makes no changes in the final rule based on these comments. Consistent with congressional intent to provide refugees with support and assistance on their path to self-sufficiency, DHS has a long history of offering refugee travel documents at reduced cost. *See* 75 FR 58972; *see also* INA sec. 207(c)(3) (public charge ground of inadmissibility in INA sec. 212(a)(4) does not apply to refugees); *see also* INA sec. 412, 8 U.S.C. 1522 (authorizing a variety of benefits and services for refugees). DHS aligns with this long-standing policy in providing a fee exemption for refugees filing Form I–131. Furthermore, as explained in the proposed rule, the increase in other fees resulting from exempting refugees from paying the fee for Form I–131 is marginal. *See* 88 FR 495.

Comment: Regarding fees for asylum applicants and asylees, commenters wrote the following:

- Add fee exemption for asylum-based Form I–765 renewal and replacement requests.
- Add fee exemption for refugees and asylees for Form I–290B when filed in connection with Form I–730. Form I–730 is the only vehicle for family reunification for asylees and refugees. I–730 petitioners have motion rights via the I–290B but no appellate rights and can only challenge a denied family reunification petition with an I–290B filed within 33 days of a denial. I–730 petitioners must file within two years of arrival as a refugee or grant of asylum and as a result are new arrivals to the United States and are categorically economically disadvantaged. The form I–730 itself is fee exempt. Most I–730 petitioners are likely to be fee waiver eligible, and so the I–290B form should be exempt from a fee in this category. Fee waiver eligibility for the I–290B is not sufficient because the asylee or refugee petitioner whose fee waiver application is denied is then time-barred from motioning to reopen or reconsider the I–730, since the rejection of an application for an insufficient fee or fee waiver application takes more than the 33-day period within which a petitioner can challenge the denial of the I–730. Considering that the proposed rule would make form I–290B fee exempt for every other humanitarian category of noncitizen contemplated in the proposed rule, adding fee exemptions for asylees and refugees for these benefits in the final rule would constitute a logical outgrowth of the proposed regulation.
- Add fee exemption for refugees and asylees for Form I–290B when filed in connection with Form I–485.
- Extend fee exemption for Form I–131 for asylees.
- Eliminate proposed fee exemption for refugees filing Form I–131.
- Asylees should not be treated differently from their humanitarian counterparts with respect to fee exemptions.
- DHS should exempt fees for all asylum-related benefits through adjustment of status.
- Add a fee exemption for Form I–485 for Asylum-based applicants. The same legal definition of a refugee applies to asylees, and that both vulnerable populations who face economic hardship, are eligible for public assistance, and are not subject to the public charge ground of inadmissibility. The proposed rule justifies new fee exemptions for refugees because refugees are not subject to the public charge ground of inadmissibility and because refugees have access to federally funded assistance. However, the same is true of asylees, and DHS does not explain why these justifications should not also lead to new fee exemptions for asylees.
- Justification for exempting fees related to humanitarian classifications—that the underlying status is fee-exempt and such applicants face economic hardships—apply equally to asylees.
- The proposed I–485 fee, along with the cost of a medical exam, would be prohibitively expensive.
- The rule ''disingenuously'' frames the I–589 fee exemption as a new benefit for asylum seekers even though this does not differ from the current fee schedule.
- Disagree that refugees are distinguishable from asylees because refugees are required to adjust status within one year while asylees are not required to do so, stating that most refugees do not in fact apply for adjustment one year after their admission.
- Asylees seek to adjust status as soon as possible to obtain stability for themselves and their family members.
- It is unfair to expect asylees to delay filing certain applications given the harmful impact that such delays will have on their ability to achieve stability, security, and family reunification; neither asylees nor refugees have gained sufficient financial security in their first year in such status in the United States to be able to afford the adjustment application fee.
- Asylum seekers often have little or no resources and experience ongoing financial hardship after a grant of asylum.
- Disagree that the large number of asylees justifies the differences in fee exemptions between refugees and asylees because the large number of asylees demonstrates a need to reduce barriers to permanent resident status for this vulnerable population.
- Providing fee exemptions for asylee I–485s could improve efficiency, since under the current rules some families can only afford to file one application at a time. This can cause derivatives to file *nunc pro tunc* I–589s before adjusting status if the principal asylee naturalizes or the derivatives ceases to meet the definition of a spouse or child before they adjust status.
- USCIS should reverse the 2020 rule and eliminate the asylum fee in the proposed rule which avoids the issues caused by prior proposed rules.
- DHS should codify fee exemptions for all forms filed by asylees through adjustment and family reunification because asylum seekers and recent asylees are vulnerable to exploitation and trafficking.
- DHS should exempt asylees from fees for a refugee travel document and that, if the I–131 fee was truly linked to the DOS fee for a U.S. passport, it would be one-tenth of the price because, unlike a ten-year passport, a refugee travel document is only valid for one year.
- Exempting fees for renewal Forms I–765 would benefit asylees and their communities through the ability to maintain employment and unexpired identity documents.

Response: Form I–589, Application for Asylum and for Withholding of Removal is fee exempt for all filers. *See* 8 CFR 106.2(a)(28). Asylees are exempted from the fees for Form I–602, Application by Refugee for Waiver of Inadmissibility Grounds, Form I–730, Refugee/Asylee Relative Petition and Form I–765, Application for Employment Authorization (initial request by asylees and initial request by asylum applicants). Most forms used by asylum applicants or asylees are already fee exempt or fee-waiver eligible. 8 CFR 106.3(b). DHS considered the views of the commenters, and the number of asylum-based filings made each year and decided that the transfer of the costs of such filings to other petitions and applications would result in an excessive shift to other fee payers. DHS acknowledges that additional fee exemptions for asylees could reduce financial burden on these applicants. DHS will continue to exempt the initial Form I–765 fee for persons with pending asylum applications. *See* 8 CFR 106.2(a)(43)(iii)(D) and (G).[196] DHS will

[196] Except for individuals applying under special procedures under the settlement agreement reached in *American Baptist Churches* v. *Thornburgh,* 760 F. Supp. 796 (N.D. Cal. 1991).

also fee exempt applicants who have applied for asylum or withholding of removal before EOIR (defensive asylum) or filed Form I–589 with USCIS (affirmative asylum) for initial filings of Form I–765. *See* proposed 8 CFR 106.2(a)(43)(iii)(D) and (G).

DHS has decided to not exempt asylees from paying the fee for Form I–131 for refugee travel documents or advance parole (although at the lower passport fee level) [197] and Form I–485 for adjustment of status. Although asylees and refugees are in some respects similarly situated populations, refugees are required to apply to adjust status after they have been physically present in the United States for at least one year, while asylees are not required to apply for adjustment of status within a certain period. Therefore, DHS decided to not shift the costs of adjudicating requests from asylees for adjustment of status, refugee travel documents and advance parole to all or certain other fee payers. Asylees filing Forms I–485 and I–131 have the option to either pay the fees or request a fee waiver. DHS disagrees that the sole considerations for providing a fee exemption are that the underlying status is fee exempt and the requestors historically face economic hardships. As explained throughout this preamble, DHS exercises its discretionary authority to provide fee exemptions for benefits and services based on numerous factors, including balancing beneficiary-pays and ability-to-pay principles, burden to the requestor and to USCIS, as well as humanitarian considerations and other policy objectives as supported by data. Though DHS may consider the similar circumstances of different categories of requestors in providing a fee exemption, as with VAWA, T nonimmigrant status, and U nonimmigrant status, whether the benefit request is submitted by populations with similar characteristics is not solely determinative of whether DHS provides a fee exemption. DHS disagrees that refugees and asylees should be provided the same fee exemptions simply because the two groups share similar characteristics. There are distinguishing characteristics between refugees and asylees. *See* INA 209, 8 U.S.C. 1159. Also, the population of asylees has far outnumbered the population of refugees in recent years.[198] DHS believes that these differences in circumstance, in conjunction with the transfer of costs to other fee-paying benefit requestors, justifies providing certain fee exemptions for refugees and not for asylees because, overall, asylees are better able to time the filing of Form I–485 or an associated benefit request with their ability to pay the fees or request a fee waiver. DHS maintains this position in this final rule.

DHS disagrees that any potential decrease in *nunc pro tunc* filings of Form I–589 would reduce burdens to USCIS to such a degree that would justify the cost of this fee exemption. In FY 2022, of the total 41,160 Form I–589 filings, approximately 92 applications (0.2 percent) were filed *nunc pro tunc.* In the same year, Form I–485s filed by asylees accounted for 57,029 of the annual total of 608,734 Form I–485s filed (9 percent). Considering the 5-year annual averages of total Form I–485 filings (551,594) and fee-paying Form I–485 filings (471,625), on average, 85 percent of all Form I–485s are fee-paying. While not a direct comparison, the commenter's suggestion would result in additional forgone revenue on tens of thousands of Form I–485s to reduce *nunc pro tunc* I–589 filings that number less than 100 annually. Thus, the commenter's assertion that the additional fee exemption would reduce burden to USCIS is not supported by data and DHS declines to adopt the commenter's suggestion.

DHS does not adopt the commenters' recommendation to add new fee exemption to the final rule for Form I–290B when filed by refugees and asylees in connection with Form I–730. DHS recognizes that we are providing a fee exemption for a Form I–290B filed by other populations in this final rule that have characteristics that resemble the population that files Form I–730. However, USCIS Form I–290B fee payment data indicates that affordability or accessibility has not generally been a problem for this population. Most individuals filing Form I–290B in association with a Form I–730 during FY 2019 through FY 2022 paid the filing fee. During this period, USCIS received a total of 376 Form I–290Bs filed in association with a Form I–730. Of those, only 57 (15 percent) were fee waived while 269 (72 percent) paid the full fee. Additionally, rejections were low and decreased over time. Of the 376 total filings, 50 (13 percent) were rejected, with no rejections occurring in FY 2021 and only two occurring in FY 2022. The demonstrably low demand for fee waivers, combined with the low incidence of rejection, does not support the need for a fee exemption for this population. Additionally, DHS addresses the public's concerns regarding fee waiver adjudication as discussed earlier in this preamble by codifying eligibility requirements and providing clarifying guidance.

DHS does not adopt the commenters' recommendation to add new fee exemption to the final rule for Form I–290B when filed by refugees and asylees in connection with Form I–485. The commenters did not provide any explanation as to why specifically form I–485 filed by a refugee or asylee should be entitled to a fee-exempt I–290B. Refugee-based I–485s are fee exempt and asylum-based I–485s are eligible for fee waiver, such that re-filing does not pose economic obstacles to economically disadvantaged refugee and asylee adjustment applicants.

DHS does not adopt the commenter's recommendation that the fee for asylees filing Form I–131 be prorated in accordance with the validity period of the refugee travel document relative to the 10-year passport. Consistent with U.S. treaty obligations, DHS does not charge a fee for a Refugee Travel Document that is greater than the fee charged for a U.S. passport.[199] This final rule sets the fee for Refugee Travel Documents using Form I–131, Application for Travel Document, at an amount which is far less than the Refugee Travel Document fee-paying unit cost [200] and equivalent to the current U.S. passport fee.[201] The requirement to match the fees is not related to the effective period that a requestor may use either document. In

[197] The fee for refugee travel documents is set at the same level as the fee for a U.S. passport consistent with U.S. obligations under Article 28 of the 1951 Convention relating to the Status of Refugees, as adopted by reference in the 1967 Protocol relating to the Status of Refugees. *See* 8 CFR 106.2(a)(7)(i) and (ii).

[198] For example, in fiscal years 2019–2021, 48,888, 30,964, and 17,692 individuals respectively received asylum status, whereas 29,916, 11,840, and 11,454 individuals were admitted as refugees. *See* U.S. Dep't of Homeland Security, Office of Immigration Statistics, Annual Flow Report, Refugees and Asylees: 2021, available at *https://www.dhs.gov/sites/default/files/2023-03/2022_0920_plcy_refugees_and_asylees_fy2021_v2.pdf.*

[199] *See* Article 28 of the 1951 Convention relating to the Status of Refugees, as adopted by reference in the 1967 Protocol relating to the Status of Refugees; 8 CFR 106.2(a)(7)(i) and (ii).

[200] *Compare* Table 1, *with* Immigration Examinations Fee Account, Fee Review Supporting Documentation with Addendum, Nov. 2023, Appendix Table 4. The fee-paying unit cost for I–131 Refugee Travel Document is $535.

[201] At the time of this rulemaking, the DOS passport fees for a U.S. Passport Book consist of a $130 application fee and a $35 execution (acceptance) fee, for a total of $165. Children under 16 applying for a U.S. Passport Book pay a $100 application fee and a $35 execution (acceptance) fee, for a total of $135. *See* U.S. Department of State—Bureau of Consular Affairs, ''U.S. Passports,'' ''Passport Fees,'' available at *https://travel.state.gov/content/travel/en/passports/how-apply/fees.html* (last viewed Sept. 15, 2023).

general, DHS does not set fees to reflect an estimated monetary value of a benefit during its validity period. As explained earlier in this preamble, DHS charges fees at a level to ''ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants.'' [202] In this final rule, DHS maintains that the fee for asylees filing Form I–131 to request a refugee travel document will be kept below cost and consistent with the U.S. passport fee, increasing from $135 to $165. *See* Table 1.

h. TPS

Comment: Commenters asked USCIS to retain the fee exemption for Form I–765 filed by initial TPS applicants under age 14 and over age 65 because:

- An EAD might be the only identification available to an unaccompanied child and it plays a vital role in securing critical support.
- Increasing fees on children and retired or disabled adults is inconsistent with the balancing of equities cited throughout the proposed rule.
- These applicants would be required to seek a fee waiver with each application.

Response: DHS recognizes commenters' concerns but believes that our rationale in the proposed rule remains valid and not retaining the Form I–765 fee exemption for TPS applicants below age 14 and above age 65 is the best policy choice. There continues to be no fee for Form I–821 TPS re-registration and fee waivers are available for Form I–765 and initial Form I–821 for eligible applicants. *See* 8 CFR 106.3(a)(3).

As explained in the proposed rule, USCIS no longer requires TPS applicants to file Form I–765 for information collection purposes, and only requires it if the TPS applicant wants an EAD. Persons applying for TPS who do not wish to request employment authorization need only file Form I–821. The reason that the INS fee exempted a Form I–765 filed by initial TPS applicants under age 14 and over age 65 from a fee no longer exists. *See* 88 FR 463. Thus, DHS will maintain that all TPS applicants requesting employment authorization must pay the filing fee for Form I–765 or request a fee waiver.

[202] *See* INA sec. 286(m), 8 U.S.C. 1356(m). The longstanding interpretation of DHS is that the ''including'' clause in section 286(m) does not constrain DHS's fee authority under the statute. The ''including'' clause offers only a non-exhaustive list of some of the costs that DHS may consider part of the full costs of providing adjudication and naturalization services. *See* 8 U.S.C. 1356(m); 84 FR 23930, 23932 n.1 (May 23, 2019); 81 FR 26903, 26906 n.10 (May 4, 2016).

i. Requests for Additional Fee Exemptions

Comment: Multiple commenters recommended that USCIS exempt fees for all survivor or victim-based applications because poverty and barriers to financial resources are felt across all survivor-based immigration categories. The commenter also stated that immigrant survivors often face additional financial burdens and safety risks when they try to gather documents needed to support fee waivers that might be controlled by abusers or exploitative employers.

One commenter recommended that DHS should exempt application fees for all forms of humanitarian relief through adjustment of status, since these populations face similar obstacles. The commenter added that DHS should provide a fee exemption for I–765 renewal and replacement applications for all humanitarian relief holders, including those based on a pending application for adjustment of status. The commenter stated that gaps in employment authorization can result in job loss. The commenter said that exempting humanitarian applicants from paying these fees would streamline the volume of fee waiver requests to adjudicate, lower personnel cost, and help ensure the continued economic independence of survivors.

Response: DHS acknowledges the commenters' concerns regarding the financial burden to individuals seeking survivor or victim-based immigration benefits. DHS weighed these considerations given the commenters' feedback against the number of VAWA-, T-, and U-related filings it receives each year and the transfer of costs to other petitions and applications if these filings were fee exempt through final adjudication of the adjustment of status application and emphasizes the benefit to survivors in providing additional fee exemptions, as well as the humanitarian nature of these programs, in this final rule. As a result, DHS provides additional fee exemptions in the final rule for VAWA, T nonimmigrant, and U nonimmigrant populations to include adjustment of status and associated forms. *See* 106.3(b)(6); *see also* Table 5B.

DHS declines to provide fee exemptions for all humanitarian categories of requestors for all forms filed through adjustment of status, as suggested by the commenter. DHS also notes that requests for humanitarian relief such as asylum (Form I–589), T nonimmigrant (Form I–914), U nonimmigrant (Form I–918), or VAWA self-petition (Form I–360), are fee exempt. In this final rule DHS provides fee exemptions and fee waiver eligibility for forms filed through adjustment and associated ancillary forms by certain humanitarian categories of requestors consistent with our fee-setting approach as explained in this preamble.

DHS disagrees with the commenter's characterization of the provision of additional fee exemptions for certain humanitarian categories as ''arbitrary'' or ''unjustified'' as it applies to the proposed rule and this final rule. As described throughout this preamble, DHS maintains fee waivers, reduces fees, and provides new fee exemptions to address accessibility and affordability where DHS has determined that a different approach would inequitably impact the ability of those who may be less able to afford the fees to seek an immigration benefit for which they may be eligible. DHS believes this final rule represents our best effort to balance access, affordability, equity, and national interest while providing USCIS with the funding necessary to maintain adequate services.

Comment: One commenter stated that DHS should make I–765 applications filed under category (c)(14) fee exempt for victims and witnesses of workplace exploitation. The commenter said that applicants requesting employment authorization under this category will have either suffered or witnessed workplace abuse and will be at risk of termination or retaliation by their abusive employers, and some may also have recently lost their jobs or may be owed back wages. The commenter added that, because this basis for requesting deferred action and employment authorization is new, the anticipated volume of these requests will be low and will not materially burden USCIS if the fees for these Form I–765s are exempted.

Response: On October 12, 2021, DHS issued a Policy Statement in support of the worksite enforcement efforts being conducted by the Department of Labor (DOL) in conjunction with other government agencies. The goal of DHS's policy is to ensure that we maximize the impact through policy and practices that will reduce the demand for illegal employment and help noncitizens navigate the USCIS process. Noncitizens who fall within the scope of a labor agency investigation and have been granted deferred action may be eligible for deferred action-based employment authorization (Form I–765 (C14). However, the C14 employment classification is not unique to these applicants. For this reason, DHS declines to fee exempt the C14 classification for Form I–765. However,

DHS has expanded the availability of fee waivers to ensure that the most vulnerable applicants are able to access the relief that they need. *See* 8 CFR 106.3.(a)(3)(ii)(E).[203]

Comment: Some commenters stated that it is unclear if Form I–824 would be fee exempt for certain humanitarian categories, and USCIS should make it exempt for SIVs, U, T, VAWA, asylees, and refugees. Other commenters said that Form I–824 should be free because it is used when USCIS has made a mistake.

Response: DHS appreciates the commenters' concern that the proposed fee exemptions for Form I–824 lacked clarity. In this final rule, DHS provides a fee exemption for T visa applicants and T nonimmigrants, U visa petitioners and U nonimmigrants, VAWA, abused spouses and children categories, and SIVs for Form I–824. *See* 8 CFR 106.3(b); Table 5B. DHS declines to provide a fee exemption for Form I–824 for asylees and refugees as these populations may not use this form.

Comment: One commenter stated that for immigrant victims of crime and abuse eligible for humanitarian immigration relief, including T nonimmigrant status, U nonimmigrant status, relief under VAWA (including Form I–751s), CAA, HRIFA, and the Nicaraguan Adjustment and Central American Relief Act (NACARA), VAWA cancellation of removal, VAWA suspension of deportation, and SIJ classification, the Form I—290B should be fee exempt. The commenter explained that requiring indigent immigrants to file a fee waiver for this form highlights the problematic approach USCIS has historically taken to fee waiver requests that impedes due process and cuts off low-income immigrant crime victims from immigration relief they would otherwise be able to receive. Similarly, other commenters expressed concern with the exclusion of Form I–290B appeals of U-based adjustment of status from the fee exemption provisions. Another commenter stated that limiting fee exemptions for VAWA self-petitioners filing I–290Bs to when the I–485 and I–360 are concurrently filed limits due process and access to justice solely based on administrative technicality.

Multiple commenters stated that the Form I–290B should be exempt for refugees and asylees to the same extent that it is for other humanitarian immigration categories, though some also stated that Form I–290B need not be fee exempt for every benefit sought by an asylee or refugee. Commenters asserted that Form I–290B should be fee exempt when filed in connection Form I–730. One commenter emphasized that the I–730 is the only vehicle for family reunification for asylees and refugees, while another said that the lack of a fee exemption would result in numerous petitioners each year suffering the devastating consequences of family separation.

Additional commenters stated that adding fee exemptions for I–290Bs filed by asylees and refugees would constitute a logical outgrowth of the proposed regulation, which eases the fee burden on most humanitarian categories of requestors. The comments said that DHS should offset the cost of the I–290B fee exemption for refugees and asylees when filed in connection with the I–730 by retaining the fee requirement for I–131s filed by refugees because refugees with an ability to travel internationally presumably have an ability to pay for the I–131 and do not have the ''presumptive'' economic hardship that justifies other fee exemptions for this population.

Response: In this final rule, DHS provides a fee exemption for Form I–290B if it is filed for a motion or appeal of a denial of any benefit request before adjusting status or for Form I–485 and associated ancillary forms for the following humanitarian categories: T and U nonimmigrant status, VAWA, abused spouses and children adjusting status under CAA and HRIFA, SIV, and SIJ. *See* 8 CFR 106.3(b); Table 5B. DHS declines to provide additional fee exemptions for asylees and refugees in this final rule for the reasons discussed elsewhere in this preamble.

Comment: Some commenters recommended that DHS create fee exemptions for Form N–400s in certain situations, specifically:

- There should be an automatic fee waiver for all Form N–400 applicants with Form N–648 that meets the requirements for the medical certificate for disability exceptions.
- DHS should also provide fee exemptions for naturalization applications filed by refugees because the Refugee Convention calls on participants to facilitate the assimilation and naturalization of refugees as far as possible, and that DHS is obligated to ensure that the increased naturalization fees do not hinder the naturalization of refugees.

Response: DHS appreciates that many applicants filing Form N–648, Medical Certification for Disability Exceptions, may be unable to pay the Form N–400, Application for Naturalization, filing fee but declines to provide a general fee exemption in this situation. Fee-exemption eligibility must be determined at the time a form is received by USCIS. The adjudication of Form N–648 is performed at the time of the N–400 interview after an Immigration Services Officer (ISO) has verified that the N–648 relates to the applicant.[204] USCIS would be unable to determine whether the Form N–648 meets the requirements before exempting the Form N–400 fee. Furthermore, were USCIS to adjudicate Form N–648 at the time of receipt, before Form N–400, this would still require a full review of the applicant's A-file.[205] Because the ISO adjudicating the N–400 would be required to perform another full review of the applicant's A-file,[206] this would result in an inefficient duplication of USCIS efforts. In addition, not all applicants filing Form N–648 are unable to pay the Form N–400 fee. Form N–648 does not have any fee and applicants can still request a fee waiver or reduced-fee Form N–400 ($380) if they are unable to pay the online filing fee of $710, a $50 savings over the paper-based filing fee of $760.

Currently, refugees are provided fee exemptions for their immediate needs upon arrival and generally would not be eligible for naturalization until 5 years after entry into the United States. DHS believes that at the time refugees are for applying for naturalization they may be employed and able to pay fees. Additionally, the Refugee Convention calls on States to facilitate the assimilation and naturalization of refugees; however, fee exemptions are not a requirement under the Convention. Article 34 of the Refugee Convention states in part that States shall make every effort to reduce the cost of naturalization proceedings.[207]

[203] *See* DHS, ''Policy Statement 065–06: Worksite Enforcement: The strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual,'' available at *https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf* (last viewed Sept. 1, 2023).

[204] *See* USCIS, ''USCIS Policy Manual,'' Vol. 12, ''Citizenship & Naturalization,'' Part E, ''English & Civics Testing & Exceptions,'' Chp. 3, ''Medical Disability Exception (Form N–648)'' [12 USCIS–PM E.3], available at *https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3* (last visited Aug. 25, 2023).

[205] *Id.*

[206] USCIS, ''USCIS Policy Manual,'' Vol. 12, ''Citizenship & Naturalization,'' Part B, ''Naturalization Examination,'' Chp. 3, ''Naturalization Interview,'' Section B, ''Preliminary Review of Application'' [12 USCIS–PM B.3(B)], available at *https://www.uscis.gov/policy-manual/volume-12-part-b-chapter-3* (last visited Aug. 25, 2023).

[207] While the United States is not a party to the 1951 Refugee Convention, it is party to the 1967

Continued

Although DHS has decided not to extend fee exemptions for naturalization to refugees, USCIS offers reduced fee options, and some applicants may be eligible for fee waivers.

G. Fee Changes by Benefit Category

1. General Fee Provisions

a. Fee Payment and Receipt Requirements

Comment: A commenter stated that applicants should retain the right to request credit card refunds, stating that this is one of the few means of recourse applicants have when facing apparently non-responsive government services. They stated that barring credit card disputes would diminish government transparency. A commenter stated that, where USCIS error prejudices individuals, filing fees should be refunded. A commenter wrote that the USCIS fee structure may confuse applicants and recommended that USCIS send a follow-up invoice rather than reject applications submitted with incomplete fees.

Response: USCIS is committed to meeting its processing time goals and reducing the immigration benefit request processing backlog. USCIS acknowledges that since it last adjusted fees in FY 2016, USCIS has experienced elevated processing times compared to the goals established in the 2007 fee rule. *See* 72 FR 29851, 29858–29859 (May 30, 2007). Processing delays have contributed to case processing backlogs. However, with the high volume of submissions that USCIS continues to experience, steps that may delay adjudication of a request or require special handling, such as holding cases while USCIS bills for unpaid or partially unpaid fees, would only exacerbate backlogs. Therefore, USCIS fees generally are non-refundable and must be paid when the benefit request is filed. *See* 8 CFR 103.2(a).

As explained in the proposed rule, credit card disputes are generally filed by requestors whose requests have been denied, who have changed their mind about their requests, or who have asserted that the service was not provided or was unreasonably delayed. *See* 88 FR 402, 483–484 (Jan. 4, 2023). USCIS makes its no-refund policy clear on its website.[208] Filing and biometric service fees are final and non-refundable, regardless of any action USCIS takes on an application, petition, or request, or if requestors withdraw a request. However, when USCIS receives a payment in error, it may refund it. For example, USCIS refunds fees for Form I–131, Application for Travel Document, when erroneously paid for humanitarian parole on behalf of a beneficiary who is a Ukrainian citizen.[209] USCIS provides other examples on its website.[210] Often, USCIS has processed the request to completion and performed the work for which the fee was charged when the credit card dispute is lodged. DHS understands that no one wants to be determined ineligible and denied when they complete, submit, and pay for an immigration benefit request. However, DHS is authorized to charge fees to cover the cost of adjudicating requests and paying a fee is not a guarantee of a particular outcome.

USCIS also has fee payments withdrawn due to credit card disputes after the request is approved. When certain benefit request fee payments are dishonored or declined, or where an approved applicant successfully disputes their USCIS fee payment with their credit or debit card company, USCIS may send the requester an invoice for the unpaid fee. However, USCIS will generally send the requester a notice of intent to revoke (NOIR) the approval for the payment deficiency. The NOIR usually results in the amount due being paid, but if not, USCIS may revoke the approved benefit request. *See* 8 CFR 103.7(a)(2)(iii).

USCIS data indicates that the credit card dispute process defaults to the consumer, and it has become a popular method for credit card holders whose immigration benefit requests are denied and delayed getting their money back. When USCIS performs services for which a fee has not been paid, such as when a chargeback of the fee payment occurs, the costs incurred result in a drain on IEFA reserves that are meant for other uses. Longstanding DHS regulations at 8 CFR 103.2(a)(1) provide that fees paid to USCIS for immigration benefit requests will not be refunded regardless of the result of the benefit request or how much time the adjudication requires. Consistent with that limitation, DHS proposed that fees paid to USCIS using a credit or debit card are not subject to dispute by the cardholder or charge-back by the issuing financial institution. *See* 8 CFR 106.1(e). USCIS is almost entirely fee funded. If every customer who experiences delays or is denied a benefit would be able to successfully dispute their USCIS fee payment with their credit card company, it could impose significant financial harm on USCIS. As stated elsewhere in this preamble, USCIS is working to reduce processing delays, and we have reduced the budget to be recovered by fees in this final rule as a result of increased efficiencies. DHS declines to make any changes to the final rule in response to these comments.

In addition, DHS is adding a clarifying provision to its regulations at 8 CFR 103.2(a)(7) governing the submission of benefit requests to ameliorate the risks that may result from the changes being made in the final rule. DHS is adding several fee discounts, fee waiver eligibility and fee exemptions in this final rule to address the concerns of commenters about the negative impacts of the new fees on low income, small employer, nonprofit, military, elderly, and young requestors. *See* 8 CFR 106.3(b) (new exemptions); 8 CFR 106.2(a)(3), (4), (11), and (c)(13) (discounts for small employers and nonprofits); 8 CFR 106.2(a)(3) & (4) (Form I–129 fee discounts); 8 CFR 106.2(a)(20)(ii) (child's fee for Form I–485, Application to Register Permanent Residence or Adjust Status); 8 CFR 106.2(b)(3)(ii) (discount for Form N–400, Application for Naturalization); 8 CFR 106.2(a)(32) and (46) (adoption fee exemptions); 8 CFR 106.2(b)(7)(ii) and (8) (adoption fee exemptions). USCIS will review the filing to determine if the requestor qualifies for a fee waiver, fee exemption, or lower fee when the request is received. However, to protect USCIS from requestors that may submit a lower fee for which they may not qualify and that USCIS may not catch at intake, DHS provides that if USCIS accepts a benefit request and determines later that the request was not accompanied with the correct fee, USCIS may deny the request. 8 CFR 103.2(a)(7)(ii)(D)(*1*); *see also* 88 FR 402, 481–482. Further, because USCIS may adjudicate certain requests in a few days, if the benefit request was approved before USCIS determines the correct fee was not paid, the approval may be revoked upon notice. *Id.*

Comment: Commenters opposed the proposal to allow USCIS to require that

Refugee Protocol, under which States agree to apply articles 2 through 34 of the Convention. *See* Protocol relating to the Status of Refugees art. 1, Dec. 16, 1966, 19 U.S.T. 6223.

[208] *See* USCIS, Filing Fees, available at *https://www.uscis.gov/forms/paying-uscis-fees* (last viewed on Sept. 22, 2022).

[209] *See* USCIS, Uniting for Ukraine, *https://www.uscis.gov/ukraine* (last reviewed/updated: June 1, 2023).

[210] *E.g.,* USCIS, USCIS Removes Biometrics Requirement for Form I–526E, Immigrant Petition by Regional Center Investor, petitioners, *https://www.uscis.gov/newsroom/alerts/uscis-removes-biometrics-requirement-for-form-i-526e-petitioners* (last reviewed/updated: Mar. 15, 2023); USCIS, Certain Petitioners for U Nonimmigrant Status May Receive a Refund for Applications for Employment Authorization Submitted Before Sept. 30, 2021, *https://www.uscis.gov/newsroom/alerts/certain-petitioners-for-u-nonimmigrant-status-may-receive-a-refund-for-applications-for-employment* (last reviewed/updated: Nov. 22, 2021).

certain fees be paid using a certain payment method or that certain fees cannot be paid using a particular method. *See* 8 CFR 106.1(b). The commenters stated that this could disallow payment methods such as cashier's checks or money orders, to the detriment of low-income applicants and petitioners who may not have internet access, U.S. bank accounts, established credit-scores, or access to reloadable debit cards necessary for some forms of payment. The commenters requested that USCIS accept cashier's checks and money orders as methods of payment for all applications, petitions, and requests. Some stated that access to internet and prepaid debit cards is limited for low-income applicants. Some stated that USCIS should not rely on public libraries to meet the need for internet access because of libraries' under-utilization. A commenter requested that any changes to acceptable payment methods should be accompanied with a widespread notice to the public of this change and a grace period to facilitate smooth processing and promote overall fairness.

A commenter stated that Form G–1450 payments are often improperly rejected even when all the information supplied is correct and legible and USCIS should allow submission of cashier's checks and money orders. Commenters also requested that Form I–140 and I–907 fees be payable from outside of the United States. A commenter suggested that a single check or money order be sufficient for all fees related to a single application to simplify returning funds from a money order.

Response: In this final rule, DHS does not restrict the method of payment for any immigration benefit request. This final rule clarifies the authority for DHS to prescribe certain types of payments for specific immigration benefits or methods of submission. DHS does not have data specific to USCIS benefit requestors' access to the internet or banking but understands that populations submitting requests may have attributes that make access to a bank account challenging. DHS acknowledges that some requestors may not use banks or use them on a limited basis for several reasons. It appears, however, that a person can alternatively purchase a pre-paid debit card, cashier check or money order that can be used to pay their benefit request fee.[211] In addition, since 2018, requesters have been able to use a credit card to pay for a USCIS form filing fee that gets sent to and processed by one of the USCIS lockboxes or, for credit card transactions that do not exceed the limits set forth in the Treasury Financial Manual, split the fees between more than one credit card.[212] More recently, USCIS expanded a pilot program that allows credit card payments for service center filings.[213] The credit card used does not have to be the applicant's; however, the person who is the owner of the credit card must authorize use of his or her credit card. In addition, comments that libraries are underused indicate they remain available for free online services, access to information and computers that the public may use to read, complete, print or submit benefit requests. Nevertheless, in evaluating future changes to acceptable means of payment for each immigration benefit request, DHS will consider the availability of internet access and different means of payment to the affected populations.

Regarding public notice, proposed changes to USCIS forms and instructions are typically published in the **Federal Register** for notice and comment. When USCIS finalizes a revised form, there is typically a grace period or advance notice before customers are required to use a revised version of the form. USCIS announces these changes on its website. When DHS expands or limits acceptable instruments locally, nationwide, or for certain USCIS benefit requests, it issues multiple communications and provides sufficient advance public notice to minimize adverse effects on any person who may have plans to pay using methods that may no longer be accepted.[214] Nevertheless, in response to the public comments and to provide more certainty to stakeholders, DHS has codified a 30-day advance public notification requirement before a payment method will be changed. 8 CFR 106.1(b).

b. Biometric Services

Comment: A few commenters wrote support for eliminating the separation of biometrics fees from the fee associated with their underlying application. Commenters wrote:

- Combining fees would reduce confusion and promote efficiency.
- They supported including biometric fees but disagreed that doing so would lower fees overall.
- A commenter requested an online scheduling system for biometric appointments.
- They recommended reusing immutable or persistent biometrics, especially for highly iterative applications with shorter grant periods biometrics to mitigate administrative burdens.
- No fee should be paid when biometrics are reused.

A few commenters opposed absorbing the biometric services fee into other fees, stating:

- Not everyone is required to submit biometrics and people should not be required to pay for something that is not needed.
- It is disingenuous to suggest that integrating the biometrics fee into the required filing fee reduces fee burdens while simultaneously seeking to double the fees an individual would pay to adjust status.
- USCIS should eliminate the biometrics requirements for O–3 applicants, consistent with H and L applications to reduce confusion and streamline the application process because there is no reason to require biometrics information from O–3 applicants.
- USCIS could lower its costs by improving its communications with EOIR, especially for the purposes of coordinating asylum and I–94 grants.

Response: DHS agrees with the comments in favor of incorporating the cost of biometric services into the underlying immigration benefit request fees. This approach aims to simplify the fee structure, create a more user-friendly experience, reduce rejections of benefit requests for failure to include a separate biometric services fee, and better reflect how USCIS uses biometric information. As explained in the proposed rule, the biometric services information used to calculate the proposed fees included when USCIS may reuse information it already collected. *See* 88 FR at 484–485 (Jan. 4, 2023). As explained elsewhere in this rule, DHS limited the fee increases for some immigration benefit requests by inflation or a lower

[211] DHS understands that some commenters are concerned about the hidden fees of certain prepaid debit cards; however, many cards exist with no fees. *See, e.g.,* CardRates.com, 6 Best Prepaid Debit Cards with No Fees (Oct. 2023), available at *https://www.cardrates.com/advice/best-prepaid-debit-cards-with-no-fees/* (last viewed Oct. 20, 2023).

[212] *See* USCIS Expands Credit Card Payment Option for Fees, *https://www.uscis.gov/news/news-releases/uscis-expands-credit-card-payment-option-fees* (last reviewed/updated Feb. 14, 2018).

[213] *See* USCIS Service Center Expands Credit Card Payment Pilot Program to Most Forms, available at *https://www.uscis.gov/newsroom/alerts/uscis-service-center-expands-credit-card-payment-pilot-program-to-most-forms* (last reviewed/updated Mar. 30, 2022).

[214] *See, e.g.,* USCIS Service Center Expands Credit Card Payment Pilot Program to Most Forms, available at *https://www.uscis.gov/newsroom/alerts/uscis-service-center-expands-credit-card-payment-pilot-program-to-most-forms* (last reviewed/updated Mar. 30, 2022); USCIS Updates Fee Payment System Used in Field Offices, available at *https://www.uscis.gov/news/news-releases/uscis-updates-fee-payment-system-used-field-offices* (last reviewed/updated Mar. 7, 2019).

percentage from the proposed rule. This includes benefit requests that typically require biometric services, such as Form I–90, Application to Replace Permanent Resident Card, Form I–485, and Form N–400. As such, the final fee for these forms is sometimes less than in the proposed rule.

The INA provides DHS with the specific authority to collect or require submission of biometrics in several sections. *See, e.g.,* INA section 235(d)(3), 8 U.S.C. 1225(d)(3) (''to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service''); INA section 287(b), 8 U.S.C. 1357(b) (powers of immigration officers and employees to administer oaths and take evidence); INA sections 333 and 335, 8 U.S.C. 1444 (requirement to furnish photographs for naturalization) and 1446 (investigation and examination of applicants for naturalization); INA section 262(a), 8 U.S.C. 1302(a) (requirement for noncitizens to register and be fingerprinted); INA section 264(a), 8 U.S.C. 1304(a) (authority to prescribe contents of forms required for alien registration); *see also* INA section 103(a)(3), 8 U.S.C. 1103(a)(3) (conferring broad authority on the Secretary to ''establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the'' immigration laws). DHS regulations at 8 CFR 103.2(b)(9) accordingly provide that USCIS may require any applicant, petitioner, sponsor, beneficiary, or individual filing a benefit request, to submit biometrics, and pay the biometric services fee.

As USCIS has tried to adjust its biometrics policies over the years, it has been stymied by the separate fee requirement and how it would be collected. In addition, the separate fee results in many requests being rejected for failure of the preparer to accurately calculate the impact of the biometric services fee on the amount owed. This rule will provide DHS flexibility in its biometrics submission practices and policies to ensure that necessary adjustments can be made to meet emerging needs, conduct biometrics-based background checks, produce documents, and verify identities, while reducing filing rejections.

In June 2023, USCIS launched a new tool which allows customers to reschedule most biometric appointments before the date of the appointment.[215] USCIS periodically changes policies related to biometric collection, such as the forms requiring biometric services.[216] Removing the biometrics services fee as a separate requirement will streamline the ability of DHS and USCIS to change biometrics polices and need and workload dictates. However, those changes may be beyond the scope of the fee rule.

c. Online/Electronic Filing

Comment: Many comments were received on the proposed changes to online and electronic filing. The commenters who were opposed to the different fees for online and paper filing wrote:

- They opposed having separate fees for online filing and paper filings without providing additional rationale.
- Paper filing fees should not differ from online filing because it would result in financial and digital inequities, contravene the objectives of E.O. 14012, burden applicants with low financial inclusion, discriminate against individuals with lower income, certain disabilities, low literacy, inability to use technology, people living in rural or remote areas, who lack access to broadband and computers; citing a 2021 Pew Research Center research on race and access to internet and computers, and a 2022 study showing that one-in-five U.S. households including many racial and ethnic minority households are not connected to the internet.
- 2020 study on the ''Digital Divide'' during the COVID–19 pandemic; a 2020 DHS study on poverty and internet access indicating that one in six people living in poverty in the United States have no internet access, multiple sources on internet access in various locations, a 2021 Pew Research study of which older Americans seldom use the internet, and a 2022 publication on low rates of smartphone ownership among seniors.
- The fees would result in chaos and confusion for unrepresented people, including missed deadlines, rejected cases, and delays.
- Applicants should not be punished for being unable to file online.
- Many applicants cannot file online due to language barriers, lack of computer skills, as well as access and resources to submit online.
- The proposal would subject applicants with low tech literacy, such as seniors and people with lower education, to scams claiming to assist in digital filing.
- The proposal would disadvantage survivors of domestic violence, human trafficking, and other serious crimes who are not able to file applications for protected case types online.
- People with disabilities may require assistive technologies that they do not have access to, especially if they are survivors of violent crimes and research indicates higher rates of disabilities, varying needs, and the impact of violent crimes and abuse on persons with disabilities.
- Applicants who are most vulnerable and in need of assistance, such as lower income and the elderly who do not have the technology or savvy to handle a finicky electronic system, would be penalized.
- The system often is not compatible with immigration software used by attorneys to file for clients.
- Lower fees for online applications would discourage immigrants from seeking assistance from attorneys and legal representatives. Instead, applicants would try to complete the applications on their own eventually leading to errors.
- Low-income individuals may not be able to access representation to help them apply online for immigration benefits.
- USCIS should not rely on library access to provide for digital filing needs, citing a 2016 Pew Research Center study on underutilization in libraries and information security issues related to library computer reliance. USCIS did not account for varying resources and library computer availability, providing citations on different staffing issues and applicant needs that libraries may face.
- All online application forms should provide for fee waivers and exemptions. Because Form I–912 is not available online, many applicants must file paper and the proposal would impose an undue burden on low-income applicants.
- They do not support a tiered payment structure until online filing options were available to all applicants and forms.
- Expressed concerns for the equity impacts of the proposed electronic filing discount but supported the possible efficiency of using electronic filing.
- Paper filing costs no more than $20 more than electronic filing.

[215] USCIS, USCIS Launches Online Rescheduling of Biometrics Appointments, available at *https://www.uscis.gov/newsroom/news-releases/uscis-launches-online-rescheduling-of-biometrics-appointments* (last reviewed/updated July 6, 2023).

[216] *See, e.g.,* USCIS, USCIS Extends Temporary Suspension of Biometrics Submission for Certain Form I–539 Applicants, available at *https://www.uscis.gov/newsroom/alerts/uscis-extends-temporary-suspension-of-biometrics-submission-for-certain-form-i-539-applicants* (last reviewed/updated Apr. 19, 2023).

• To charge less for an application or petition filed online is inappropriate, because USCIS' online filing system does not function properly and would only hinder proper filings and increase the backlog.

• The online filing system does not work properly, is difficult to use, and is not user-friendly.

• Recommended allowing applicants and their attorneys to log-in with the same account rather than using two separate computers and having separate logins, and that password reset, or lockout resolutions be simplified.

• Attorneys should be able to submit filings on behalf of their clients that the system should allow the use of Application Programming Interfaces.

• A glitch requires them to obtain a new USCIS attorney account for every filing they initiate.

• Expressed skepticism regarding how online filing would ensure that supporting documentation is properly received. They would prefer to file online, but that they cannot successfully do so as often information that is entered and submitted in the system is later lost or riddled with errors.

• Due to issues with the online system, they advise clients not to use it.

• Provided examples of how the system is not user friendly, prone to errors, and that USCIS' online account and filing software must be seriously improved.

• Form N–400 has exhibited poor data integrity when filed online.

• Filings, such as Form I–589, that require significant amounts of documentation organized in a particular manner are difficult to organize digitally rather than by an applicant's counsel.

• Recommended that USCIS provide both instructions and the ''online forms for discounted only benefit applications'' in several common foreign languages.

• USCIS should provide instructions and the online forms in at least several common foreign languages, and the proposal falls short of USCIS' own Language Access Plan. Many of the applications impacted under USCIS' proposed rule have not been translated into Chinese, Vietnamese, Tagalog, or Korean, or other languages.

• Expressed concern for the security of online filing and urged USCIS to ensure that applicants are not forced to use an unsafe system.

• Disagreed with fee increases without increases in service or efficiency and suggested improved and increased online-filing options.

• USCIS must explain an operational benefit to charging more for online filing, whether doing so would hasten a transition to online filing, and clearly explain the goal of the fee differential before proceeding with the proposal.

• Digital filing would increase processing time and cost any but the most complex applications.

• Because fees are higher for some of the online applications and that separate applications must be made for each family member, and that not all services are readily available online (such as rescheduling biometrics appointments) these are examples of an inefficient system.

• USCIS' platform cannot save data for more than 30 days and thus it is a poor site to enter data into.

• Allow Form I–485 to be filed online.

Commenters who supported different fees for online and paper filings wrote:

• Expressed support for a secure online portal that would enable online filings of all documents and forms so both USCIS and submitters could view and verify documents submitted and issued.

• Supported expanding online filing to reduce costs associated with H–2A filings.

• Supported the proposed online filing discount to support the transition to digital filing and related cost-savings.

• Expressed support for USCIS' current H–1B registration system and recommended that similar technological advancements be made for Form I–130 petitions.

• Improve the responsiveness of the e-Request tool to improve operational efficiency and address problem of principals separated from derivative applicants; handling requests to link family members together for more efficient adjudication; enabling counsel and applicants to address priority date issues, including inter-filing requests; and expediting requests.

• Make all filings available online and improve the USCIS online filing system, expand online filing to all immigrant and nonimmigrant benefits because this would improve efficiency.

Commenters requested online filing options for the following forms:

• All Form I–765 categories and applicants, especially those granted withholding of removal, T Nonimmigrants, U Nonimmigrants, VAWA self-petitioners, and people under an order of supervision.

• Form I–129.

• Form G–28. USCIS should update the G–28 to allow for electronic notifications and eliminate mailing of notices.

• Forms I–912 and I–942.

• Form I–485.

• Form I–539.

Commenters that wrote about USCIS online filing without commenting about the specific fees in the proposed rule, wrote:

• USCIS should improve its management of online accounts for immigration attorneys.

• USCIS should permit online filings for fee-waived and reduced N–400s.

• USCIS' digitization efforts have lagged those of other agencies and described ways that mail processing can be inefficient, including via erroneous rejections.

• The proposed incentives for digital filing are insufficient and recommended that USCIS develop an Application Programming Interface to facilitate a direct system-to-system data exchange with large volume filers.

• They hope for a fully digitized filing platform for every form that is fully compatible with attorney case management systems and capable of accepting attorney-filed forms.

• They recommend a system to accept scanned or uploaded application materials, to be funded by ''a dedicated funding stream'' separate from a fee increase.

• They recommend that USCIS install computers and scanners at USCIS Field Offices to assist applicants trying to electronically file applications and petitions.

• USCIS should confirm its continued provision to applicants of an option to use paper filing, and paper notices, especially Receipt Notices, RFEs, Notices of Intent to Deny (NOID), decisions and biometrics to ensure that applicants with temporary internet access are able to receive communications.

• They recommend that USCIS use email more often to provide notices as a cost-saving measure, and communicate via phone call, and video teleconference more often to improve operations, and to reduce delays and mistakes and ensure individuals receive the service they pay for.

• They request that USCIS adopt electronic signature technology to reduce administrative burdens on employers.

• USCIS should engage with stakeholders on a listening session to receive feedback on the online filing process and consult with immigration lawyers to determine how to improve electronic filing systems.

Response: DHS understands some commenters' desire for expansion of electronic filing. USCIS is actively planning the expansion of its online electronic filing platform for the submission and adjudication of immigration benefits. As of the end of

FY 2022, approximately 20 percent of USCIS intake was processed through online filing, and we are striving to increase that level. USCIS continues to improve the availability and user experience of online filing. The benefits of digital tools are not limited to customers that file online. Every submission completed online rather than through paper provides cost savings and operational efficiencies to both USCIS and our customers. USCIS scans some applications, petitions, and requests received on paper so that we can process them electronically. USCIS offers recommendations to avoid delays when filing paper; if more documents were filed electronically, it would reduce the time spent on scanning paper documents and free up more time for adjudication rather than administrative tasks.[217]

These benefits accrue throughout the immigration lifecycle of the individual and with the broader use of online filing. As such, DHS believes it should encourage online filing through discounted fees.

In response to comments, DHS reevaluated the difference between online and paper fees, as discussed earlier in this preamble. In this final rule, DHS provides that online filing fees will be $50 less than the paper filing fee as additional forms are made available for online filing, unless otherwise noted. *See* 8 CFR 106.1(g).

d. Premium Processing (*e.g.,* Business Days, Combined Payment, I–907, Expansion, Emergency Stopgap USCIS Stabilization Act)

Comment: DHS received the following comments on the proposed changes to premium processing:

- Many applicants need to use premium processing to avoid processing delays in standard processing services.
- Support for USCIS' goals of addressing backlog and processing delays with premium processing.
- They recommended providing expanded premium processing options because this change would both increase revenue and expedite processing.
- They described the proposed rule's approach as not sustainable and that it has caused standard processing delays.
- Premium processing email service is generally quite effective and more effective than the general USCIS E-request and telephone system.
- USCIS is creating an artificial backlog to generate more money off premium processing fees.

On the proposed change of premium processing times from calendar days to business days, commenters wrote:

- They support the change but also recommended clarifying the definition of business days as days on when USCIS service centers are open.
- The purpose and advantage of premium processing is its predictability, and it is appropriate to amend the 15-calendar day timeline to exclude predictable discrete events such as Federal holidays and weekends, but not unpredictable and unknown events such as building or weather-related closures, or ''other days the Federal Government chooses to close its offices.'' If USCIS chooses to finalize a change to business days it should only exclude weekends and Federal holidays from the timeline, rather than also excluding weather emergencies and other regional or unanticipated closures.
- Changing premium processing from calendar days to business days is reasonable because it is unreasonable to expect USCIS to work weekends and holidays.
- The proposed change would violate Federal regulations requiring the use of calendar days for required actions.
- USCIS' new position that the original USCIS interpretation of ''calendar day'' was incorrect is inconsistent with decades of USCIS practice and other Federal agencies' interpretations of ''day.'' USCIS' original interpretation of ''day'' as ''calendar day'' was not incorrect, and USCIS does not have legal support for the proposed change to a 15-business day processing timeframe.
- Congress did not change USCIS' use of calendar days for premium processing, which it could have done if that had been the congressional intent.
- The proposed change would mean processing would generally be completed after the 14-day timeframe required by statute.
- The longer timeframe would decrease the value of the premium service compared to standard processing.
- USCIS has proven it can successfully complete premium processing adjudications within 15 calendar days.
- The number of Federal holidays at the end of the year would complicate processing during one of the most active periods of the year for many U.S. arts agencies.
- The change to business days would reflect on DHS' inability to accommodate a quick service for a substantial fee.
- The proposed change would reward inefficiency and shows a lack of appetite to improve service.
- The change would impose a burden on petitioners, and individuals and make it difficult to secure visas.
- O and P petitioners often must apply for visas at the last minute and the proposed change would make it very difficult to complete the process in a workable period.
- Tight employment processing timelines with the Department of Labor (DOL) leave no spare time for lengthening the premium processing timeframe.
- A concern with the existing practice of resetting the premium processing timeframe whenever a RFE or NOID is issued and recommendation that instead the timeframe be tolled until the applicant responds to RFEs and NOIDs because this approach would promote efficiency, accountability, and align with congressional intent.
- They recommended that USCIS define how notices would be provided to petitioners, consider electronic notices, and review internal procedures and policies to ensure efficient adjudication, predictability, and reliability for petitioners.
- USCIS needs to move resources during peak filing times for certain visa categories, especially for H–2B visas as they have unique scheduling time pressures.
- The premium processing fee should be decreased considering the decreased value of the premium processing service, given the proposed longer processing period of business days.
- Premium processing fees have been increased in the past without any improvement in processing times.
- The Form I–907 fee is unreasonable.
- Premium processing should be offered and maintained without the service interruptions that have been problematic in the past.
- USCIS should respond promptly to requests for premium processing and criticized RFEs as the first responses from USCIS.
- Physician National Interest Waiver (PNIW) petitions should be adjudicated within the 15-day timeframe rather than the 45-day timeframe.
- Premium processing should be maintained without service interruptions for Form I–539 applications and Form I–129 petitions.

Response: DHS disagrees that adjusting the timeframe for adjudicative action on a petition for which premium processing service has been requested from 15 calendar days to 15 business

[217] USCIS offers recommendations to avoid delays when filing paper. *See* USCIS, Recommendations for Paper Filings to Avoid Scanning Delays, *https://www.uscis.gov/newsroom/alerts/recommendations-for-paper-filings-to-avoid-scanning-delays* (last visited Feb. 7, 2023).

days would meaningfully harm petitioning entities.[218]

DHS is adjusting the timeframe for premium processing for multiple reasons. The current timeframe does not consider the days on which government offices are closed and USCIS staff are unavailable to adjudicate cases, such as a Federal holiday. Therefore, a surge in applications may coincide with a period when USCIS staff have substantially less than 15 working days to receive and adjudicate a petition with premium processing. In the past, there have been instances when USCIS was unable to adjudicate all the petitions for which petitioners requested premium processing within the 15-calendar day timeframe. This led USCIS to refund the premium processing fee for petitions that were not adjudicated within 15 calendar days and to temporarily suspend premium processing service. DHS believes that extending the premium processing timeframe from 15 calendar days to 15 business days will allow USCIS adequate time to take adjudicative action on petitions and will provide petitioners with a consistent and predictable experience.

DHS understands that sometimes a petitioning employer needs USCIS to take quick adjudicative action. DHS appreciates that some regular petitioners for foreign workers have built in the current 15-calendar day processing into their planning for projects and we have fully considered the impacts on such firms in making this change. As stated in the proposed rule and Regulatory Impact Analysis, DHS believes that changing from calendar days to business days may reduce the need for USCIS to suspend premium processing for applications and petitions during peak seasons, and thus impacts only a very small number of applications and petitions whose Form I–907, Request for Premium Processing Service, could not be processed within the 15-calendar day timeframe. This may permit USCIS to offer premium processing to more applicants and petitioning businesses each year. The change will only increase the maximum time USCIS has to complete the adjudication, and the average time for well-prepared requests may not increase as a result. However, DHS believes the possibility that a petitioner requesting premium processing service may need to wait a few additional days for adjudicative action is a small cost to impose for being able to expand premium processing to more requests and reduce the likelihood of a refund or for future suspensions of premium processing service.

Comment: Commenters stated that premium processing should be expanded. A commenter recommended USCIS expand it to all applications across all categories. Other commenters recommended extending it to the following benefit requests:

- Form I–526 petitions.
- Form I–485 (asylum/refugee based).
- EADs and Form I–765 filings.
- Asylum seekers, to receive an interview and adjudication in a shorter period.
- Family-based immigration cases and all employment authorization applications.
- Naturalization interviews to recover costs.

Response: USCIS is working to expand premium processing services to all categories of Form I–539, Application to Extend/Change Nonimmigrant Status, and Form I–765, Application for Employment Authorization, by the end of FY 2025. *See* 87 FR 18227, 18228, 18235 (Mar. 30, 2022). In March 2023, USCIS began accepting premium processing requests for some students who had a pending Form I–765.[219] In June 2023, USCIS announced it would expand premium processing to some categories of Form I–539.[220] USCIS may expand premium processing service to other form types in future rulemakings. However, USCIS is also working to reduce processing times without the need for an additional premium processing service fee. *See* section III.D.4 of this preamble and 88 FR 402, 529–530 (Jan. 4, 2023). DHS has made no changes based on these comments.

e. Adjusting Fees for Inflation, Proposed 8 CFR 106.2(c)

Comment: Commenters discussed adjusting fees for inflation and the DHS proposed rule to codify the authority at 8 CFR 106.2(d) to increase fees using the Consumer Price Index (CPI–U). Commenters wrote:

- While some fees need to increase due to normal inflation, there is no reason that applications should increase so significantly.
- Fees should not be raised more than the current rate of inflation or cost-of-living.
- The fee increases should be tied to 7 percent inflation instead of the proposed increases.
- USCIS should not use inflation to further increase fees before 2025.
- USCIS should reconsider automatically increasing fees based on inflation.
- Increasing the fee regularly establishes a ''moving target'' for applicants and imposes a financial burden on low-income, survivor applicants, and applicants in need of assistance.
- They supported a mechanism to allow for nominal increases in fees in between the biennial fee reviews.
- Adjusting for inflation can provide more predictable and moderate fee increases than those included in the proposed rule.
- Because total inflation since January 2016 was 26.28 percent. Any fee with an increase less than this amount is operating at a relative discount.
- Providing for regular fee increases would remove consideration of ''ability to pay'' in fee setting.
- Regular fee increases would decrease USCIS' incentive to reduce the immigration backlog and improve administrative efficiency.

Response: After reviewing the public comments on the subject, DHS has decided to retain a provision that provides that DHS may adjust IEFA non-premium fees by the rate of inflation. *See* 88 FR 402, 516–517 (Jan. 4, 2023); 8 CFR 106.2(d). While the CFO Act, 31 U.S.C. 901–03, requires agencies to review their fees on a biennial basis and recommend changes, fee changes can be delayed by competing policy consideration and other deliberative matters, whereas a fee increase that is based on a precise mathematical inflation formula might avoid such a delay. An adjustment that is based on inflation would allow DHS to keep USCIS IEFA revenue in pace with costs more regularly. In addition, if DHS can adjust USCIS fees on a timelier basis to match inflation, the fees will be more incremental and more predictable than larger increases every few years. 88 FR 402, 516. As a result, regular inflation rate increases using a basic mathematical calculation are expected to result in smoother fee increases and less sticker shock from new fee rules.

[218] DHS did not propose any changes in premium processing fees. Premium processing fees were established by law and in other rulemakings. *See* Public Law 116–159, secs. 4101 and 4102, 134 Stat. 739 (Oct. 1, 2020); 8 U.S.C. 1356(u); Implementation of the Emergency Stopgap USCIS Stabilization Act, 87 FR 18227 (Mar. 30, 2022); Adjustment to Premium Processing Fees, 88 FR 89539 (Dec. 28, 2023).

[219] *See* USCIS, USCIS Announces Premium Processing; New Online-Filing Procedures for Certain F–1 Students Seeking OPT or STEM OPT Extensions, available at *https://www.uscis.gov/newsroom/news-releases/uscis-announces-premium-processing-new-online-filing-procedures-for-certain-f-1-students-seeking-opt* (last reviewed/updated Mar. 6, 2023).

[220] *See* USCIS, USCIS Expands Premium Processing for Applicants Seeking to Change into F, M, or J Nonimmigrant Status, available at *https://www.uscis.gov/newsroom/alerts/uscis-expands-premium-processing-for-applicants-seeking-to-change-into-f-m-or-j-nonimmigrant-status* (last reviewed/updated 6/12/2023).

Nevertheless, in this final rule, DHS is revising proposed 8 CFR 106.2(d)(2) to provide that the inflation adjustment would affect all fees that are not set by statute. In response to comments that requested DHS adjust fees by inflation instead of using the proposed fees, DHS decided to limit some fees to the lesser of either the proposed fee or the current fee adjusted for inflation. *See* section II.C. Changes from the Proposed Rule of this preamble.

2. Employment and Immigrant Investors

a. Asylum Program Fee

Comment: Many commenters submitted comments on the Asylum Program Fee and proposed 8 CFR 106.2(c)(13). Some commenters supported the proposed Asylum Program Fee and funding the asylum process through employment petition fees. Other commenters stated that, although this fee will apply to Form I–129 petitions for H–2A workers, it does not raise the same concerns that they included in their comment letter about worker mobility because it applies equally to all applications and therefore does not disincentivize hiring of H–2A workers already in the United States. Other commenters suggesting that the proposed fee be increased to eliminate the backlogs in other humanitarian fee-exempt programs. Others wrote that they supported cost shifting provided that a greater share is covered by employer petitions as a means of ensuring asylum seekers and other vulnerable groups are not harmed by DHS's funding structure, by shifting asylum costs to those applicants who are more likely to be in a financial position to afford to pay. Other commenters supported the proposed Asylum Program Fee until congressional funding is secured for such purposes.

Most commenters on the subject wrote that they opposed the proposed Asylum Program Fee. DHS summarizes the commenters as follows:

- Raising fees on employment-based applicants to subsidize asylum applicants would be unfair.
- The surcharge would exacerbate the costs borne by employers, nonprofits, and small businesses in particular, while decreasing demand for employment-based visas.
- The fee would have a chilling or deterrent effect on employment stakeholders regarding hiring foreign nationals.
- The decrease in demand for employment-based visas could lead to less revenue, or a lack of funding necessary to adjudicate benefits and facilitate a long-term solution to case backlogs.
- The negative impact of the Asylum Program Fee on businesses would have a downstream impact on consumers that they cannot afford while battling historic inflation.''
- International touring artists and American businesses are still recovering from the worldwide pandemic shutdown and cannot bear the burden of funding of the asylum program.
- The proposed fee is well beyond a cost-of-living increase or even today's inflation rate.
- The fee would have a disproportionately onerous effect on small businesses who are seeking relief from the financially detrimental effects of COVID–19 followed by a labor shortage.
- Employers or petitioners should not bear the burden for a program that is not connected or relevant to employment benefits.
- The asylum program should not be funded by taxing or on the backs of other petitioners who are already struggling financially, such as agricultural employers, academic institutions, or international musicians. Commenters assert that USCIS acknowledges this issue in the rule, but it fails to offer a response to this anticipated objection, while the primary reason for charging separate fees for Forms I–485, I–765, and I–131 in adjustment of status applications is to prevent this same imbalance.
- DHS should adopt a consistent approach and properly weigh the burden of the cost of the asylum program on I–129 and I–140 petitioners. Instead, they seem to allow for petitioners to bear the cost of unrelated programs only when it means an increase to USCIS revenue.
- This proposal will have a materially adverse and arguably discriminatory impact on petitioners that are already bearing the largest burden in the proposed rule while USCIS is suffering unprecedented processing backlogs and inefficiencies. Asking these stakeholders to incur significant additional costs for unrelated services without any commitment to address their specific concerns sends a message of disregard that will discourage businesses from developing or expanding operations in the United States.
- USCIS arguing that it is necessary to impose this surcharge so that USCIS can limit fee increases on other filings provides requester's no real option and either requires paying the Asylum Program Fee or not filing a petition.
- USCIS could request appropriated funds or use premium processing program revenue to subsidize much of the $425 million cost of the asylum program.
- Subjecting H–2A petitioners to multiple asylum program fees for a single job order is not fair or reasonable.
- These additional fees will significantly impact IT and engineering staffing firms, which file Form I–129 for extensions of stay or status changes like a new job site more often than other employers. This commenter provided detailed information about the cost impacts to its members.
- Employers with limited resources will be less likely to cover visa fees for a worker's spouse or dependents, affecting a foreign worker's willingness or ability to take on employment in the United States.
- Such drastic increases in fees may suppress wage growth in industries where foreign workers are legitimately needed to supplement the domestic workforce. Employers who hire foreign workers should incur higher costs than they would for hiring U.S. workers, but these costs should come in the form of higher pay proffered to both U.S. and foreign workers and not petition fees.
- The proposal does not consider religious entities, many of which are small with limited budgets. Nonprofits and religious organizations provide significant benefit to the United States and asylees through outreach programs.
- Many health care providers and hospitals in medically underserved areas will not be able to sponsor needed physicians, nurses, and other health care professionals.
- The Asylum Program Fee would have a negative impact on the higher education community. Many universities with limited funds would no longer be able to sponsor specialized international researchers and other diverse faculty and staff.
- The ability to pay principle does not recognize the impact that an extra fee will have on U.S. higher education and related nonprofits with limited funding, such as public funds and specific, limited research grants.
- Because of the financial ecosystem of some institutes of higher education, they would be challenged by the fee, because of funding inequity between departments, lack of large endowments or high tuition rates, and reliance on Federal grants. A university is composed of numerous, smaller departments and units, each of which has a budget and is responsible for bearing the cost of immigration filings for its international employees.
- The Asylum Program Fee would penalize employers for utilizing legal avenues to hire foreign workers.
- Regarding H–2A employers:

- ○ There are already more employment costs for H–2A employers from increased administration and costs to achieve compliance.
- ○ Employers hiring H–2A workers are already facing increased input costs with no commensurate market price increase from purchasers.
- ○ The Asylum Program Fee would be penalizing small and seasonal American businesses for trying to hire a legal workforce.
- ○ Farmers in the H–2A program face extraordinary cost and burdens for the requirements of a legal guest worker program.
- ○ The fact that many individuals living in foreign lands see the land of the free and the home of the brave as a safe and secure shelter to the too often unspeakable horror they may face at home is a testament to the beacon that the United States represents. However, taxing agricultural employers to fund the mechanisms for providing secure shelter is arbitrary and capricious and an abuse of discretion.
- ○ The DHS statement that H–2A employers have more ability to pay is arbitrary and completely inaccurate according to the U.S. Department of Agriculture (USDA) Economic Research Service report on Farm Household Well-being. Many households report negative farm income.
- ○ USDA data on the H–2A program indicates that the Asylum Program Fee increases the financial burden of the employer with no ability to recover these added costs.
- ○ Questioning the factual basis behind the ability to pay presumption, a commenter said many of the other visa classifications included in the proposed rule are for voluntary travel, but the use of H–2A workers is a necessary part of business.
- ○ The outlook for 2023 does not indicate that farmers will have income to pay additional fees.
- ○ USCIS should not put the U.S. food supply in jeopardy by requiring agricultural worker visas to include an unnecessary asylum fee.
- ○ Farm employers are having a very difficult time staying in business and this fee will create a financial burden upon the H–2A program that they rely upon for most of their labor resource.
- ○ The Asylum Program Fee is unreasonable and overburdensome and USCIS must realize that the program is what keeps labor-intensive agriculture afloat.

- When an international artist applies for an O or P visa they plan on touring and therefore are not reimbursed for visa costs. This change signals to the international arts community that their contribution to cultural influence is not welcome.
- The Asylum Program Fee would have a potentially discriminatory impact on beneficiaries from countries with severely backlogged immigrant visa quotas, such as India. The fee would have a disparate impact on individuals who are on the path to lawful permanent residence but are required to maintain nonimmigrant status for decades because of the lack of immigrant visa availability. Other commenters expressed similar concerns about the disparate treatment of foreign nationals, and their employers, from certain countries that are disproportionately affected by the visa backlog, like India and China, as employers must file more Form I–129 and Form I–140 petitions for the employee than for similarly situated individuals in order to maintain their status while they wait for an immigrant visa to become available.
- The Asylum Program Fee shows a lack of understanding and reinforces the stereotype that the arts, extraordinary ability, and business communities can afford such fee increases.
- The fee should be spread around all the applications, not just targeting what DHS seems to view as the most lucrative applications.
- DHS' ability to pay determination is conclusory and unsubstantiated, and therefore primed to be found arbitrary and capricious.
- The rule does not transfer the cost of asylum to all other fee-paying applicants but to business petitioners only, with the greatest impact on small businesses, nonprofits, start-ups, and religious organizations while also ignoring the ability to pay methodology announced in this rule.
- While it may be true that businesses in general have more ability to pay compared to asylum seekers, this fee increase is disproportionately burdensome to U.S. small and seasonal businesses.
- The Asylum Program Fee is arbitrary because it is based on an estimate, and USCIS failed to provide actual historical data on asylum claims and associated workload that the public can evaluate to determine if DHS's proposed fee amount and allocation of the fee on certain petition filers is warranted or reasonable.
- The added burden on business immigration applicants is unjustified because USCIS relied on a statistically insignificant sample to measure ability-to-pay. Forms I–129 and I–140 account for just 10 percent of fee-paying receipts, but would bear the burden of asylum case processing, along with other fee increases.
- Table 11 of the proposed rule provides estimated costs for FY 2022 and FY 2023; the proposed rule does not explain how it arrived at its total estimated costs since there is no list of itemized expenses. Without specific program cost data, the commenter said the $600 fee has no basis in fact.
- USCIS' Small Entity Analysis (SEA) of nonprofit institutions relies on unsupported assumptions about the burden to nonprofits and is silent on the benefits of nonprofits to the nation. The analysis does not fully discuss the impact on distributing asylum fees across all application types, so it is difficult to accept these assumptions without reviewing the impact for comparison.
- Until DHS acknowledges the distinction between for profit and nonprofit employers, DHS is asking nonprofit employers to fund what the U.S. Congress is unwilling to do.
- There is no justification for asking employers to pay an additional fee that may curb H–2B program participation at the very time that the administration seeks to expand pathways to legal employment for migrants. The premise that H–2B employers can absorb the cost of funding the asylum program and other processing activities is entirely flawed. The rule assumes, without evidence, that all H–2B employers have an ability to pay fees that are 200 percent higher than the current fees.
- There is no evidence in the record showing that companies currently using H–1B visas can more easily afford this fee than family-based petitioners.
- The fee does not take into consideration true ability to pay, particularly for H–1B employers.
- USCIS regulations require some Form I–129 fees, like the H–1B fees, to be paid by the employer rather than the beneficiary, so there is no leeway for the affected parties to negotiate among themselves on who is better able to pay the fee.
- Imposing a flat fee tied solely to asylum seekers suggests that such individuals are the sole factor in USCIS' challenges in processing employment-based applications, rather than challenges that USCIS faces because of policies instituted under the prior administration, increased volumes of applications, delays in staffing and staff retention, legislative inaction, and longstanding backlogs.
- It is unfair to impose costs on employers and workers that USCIS creates, as well as unnecessary since USCIS can reduce costs at any time.

• DHS should direct the limited pool of USCIS fees toward core adjudicative functions needed to keep it more efficient, rather than toward a flawed new asylum program whose truncated timeline deprives asylum seekers of a fair opportunity to present their cases.

• Congress did not provide DHS with the discretion to set fees based on the agency's apparent political agenda.

• Imposing a $600 surcharge on Form I–129 and Form I–140 petitioners is the wrong approach to funding this important national obligation, as well as an extraordinary and unparalleled overreach of authority by USCIS. Section 286(m) of the INA provides a statutory basis to recover the costs of the asylum program by setting adjudication and naturalization fees at a level sufficient to recover the costs of the asylum program, but never in the history of USCIS has there been a decision to impose a surcharge on a discrete group of filers to fund services to another discrete and distinct group of filers. This is a distortion of the statute and the ability to pay concept, upon which USCIS primarily justifies this decision.

• This fee is a gross overreach of authority and USCIS has never imposed a surcharge as significant as this upon a distinct population of stakeholders for the sole benefit of another group of stakeholders.

• The INA does not authorize the creation of new fee categories, nor is there ambiguity in INA section 286, 8 U.S.C. 1356 that would allow such a regulatory invention. Creation of the new proposed fee category would require a statutory authority, and the agency is on a path that courts will likely find impermissible.

• The current $30–$85 charges per asylum applicant paid into IEFA is all that is allowed per treaty. Depositing fees into IEFA does not convert it to funds to adjudicate asylum cases. Using IEFA to adjudicate asylum will overwhelm the purpose of the IEFA.

• The fee is unjustified and USCIS should secure congressional funding to efficiently adjudicate asylum applications.

• The costs for any asylum program should be paid out of the Treasury instead of using a rulemaking undertaken by the Executive Branch.

• Congressional appropriations with a reduction in enforcement, detention, and deterrence costs, should be the priority.

Commenters suggested that the following entities be exempted from an Asylum Program Fee:

• U.S. higher education and related nonprofits (*e.g.,* cap-exempt employers) following the same logic of exempting U.S. higher education and related nonprofit organizations from the ACWIA Training Fee.

• Government research organizations, also consistent with precedent afforded by ACWIA.

• Nonprofit entities.

• Religious organizations.

• Individual employers that cannot pay the fee.

• Certain small businesses.

• Healthcare facilities.

• H–2A and H–2B petitioners.

Other commenters suggested alternatives to the proposed Asylum Program Fee. Those commenters wrote:

• Instead of the proposed $600 fee, a small stipend toward asylum cases ($50 per case) would seem conscionable to help with the border crisis. Another commenter suggested a $200 fee.

• USCIS should distribute the asylum fee across all form types or fee payers.

• The Asylum Program Fee should be based on the size or revenue of the employer filing the petition.

• The asylum program should be supplemented by businesses that operate within the multimillion-dollar range.

• USCIS should use a sliding scale for employers based on net revenues and/or number of employees.

• USCIS should instead charge a fee to asylum applicants or their sponsors. Asylum seekers hire lawyers and other services to arrive in the United States, so they should be able to afford an additional fee.

• USCIS should adopt a model like the H–1B program, whereby asylum seekers would be required to obtain a U.S. sponsor, who would pay a small application or program fee.

• Many commenters suggested that, if the Asylum Program Fee must remain, employers should only be required to pay the fee one time.

• The Asylum Program Fee should only be assessed for the initial petition filed by an employer, like the Fraud Prevention and Detection and Public Law 114–113 fees, and not subsequent transfers, extensions, renewals, and changes of status.

• A $100 fee could be assessed once, like the H–1B Prevention and Detection Fee.

• The fee could be structured like the Fraud Fee, required once at a higher education institution when filing Form I–129.

• USCIS should implement a premium processing program for asylum interviews to recover case processing costs, reduced asylum division staffing, or fees for non-USCIS-certified immigration attorneys representing asylum seekers or use premium processing fees to finance free asylum applications.

• USCIS should consider other funds in addressing asylum processing including premium processing fees.

• USCIS should take a more balanced approach to accommodate the costs of humanitarian processing, including by (1) considering projections for premium processing revenues in setting fees, and (2) expanding opportunities for employment authorization for migrants and asylum seekers on parole in the United States.

• The asylum fee should be divided between the Forms I–129, I–485, N–400, and Form I–90, which would decrease the Asylum Program Fee per application/petition to a more manageable $155.

• USCIS could implement a registration fee to provide an initial stream of revenue, like the H–1B Registration Fee.

• If asylum filings will be increasing, USCIS should consider implementing an ''after you have been settled'' filing fee for all asylum cases (like the Form I–751 for marriage-based Green Card cases) to recoup some of the costs from asylees.

To mitigate the impact of the Asylum Program Fee on small entities commenters suggested the following alternatives:

• USCIS should also reduce the amount for other small business entities like how the ACWIA fee is currently assessed.

• DHS should establish tiers of fee pricing based on revenue, number of employees, type of visa, or number of workers per petition.

• DHS should limit the frequency of asylum fee payments by small entities (*e.g.,* to once or twice per employee for H–1B, or once per worker per season for H–2A/H–2B). Meaning, the Asylum Program Fee would only apply to initial petitions. It would not apply to amendments or extensions using Form I–129, similar to ACWIA.

• DHS should establish a lower tier of fee pricing for small nonprofits, exempt nonprofits, or limit the frequency of paying this fee to once per worker category.

• USCIS should phase-in the new fee over at least 2–3 years.

• Should the number of people seeking asylum suddenly drop the NPRM indicates the Department will nonetheless continue to collect the fees. The Department instead should describe what fee will be charged based on different asylum workload levels.

• DHS should explain how the estimated costs were calculated and

how the potential impact on the employer community was assessed, including the potential of fees to decrease should the system become less burdened by asylum seekers. Commenters asserted that USCIS must explain how it has calculated this fee amount and inform the business community of the cadence and metrics by which the agency will review the fee, to determine whether it should decrease over a prescribed period, exist in perpetuity, or sunset on a specific date, or end if the asylum crisis ends.

- Regarding USCIS' statement that it will re-evaluate the Asylum Program Fee based on the status of the Asylum Processing IFR and any funding appropriated for it when DHS develops its final fee rule, commenters supported the agency's humanitarian mission and encouraged USCIS to provide additional details regarding how it will determine the final fee amount and any future adjustments.
- Because DHS will re-evaluate the Asylum Program Fee based on the status of the Asylum Processing IFR and funding appropriated for it in the final fee rule, the fee should be delayed until the funding is more certain and can be recalculated.
- USCIS should consider reviewing this fee more frequently than the others because of the variability of migration patterns and whether the fee should be distributed more uniformly amongst those seeking immigration benefits.
- The USCIS fee schedule proposal was published several weeks before DHS and DOJ published its Circumvention of Lawful Pathways proposed rule, thus USCIS' assumptions regarding future asylee flows will need to be reconsidered.

Response: As explained in the proposed rule, DHS calculated the Asylum Program Fee by dividing estimated annual costs by forecasted workload. *See* 88 FR 402, 451–454 (Jan. 4, 2023). The Asylum Program Fee may be used to fund part of the costs of administering the entire asylum program and would be due in addition to the fee those petitioners would pay using USCIS' standard costing and fee calculation methodologies. *See* 88 FR 402, 451 (Jan. 4, 2023). DHS did not propose this Asylum Program Fee without having carefully considered its implications and effects, as discussed in the proposed rule and the SEA. *See* 88 FR 402, 453–454 (Jan. 4, 2023).

By law, USCIS is required to conduct a fee review every 2 years. Therefore, all fees, including the Asylum Program Fee, will be reviewed biennially. DHS is authorized to set fees at a level that will ensure full recovery of the costs of providing services, including the costs of services provided without charge to asylum applicants or other immigrants. *See* INA sec. 286(m), 8 U.S.C. 1356(m). Consistent with other immigration benefit requests where fees are waived or held below the cost of providing the service, the cost of the Asylum Program has always been incorporated into and spread across other immigration benefit requests for which a fee is paid. DHS considered the impact of spreading the cost of the Asylum Program across various requests, including Forms I–485 and I–765. However, DHS decided to assign these costs only to Form I–129, Petition for a Nonimmigrant Worker, and Form I–140, Immigrant Petition for Alien Workers, as explained in the proposed rule. *See* 88 FR 402, 451–454 (Jan. 4, 2023). DHS requested $375.4 million in appropriated funding for USCIS asylum adjudications in FY 2023.[221] However, USCIS did not receive the funding. In the absence of appropriations, USCIS must fund the asylum program through fee revenue.

As explained in section II.C. Changes from Proposed Rule of this preamble, after considering the public comments, DHS has decided to change the Asylum Program Fee in the final rule to alleviate the effects of the fee on nonprofit entities and employers with fewer than 25 full-time equivalent (FTE) employees.

USCIS considered the various concerns raised by commenters that suggested that the $600 Asylum Program Fee would cause indirect secondary, tertiary, and downstream economic impacts on many facets of the U.S. Examples cited by the commenters included exacerbating the effects on consumers of inflation and the COVID–19 pandemic, increasing costs for already unprofitable farmers, reducing the food supply, harming information technology and engineering firms, harming religious entities, impacting health care providers, exacerbating the plight of nationals of certain countries such as India and China, and generally writing that DHS failed to analyze the effects of the new fee. DHS has accounted for the direct costs of the Asylum Program fee, and our data indicates that the Asylum Program Fee will not have the deleterious effects on multiple parts of U.S. economy that the commenters state that it will. Nevertheless, as requested by commenters and described in section II.C. of this preamble, DHS is providing relief to nonprofits and small employers in this final rule.

Comment: Multiple commenters, including a business association and a professional association, suggested USCIS create tiered levels for different types of fees. For example, a business association recommended tiered fee levels for the proposed asylum fee where smaller companies would pay a lesser amount for the asylum fee. The association further proposed tiered asylum fees that would apply to more immigration benefit requests aside from Forms I–129 and I–140, thus not placing this cost burden entirely on the business community. Additionally, the commenter requested a set limit on the number of times an entity must pay the asylum program fee for a specific beneficiary.

Response: As explained elsewhere in this final rule, DHS creates lower fees for certain small employers and nonprofits in this rule. Businesses with 25 or fewer FTE employees will pay a $300 Asylum Program Fee instead of $600, and half of the full fee for Form I–129. Non-profits will pay $0. DHS carefully considered the implications and effects of the Asylum Program Fee, as discussed in the proposed rule and the SEA. *See* 88 FR 402, 453–454 (Jan. 4, 2023). As explained above and in the RIA, DHS revised the USCIS budget to accommodate the revenue generated by the fees and volumes in this final rule. In this final rule, DHS implements lower fees for certain small businesses and nonprofits using Form I–129. DHS believes this tiered approach accommodates these commenter's concerns by offering lower fees for some small employers and nonprofits. DHS considered the suggestion but declines to limit the number of times an entity must pay the Asylum Program Fee for a specific beneficiary because determining if the fee exemption applied at intake would require a check of systems to determine if the beneficiary had a fee paid for them in the past, and that would delay intake and processing and add to USCIS cost.

b. EB–5 Program and Fees (I–526/526E, I–829, I–956/956F/956G), Reform and Integrity Act (Not Related to Small Entities/RFA/Quantitative Impacts)

Comment: Many commenters submitted comments on the EB–5 Program and fees. Some commenters expressed support for increasing the EB–5 investment visa's filing fee reasoning the fee hike could rule out unqualified investors as well as ensure integrity and quality in applicants to a highly demanded visa. Others disapproved of the investor filing fees

[221] DHS, Budget-in-Brief Fiscal Year 2023 at 77, available from *https://www.dhs.gov/publication/fy-2023-budget-brief* (last updated Mar. 28, 2022).

but wrote that the proposed increase in fees for Regional Centers is arguably reasonable given the due diligence requirements imposed by new laws.

Many commenters wrote that they did not support the proposed EB–5 program fees including Forms I–956, I–956G, I–526E, and I–829. Those comments are summarized as follows:

- The increase in fees for EB–5 visas would make legal immigration to the United States more difficult, particularly the ability for investors to sponsor temporary workers.
- The fee increases associated with the EB–5 Immigrant Investor categories would have a chilling effect on an invaluable, job-creating visa category and would not provide adequate assurances for improved service or shorter processing timelines.
- The proposed rule will cause EB–5 program related applicants to shoulder an unsustainably high financial burden that could threaten the reputation and longevity of the program.
- Stakeholders might support the proposed fee increases for the EB–5 program if they were accompanied by improved case processing times.
- USCIS does not anticipate using the additional fees to provide additional resources or staff for EB–5 program related filing despite exceptionally high processing times.
- Before modifying fees for EB–5 services, USCIS must first conduct a fee study compliant with statutory provisions of the Reform and Integrity Act. Because the fee study has not been conducted, the proposed EB–5 program fees in the rule are premature and should therefore be withdrawn from the final rule, and EB–5 program fees must be set at levels that ensure full cost recovery of only the costs of providing its services.
- The proposed increase is unjustified for Form I–829 because it does not require a considerable number of staff.
- USCIS should retain the fee on the Form I–829 for investors who have already filed their Form I–526 petitions because they had not budgeted for a 154 percent fee increase when deciding to permanently move to the United States.
- The proposed fee for the Form I–526 increased despite a reduction in the Form I–526 adjudication burden, and USCIS does not claim to track adjudication times on Form I–526.
- The idea that a higher fee for Form I–526 may reduce adjudication times is not supported by historical precedent. Processing times for EB–5 related filings have increased year after year since 2016, without measurable increases to productivity.
- USCIS should institute expedited processing, specifically, for the Form I–526 to reduce the legal burden on investors and to avoid delaying positive impacts to the economy.
- The proposed fee increases for Form I–526 and Form I–526E should only apply in cases where petitions can be processed within 12 years or the proposed fee for these forms should reduce by at least 50 percent.
- Because filing Form I–526E does not require adjudication of the underlying project, its fee should be lower than the fee for Form I–526.
- The proposed fee for the first time filing a Form I–956 would be excessive if USCIS cannot guarantee adjudication time will be less than a year.
- USCIS should make a distinction between a Form I–956 filed for the first time for a Regional Center designation and a Form I–956 filed for amendments such as reporting a name or ownership change. The proposed fee would be more understandable for new designations but would be excessive for amendments. Requiring Form I–956 for making amendments to Regional Center Designation and requiring annual renewal of designation status contribute to a heightened overall filing volume for such form.
- The proposed rule relies on inaccurate inputs and inappropriately forecasts a small number of incoming EB–5 receipts to cover the cost.
- Prior fee increases did not improve processing speeds; commenters are concerned that this increase would not augment staffing levels sufficiently to create any change.
- Delayed processing can cause investors to lose their investment; adjudication times should be 3–6 months for Form I–956 applications and 1–2 years for Forms I–526, I–526E, and I–829 petitions.

Some commenters wrote in support of the proposed EB–5 program fees or provided additional suggestions. Those comments are summarized as follows:

- The price increase should lead to improved efficiencies, such as processing timelines of less than one year. USCIS should hire more staff to accelerate processing and decisions on Form I–829.
- The increase for Form I–526 is a fair cost for the adjudication required the first time USCIS processes an EB–5 investment project.
- USCIS should publish reduced adjudication timelines for the Form I–526 given its proposed filing bifurcation and the proposed increase in its fee.

Response: DHS is authorized to set fees at a level that ensures recovery of the full costs of providing immigration adjudication and naturalization services. Because USCIS relies almost entirely on fee revenue, in the absence of a fee schedule that ensures full cost recovery, USCIS would be unable to sustain an adequate level of service, let alone invest in program improvements. Full cost recovery means not only that fee-paying applicants and petitioners must pay their proportionate share of costs, but also that at least some fee-paying applicants and petitioners must pay a share of the immigration adjudication and naturalization services that DHS provides on a fee-exempt, fee-reduced, or fee-waived basis. DHS is therefore mindful to adhere to the standard USCIS fee methodology as much as possible, and to avoid overuse of DHS's discretion to eliminate or reduce fees for special groups of beneficiaries.

DHS disagrees with commenters who suggest that the EB–5 Reform and Integrity Act of 2022 precludes DHS from adjusting EB–5 program fees in this rule. As mentioned in the proposed rule and acknowledged by many commenters, the EB–5 Reform and Integrity Act of 2022 requires DHS to complete a fee study not later than 1 year after the date of the law's enactment; and then, not later than 60 days after the completion of the study, set fees for EB–5 related immigration benefit requests to recover the costs of providing such services and completing the adjudications, on average, within certain time frames. DHS realizes that the EB–5 Reform and Integrity Act of 2022 instructs DHS to complete the required fee study within one year, but that law requires a fee calculation method that is different from what DHS generally uses, *see* INA 286(m), 8 U.S.C. 1356(m), OMB Circular A–25 suggests, and most agencies follow. 88 FR 402, 471 (discussing full cost recovery and relevant guidance). In its fee rulemakings DHS has set USCIS immigration benefit requests generally with the goal of improving or achieving reasonable processing times, but not with the relatively short and precise processing times aspired to in the EB–5 Reform and Integrity Act of 2022. *See, e.g.,* 72 FR at 29858–59 (discussing USCIS plans to reduce processing times for certain request by twenty percent by the end of FY 2009); 81 FR at 26910 (discussing the rule's goal to achieve processing times that are in line with the commitments in the FY 2007 Fee Rule). The EB–5 Reform and Integrity Act of 2022, on the other hand, requires DHS to set the fees at a level that will provide USCIS with the resources necessary to process EB–5 benefit

requests within certain time parameters, that are generally shorter than what USCIS currently achieves. The EB–5 Reform and Integrity Act of 2022 also differs from INA section 286(m), 8 U.S.C. 1356(m), in that it limits the costs of free or discounted USCIS immigration benefit requests that can be transferred or funded by the EB–5 fees.[222] DHS is actively engaged in the work required to determine the fees under that law. Meanwhile, DHS has not adjusted its fees since 2016, is obligated under the CFO Act to review is fees and is authorized by the INA to set fees to recover USCIS costs.

As DHS stated in the proposed rule, the EB–5 Reform and Integrity Act of 2022 provides that the fee study required by 106(a) does not require DHS to adjust USCIS fees in the interim. *See* 88 FR 402, 420, 508–511 (Jan. 4, 2023); *see also* Public Law 117–103, sec. 106(f). No legislative history exists to explain how that provision should be read in conjunction with section 106(a). More importantly, the statute does not *prohibit* the modification of fees under INA 286(m), 8 U.S.C. 1356(m), prior to the completion of the fee study and rulemaking contemplated by section 106. Stated differently, by suggesting that the section need not be construed to require modification of the fees before completion of the study, section 106(f) necessarily implies that fees may be modified (*i.e.,* what is not required is permitted). Therefore, DHS interprets the provision to mean that the provisions of the law are not effective until DHS takes the steps it requires to be implemented; and that any requirement for DHS to set fees to achieve the processing time goals under section 106(b) of the EB–5 Reform and Integrity Act of 2022 are dependent on completion of the fee study and rulemaking contemplated by section 106. A different interpretation would prevent DHS from adjusting fees to recover the costs of normal processing until the fee study and rulemaking under section 106 is complete, a result that would be inconsistent with the broad purpose of section 106, which is to accelerate adjudications. Accordingly, DHS interprets ''[N]otwithstanding'' in section 106(b) of the EB–5 Reform and Integrity Act of 2022 to mean that section 106 requires DHS to establish fees to achieve the processing time goals set out in section 106(b), but that authority and its separate study requirements exist separately from (or ''notwithstanding'') INA section 286(m), 8 U.S.C. 1356(m), and therefore do not preclude USCIS from instituting new EB–5 program fees while that effort is undertaken. The fees that DHS sets in accordance with section 106 will go beyond normal cost recovery and effectively supersede section 286(m), 1356(m), to achieve processing time goals. Meanwhile, DHS establishes new fees for the EB–5 program forms in this rule using the same full cost recovery model used to calculate EB–5 fees since the program's inception and not the parameters required by the EB–5 Reform and Integrity Act of 2022. *See* 88 FR 402, 420 (Jan. 4, 2023). Accordingly, DHS will collect the fees established in this rule under INA sec. 286(m), 8 U.S.C. 1356(m), for the EB–5 program until the fees established under section 106(a) of the EB–5 Reform and Integrity Act of 2022 are codified and take effect.

Regarding concerns raised about processing times, DHS appreciates that USCIS is experiencing considerable backlogs in the processing of EB–5 related forms. USCIS is committed to adjudicate cases and reduce processing times, and USCIS continues to look for efficiencies in the EB–5 program, especially now as we implement the new legislation efficiently and effectively. Across our agency, we are working diligently to fill vacancies and IPO is no exception. While many of these positions remain unfilled due to attrition, prior budget constraints, and the prior hiring freeze, we are working to increase our staffing levels to support the mission. It is important to note too that in addition to adjudicating cases, IPO requires the time and subject matter expertise of our adjudications staff to address other necessary efforts, including implementation of the new legislation, litigation response, FOIA requests, public inquiries, and others.

USCIS understands the desire to receive prompt service, and the agency strives to provide the best level of service possible. USCIS also recognizes that lengthy processing times place a strain on EB–5 investors who are awaiting the adjudication of their immigration benefits. DHS proposed higher fees to fund additional USCIS staff generally and for EB–5 workload specifically, and other reasons identified in the proposed rule. *See, e.g.,* 88 FR 402, 417–419, 509–510 (Jan. 4, 2023). USCIS cannot commit to across-the-board processing time reductions as adjudications involve case-by-case review of complex applications and related supplementary information.

Comment: Commenters expressed the following concerns with EB–5 completion rates:

- USCIS' completion rates for processes related to the EB–5 classification are based on questionable data and are an inaccurate measure for proposing fees.
- USCIS officials have admitted under oath that the time to adjudicate Form I–526 is not actually tracked and instead based on assumed metrics, which calls into question many other adjudication figures cited by USCIS.
- Even assuming these adjudication figures are available and accurate, it is difficult to justify such a substantial increase in completion rates from FY 2017 to FY 2023 for some forms, including Forms I–526 and I–829, given no substantial changes in EB–5 regulations across that period.
- Commenters expressed confusion about the methodology used to determine the proposed fee increase for Form I–526 filings, given recent procedural changes and the lack of adjudication tracking for this form.
- A commenter asked the basis for the adjudication time for Form I–526 increasing by 240 percent, considering the reduced adjudication burdens after the shift of work from Form I–526 to other forms.
- A commenter stated that the manhours the proposed rule stated that officers spent on each application is nonsensical and that, if accurate, there would be no backlog.
- USCIS has not provided any statistics on the adjudication of Form I–956 and it is difficult to justify a completion rate significantly higher than the rate for Form I–924.
- USCIS should pursue a comprehensive study of the overall fee structure for EB–5 forms.

Response: DHS strives to make its fee schedules equitable, balancing the ability to pay and beneficiary pays principles, using the best information available. DHS is not required to precisely calculate the amount of time required to process all requests or the burden of one immigration benefit request or program relative to the entire realm of USCIS responsibilities. However, DHS follows OMB Circular A–25 to the extent possible and uses subject-matter expertise to estimate completion rates for the EB–5 program forms. The completion rates are estimates developed by Office of Performance Quality, using data and subject matter expert input from the Field Operations Directorate's (FOD's) IPO. Additionally, USCIS estimated the completion rates of the EB–5 forms by extrapolating from similarly complex

[222] EB–5 Reform and Integrity Act of 2022, Pub. L. 117–103, section 106(c)(1) (providing that the EB–5 fees may exceed the levels determined necessary in an amount equal to the amount paid by all other fee-paying requests to cover the costs of requests charged no or reduced fees).

adjudications, and by surveying personnel who were experts on EB–5 request processing. While INA section 286(m), 8 U.S.C. 1356(m), requires USCIS fees to be based on the total costs for USCIS to carry out adjudication and naturalization services, which could be affected by the amount of time required to process requests, it does not require that each specific USCIS fee be based on the costs of the service provided compared to the burden of all other services, or perceived market rates and values. DHS has investigated the concerns of the commenters and believes the estimates used to determine the fees for Forms I–526, I–829, I–956, and other EB–5 workloads are reasonable.

c. H–1B Registration Fee

Numerous commenters expressed support for the proposed fee increase for H–1B registration. Commenters wrote:

- Employers should be willing to sponsor an employee with any reasonable fee.
- The fee increase would give more opportunities to talented foreign students in STEM fields; assist small and mid-size U.S. companies; and improve USCIS efficiencies and adjudicator wellbeing.
- The proposed increase of the H–1B pre-registration fee would help address ongoing H–1B lottery abuse, whereby companies can submit multiple, frivolous registrations for a single candidate.
- With H–1B lottery abuse and a 57-percent increase in registrations from 2020 to 2023, the fee increase would cover USCIS' operation costs and help to avoid false cap registrations. False registrations harm the legal rights of other applicants who are hired through standard processes and who later apply for the H–1B visa to continue working for the same company.
- The increased registration fee would discourage companies from enrolling potential employees in the lottery before they accept an offer or start working, which disadvantages existing employees.
- USCIS should raise the fee further to mitigate abuse and other related concerns to stop lottery abuse, suggesting fees ranging from $500 to $3,000.
- The increase in the H–1B fee to $215 is too low because if an employer sincerely wants to recruit highly skilled foreign nationals, they should be willing to pay more. A higher fee would fund USCIS operations and reduce abusive petitions.
- General agreement with the fee increase, but the proposed fee would not help to mitigate abuse.
- USCIS should consider duplicate registrations based on SSNs or passport IDs.

Multiple commenters expressed opposition to the proposed fee increase for H–1B pre-registration. Those comments are summarized as follows:

- The rule would negatively impact employers and small businesses.
- The registration fee would disincentivize registration, creating a chilling effect on recruitment and stifling technological innovation.
- The increase in filing fees would create an unequal system whereby small businesses would be unable to hire and retain H–1B workers, unlike Fortune 500 companies that can afford the higher fees.
- USCIS should foster a healthy and even-handed competition between small and large businesses that are interested in hiring H–1B workers.
- USCIS should consider a smaller, 100-percent increase to $20 instead of the proposed increase.
- The registration fee increase is unfair, unreasonable, or unjustified. The electronic registration program was designed to reduce costs and increase efficiencies in the H–1B process. If USCIS knew soon after the program's creation that it was not sufficiently recuperating costs, it should not have proceeded with implementation.
- The fee increase is in direct opposition to the justifications DHS lists in the **Federal Register** for the changes to the fee structure. The commenters provided the following reasoning:
  - The proposal is contrary to law and fails to meet the intended goal of the electronic H–1B registration program to eliminate unnecessary costs and mitigate the inefficient use of both government and petitioner resources.
  - The proposed H–1B registration fee is contrary to the implementing regulation, which stated that the registration fee was to be nominal. The proposed fee defies this stated goal and exceeds the amount necessary to run the annual selection process. The proposed fee is unlawful.
  - Increasing user fees rarely deter alleged misuse of a program, and instead adds unnecessary burdens to the legitimate use of the H–1B program. The fee would not likely dissuade any who may attempt to increase the odds, but instead would price some companies out of the market.
  - The proposed 2,050-percent increase to the H–1B registration fee is one of the only processing fees that does not cover processing, as DHS specifically confirms that there are no costs associated with adjudicating an H–1B registration.
  - The proposal would not reduce barriers and promote accessibility but would amount to an unjustifiable mechanism for generating revenue without providing benefits to most companies paying the fee.
- The fee is unjustifiable and arbitrary, and DHS should conduct its promised review to calculate H–1B registration costs, beyond the vague existing references to costs to inform the public and conduct management and oversight before raising registration fees by more than 2,000 percent.
- DHS should provide additional transparency regarding how it arrives at a final fee amount and how it will allocate the additional funding to benefit the H–1B registration process.
- USCIS should reference activity costs for a) informing the public, and b) management and oversight with more specificity, and clarify the justification for the $129 component of the H–1B fee allocated to Management and Oversight.
- The registration fee is only slightly less than substantive Form I–129 ($147) and Form N–400 ($150) fees despite this being an automated, computer-generated selection with no adjudication involved.
- No fee should be required for informing the public and for management and oversight, because the activity is conducted online at effectively zero cost or only occurs during a short period of the year. Even if fees are required, the fees should drop when the number of registrations increases. The fee is unjustified and should be rescinded.
- USCIS is taking a narrow view in presuming employers can pay the increased registration fee because the H–1B registration system is a lottery and increasing the fee by over 2,000 percent would be unfair.
- USCIS has not considered the cumulative costs to employers or the actual budgets of a company. While companies may appear to have a high net income, the fee increase is substantial enough to affect whether a company can employ or continue to employ a foreign national.
- The proposed fee would not eliminate multiple registrations; USCIS should consider disregarding H–1B registrations from different organizations filed for the same candidate.
- USCIS should raise the registration fee for each additional entry, suggesting $200 for the first entry, $400 for the second, $800 for the third, and $1,600 for the fourth.

- Petitioners engaging in lottery abuse should face penalties.
- USCIS should not use fees as a mechanism to deter multiple entries in the H–1B lottery pool, because a higher fee would not assist in this effort. Instead, USCIS should keep fees low to encourage employers to sponsor international talent and place a cap on multiple (two to three) entries with the same passport number.
- USCIS should evaluate this fee carefully to promote fairness and efficiency in the lottery system. If selected, the applicant's registration fee should be counted toward the Form I–129 filing fee to reduce burdens for small businesses.
- USCIS must revise the *my.uscis.gov* website to allow registrants, applicants, and petitioners to pay filing fees directly and submit filings prepared by attorneys. The new fee coupled with the current system would yield unworkable results, such as credit card company penalties that would block large-scale registrations and unduly prejudice potential beneficiaries.
- USCIS should clarify the timeline for implementing the proposed H–1B registration fee, because it is unclear if the fee would go into effect before the next H–1B cap lottery.
- Reliance on application fees such as the one for the H–1B registration generates perverse incentives. Because the H–1B lottery is random, many large firms sponsor more migrants than they need, and these factors cause the H–1B visa program to subsidize other areas of the immigration process. Because USCIS lacks the funding to promptly review applications, that distortion is tolerable since the H–1B visas are profitable.

Response: When DHS established the current $10 fee, USCIS lacked sufficient data to precisely estimate the costs of the registration process, but we implemented the $10 fee as a measure to provide an initial stream of revenue to fund part of the costs to USCIS of operating the registration program. *See* 84 FR 60307 (Nov. 8, 2019). The electronic registration program has made the H–1B selection process more efficient, both for H–1B petitioners and USCIS, by no longer requiring the preparation and submission of Form I–129 for all petitioners before they knew it would be adjudicated. Form I–129 now need only be filed by petitioners with selected registrations who wish to petition for an H–1B worker. The implementing regulation specifically anticipated that this temporary, nominal fee would ultimately increase based on new data, stating, ''Following implementation of the registration fee provided for in this rule, USCIS will gather data on the costs and burdens of administering the registration process in its next biennial fee review to determine whether a fee adjustment is necessary to ensure full cost recovery.'' *See* 84 FR 888 (Jan. 31, 2019); *see also* 84 FR 60307, 60309 (Nov. 8, 2019). Given that $10 was an intentionally low and temporary fee, DHS disagrees with some commenters' characterization that the proposed fee should not increase substantially. DHS clearly explained in the proposed rule that the proposed $215 H–1B registration fee was based on empirical cost estimates, as anticipated in the implementing regulation. *See* 88 FR 402, 500–501 (Jan. 4, 2023). DHS based the proposed fee on the activity costs for two activities: Inform the Public and Management and Oversight. *Id.* The fee review supporting documentation provides definitions of these activities. Inform the Public involves receiving and responding to inquiries through telephone calls, written correspondence, and walk-in inquiries. It also involves public engagement and stakeholder outreach initiatives. As explained in the supporting documentation, Inform the Public includes the offices responsible for public affairs, legislative affairs, and customer service at USCIS. Management and Oversight involves activities in all offices that provide broad, high-level operational support and leadership necessary to deliver on the USCIS mission and achieve its strategic goals. The proposed rule stated that the registration selection was automated, but that does not mean that USCIS incurs no costs in operating and maintaining the system or that registration fees should not fund some of the costs of services provided without charge as permitted by the INA.

As explained in the proposed rule, DHS is authorized to fund all USCIS operating costs and absent other funding mechanisms we must adjust fees to maintain an adequate level of USCIS service. *See* 88 FR 402, 417–419 (Jan. 4, 2023). DHS does not establish the H–1B Registration Fee at $215 without having carefully considered the implications and effects of such an increase. DHS understands that the beneficiaries of H–1B petitions help the U.S. lead the world in science, technology, and innovation. At the same time, DHS is charged with establishing a fee schedule that will fund USCIS using authorized, available, and appropriate means. Faced with the imperative of adequately funding USCIS to ensure the fair and efficient functioning of the legal immigration system, DHS has determined that increasing the H–1B Registration Fee to recover the costs of the registration system is the option that minimizes burden for the most individuals and entities overall.

DHS has limited data with which to estimate the impact of the increased H–1B Registration Fee upon the number of H–1B registrations. The Price Elasticity section of this rule's RIA shows H–1B petitioners did not reduce requests for H–1B workers in response to the 2016 Fee Rule's 42-percent increase of the Form I–129 fee from $325 to $460. In October of 2021, Congress increased the fee for premium processing of H–1B petitions from $1,440 to $2,500. In reports to Congress submitted before and after the $1,060 (74 percent) increase, although suspension of premium processing may have impacted pre-FY 2020 levels, USCIS observes the percentage of initial Form I–129 H–1B petitions requesting premium processing increased from 37 percent to 47 percent in the first year of higher fees and to 53 percent in FY 2022.[223] In addition to premium processing, the median H–1B registrant demonstrates the continued ability to pay for the assistance of an accredited representative as well as median annual compensation to beneficiaries of $118,000 in FY 2022 and benefits. In contrast to affordability concerns raised in public comments, USCIS observes the quantity of registrants and registrations increasing, including a constant share of small entities (as measured across SEAs for the FY10, FY16, FY20 and current rule), despite these cost increases that would be applicable when filing the subsequent petition. The price elasticity section of the RIA further describes that the registration fee increase comprises less than a 1-percent increase in the total cost to an H–1B employer, relative to the total costs of compensation, benefits, technical assistance, and premium processing fees. Lastly, the Final Regulatory Flexibility Act for this rule (and the separate more detailed SEA) describes the impacts on Forms I–129 for all classifications, I–140, I–360, I–910, genealogy forms, and immigrant investor forms in this final rule to minimize the magnitude and scope of adverse impacts to small entities, including the many small businesses

[223] *See* Characteristics of H–1B Specialty Occupation Workers FY22 Annual Report to Congress (Mar. 13, 2023), at *https://www.uscis.gov/sites/default/files/document/data/OLA_Signed_H-1B_Characteristics_Congressional_Report_FY2022.pdf* and FY20 Annual Report to Congress (Feb. 17, 2021), at *https://www.uscis.gov/sites/default/files/document/reports/Characteristics_of_Specialty_Occupation_Workers_H-1B_Fiscal_Year_2020.pdf* (last accessed Aug. 30, 2023).

that register and petition for H–1B workers.

A comment about fee increases ''chilling demand'' for H–1B workers cited since-published NBER research showing that winning the opportunity to file a cap-subject H–1B petition was associated with improved chances of winning a patent, improved chances of obtaining additional external funding, and improved chances of a successful initial public offering over the subsequent five years.[224] USCIS reviewed this research and agrees the findings underscore that the H–1B lottery facilitates employer access to highly valued foreign workers. The study's impacts are measured against many firms that registered for H–1B workers and were selected zero times. In conducting the Small Entity Analysis (SEA) for this final rule, USCIS observed that while some Small Business Administration (SBA)-classified small entities file hundreds of H–1B registrations to be selected to petition for a cap-subject visa, more than ten times that number had only one or two H–1B petitions. While it is not possible to know how each small entity may respond to the combined price increase of the H–1B Registration Fee, Form I–129 H–1B Fees, and the Asylum Program Fee, any such price response might reasonably be most pronounced among those small entities with the greatest number of valid H–1B workers and registrations. A direct impact of any reduction to the number of registrations submitted would be reducing the number of registrations that any one potential petitioner would need to submit for that petitioner's registrations to be selected and for them to be able to hire the same quantities of H–1B workers. Thus, small businesses that submit fewer H–1B registrations would see marginally increased likelihood of their registration being selected in the lottery, and roughly 85 percent of H–1B petitioners are also small entities.

DHS emphasizes that the H–1B Registration Fee is set at $215 to recover the costs of USCIS administering the legal immigration system. As stated in the proposed rule and multiple sections of this final rule, DHS appreciates the significant contributions of immigrants to the U.S., and this final rule is not intended to impede, reduce, limit, or preclude immigration for any specific population, industry, or group. DHS agrees that immigrants are an important source of labor in the United States and contribute to the economy. DHS considered the comments that suggested that the $215 fee would result in far fewer registrations being submitted and those that wrote that the fee should be much higher fee than $215 to deter fraud. As stated in the proposed rule, USCIS's ability to generate the necessary revenue through this rule depends on the volumes of forms that pay fees not falling short of the total projected. 88 FR 402, 528 (Jan. 4, 2023). DHS notes the estimated burden of H–1B registration is 0.5 hours plus 0.17 hours for account creation and that this burden is 4.67 hours less than the full petition burden of 2.34 hours for Form I–129, 2 hours for the H Classification Supplement, and 1 hour for the H–1B and H–1B1 Data Collection and Filing Fee Exemption Supplement. Although this rule's RIA depicts a baseline with registration requirement at unchanged fees, DHS recognizes many employers seek assistance from outsourced attorneys who, at $196.85 per hour loaded wage, would cost $919 more if the random lottery selections were made on full petitions rather than registrations. Future fee rules will reconsider the H–1B registration fee and other rulemakings may consider operational changes to the H–1B registration process. In this final rule, DHS has decided to establish the H–1B Registration fee at a level needed to fund the costs of the registration system, but not at such a high dollar amount to present serious risk of disincentivizing valid registrations or chilling valid participation in the H–1B program, including by small businesses.

d. I–129 Nonimmigrant Workers, Separate Fees (Not Related to Asylum Program Fee)

Comment: Many commenters expressed general opposition to Form I–129 fee increases. Commenters wrote:

- USCIS should reconsider the proposed Form I–129 fees.
- The fee increases would have an adverse effect on cultural life in the United States, higher education institutions, nonprofits, non-major-league athletes, the agricultural community, highly skilled foreign workers and U.S. employers.
- The increase and separation of Form I–129 fees would compound confusion and lead to rejections.
- The proposed separation of forms, processes, and fees based on nonimmigrant classifications was overly complicated and USCIS should instead simplify these processes.
- They opposed all separate Form I–129 fee increases of over 7 percent, because employment-based immigration offers a substantial source of revenue for the United States.
- The many changes proposed for Form I–129 petitions would have dire consequences for large and small businesses and firms, would deter recruitment of foreign talent, repel entrepreneurship, exacerbate labor shortages, lead to retaliatory actions from other countries, and amount to millions of dollars in additional costs for multiple large multinational firms.
- The fee increases are unprecedented with significant disparities among categories. For example, comments questioned the difference between H–1B and TN fees.
- H–2A and H–2B completion rates are based on the first six months of FY 2021, and it is not clear whether this is based on actual data collected or estimates of future projections.
- The proposed fees would disproportionately affect the hiring of Mexican citizens, for whom TN petitions are mandatory.
- The increased fees would incentivize employers to challenge RFEs and denials and litigate in Federal court to bypass the appeals process.
- Given the magnitude of the proposed fee increases, USCIS should consider whether it is accurately calculating the funding needed to adjudicate immigration benefit requests without imposing an unreasonable burden on employers.

Response: In this rule, DHS implements the fees for all types of Form I–129, as described in the proposed rule. *See* 88 FR 402, 495–500 (Jan. 4, 2023). DHS proposed different fees for Form I–129 based on the nonimmigrant classification being requested in the petition, the number of beneficiaries on the petition, and, in some cases, according to whether the petition includes named or unnamed beneficiaries.

The fees established by this rule better reflect the costs associated with processing the benefit requests for the various categories of nonimmigrant worker. Part of the proposed fee was based on the adjudication hours and completion rates for various Form I–129 categories. As explained in the proposed rule, USCIS does not have separate completion rates for the TN classification. *See* 88 FR 402, 499 (Jan. 4, 2023). Currently, USCIS adjudicators report TN hours on these classifications in a catch-all Form I–129 category. *Id.* However, USCIS adjudicators report hours for H–1B petitions separately. As such, DHS proposed separate fees for TN applications than H–1B petitions using different hours information, despite commenters' statements on the

[224] *See* Dimmock, S.G, et al (2021) Give Me Your Tired, Your Poor, Your High-Skilled Labor: H–1B Lottery Outcomes and Entrepreneurial Success. Management Science 68(9):6950–6970. *https://doi.org/10.1287/mnsc.2021.4152.*

similarities between the two workloads. If USCIS has more detailed information to further distinguish between Form I–129 categories in the future, then DHS may use it in establishing fees in subsequent fee rules. As explained in the proposed rule, USCIS began tracking Form I–129 adjudication hours by petitions for H–2A and H–2B petitions involving named or unnamed beneficiaries in FY 2021. *See* FR 402, 498 (Jan. 4, 2023). The FY 2022/2023 fee review considered the first 6 months of that data because it was the most recent available at the time of the FY 2022/2023 fee review. *Id.* DHS believes this 6 months of data is still reasonable to use. Future fee reviews will use a full year of information if it is available.

DHS does not believe that the fee increases implemented in this final rule will impose unreasonable burdens on petitioners. However, DHS is implementing lower Form I–129 fees for small employers and nonprofits, as described in section II. C. *See* 8 CFR 106.2(a)(3). These lower fees should alleviate some of the concerns raised by commenters, such as the effect on nonprofits and small businesses. We broadly address concerns on other petitioners, such as agricultural or cultural employers, in section IV.B.2.e of this preamble.

Should a petitioner wish to appeal a decision after a denial, they may file Form I–290B. As explained in the proposed rule, DHS limited the proposed fee for Form I–290B, consistent with past fee rules, 88 FR 402, 450–451, and adopts the proposed fee for Form I–290B in this final rule.

DHS does not separate Form I–129 into different forms for different classifications in this rule. DHS disagrees with commenters that separate Form I–129 fees will create confusion and delays. Some petitioners or applicants already pay different fee amounts based on whether statutory fees apply or the services they choose. In some cases, certain petitioners must pay statutory fees in addition to a base filing fee. For example, several statutory fees exist for H and L nonimmigrant workers.[225] H–2B and R nonimmigrant classifications have a different premium processing fee from all other nonimmigrant classifications. USCIS provides several optional checklists to help navigate the specific requirements of some nonimmigrant classifications. DHS makes no changes to this rule based on these comments.

Comment: Commenters raised the following concerns with the proposed fees and their effects on small businesses and nonprofits:

- The unnecessary and unjustified proposal would disproportionately increase economic burdens on small businesses.
- Small organizations and nonprofits that cannot absorb the fee increases would ultimately limit petitions submitted on behalf of foreign workers, which they said would result in the loss of a critical resource across various industries and decrease U.S. competitiveness.
- USCIS should reduce the proposed fees for ACWIA petitioners so that public institutions can better allocate limited funds to STEM professionals needed for patient care or health care research.
- USCIS should consider a tiered fee for the Form I–129 based on business size as a solution in the absence of comprehensive immigration reforms.
  - ○ The increased fee for H–2A petitions with named beneficiaries makes sense, but USCIS should keep the fee for unnamed beneficiaries at $460 per petition.

Commenters wrote that USCIS should exempt Form I–129 petitions from a fee for the following types of petitioners:

- Governmental research organizations.
- Nonprofit institutions.
- Academic institutions.
- Religious institutions.
- Cap-exempt employers.
- Nonprofit organizations.
- Higher education institutions.
- Small businesses.
- Agricultural employers.
- If the beneficiary is a currently on a student work visa, an artist, or a performer.

Response: In response to these comments, DHS implements lower Form I–129 fees for qualifying petitioners. *See* section II.C of this preamble. To qualify for the lower fee, petitioners must be a nonprofit organization or a small employer of 25 or fewer FTE employees. *See new* 8 CFR 106.1(f). In many cases, these lower I–129 fees are approximately half of the proposed fee. *See* 8 CFR 106.2(a)(3). In some cases, DHS maintains the current $460 fee. *Id.* These lower fees are in addition to the lower Asylum Program Fee described earlier in this rule. DHS has reviewed the comments and has decided not to provide any fee exemptions for Form I–129 because the petitioner would generally need to have the capacity to employ the beneficiary and pay any applicable wages and benefits at the time of their admission or upon a grant of status based on the petition approval. Meaning, if an employer cannot afford USCIS fees, then it is unlikely that they would be able to afford to employ the beneficiary of their petition.

DHS considered the volume and content of the comments on this subject, many pointing out the cultural, economic, and scientific benefits that inure to the United States from the ability of institutions being able to hire talented foreign nationals to assist them in their pursuits. DHS agrees with the commenters and has decided that some accommodation should be made for Form I–129 petitioners, such as cultural or scientific employers, that may have very little revenue or profit or lack budgetary flexibility such that they would benefit from some relief from the increased fees. Therefore, DHS has decided to provide a reduced Form I–129 fee for small employers and nonprofits. DHS broadly addresses other comments from employers in section IV.B.2.e of this preamble.

Comment: Many commenters expressed opposition to the proposal to cap the number of beneficiaries on Form I–129 petitions at 25 beneficiaries. Comments in opposition to the proposal to limit petitions to 25 beneficiaries stated the following:

- They would have a serious adverse effect on O and P filings, increase the work of USCIS officers, and raising questions as to how O–2 and P petitions should be filed and will be adjudicated, based on the regulatory requirements.
- This proposal was based on an audit of H–2 petitions, and there is no evidence to suggest that this proposed rule would be equitable for the O or P classification or those who have only a few beneficiaries.
- The proposal would require numerous petitions for large ensembles, imposing additional financial burdens on nonprofits and performing arts groups.
- The proposed cap would negatively impact Australia's creative imports to the United States.
- The increase in fees would have a chilling effect on growers' ability to afford to transfer workers as allowed by the regulation.
- The proposal would penalize employers who have developed longstanding relationships with H–2 workers.
- Employers with few beneficiaries or employers that submit multiple petitions, would subsidize the costs of

[225] Various statutory fees apply to H and L nonimmigrants. For more information on the fees and statutory authority, see USCIS, ''H and L Filing Fees for Form I–129, Petition for a Nonimmigrant Worker,'' available at *https://www.uscis.gov/forms/all-forms/h-and-l-filing-fees-for-form-i-129-petition-for-a-nonimmigrant-worker (last updated/reviewed Feb. 2, 2018).*

large employers with many beneficiaries.

- In the O–2 and P context, groups must include more beneficiaries than what may be needed for U.S. performances, and theatrical groups cannot perform with a limited subset of performers or crew.
- Limiting petitions to 25 named beneficiaries does not align with DHS's goal of accurately reflecting differing burdens of adjudication and adjudicating petitions more effectively. It is less efficient for USCIS to review multiple petitions, as opposed to reviewing one.
- The proposal generates unnecessary burdens and confusion for entities to file multiple petitions.
- The need to file multiple petitions would create complications with respect to meeting the requirement that 75 percent of the members of a group applying for a P–1B visa must have belonged to the group for at least 1 year.
- Confusion could lead to mistakes when applying with the Department of State due to individuals using the incorrect receipt number.
- A large group of individuals covered by various petitions may not be able to identify which petition number applies to them upon arriving at a consular office to obtain their visas.
- The proposal introduces increased risk of inconsistent adjudication and delays, and would create logistical problems such as one employer's petitions moving at different speeds or with different outcomes.
- This raises various questions around union consultations and principal petitions, and the increased separation of petitions from the principal petition could result in more RFEs.
- This is arbitrary and the fee structure impermissibly discriminates against employers with fewer workers on named petitions.
- DHS failed to provide the public with data regarding the number of names typically listed on named petitions.
- DHS has not afforded the public sufficient opportunity to comment on the rationale for limiting petitions to 25 named beneficiaries.
- USCIS should continue to process P petitions based on current practices, and instead consider an audit of the O and P classification to better determine the need or feasibility of increased fees or separation of petitions based on beneficiary numbers.
- USCIS should use a sliding scale for petitions with more than 40 beneficiaries.
- USCIS should determine a fee structure that allows all named beneficiaries to remain on a single petition, such as a cost per beneficiary or per group fee structure.
- Instead of capping petitions at 25 beneficiaries, USCIS should require a higher fee for petitions involving more than 25 workers on a per-worker basis as Department of Labor (DOL) does for H–2A fees.
- The new fees are arbitrary and capricious because it would have perverse consequences for returning workers who have been previously vetted by USCIS while petitioners recruiting new unnamed workers would pay lower USCIS fees to hire workers that were not previously vetted.
- USCIS is creating a substantial incentive for employers to submit petitions with unnamed beneficiaries.
- USCIS' reference to background checks as justification for higher fees for named beneficiaries is misplaced because visa applicants are already subject to background checks at consulates abroad.
- DHS fails to explain why it performs background checks on named beneficiaries listed in a petition and fails to consider the alternative to rely on DOS to conduct background checks or take public comment on such a proposal.
- Charging fees based on whether H–2A beneficiaries are named or unnamed is not necessary to address the disparity in resources required for processing petitions because unnamed beneficiaries are less resource intensive for USCIS to process.
- A disparity in government resources needed should not be dispositive in setting fees.
- The proposed fee structure already adopts the OIG's recommended solution to the resource disparity and places a cap on the number of beneficiaries that an employer may name in a single petition.
- USCIS could tie the fee to the number of workers requested—whether named or unnamed—to ensure small employers do not bear a disproportionate share of processing costs imposed by large employers.
- The proposed separation of fees for unnamed beneficiaries is unfair to H–2B users who are requesting returning workers through the H–2B supplemental cap allocation process that USCIS created, which requires naming workers.

Response: DHS disagrees with the commenters that stated a limit on the number of named beneficiaries would harm most petitioners. As explained in the proposed rule, a report by the DHS Office of Inspector General (OIG) reviewed whether the fee structure associated with the filing of H–2 petitions is equitable and effective.[226] It made three recommendations. DHS adopts the first recommendation by implementing fees based on the time necessary to adjudication a petition. DHS adopts the second recommendation by implementing separate fees for petitions with named workers. We explained the cost differences in the proposed rule, how petitioners filing petitions with low named beneficiary counts subsidize the cost of petitioners filing petitions with high named beneficiary counts, and how the limit on the number of named beneficiaries results in a more equitable fee schedule. 88 FR 402, 498 (Jan. 4, 2023). We explained that USCIS would perform background checks on named workers. DHS agrees with commenters that DOS will perform background checks for the programs that DOS administers, in accordance with DOS's own policies. As explained in the proposed rule, DHS is expanding the limit to named workers to other Form I–129 petitions, such as the O classification, to make the fee structure more equitable like the OIG report recommended for H–2 petitions. 88 FR 402, 498–499.

DHS declines to implement a fee per named worker as an alternative to the 25 named beneficiary limit, as some commenters suggested. Creating and maintaining such as system would be administratively burdensome. DHS does not require additional per beneficiary fees for other multi-beneficiary benefit requests, such as Form I–539. Such a system would complicate intake and adjudication by requiring USCIS to determine the correct fee was paid for the number of beneficiaries requested.

Regarding the assertion that it is unfair to H–2B petitioners for returning workers through the H–2B supplemental cap allocation process to require naming beneficiaries in the supplemental process, naming beneficiaries on petitions has been required under the statutory cap exemption that was last in effect for FY 2016. Subsequent H–2B supplemental caps have permitted returning workers to be requested as unnamed beneficiaries in all iterations that have included this requirement, with eligibility of such workers determined by DOS in the visa application process. Thus, the limit on named beneficiaries in this rule will not

[226] DHS OIG, ''H–2 Petition Fee Structure Is Inequitable and Contributes to Processing Errors'' (Mar. 6, 2017), available at *https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-42-Mar17.pdf.*

have the effect the commenter suggested it will.

Commenters did not provide data to refute that petitions with more named beneficiaries require more time and resources to adjudicate than petitions with fewer named beneficiaries. As shown in the RIA for this final rule, many petitions with named beneficiaries request 1–25 named beneficiaries. For example, 99.7 percent of O petitions from FY 2018 to FY 2022 requested 1–25 named beneficiaries. In the same timeframe, 98 percent P petitions requested 1–25 named beneficiaries. Meaning, the vast majority of these petitioners will only need to file one petition despite the limit on the named beneficiaries implemented in this rule. No changes were made based on these comments, except for the small employer discounts discussed earlier in this preamble. See section II.C. Changes from the Proposed Rule.

Comment: Many commenters in opposition to the proposal to limit petitions to 25 beneficiaries suggested policy or operational changes. Commenters stated the following:

- USCIS should create an online beneficiary submission option on a secure site where the petitioner would list each beneficiary's information and upon submission of the full list, would receive a confirmation page included with the petition filed with USCIS.
- DHS should review whether it is necessary to conduct a background check of named beneficiaries on every petition, given that in every extension or transfer request the named beneficiaries will have already cleared a background check and been admitted to the United States.
- If USCIS raises the fees for named workers, it must stop unnecessarily requiring naming in the supplemental process.
- USCIS should automatically approve unnamed petitions without a fee, and not raise fees for named beneficiaries, which would save employers time and money, preserve agency resources, and reduce the usual H–2 filing fees.
- USCIS should require DOL to certify H–2A and H–2B recurring jobs for up to 3 years to provide more visas under the H–2B annual cap, reduce unauthorized immigration, and foster employment and economic growth.
- The proposed fee changes for named beneficiaries would hinder H–2 worker mobility by discouraging U.S. employers from hiring H–2 workers already present in the United States and seeking to change employers. A 2015–2017 analysis of human trafficking on temporary work visas, a Farmworker Justice report on worker abuse, and a survey of returned H–2A workers in Mexico, indicate that this lack of mobility would amplify existing power imbalances between employers and workers and lead to coercion, intimidation, legal violations, trafficking, and forced labor.
- USCIS should abandon its proposal to increase the Form I–129 fee for named beneficiaries to benefit H–2 workers by empowering them to leave unhealthy or illegal work environments and incentivize H–2 employers to provide competitive working conditions and wages.
- The lack of worker mobility is a core flaw of the H–2A program by tying workers to a single employer, and the proposed rule would create another obstacle for workers seeking other employment in the United States.

Response: DHS appreciates the commenters' suggestions for policy and process improvements. We fully considered them and may implement them through future guidance or rulemaking. For example, DHS proposed changes to H–2 program which may address some comments on worker mobility, if adopted in a future final rule. *See* 88 FR 65040 (Sept. 20, 2023). However, DHS declines to make any of these H–2-specific policy and procedure changes in this final fee rule. USCIS's fee study determined the agency's costs of processing petitions for named H–2 workers are greater than the costs of processing petitions for unnamed H–2 workers. While comments allege that studies indicated a causal link between DHS filing fees, lack of mobility and abuse, USCIS reviewed these studies and found that they contain no specific references to the fees set in this rule. While worker violations, including serious reports of trafficking of H–2 workers do occur, neither DHS nor the commenters can prescribe here what improvements in worker mobility reasonably would be achieved per dollar of subsidized named H–2 fee.

(1) H–1B Classification

Comment: Multiple commenters expressed general opposition to the proposed H–1B fee increases, with many citing impacts to U.S. companies, workers, and the economy. Commenters stated that increases in the H–1B fee would be detrimental to various U.S. employers, such as educational institutions, health care institutions, and technology companies limiting their ability to bring in foreign students and hire healthcare workers, professors, researchers, and other important workers, thereby stifling innovation. Commenters wrote:

- The fee increase for H–1B visas would make legal immigration more difficult.
- The increased filing fees for H–1B visas would result in dire consequences for thousands of international students seeking employment in the United States and discourage small firms from hiring individuals on F–1 visas.
- USCIS should exclude petitions for H–1B workers from the proposed fee increases altogether, because high processing and legal fees make it difficult for applicants to find new employers.
- USCIS should further increase H–1B fees because H–1B jobs are generally much higher paying jobs than the H–2A or H–2B and are for a longer duration.
- USCIS should waive the H–1B requirement for individuals with an approved Form I–140 petition.
- USCIS should raise the cap on H–1B visas to increase revenue.

Response: DHS acknowledges that a higher fee may affect certain employers from hiring H–1B workers, but we have analyzed the impacts of the new fees (RIA and SEA) and there is no evidence that the H–1B fees in this rule are increased to the extent that U.S. industries and the U.S. economy may lose some the skilled workforce this program provides.[227] DHS acknowledges that some petitioners may incur additional legal fees. The economic analysis does not describe every immigrant's situation. Rather, DHS presents our best estimates of the effect of the rule. As stated earlier, USCIS is almost entirely fee funded, meaning that tax revenues from the salaries of H–1B workers do not indirectly provide funding for USCIS. As such, DHS sets USCIS fees without consideration for tax revenues from H–1B workers. In any event, an adjustment in immigration and naturalization benefit request fees is necessary because USCIS cannot maintain adequate service levels, at its current level of spending, without lasting impacts on operations. The new fee schedule was calculated by benefit request, as explained elsewhere. As explained throughout this preamble, DHS exercises its discretionary authority to set fees for benefits and services based on numerous factors, including balancing beneficiary-pays and ability-to-pay principles, burden to

[227] *See* USCIS, FY 2022–2023 Fee Review Regulatory Impact Analysis (RIA), *https://www.regulations.gov/document/USCIS-2021-0010-0031; see also* USCIS, FY 2022–2023 Fee Rule Price Elasticity Regression Analysis, *https://www.regulations.gov/document/USCIS-2021-0010-0033.*

the requestor and to USCIS. The price elasticity analysis for Form I–129 indicated that after the last fee increase, I–129 volumes increased when the fee increased and remained around the same level in the following years. While counterintuitive to conventional theory that quantities demanded decrease in response to price increases, DHS believes this data supports that H–1B petitioners will be willing to pay the higher fees set in this rule.

In this final rule, for nonprofits and businesses with 25 or fewer FTE employees (including any affiliates and subsidiaries) filing Form I–129 for the applicable nonimmigrant classification, DHS is setting the fee at either the current $460 fee or half of the new fee whichever is higher. *See* 8 CFR 106.2(a)(3)(i).

DHS declines to make the other changes suggested by these commenters.

Comment: Some commenters expressed support for the proposed H–1B fee increases. Commenters wrote:

- They supported the proposed increase in H–1B filing fees because the proposed fee increase would help USCIS process cases faster and hire more employees.
- The fee increase would be nominal relative to applicants' salaries, and any additional expense would not be noticeable as it would be spread over the duration of the visa status.

Response: DHS appreciates that some commenters support the proposed fees. DHS agrees with commenters that the fee increases may allow USCIS to hire more adjudicators. DHS believes that the final fees for H–1B petitions should remain affordable for employers.

(2) H–2 Classifications

Comment: Commenters stated that fee increases would particularly impact farms that rely on the H–2A program. Commenters stated:

- The fee will have a negative impact on agricultural employers, the food supply system, future generations of farmers, small businesses and hinder the ability of employers to move forward with capital improvements and hire additional workers.
- The H–2A fee increases fees above the pay that applicants receive for their labor.
- The significant added costs for H–2A workers in the rule would jeopardize the sustainability of U.S. farms and ranches.
- The 1,470-percent increase in fees is a cost agricultural employers would never be able to recover.
- Agriculture continues to absorb unpredictable costs outside of their control, including those associated with inflation, input costs, and depressed farm income. According to USDA data, compared to 2022, labor costs in 2023 will rise by 7 percent, and farm and ranch production expenses are expected to rise by 4 percent–24 percent and 18 percent higher than a decade ago, respectively.

Response: DHS understands the need for nonimmigrant workers to meet seasonal or agricultural demands, or both, in the United States and is mindful of the costs for employers involved in doing so. DHS appreciated the important role of farmers and ranches in our food supply system. However, the commenters did not supply any data to quantify how increased fees will jeopardize the U.S. food supply system for future generations of farmers and ranchers. As such, the filing fee for unnamed H–2A workers will be increasing from $460 to $530 per petition (15 percent increase from current fee) and the filing fee for named H–2A workers will be increasing from $460 to $1,090 per petition (137 percent increase from current fee), with a maximum of 25 named workers per each H–2A petition. The change in these filing fees, as provided in this final rule, is consistent with the proposed rule. A report by the DHS OIG [228] reviewed whether the fee structure associated with the filing of H–2 petitions is equitable and effective, and recommended separate fees for petitions with named workers, which, due to the need to verify eligibility of individually named workers, is more costly to USCIS than the costs associated with adjudicating petitions filed on behalf of unnamed workers. However, after considering the comments on the proposed rule, DHS has decided to provide lower fees to accommodate petitioners with 25 or fewer employees and nonprofits, as explained elsewhere in this rule. *See new* 8 CFR 106.1(f). Depending on the nonimmigrant classification for which it is filed, Form I–129 fees will be the proposed fee, $460, or half of the proposed fee. *See* 8 CFR 106.2(a)(3). These lower fees are in addition to the lower Asylum Program Fee described earlier in this rule.

Comment: Additional comments on the H–2A and H–2B fee increases are as follows:

- The proposed H–2B fee increases would price travel businesses out of the program entirely and employers would abandon the program due to increasing complexity and burdens. Thus, the program is likely to be used less, diminishing the fees collected by USCIS for visa services, as USCIS articulates in the proposed rule.
- Based on a 2011 study on immigration and U.S. jobs, the proposed fees would reduce operations and services for businesses who cannot meet their workforce needs, particularly for seasonal operations. Instead of raising fees, USCIS should modernize its procedures for H–2B processing, adjudication, and job postings to reduce costs associated with compliance and application.
- If small and seasonal businesses continue to experience rising costs, U.S. consumers would be left to foot the costs, leading to more inflation.

Response: DHS' prepared a price elasticity analysis for both the proposed and final rules and placed it in this rule's docket for the public to review and comment on. That analysis indicates that the proposed fees in the rule may not reduce program participation or affect an H–2B petitioner's ability to meet their workforce needs.[229] Nevertheless, to address the commenters' concerns, as described earlier in this rule, DHS implements lower fees for Form I–129 for petitioners with 25 or fewer employers and nonprofit organizations from what were in the proposed rule. *See new* 8 CFR 106.1(f) and 106.2(a)(3). DHS maintains the current fee for H–2A and H–2B petitions with only unnamed beneficiaries for petitioners with 25 or fewer employers and nonprofit organizations. *See* 8 CFR 106.2(a)(3)(iii) and 106.2(a)(3)(v).

DHS appreciates the suggestions of commenters for modernization and integration of the U.S. Department of Labor, DHS, and U.S. Department of State processes for requesting and issuing visas but most of the suggestions are not within DHS's statutory authority or this fee schedule rulemaking. DHS is working toward online filing for H–2B petitions, which we agree would benefit the agency and program users alike. However, such an enhancement may not result in the significant cost reductions that commenters assert will occur, particularly when it requires systems development and programming. When online filing becomes available for H–2B petitions, this rule provides that an ''online filing discount'' of $50 would generally apply. In addition, the

[228] DHS OIG, ''H–2 Petition Fee Structure Is Inequitable and Contributes to Processing Errors'' (Mar. 6, 2017), available at *https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-42-Mar17.pdf.*

[229] See USCIS, FY 2022–2023 Fee Review Regulatory Impact Analysis (RIA), *https://www.regulations.gov/document/USCIS-2021-0010-0031.* See also USCIS, FY 2022–2023 Fee Rule Price Elasticity Regression Analysis, *https://www.regulations.gov/document/USCIS-2021-0010-0033.*

reduced Form I–129 filing fee for small employers addresses most of the concerns about the impact on hospitality, amusement, recreation, and other seasonal industries.

Comment: Comments on the H–2 ABC model results were as follows:

• The estimates USCIS used for the H–2B program are vastly different than publicly available data. USCIS underestimated the H–2A and H–2B volumes. USCIS should update its ABC model with proper numbers and consider ways to reduce the cost of employers who are seeking to hire a legal workforce amid U.S. labor shortages. At a minimum, the H–2B fees should not exceed the revised ABC model's cost to perform the H–2B functions.

• The H–2A and H–2B program fees should not exceed the revised ABC model's cost.

Response: As explained in the proposed rule, DHS proposed H–2A and H–2B fees that are higher than the ABC model output to offset limited fee increases for some other benefits requests and workloads without fees. *See* 88 FR 402, 451 (Jan. 4, 2023).

Regarding comments on H–2A and H–2B volumes, USCIS used the best information available at the time of the fee review. The average annual estimates for the FY 2022/2023 Fee Review may be more or less than actual receipts in those years. The H–2B program may periodically receive supplemental visas based on joint rulemakings by DHS and DOL.[230] Those increases are temporary. As explained in the proposed rule, DHS excludes projected revenue from expiring or temporary programs in setting USCIS fees due to the uncertainty associated with such programs. *See* 88 FR 402, 454 (Jan. 4, 2023). While TPS designations and DACA are the largest such programs, the same rationale may apply to temporary increases in H–2B visas. DHS will evaluate these fees, volume forecasts and ABC model results in future fee reviews using all available data at that time.

(3) L Classification

Comment: Commenters on the L-classification fee increases wrote the following:

• The fee increase for the L nonimmigrant worker petition cannot be justified, because the same immigration benefit costs five times as much in the United States as it does in Canada. An increase of this magnitude runs contrary to the intent and spirit of free trade agreements between the United States and foreign countries.

• For intracompany transferees under the L–1 program, petitioners may prioritize applications administered by the DOS over USCIS.

• The burden of fee increases may divert limited resources of small- to medium-sized companies away from research and development initiatives, job growth, and other investments.

• They questioned whether the fee increase for L–1 petitions would allow USCIS to render decisions within 30 days in alignment with INA section 214(c)(2)(C), or whether petitioners would have to pay a premium processing fee to have petitions adjudicated within ''a reasonable amount of time.''

• USCIS should partner with CBP to return to allowing L–1 extensions at the port of entry for Canadian citizens. Before 2019, Canadian citizens could obtain a renewed L–1 at a U.S. port of entry, but CBP stopped processing such applications after a policy change by DHS. Reverting to the policy of allowing CBP to handle such applications would reduce the volume of Form I–129 applications.

Response: DHS disagrees with commenters that it did not provide justification for the proposed fee for L petitions using Form I–129. DHS provided the rationale in the proposed rule. *See* 88 FR 402, 495–496. DHS data relating to past fee increases and the small entity impact analysis that accompanies this rule indicate that the moderate fee increases in this rule will not appreciably affect the research, development, employee expansion, and investment budgets of the affected petitioners. *See* Small Entity Analysis, Section 4.C. DHS adjudicates all L-nonimmigrant petitions as expeditiously as possible, and the new fees provided in this rule will allow us to maintain or improve current service levels. In response to comments, DHS provides that L petitions filed by nonprofits and businesses with 25 or fewer employees will pay a $695 Form I–129 fee which is approximately half of the full fee of $1,385 for other L petitions. *See* 8 CFR 106.2(a)(3)(vi) and (ix). DHS has no control over the fees that Canada may charge for similar services. DHS appreciates the commenters' suggestions for policy and process improvements, such as partnering with CBP to allow L–1 extensions for Canadians. We fully considered them and may implement them through future guidance or a rulemaking. DHS declines to make any other changes to this rule based on these comments.

(4) O and P Classifications

Many commenters submitted comments about the increase in fees for O and P visas. The commenters oppose the fee increases, stating the following:

• The proposed fee increases would impose financial impacts on the arts, entertainment, and non-major-league sports industries while deterring companies and nonprofits from recruiting foreign talent to the United States.

• The proposed fee increases would deter foreign workers and artists from coming to the United States.

• The proposal would be mutually damaging to the United States and its foreign counterparts, as it would result in increased prices for U.S. audiences and foregone cultural, diplomatic, and economic opportunities. Furthermore, deterring foreign talent would stifle USCIS revenue.

• The negative ripple effect of the proposed fee increases would extend to U.S. cities and businesses that depend on the revenue generated by performances. Based on a 2021 study by Oxford Economics, in 2019 live entertainment supported 913,000 U.S. jobs and increased GDP by more than $130 billion. Furthermore, out-of-town visitors who attend local concerts spent more than $30 billion in U.S. communities in the same year.

• The proposal runs counter to the Administration's September 30, 2022, E.O. on ''Promoting the Arts, the Humanities, and Museum and Library Services', which pledged to, ''strengthen America's creative and cultural economy, including by enhancing and expanding opportunities for artists, humanities scholars, students, educators, and cultural heritage practitioners, as well as the museums, libraries, archives, historic sites, colleges and universities, and other institutions that support their work.''

• The proposed rule contradicts the White House Fact Sheet issued on January 21, 2022, which states the belief that ''one of America's greatest strengths is our ability to attract foreign talent.''

• The proposed fee increases would be cruel, unjust, or arbitrary as they apply to orchestras and artists.

• The proposed fees would result in a system whereby O and P visas would only be accessible to the highest earners among international performers, venues, and performing arts companies.

• USCIS misapplied the ability-to-pay principle and fails to recognize that O

[230] *See, e.g.,* USCIS, USCIS Reaches H–2B Cap for Second Half of FY 2023 and Announces Filing Dates for the Second Half of FY 2023 Supplemental Visas, available from *https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-second-half-of-fy-2023-and-announces-filing-dates-for-the-second-half-of* (last reviewed/updated Mar. 2, 2023).

and P petitioners are not necessarily employers, and in the case of the arts, the foreign national or group often pays the USCIS fees.

• The increased fees would be coupled with additional financial and administrative burdens, such as legal fees, RFEs, premium processing, and the cost of touring, itself. Furthermore, in some itinerary-based professions, the O visa is only granted for a short period, and extensions are costly.

• The O and P fee increases would result in a retaliatory increase in fees by other countries such as Canada and the U.K., generating negative impacts on U.S. artists and performers.

• The fees would limit the international touring industry with broad impacts on the U.S. economy, including decreased Federal and State tax revenue and decreased patronization of businesses by artists and audiences.

• The fee increases do not respect the USCIS-approved Reciprocal Exchange Agreement, covering the reciprocal exchange of U.S. and Canadian artists across respective borders.

• Most touring artists are engaged to perform in small venues, and the proposed increase in fees would block such venues from engaging international artists, leaving only larger employers, venues, and acts with access to cross-border diversity in programming.

• The proposed fees would compound the economic risks associated with inconsistent application processing times, uneven interpretation and implementation of the statute, and unwarranted requests for additional evidence.

• The increase in fees would compound the complexity of an already unpredictable petition process, making the process of petitioning for foreign artists beyond the reach of small- and mid-size organizations, which are most likely to serve communities of color and other marginalized groups.

• The Average Impact Percentage of the fee increase on P visa applicants was not realistically assessed and would likely exceed the estimate USCIS provided in Table 32 of the proposed rule. The Impact Percentage would represent 20.6 percent of the work completed with a P–2 visa. Unlike O visas, P visas are shorter in duration, generate less income, and are usually requested by self-employed artists or smaller organizations.

• The USCIS' SEA underestimated the impact of the proposed fees increase on nonprofit organizations and did not include any performing arts organization (North American Industry Classification System (NAICS) code 711).

• The impact on nonprofit performing arts organizations would be unconscionable should the fees increase to the proposed levels for O and P classifications coupled with the proposed cap on the number of beneficiaries on Form I–129 petitions.

Considering the above concerns related to O and P petition fees, several commenters offered alternatives to the proposed changes, including:

• Conduct an economic assessment of the impact of O and P petition fee increases on the music and entertainment industry before finalizing the rule.

• Postpone implementation of the new fees or give petitioners time to adapt to the change in fees to accommodate the time-sensitive nature of performing arts planning.

• Increase fees based on annual revenue, the number of visas requested, or the number of employees working at a petitioning company, so that larger companies would pay for the extra expenses covered by USCIS fees.

• Implement a tiered structure—based on revenue, length of stay, or venue size, or for individuals who are active in more lucrative industries—to increase accessibility and stability for lower-income applicants.

• Significantly reduce the proposed O and P visa fees such as at $500 or less or increase them by no more than $40 or 1 to 5 percent.

• USCIS should not assign ASVVP costs to H–3, P, or Q petitions when they do not require site visits.

• In the SEA, USCIS isolated those entities that overlapped in both samples of Forms I–129 and I–140 by Employer Identification Number (EIN) and revenue. Only one entity had an EIN that overlapped in both samples; this was a large entity that submitted three Form I–129 petitions and a single Form I–140 petition. The commenter suggested this was not reflective of the experience of the commenter, which filed roughly 100 Form I–129 petitions, all for O and P status, between October 1, 2019, and September 30, 2020.

Numerous commenters objected to or expressed concern with the proposed fees and suggested corresponding policy or operational changes, including:

• U.S. stakeholders have already provided USCIS with detailed plans for improvements to USCIS processing of Form I–129 petitions for O and P visas, as outlined in its ''Recommendations for Performing Arts Visa Policy.''

• The unique nature of scheduling international guest artists requires that the visa process be efficient, affordable, and reliable so that U.S. audiences may experience artistic and cultural events. Congress affirmed the time-sensitive nature of arts events when writing the 1991 Federal law regarding O and P visas, in which USCIS was instructed to process visas in 14 days.

• The requirement for P petitions that there be no gap in work of more than 1 month would require multiple filings, which further increases the fees paid by the foreign group to come to the United States. The maximum allowed gap of 5–6 months for O–1B petitions and a 1-year maximum classification period for P nonimmigrants would have a similar effect.

• USCIS should separate the P petition from the miscellaneous H–3, P, Q and R classifications, as the proposed combination includes 14 possible requested nonimmigrant classifications, 10 of which are P classifications. USCIS should separate the P classification for purposes of this proposal or add it to the O classification proposal.

• Keeping the O and P together, or separating the P classification out, would allow for better training of USCIS officers on the specific nuances of the O and P classifications given the similarities in the regulatory requirements for the two classifications (*i.e.,* advisory opinions from applicable union/labor organizations, agents as petitioners, etc.).

• Extend the 3-year authorized period of stay for O and P nonimmigrants to at least 5 years or lower processing fees in exchange for a shorter, 3-month validity period of stay for O an P nonimmigrants.

• Eliminate the unnecessary P visa requirement for Canadian musicians to save USCIS resources and mirror the Canadian policy for visiting U.S. musicians or adopt a system like the UK's Certificate of Sponsorship for performers from Visa Waiver Program countries.

• USCIS should retain information on file for those groups who tour the United States regularly to reduce the need to begin the visa application process anew each time.

• The United States should maintain and prolong the 48-month extension to the Interview Waiver Program, up to 4 years, to alleviate the burden of the visa process.

• USCIS' practice is to deny requests for expedited processing of O and P petitions, which leads to worthy organizations facing prohibitive and obscene filing fees.

• The proposed changes do not adequately address the underlying concerns related to USCIS processing of O and P petitions.

Response: DHS agrees with the commenters' views that the arts,

entertainment, and sports industries are vitally important and beneficial. However, DHS reiterates that the fees established in this final rule are intended to recover the estimated full cost to USCIS of providing immigration adjudication and naturalization services. DHS does not intend to deter or unduly burden petitioners requesting workers in these, or other, industries but any preferential treatment provided to these petitioners is borne by other petitioners, applicants, and requestors.

USCIS conducted a comprehensive fee review and determined that its costs have increased considerably since its previous fee adjustment. As explained in the proposed rule, the fees for Form I–129 were calculated to better reflect the costs associated with processing the benefit requests for the various categories of nonimmigrant worker. *See* 402, 495–500. At its current level of spending, USCIS cannot maintain adequate service levels without lasting impacts on operations. *See* 88 FR 402, 426–430, 528; *see also* section IV.D.4 of this preamble. Therefore, DHS needs to adjust fees. Nevertheless, after considering the comments from petitioners for O and P nonimmigrant workers who wrote that they are a small organization with few or no employees, or they are a nonprofit, DHS has decided to lower the fee for a Form I–129 and the Asylum Program Fee filed by either an employer with 25 or fewer employees or one that is a nonprofit entity. 8 CFR 106.2(a)(3) and 106.2(c)(13). As stated elsewhere in this rule, as with any free service or reduced fee provided in this rule, this change requires that DHS shift some of the costs of an employer with 25 or fewer employees or a nonprofit entity petitioning for O and P nonimmigrant workers to other applicants and petitioners.

DHS respectfully disagrees that an increase in fees contradicts the White House's January 21, 2022, Fact Sheet, would be mutually damaging to the United States and its foreign counterparts, or would lead to an increase in the complexities of the petition process. Nevertheless, the lower Form I–129 fees for small employers and nonprofits, as described earlier may alleviate this concern from some commenters.

DHS appreciates the commenters' suggestions for policy and process improvements. We fully considered them and may implement them through guidance or a future rulemaking.

(5) R Classification

Comment: Multiple commenters provided feedback in opposition to the proposed fee increases for R–1 workers. These commenters wrote:

- R–1 workers offer substantial benefits to the United States in the form of service, outreach, and diverse cultural perspectives and experiences. Considering existing financial barriers for R–1 workers, sponsoring religious organizations and nonprofits would struggle to retain these workers if the proposed fees were implemented.
- The proposed rule fails to recognize the unique role of clergy in society as essential workers and the impact that such fee increases would have on the ability of U.S. religious organizations to fill needed positions with foreign clergy. Based on data from the Bureau of Labor Statistics, 48 percent of U.S. clergy were at least 55 years old, and, between 2018 and 2016, growth in clergy employment opportunities would see an 8-percent growth.
- The fee increases for R–1 petitions would have a chilling effect on U.S. religious organizations and prevent them from carrying out their religious and social mission. The Religious Worker Visa Program is important for providing critical services and addressing the specific needs of ethnic groups, including the Hispanic, Asian, and African communities, as well as the needs of vulnerable populations. The program also assists religious organizations that face obstacles in using traditional employment-related categories, which historically have not fit their situations.
- The fees would disproportionately affect small religious organizations, parishes, and communities that share a charitable function in the United States.
- The proposal departs from prior practice by treating this category like other employment categories. The commenter wrote that fee adjustments for religious workers should weigh the nonprofit nature of the sponsor.
- USCIS should not increase the fee for R–1 visa petitions because the volume of R–1 petitions is low compared to other visa categories and the fee increase would not generate substantial revenue for USCIS but would hurt U.S. nonprofit religious organizations.
- USCIS grouped R–1 visas with the same increase in fees as E–2s (investors), P–1s (professional athletes and performers), and TNs (Mexican/Canadian professionals), but R–1 petitions are filed by nonprofit organizations on behalf of religious workers and neither the organizations nor workers can absorb the proposed increased costs.
- A 2- to 5-percent increase in R immigrant worker fees would be more understandable than the proposed increase from $460 to about $1,000.

Response: As explained in the proposed rule, DHS proposed a Form I–129 fee that included the cost of religious workers and other visa classifications. *See* 88 FR 402, 499 (Jan. 4, 2023). Past DHS rulemakings resulted in no decrease in the number of Form I–129 filings for any nonimmigrant classification, and our analysis for this rule indicates that the fees established will not result in any detectable effect on the number of petitioners who choose to petition for nonimmigrant religious workers. DHS has no data, and the commenters provide none, that supports their assertion that the fee increases implemented in this final rule will impose unreasonable burdens on petitioners, churches, religious organizations, or small entities who wish to petition for a nonimmigrant religious worker. However, as many commenters noted, many petitioners for religious workers may be nonprofit organizations. Therefore, as explained more fully elsewhere in section II.C. of this preamble, after considering the comments, and, to alleviate any potential burden on nonprofit religious entities, DHS implements a lower Form I–129 fees for nonprofits in this rule. *See* 8 CFR 106.2(a)(3)(ix). DHS also exempts nonprofits from the Asylum Program Fee. *See* 8 CFR 106.2(c)(13)(i).

(6) H–3, E, Q, and TN Classifications

Several commenters expressed opposition to the fee increases for E and TN classifications. Commenters wrote:

- The fee increases would be antithetical to the special designation afforded to North American Free Trade Agreement countries and Australia.
- The fee for TN when filed with CBP is only $50 while a TN filed with USCIS is over $1,000.

Response: DHS recognizes that the E and TN nonimmigrant classifications are available to foreign nationals from certain countries with which the United States has entered into an international agreement, or with which the United States maintains a qualifying treaty of commerce and navigation. Typically, the opportunities accorded to certain noncitizens to obtain these visas are based insofar as practicable on the treatment accorded to U.S. nationals in similar classifications. While U.S. obligations under the international agreements or treaties, as implemented by the United States, permit qualifying nationals of the signatory countries to seek admission to the United States for a temporary period, the agreements do not include provisions that limit the U.S. government from recouping the full

cost of administering the E and TN programs. Furthermore, no provisions finalized in this rule would alter the existing general eligibility criteria for either the E or TN classifications, thus maintaining the special designations afforded to these countries.

The Form I–129 fees finalized in this rule are based on USCIS costs and not CBP costs. Although CBP charges fees for some services, most CBP funding comes from appropriations instead of fees, unlike USCIS. For example, CBP's FY 2021 enacted budget totaled approximately $16.3 billion, of which $14.7 billion came from discretionary appropriations.[231] The remaining approximate $1.6 billion or 10 percent came from a mix of discretionary and mandatory fee accounts. As such, CBP fees may not necessarily need to recover the full cost. DHS declines to make any changes to this rule based on these comments.

e. I–140 Immigrant Petition for Alien Worker (Not Related to Asylum Program Fee)

Comment: Commenters suggested process changes to Form I–140. A commenter, citing a USCIS memo, encouraged USCIS to issue an EAD after Form I–140 approval, reasoning that such an approach would advance efforts toward ''continuous improvement at USCIS.'' A commenter expressed concern that some Form I–140 applications may be ''duplicate'' filings in cases where an applicant is downgrading from an EB–2 to an EB–3 classification due to changing visa availability. The commenter suggested creating a new form for a ''request to transfer underlying basis of classification'' wherein an applicant may provide proof of EB–2 approval to downgrade their employment visa classification to EB–3, to reduce overall receipt volumes for Form I–140.

Response: DHS may consider these comments in future rules or policy changes but declines to address these comments with changes in this rule. These comments focus on changes to the immigration process that are out of scope of this fee rule.

f. I–765 Employment Authorization/ EAD (Not Related to Other Bins/ Exemptions)

(1) General

Comments submitted regarding Form I–765 stated:

- EAD applicants are not employed, and they will struggle to afford the increase.
- USCIS should explain Form I–765 fee increase.
- Increasing costs for EAD renewal will disrupt employment for workers waiting to have their asylum case adjudicated.
- The proposed fee increase for Form I–765 will delay employment authorization for applicants, restricting their economic and civic participation.
- The fee would negatively impact families, international students, and low-income noncitizens who may be ineligible for public benefits and fee waivers.
- Increasing the fee for Form I–765 will exacerbate the current labor shortage.
- USCIS should continue the 180-day EAD status extension and apply the automatic extension to spouses of high-skilled workers.
- If DHS increases the I–765 fee, all EADs should have at minimum a 2-year validity period.
- DHS should issue an EAD to adjustment of status applicants for a period of 4–5 years or longer to reduce the need to adjudicate benefits.
- For humanitarian category applicants, USCIS should provide EADs more quickly and offer a fee waiver or a reduced fee option.
- The settlement agreement in *Edakunni* v. *Mayorkas* requires USCIS to grant an automatic extension to H–4 nonimmigrants who filed their H–4-based EAD renewal on time and extend employment authorization opportunities for L–2 nonimmigrants with valid nonimmigrant status.
- Employment authorization should be provided to J–2 spouses.
- USCIS should not require derivative applicants seeking an extension of status to request employment authorization separate from the principal's H–1B petition.
- USCIS should allow filing of Form I–765 by an approved Form I–140 beneficiary, because allowing noncitizens with approved immigrant petitions to work is an approach endorsed by Congress and statute and would reduce the number of H–1B renewals, saving USCIS time.
- USCIS should issue employment authorization cards without a formal expiration date. Instead, the card should say the application is pending and provide a link or QR code to check its status.
- USCIS should automatically issue EADs to adjustment of status applicants because the information required should already be on file or permit a Form I–797C receipt notice to serve as an employment authorization.
- Increasing the Form I–765 fee while increasing fees for other employment related benefits forms will impose a disproportionate burden on the employer community because Form I–765 is fundamental to their feasibility to preserve jobs and livelihoods.
- The increased fee may deter eligible workers from utilizing USCIS' new Labor Agency Investigation-Based Deferred Action because of finances.
- Increasing the Form I–765 fee would burden nonimmigrant workers who need to maintain lawful employment and enjoy full labor rights.
- It is notable that there is a fee reduction in online filing for Form I–765 compared to paper filing, however, USCIS needs to improve its online system.

Response: DHS is sympathetic to the financial needs of low-income individuals. Thus, this rule maintains all existing fee waivers policies, including those for Form I–765. Individuals or families that meet specific criteria, including receiving a means-tested benefit, are eligible to request a fee waiver. USCIS is working on making the fee waiver process available online, but at this time, Form I–912, Request for Fee Waiver, must be mailed, along with the completed USCIS application or petition and supporting documentation, and cannot be submitted online. As explained elsewhere in this rule, DHS expands fee exemptions for certain populations, including some Form I–765 applicants. DHS notes that there is no fee for an initial Form I–765 filed by an asylum applicant, *see* 8 CFR 106.2(a)(44)(ii)(G), and the renewal fee requests can be waived for applicants who can demonstrate that they are unable to pay, *see* 8 CFR 106.2(a)(3)(ii)(E).

While the proposed rule did not have a specific section on Form I–765, it explained the general methodology for assessing proposed fees, including the proposed fee for Form I–765. *See* 88 FR 402, 450–451 (Jan. 4, 2023). However, the final rule uses a different approach for the Form I–765 implemented in this rule. As explained earlier, in this final rule DHS limits the increase for many fees by inflation and rounds to the nearest $5. The current fee is $410. When adjusted for inflation, it would be $518.[232] As such, DHS is setting the

[231] *See* DHS, U.S. Customs and Border Protection Budget Overview Fiscal Year 2023 Congressional Justification available at *https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Customs%20and%20Border%20Protection_Remediated.pdf* (last visited Sep. 20, 2023).

[232] DHS calculated inflation by subtracting the December 2016 CPI–U (241.432) from the June 2023 CPI–U (305.109), then dividing the result (63.677) by the December 2016 CPI–U (241.432). Calculation: $(1 + (305.109 - 241.432)/241.432 = .2637 \times 100 = 26.37$ percent. The current $410 fee

paper filing fee at $520, a 27 percent increase from the current $410 fee. *See* 8 CFR 106.2(a)(44). As explained earlier, DHS is implementing a $50 discount for online filing in most cases. *See* 8 CFR 106.1(g). Therefore, DHS is setting the online filing fee Form I–765 at $470, only $60 more than the current fee of $410. In addition, as explained in the proposed rule and later in this rule, DHS is setting separate filing fees for Form I–765 when filed concurrently with Form I–485 or as benefit requests based on a pending Form I–485 filed on or after the effective date of this rule. DHS is setting the filing fee for a Form I–765 filed concurrently with Form I–485 after the effective date at $260. *See* 8 CFR 106.2(a)(44)(i). Applicants will pay the same fee to renew their EAD while their Form I–485 is pending. *Id.*

DHS declines to codify a new validity period of employment authorization for any category in this rule because the length of EAD validity is not directly related to USCIS fees and the other changes proposed. In addition, 8 CFR 274a.12(a) and (c) provide that USCIS may, in its discretion, determine the validity period assigned to any EAD or document issued evidencing a noncitizen's authorization to work in the United States, thus EAD validity periods are generally not codified in regulations such as those being published by this rule. In 2023, USCIS increased the maximum validity period to 5 years for initial and renewal EADs for applicants for asylum or withholding of removal, adjustment of status under INA 245, and suspension of deportation or cancellation of removal, among other categories.

DHS believes limiting the Form I–765 fee increase to the change in inflation, lowering fees for online filing or when filing with Form I–485, continuing to offer fee waivers, and expanding fee exemptions addresses concerns raised by commenters.

(2) Students

Comment: Increased fees would create hardships for foreign students, in part because they tend to be low-income and have difficulties finding sponsors.

Response: The commenters have not provided evidence that indicates foreign students tend to be low-income individuals or that increased fees would create hardships for foreign students, specifically. In addition, as explained throughout this rule, USCIS is fee funded, and absent another source of revenue to finance its operations, it must charge fees. When lower fees, fee waivers and exemptions are provided for a population, the cost of the immigration benefit request for which the fee is lowered must either be recovered in the form of higher fees for another group, or USCIS' limited funding reserves must be depleted to cover those costs. DHS declines to provide discounts to Form I–765 on the basis that the applicant is a student. However, as explained elsewhere in this preamble, DHS is limiting the fee increase for Form I–765 to the change in inflation since the last fee rule. DHS also is setting an online filing fee for Form I–765 that is $50 less than the paper filing fee. Generally, students are eligible for online filing. These changes from the proposed rule will benefit students and all other Form I–765 applicants that will pay the new fee.

(3) DACA

Comment: DACA recipients should receive an exemption to the I–765 fee increase because DACA fees and costs were not considered in the fee model so the exemption should be granted without needing to alter USCIS' financial analysis. The fee would hinder DACA recipients from renewing their employment authorizations and exacerbate the burden of DACA status renewal fees and other costs for those with uncertain status.

Response: DHS does not believe the $520 fee will hinder DACA recipients from renewing their EADs that have allowed them to earn income in lawful employment in the United States. In addition, as DHS stated in the DACA rule, DHS believes that maintaining the existing fee structure with limited fee exemptions strikes the appropriate balance and declined to modify the rule to extend fee waivers or exemptions for DACA-related I–765s. 87 FR 53152, 53237 (Aug. 30, 2022). Likewise, DHS declines to make any changes based on these comments in this rule.

g. Other/General Comments on Employment-Based Benefits

Commenters on employment-based benefits generally stated:

- They are opposed to any increase in fees for employment-based visa holders and their employers because costs and timeline burdens are already high for this population.
- USCIS employment-based benefit request fees should be used to process H–1B and H–4 visas, rather than other visa categories.
- USCIS should commit to deciding normal applications in 1 month. RFEs and delays are tactics to generate more revenue. USCIS should commit to delivering a certain number of employment-based benefit request decisions each day.
- USCIS should increase the fees for family and humanitarian-based petitions and not for employment-based petitions. USCIS should allocate its resources to process each form according to how much revenue it generates.
- These fee increases will burden the business community rather than improve upon services render or save costs.
- Increased fees for employment-based petitions would further burden academic research employees whose grants specify a salary budget that includes visa costs. USCIS fees are an ineffective use of public grant funds aimed at research.
- USCIS should allow applicants awaiting an employment-based benefit decision to pay a one-time fee, suggesting $5,000 per applicant, and file for adjustment of status along with an EAD and travel documentation to provide stability for those who have been waiting in the queue for a decade or more.
- USCIS should restrict the EB–1C category because fraud is preventing researchers and scientists from moving to the United States.
- USCIS should not waste any Green Cards for employment-based categories because providing Green Cards increases the backlog.
- USCIS should reimplement the known employer program because the agency should possess sufficient information and data to establish a permanent program. The program could lower costs and increase efficiency for employers, particularly those who frequently file petitions in large volumes.
- USCIS should continue development and implementation of a trusted employer program that allows established and well-known employers to file their petitions more easily. USCIS expected a trusted employer program would promote simplicity and efficiency in the benefit application process for employers, while allowing USCIS to further protect benefit integrity, ensure consistency with respect to adjudications, and reduce the need for fraud detection at the individual level for such employers.

Response: DHS discusses processing times, backlog reduction, family-based fees versus employment-based fees, and the uses of fee revenue elsewhere in this rule. The other comments summarized above are about changes to programs and policies and not directly about the fees or changes that were proposed in the proposed rule; thus, DHS declines to make any changes based on these comments.

multiplied by 126.37 percent is $518.12. DHS rounds all USCIS fees to the nearest $5 increment.

3. Citizenship and Naturalization

a. N–400 Application for Naturalization

Comment: Some commenters expressed support for the fee increase for Form N–400, writing:

• The fee increase was justified given inflation.

• The increase was minimal.

• The Form N–400 application should remain accessible based on applicants' ability to pay, which the proposed rule would accomplish.

Response: DHS appreciates commenters' feedback and has made no changes in the final rule based on these comments. DHS sets the Form N–400 fee as in the proposed rule, except that the final fee schedule now includes $50 discount for online filing.

Comment: Multiple commenters expressed opposition to the increased fee for Form N–400. Commenters indicated that increasing the Form N–400 fees would price out many immigrants who are often low-income or below the Federal poverty level. Some added that the increase would impact many applicants who face difficulty affording the current fee but do not qualify for a fee waiver or reduced fee. Several commenters reasoned that the fee increase would discourage immigrants from becoming citizens and contributing more to the country. Many commenters similarly urged USCIS to incentivize naturalization and make processing fees more affordable. The commenters added that naturalization increases earning potential and security so applicants can more fully participate in civic life.

Response: DHS appreciates these commenters' concerns regarding the affordability of naturalization and recognizes the benefits of naturalization for new citizens and the United States. However, DHS has only increased the fee for Form N–400 with biometrics by $35 (4.8 percent increase), which is substantially below the rate of inflation since the last fee increase (approximately 26 percent as of June 2023). Previously, most applicants had to pay a separate $85 fee for biometrics. The final rule also incorporates a $50 discount for online filing ($710), *see* 8 CFR 106.1(g), which is *below* the prior fee for a Form N–400 with biometrics. In addition, fee waivers are available to all naturalization applicants who are receiving means-tested public benefits, whose household incomes are at or below 150 percent of the Federal Poverty Guidelines (FPG), or who are experiencing extreme financial hardship such as unexpected medical bills or emergencies. *See* 8 CFR 106.3(a)(1)(i).

Nevertheless, in response to commenters' concerns about the affordability of applying for naturalization, DHS has broadened the availability of a reduced fee N–400 to applicants whose household incomes fall at or below 400 percent of the FPG. *See* 8 CFR 106.2(b)(3)(ii). Considering this change along with those accommodations already made for Applications for Naturalization, DHS does not believe that the new N–400 fee will prevent or discourage eligible noncitizens from applying for naturalization.

Comment: While expressing appreciation for the limited fee increase for Form N–400, a commenter stated that DHS should seeks ways to make Form N–400 more affordable and included as an example offering a discount for families who jointly file two or more Form N–400s. The commenter stated that eligible Green Card holders may opt to renew their status instead of naturalizing if application fees become unaffordable.

Response: DHS declines to adopt the commenter's recommended discount for family members who file N–400s simultaneously because joint N–400 filings would result in minimal, if any, processing efficiencies for USCIS. Unlike an application for adjustment of status, where the principal applicant's spouse and children may derive eligibility through the principal, *see* INA section 203(d), 8 U.S.C. 1153(d), every naturalization applicant must independently establish their eligibility for U.S. citizenship. *See* 8 CFR 316.2(b). Although each family member is required to submit their own Form N–400, fee waivers and the additional reduced-fee eligibility for household income less than or equal to 400 percent of the FPG should provide sufficient relief from the cost of fees for those who are unable to pay. *See* 8 CFR 106.2(b)(3)(ii), 106.3(a)(3)(i)(I). In addition, USCIS now extends Green Cards up to 24 months from expiration for those applicants who file Form N–400.[233] Therefore, DHS does not believe that the limited fee increase for Form N–400 will cause a significant number of naturalization-eligible applicants to renew their Green Cards instead of applying to naturalize.

Comment: Multiple commenters expressed concerns with the fact that the Form N–400 fee would be below full cost recovery. A research organization stated that this would shift naturalization costs to visa applicants and reasoned that this would negatively impact integration since a Green Card is a prerequisite for naturalization and a non-immigrant visa is often itself a prerequisite for a Green Card. Another commenter urged USCIS to stop subsidizing the Form N–400 process by charging a fee that is below the cost of the benefit. The commenter stated that U.S. citizenship is a privilege with great value. The commenter also stated that immigrants do not need additional incentive to naturalize, and that by eliminating this subsidy USCIS could improve case processing for other stakeholders such as highly skilled workers, students with advanced degrees, or doctors and other work critical to the U.S. economy. The commenter also asserted that this ''subsidy'' is paid more by immigrants who have stayed in the country longer and must renew their visas multiple times, such as employment-based immigrants from China and India.

Response: DHS acknowledges these commenters' concerns but believes they are outweighed by the importance of naturalization to individual beneficiaries and the United States as a whole. Naturalization facilitates integration of immigrants into American society. Upon naturalizing, new citizens can vote in public elections, participate in jury duty, and run for elected office where citizenship is required. Moreover, there are proven, beneficial economic and civic outcomes for immigrants who become citizens, which include increased earnings and homeownership. These earning gains from naturalization may translate to greater city, State, and Federal tax revenues.[234] E.O. 14012 instructed DHS to ''make the naturalization process more accessible to all eligible individuals, including through a potential reduction of the naturalization fee.'' E.O. 14012, 86 FR 8277 (Feb. 5, 2021). DHS has held the fee for Form N–400 below the estimated cost to USCIS of adjudicating the form since 2010, as explained in the proposed rule. *See* 88 FR 402, 487 (Jan. 4, 2023). DHS has determined that shifting costs of naturalization to other applicants in this manner is desirable given the significant value that the United States obtains from the naturalization of new citizens. Many commenters on the 2020 fee rule stated that the fee would deter eligible applicants and cost can be a prohibitive

[233] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, PA2022–26 Policy Alert, ''Extension of Permanent Resident Card for Naturalization Applicants'' (Dec. 9, 2022), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221209-ExtendingPRC.pdf.*

[234] *See* Holly Straut-Eppsteiner, Cong. Research Serv., R43366, ''U.S. Naturalization Policy'' (May 2021), at 2–3, *https://crsreports.congress.gov/product/pdf/R/R43366.*

barrier for would-be naturalization applicants. *See* 85 FR 46788, 46855 (Aug. 3, 2020). DHS is committed to promoting naturalization and immigrant integration and making sure that naturalization is readily accessible. For these reasons, DHS will continue to provide fees for naturalization applications on Form N–400 at an amount less than its estimated costs and recover some of its costs from other fee payers using the cost reallocation methodology.[235]

Comment: Multiple commenters wrote that USCIS should increase the income limitations for Form N–400 fee waivers to include more low-income applicants. By contrast, a different commenter asserted that fee waivers should not be available for Form N–400, since becoming a U.S. citizen is a privilege.

Response: DHS acknowledges commenters' concerns regarding the affordability of naturalization but believes that this fee schedule makes naturalization practically available to all eligible low-income applicants. Applicants whose household income is at or below 150 percent of the FPG, who are receiving a means-tested public benefit, or who are experiencing extreme financial hardship are eligible for a full waiver of the N–400 fee. *See* 8 CFR 106.3(a)(1)(i). Furthermore, the reduced N–400 fee ($320) will be available to applicants whose household income is at or below 400 percent of the FPG. *See* 8 CFR 106.2(b)(3)(ii). So, for example, members of a four-person household would qualify for the reduced fee if their household income was at or below $120,000 per year, which is greater than the median income for a household of four in most states.[236] Online N–400 filers are also eligible for a $50 discount. *See* 8 CFR 106.1(g). DHS believes that these measures are sufficient to ensure that naturalization is financially feasible for all eligible applicants. DHS disagrees with the assertion that fee waivers should not be available to naturalization applicants. DHS acknowledges that naturalization is a significant immigration benefit, but, as noted earlier, believes that the United States also benefits significantly from newly naturalized citizens.

Comment: Many commenters expressed opposition to the increased fees for those filing a Form N–400 who do not need to provide biometrics, reasoning that this would burden elderly applicants. Another commenter likewise asserted that the fee increase would disproportionately impact the elderly and further urged USCIS to lower the cost for filing a reduced-fee Form N–400 without biometrics for the same reason.

Response: DHS disagrees that the N–400 fee increase disproportionately burdens elderly applicants because, since 2017, all naturalization applicants have been required to provide biometrics regardless of their age, unless they qualify for a fingerprint waiver due to certain medical conditions.[237] DHS acknowledges that commenters' concerns regarding Form N–400 fee increases may apply to applicants who do not require biometrics due to certain medical conditions. However, as discussed in the proposed rule, DHS believes that incorporating biometric service fees into immigration benefit requests will simplify the fee structure, reduce application rejections for failure to pay the correct fees, and better reflect how USCIS uses biometric information. *See* 88 FR 402, 484 (Jan. 4, 2023). These efficiencies will enable USCIS to maintain lower immigration benefit fees for applicants in general. In addition, the commenter presumes that being elderly equates with poor financial condition. Applicants who are low-income, receiving a means-tested public benefit, or experiencing extreme financial hardship are eligible for a waived or reduced N–400 fee. *See* 8 CFR 106.3(a)(1)(i), 106.2(b)(3)(ii). Also, the fee increase for applicants who do not require biometrics (19 percent) is less than the rate of inflation since the last fee increase (26 percent as of June 2023), and that this increase is mitigated for applicants who file online. *See* 8 CFR 106.1(g).

b. Reduced Fee N–400, Reversal of 2020 Rule's Removal of the Reduced Fee N–400

Comment: Multiple commenters expressed support for a reduced fee for Form N–400, under which qualifying applicants requiring biometric services would pay $25 less than under the previous fee schedule. However, multiple commenters recommended that USCIS increase the income limit for a reduced fee. A commenter wrote that many of its clients would not qualify for a waived or reduced fee or be able to afford the fee for Form N–400. Other commenters stated USCIS should consider increasing the percentage multiplier threshold for a reduced fee because the current poverty guidelines are outdated. A commenter opposed the 19 percent increase to the reduced fee for applicants who do not require biometric services.

Response: In response to public comments and additional stakeholder feedback, and in recognition of the enormous benefits that the United States obtains from new naturalized citizens, DHS has raised the income limits for a reduced fee Form N–400 to include applicants whose household income is at or below 400 percent of the FPG. *See* 8 CFR 106.2(b)(3)(ii). This change, coupled with the fee waiver for those who are unable to pay the Form N–400 fee, will make naturalization more available to all eligible applicants. The FPG are updated yearly by the U.S. Department of Health and Human Services (HHS).[238] And the fee increase for those who do not require biometric services applies to a small portion of Form N–400 filers since, as stated earlier, Form N–400 applicants require biometrics services regardless of age. Applicants who do not require biometrics due to a medical condition may also qualify for a full fee waiver if they are low income and receive a means-tested benefit due to their medical condition. *See* 8 CFR 106.3(a)(1)(i)(A).

c. N–600/600K

Comment: While one commenter expressed general support for increasing fees for Forms N–600 and N–600K, many commenters expressed strong opposition to these fee increases, reasoning that existing fees are already too high and that the increases may impose an undue burden on parents seeking evidence of citizenship or naturalization for their children.

[235] Based on filing volume trends in recent years, USCIS forecasts an increase of 62,165 Form N–400 applications, nearly a 10 percent increase from the FY 2016/2017 fee rule forecast. *See* Table 7, Workload Volume Comparison.

[236] *Compare* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Form I–864P, ''2023 HHS Poverty Guidelines for Affidavit of Support,'' *https://www.uscis.gov/i-864p* (last updated Mar. 1, 2023), *with* U.S. Dep't of Justice, ''Census Bureau Median Family Income By Family Size, Cases Filed Between May 15, 2022 and Oct 31, 2022,'' *https://www.justice.gov/ust/eo/bapcpa/20220515/bci_data/median_income_table.htm* (last visited Aug. 21, 2023).

[237] See U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, PA–2017–03, Policy Alert, ''Biometrics Requirements for Naturalization'' (July 26, 2017), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20170726-NaturalizationBiometrics.pdf* ; U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''USCIS Policy Manual'', Vol. 12, ''Citizenship & Naturalization'', Part B, ''Naturalization Examination'', Chp. 2, ''Background and Security Checks'', Sec. B, ''Fingerprints'' [12 USCIS–PM B.2(B)], *https://www.uscis.gov/policy-manual/volume-12-part-b-chapter-2* (last updated Nov. 8, 2023).

[238] *See* U.S. Dep't of Health & Human Servs, HHS Poverty Guidelines for 2023, *https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines* (last visited Aug. 21, 2023).

Another commenter stated that the fee increase for Forms N–600 and N–600K would have a significant negative impact on farmworkers, who are an economically disadvantaged segment of the population. A couple of commenters reasoned that the proposed fees would deter families from obtaining the documentation needed to prove the U.S. citizenship of foreign-born individuals.

Response: DHS recognizes commenters' concerns about the fee increases for Forms N–600, Application for Certificate of Citizenship, and N–600K, Application for Citizenship and Issuance of Certificate Under Section 322. However, the Form N–600 fee remains significantly below its estimated cost under the USCIS ABC model. For example, had DHS proposed to recover full cost on Form N–600, the fee would have been $1,835 when filed online and $2,080 when filed on paper. *See* 88 FR 402, 489 (Jan. 4, 2023). The current fee increases for both forms are slightly less than the rate of inflation since the last fee schedule. Applicants may request a waiver of the Form N–600 and N–600K fees. *See* 8 CFR 106.3(a)(3)(i)(L), (M). Approximately 47 percent of Form N–600 filers and 26 percent of Form N–600K filers receive such fee waivers. *See* 88 FR 402, 488 (Jan. 4, 2023). Children of U.S. citizens may obtain evidence of citizenship by applying for a U.S. passport, which is a less expensive alternative to applying for a Certificate of Citizenship through Form N–600. Therefore, DHS maintains the Form N–600 and N–600K fees at the amounts that were proposed. 8 CFR 106.2(b)(7), (8).

For a discussion on fee exemptions for Form N–600 and Form N–600K for certain adoptees see section IV.G.5.d. of this preamble.

Comment: A couple of commenters expressed concern that the cost of a Certificate of Citizenship will be nearly twice the cost to apply for naturalization. Another commenter suggested that the fee amounts for Form N–600 should not exceed those for Form N–400 and the two fees should be reversed. A religious organization likewise suggested that the fee for Form N–600 be made comparable to the reduced fee for Form N–400, adding that Form N–600 should be reasonably affordable such that applicants do not have to struggle financially to obtain proof of citizenship.

Response: DHS appreciates these commenters' concerns but believes that the difference in fees for Forms N–400 and N–600 is justified by multiple factors. First, there is a significant difference in the fee-paying unit cost between Form N–400 ($1,150) and Form N–600 ($1,429).[239] Also, the fee difference is justified by the difference in urgency between these two groups of applicants. Individuals who derive citizenship from their parents are legally U.S. citizens and may access the benefits of citizenship without filing Form N–600. Such individuals may obtain proof of citizenship through less expensive means such as applying for a U.S. passport. By contrast, an applicant for naturalization cannot access the benefits of citizenship until their Form N–400 has been adjudicated and they have taken the oath of allegiance. Given the different stakes for these groups of applicants, it makes sense for DHS to lower barriers to filing Form N–400. As noted earlier, because of the importance of naturalization to individual applicants and American society, DHS has sought to keep the Form N–400 fee at an affordable level that is below full cost recovery. Finally, maintaining a low Form N–400 fee is consistent with E.O. 14012's goal to ''make the naturalization process more accessible to all eligible individuals, including through a potential reduction of the naturalization fee.'' E.O. 14012, 86 FR 8277 (Feb. 5, 2021).

Comment: Another commenter suggested that, as an alternative to the current fee waiver policy, USCIS create a fee exemption for Form N–600 and N–600K applicants who can verify they lack access to a birth certificate. The commenter stated that applicants who qualify for the waiver would often be children, who would otherwise apply for a passport if they possessed a birth certificate.

Response: DHS declines to adopt the commenter's proposal because it would diverge from both the ability-to-pay and the beneficiary-pays principles and these forms are currently eligible for fee waivers. DHS recognizes that some Form N–600 and N–600K applicants may be unable to afford the application fees due to the same reasons that they lack birth certificates, for example, because they were admitted to the United States as refugees. However, some applicants may still possess the means to pay these filing fees despite their lack of a birth certificate. The existing fee waiver criteria (receipt of a means-tested benefit, household income at or below 150 percent of the FPG, or extreme financial hardship) are more directly related to an applicant's ability to pay. *See* 8 CFR 106.3(a)(1)(i).

[239] *See* Immigration Examinations Fee Account, Fee Review Supporting Documentation with Addendum, Nov. 2023, Appendix Table 4.

d. Other/General Comments on Fees, and Limiting Fee Increases (N–300, N–336, N–470, N–565)

Comment: An individual commenter suggested that, in comparison to Form N–600, the Form N–565 fee should be increased as applicants tend to lose, laminate, or give the original document to a different agency or entity that never give it back.

Response: DHS believes that the current fee structure satisfies the commenter's concerns. The final fee for Form N–565, Application for Replacement Naturalization/Citizenship Document, ($505 online, $555 paper) recovers more than the full fee-paying unit cost of the application ($453), while the Form N–600 fee ($1,335 online, $1,385 paper) recovers less than the fee-paying unit cost ($1,429).[240] DHS believes that further increases to the Form N–565 fee would be excessively burdensome for applicants who need to obtain a new Certificate of Naturalization or Citizenship, Declaration of Intention, or Repatriation Certificate.

Comment: One commenter stated that USCIS should consider reducing the fee for Form N–565. The commenter said that a replacement naturalization certificate should be affordable, since an accurate and up-to-date certificate is necessary for accessing important government services. Multiple commenters stated that the fee for Form N–565 is unfair in comparison to the fees that U.S. born citizens pay for a replacement birth certificate. One of these commenters asserted that the Form N–565 fee treats naturalized citizens as ''second class citizens,'' and, without evidence, that naturalization certificates and birth certificates include the same safeguards and features against unlawful duplication. Finally, one commenter wrote that they supported the Form N–565 fee remaining the same without providing additional rationale.

Response: DHS acknowledges commenters' concerns about the affordability of Form N–565. Although DHS will maintain the proposed Form N–565 filing fee for paper applications, DHS will now offer a $50 discount for Form N–565 when filed online. DHS also notes that the paper-filed Form N–565 is now less expensive in terms of real dollars since the FY 2016/2017 fee rule, given the rate of inflation since then.[241] While DHS recognizes that

[240] For fee-paying unit costs in this final rule, see Immigration Examinations Fee Account, Fee Review Supporting Documentation with Addendum, Nov. 2023, Appendix Table 4.

[241] Inflating the current N–565 fee of $555 from December 2016 to June 2023 would raise the fee to $700 (rounded to the nearest $5).

having an up-to-date citizenship document is helpful for accessing government services, DHS believes it is also important for individuals to be able to access naturalization or proof of citizenship in the first place, which is why Forms N–400, N–600, and N–600K are priced less expensively relative to their fee-paying unit costs. As explained in the proposed rule, DHS decided to hold the current fee for Form N–565 to allow this form to fund some of the costs of other forms and limit the fee increase for other forms. *See* 88 FR 402, 450 (Jan. 4, 2023). Furthermore, DHS notes the number of Form N–565 filings is limited, applicants may request a fee waiver, and there is no fee when seeking to correct a certificate due to USCIS error. *See* 8 CFR 106.3(a)(3)(i)(K); 8 CFR 106.2(b)(6). Some new citizens may also possess other, less expensive means of obtaining proof of citizenship such as applying for a U.S. passport. DHS considers the cost for obtaining a replacement U.S. birth certificate irrelevant to the cost of filing Form N–565, as the primary purposes of these two forms are fundamentally different. Also, Certificates of Naturalization and Citizenship contain many security features that may not appear on birth certificates, making Certificates of Naturalization and Citizenship less susceptible to fraud.[242] Issuance of a replacement certificate of citizenship or naturalization may also require that the applicant appear for an interview or provide biometrics.[243] DHS will retain the proposed fee for a paper filing of Form N–565 of $555. Consistent with the general initiative to encourage online filing, DHS will reduce the fee for an electronically filed N–565 by $50, to $505. *See* 8 CFR 106.1(g).

Comment: A few commenters wrote that they opposed increasing the fee for Form N–336 because:

- It would impose a barrier for low-income and working-class applicants to appeal or obtain a hearing if USCIS denies their naturalization application.
- It could deter applicants from pursuing legitimate challenges to denials of their naturalization applications.
- It would limit access to appeals for these applicants, which is counter to USCIS' FY 2023–2026 Strategic Plan goals for promoting quality adjudications and reducing undue barriers to naturalization.

Response: DHS acknowledges commenters' concerns regarding the fee increase for Form N–336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA), but the Department does not believe that the new filing fee would deter Form N–336 filings. The 19 percent fee increase is reasonable because it is below the 26 percent rate of inflation since the last fee rule. DHS has reduced the increase for some filers by including the N–336 amongst the benefits that receive a $50 discount for online filing. *See* 8 CFR 106.1(g). Applicants who are unable to pay the Form N–336 fee may request that it be waived. *See* 8 CFR 106.3(a)(3)(i)(H). Depending on the circumstances of their cases, some applicants may choose to refile Form N–400 at the reduced filing fee rather than file Form N–336. Also, N–336 filers may benefit from the other fees for naturalization-related forms, which received lower increases to reduce barriers for naturalization applicants in general.

Comment: A commenter agreed with the proposed fee increase for Form N–336 because higher naturalization fees will prevent those who need public assistance from seeking citizenship, preventing strain on U.S. public assistance systems.

Response: DHS appreciates the support for the N–336 fee. However, DHS disagrees with the commenter's premise that naturalization fees should be set at a level that limits access to public assistance and does not believe the increased fee for Form N–336 will further that goal. Applicants who receive a means-tested benefit are eligible for a waiver of the fees for naturalization-related forms. *See* 8 CFR 106.3(a)(1)(i)(A), (a)(3).

4. Humanitarian

a. NACARA

Comment: A commenter wrote that Guatemalans and Salvadorans who are eligible for NACARA rely on Form I–881 and therefore the proposal to increase fees would impose financial burdens on Latino immigrants. Furthermore, while acknowledging the proposed reduction of fees for Form I–881 applications for families, the commenter said this reduction would not affect the significant number of Form I–881 applicants who are individuals.

Response: As explained in the proposed rule, the IEFA fees for Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100 (NACARA)), have not changed since 2005. *See* 88 FR 402, 515–516 (Jan. 4, 2023). DHS proposed to limit the fee increase for Form I–881, like adoption-related or naturalization fees. *See* 88 FR 402, 450–451 (Jan. 4, 2023). This rule combines the current individual and family tiered fee schedule into a single Form I–881 fee because there is no cost data to support limiting the amount charged to a family. Additionally, the new fee of $340 is less than the cost to adjudicate the form (approximately 14 percent of the cost of adjudication), and at a 19 percent increase to individual filers, the fee increase is below the CPI–U of 26.37 percent.[244] DHS is not setting any fees in this rule to deter requests from families, specific nationalities, or any immigrants based on their financial or family situation or demographics from accessing immigrant benefits and we have no evidence or experience in setting fees that indicates that the fees would have such an unintended effect. DHS acknowledges the commenter's concerns regarding the increased fee for Form I–881 for an individual adjudicated by DHS ($285 to $340). This fee in the final rule reflects a 19 percent increase in the filing fee for Form I–881 for an individual adjudicated by DHS, which is below the rate of inflation since the current IEFA fees for Form I–881 were last changed in 2005. All other IEFA fees for Form I–881 decreased, when compared to the current total fees including the fee for biometric services.

The proposed rule included a provision that would eliminate the separate biometric service fee requirement in most cases. *See* 88 FR 402, 484–485 (Jan. 4, 2023). For a family, the fee for Form I–881 adjudicated by EOIR remains at $165 (0 percent increase); for an individual, the fee for Form I–881 adjudicated by DHS with biometric services is 8 percent

[242] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Commonly Used Immigration Documents'', *https://www.uscis.gov/save/commonly-used-immigration-documents* (last updated Mar. 23, 2023); *cf.* Office of Inspector General, U.S. Dep't of Health & Human Servs., ''Birth Certificate Fraud'' (Sept. 2000), *https://oig.hhs.gov/oei/reports/oei-07-99-00570.pdf* (noting over 14,000 different versions of birth certificates in circulation, and varying security features among vital records offices).

[243] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Form N–565, Instructions for Application for Replacement Naturalization/Citizenship Document (Dec. 8, 2021), *https://www.uscis.gov/sites/default/files/document/forms/n-565instr.pdf; cf.* Office of Inspector General, U.S. Dep't of Health & Human Servs., ''Birth Certificate Fraud'' (Sept. 2000), *https://oig.hhs.gov/oei/reports/oei-07-99-00570.pdf* (noting that 85–90% for birth certificate fraud encountered by former INS and passport services is the result of genuine birth certificates held by imposters).

[244] DHS calculated this by subtracting the December 2016 CPI–U (241.432) from the June 2023 CPI–U (305.109), then dividing the result (63.677) by the December 2016 CPI–U (241.432). Calculation: $(305.109 - 241.432)/241.432 = .2637 \times 100 = 26.37$ percent. *See* 88 FR 402, 515 (Jan. 4, 2023); Table 1.

lower; for a family, the fee for Form I–881 adjudicated by DHS is 40 percent lower; and for two people, the fee for Form I–881 adjudicated by DHS with biometric services is 54 percent lower in this rule. *See* 88 FR 402, 408–409 (Jan. 4, 2023). Furthermore, DHS recognizes that abused spouses and children under NACARA must file for VAWA benefits while in immigration proceedings, and they are a particularly vulnerable population. Therefore, DHS provides a fee exemption for abused spouses and children under NACARA filing Form I–881, as well as ancillary Form I–765 (submitted under 8 CFR 274a.12(c)(10)). *See* 8 CFR 106.3(b)(7). For other applicants who are unable to pay the fee, Form I–881 is also eligible for a fee waiver. *See* 8 CFR 106.3(a)(3)(i)(F).

b. Qualifying Family Member of a U–1 Nonimmigrant

Comment: Commenters wrote that USCIS' proposal to increase the fees for relief for family members of a U-visa petitioner would undermine the rights of survivors of crimes and the U.S. criminal legal system. Commenters requested that DHS keep derivative petitions for U-visa petitioners affordable to incentivize individuals to report when they have been a victim of crime and to prioritize public safety and family unity.

Response: DHS is committed to the goals of our humanitarian programs. In this final rule, DHS provides additional fee exemptions for petitioners for U nonimmigrant status because of the humanitarian nature of the program and the likelihood that individuals who would file requests in this category would qualify for fee waivers. *See* 8 CFR 106.3(b)(5). For example, DHS provides a fee exemption for Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant. DHS believes it is an important policy decision to provide a fee exemption for the Form I–929 to continue to provide for this vulnerable population and promote family unity in line with other humanitarian status requestors. Furthermore, a fee exemption for Form I–929 is consistent with the fee exemptions provided for most forms associated with U nonimmigrant status. *See* 8 CFR 106.3(b).

c. Other/General Comments on Humanitarian Benefits

Comment: A commenter stated that DHS should impose a fee for Form I–589, Application for Asylum and for Withholding of Removal. The commenter recommends that the fee represent the costs associated with an asylum application. They believe the INA authorizes fees ''for the consideration of an asylum application, for employment authorization, and adjustment of status under section 209(b), not to exceed the costs in adjudicating the applications.'' A commenter generally supported USCIS' proposal to keep humanitarian fees the same.

Response: The enjoined 2020 rule included a $50 fee for Form I–589, Application for Asylum and for Withholding of Removal, despite opposition from many commenters. *See* 85 FR 46788 (Aug. 3, 2020). DHS acknowledges the commenters' concerns about asylum seekers' inability to pay the fees and humanitarian plight of legitimate asylum seekers. In recognition of the circumstances, the proposed rule withdraws the $50 fee imposed in the 2020 rule. DHS will continue to accept Form I–589, Application for Asylum and for Withholding of Removal with no fee. Furthermore, the initial filing of the applicant's Form I–765, Application for Employment Authorization, has no fee. *See* 88 FR 402, 464 (Jan. 4, 2023); 8 CFR 106.2(a)(44). Asylum seekers often come to the United States with limited economic resources and are dependent on family and charitable organizations for survival. DHS believes that these fee exemptions will eliminate the additional financial burden for asylum seekers and maintain accessibility of the affirmative asylum program, which provides eligible applicants critical humanitarian protection from return to persecution. DHS data indicates that this population would be eligible for fee waivers and requiring a fee for asylum applications and their Form I–765, but permitting fee waivers, would be costly and inefficient in creating a fee for asylum applicants who are not eligible for an EAD until their application has been pending for 150 days. *See* 8 CFR 208.7(a)(1). DHS declines to make any changes based on this comment.

5. Family-Based

a. Alien Fiancé

Comment: A commenter stated that the fee increases would force more U.S. citizens to travel to other countries and get married out of sheer desperation. One commenter also said that employers are more able to bear rising immigration costs than families. Another commenter stated after the pandemic, many have lost their jobs and find it difficult to pay rent, and that raising the cost of the fiancée visa goes against USCIS's humanitarian mission and the mission to reunite families.

Response: USCIS understands the economic situation that many families face today. DHS is authorized to set fees at a level that ensures recovery of the full cost of providing the adjudication services for the programs USCIS administers. *See* INA sec. 286(m), 8 U.S.C. 1356(m). Because USCIS relies almost entirely on fee revenue, in the absence of a fee schedule that ensures full cost recovery, USCIS would be unable able to sustain an adequate level of service. USCIS has not had a fee increase in the I–129F since 2016 to fund the processing of these applications. As noted earlier in Section I.D. of this preamble, DHS will raise the fee for Form I–129F, Petition for Alien Fiancé(e) from $535 to $675 (26 percent), which amounts to a decrease of $45 (6 percent) from the original proposed fee. *Compare* 8 CFR 106.2(a)(5) and Table 1, *with* 88 FR 402, 409 (Jan. 4, 2023). The final increase is consistent with a 26 percent rate of inflation since the last fee increase in December 2016, as of June 2023. The fee for the Form I–129F resulted from application of the standard USCIS fee methodology. DHS values its role in assisting U.S. citizens who wish to bring a foreign national fiancé to the United States to marry and is sensitive to the extra burden that the increased filing fee may impose. DHS understands that being separated from loved ones and having to wait to start a life together may be frustrating. However, DHS does not believe that the I–129F fee increase will encourage out-of-country marriages, since, if the couple marries abroad, instead of paying $675 to file the I–129F for their fiancé to immigrate, the petitioner would need to file Form I–130, Petition for Alien Relative, for their spouse to immigrate. This final rule increases the fee for online I–130 filings to $625 and paper filings to $675; therefore, out-of-country marriage would not result in a significant cost savings. *See* 8 CFR 106.2(a)(6), and 8 CFR 204.1; Table 1. Also, as a general matter, DHS does not waive fees where the petitioner will eventually need to complete an affidavit of support in order for the beneficiary to obtain LPR status. To adjust status, a K-visa applicant must demonstrate that they are not likely to become a public charge, *see* INA section 212(a)(4), 8 U.S.C. 1182(a)(4), which requires an affidavit of support from the petitioning spouse, *see* INA sections 212(a)(4)(C) and 213A, 8 U.S.C. 1182(a)(4)(C) and 1183A. Applicants may file a fee waiver request for Form I–751, Petition to Remove Conditions on Residence, *see* 8 CFR 106.3(a)(3)(c), which is required for most fiancé(e)s

after adjustment of status in order to remove the conditional basis of their LPR status, *see* INA section 216 and 245(d), 8 U.S.C. 1186a and 1255(d). However, because a fee waiver would be inconsistent with the financial support requirement and public charge ground of inadmissibility. Therefore, fee waivers for the Form I–129F will not be provided.

b. Petition for Alien Relative

Comment: Multiple comments expressed concern about the cost of the proposed fee increase for the Form I–130. Commenters wrote:

- The fee threatens to violate the right to family enshrined in the Universal Declaration of Human Rights and other human rights standards that the United States has agreed to uphold.
- The proposed Form I–130 fee would exclude immigrants from our workforce and our broader community.
- The fee increase could split families by forcing some petitioners to file for one family members at a time, which would further undermine family unity.
- Absence of fee waivers for I–130 petitions would worsen these effects.

Response: DHS appreciates the concerns of commenters but reiterates that USCIS is funded almost exclusively by fees, *see* INA section 286(m), 8 U.S.C. 1356(m), and without proper funding, USCIS will lack the resources to keep pace with incoming benefit requests. The increase in the I–130 fee is necessary to provide the resources required to do the work associated with such filings. The Form I–130 fee increase (electronically filed), from $535 to $625 (17 percent), has been reduced by $45 (6 percent) from the proposed rule. See 8 CFR 106.2(a)(6).

USCIS understands the importance of facilitating family unity, as well as the advantages that LPR status provide to new immigrants. However, by statute, Form I–130 petitioners must have access to sufficient financial resources to support all beneficiaries, in addition to the petitioner's entire household, for the beneficiary to obtain LPR status. *See* INA sections 1182(a)(4)(C) and 213A, 8 U.S.C. 1183(a)(4)(C) and 1183A. A petitioner seeking to file for several family members, may lack the financial resources for all the family members to adjust at the same time, forcing the petitioner to bring one beneficiary over at a time. However, the I–864, Affidavit of Support Under Section 213A of the INA, allows the petitioner to count the income and assets of members of the household who are related by birth, marriage or adoption, and allows the beneficiary to provide a joint sponsor to meet the minimum income requirement.[245] As previously mentioned, USCIS's humanitarian mission is to provide protection to individuals in need of shelter or aid from disasters, oppression, emergency medical issues and other urgent circumstances as provided through specific humanitarian programs.[246] Although the 1948 Universal Declaration of Human Rights (UDHR) speaks to the right to marry, the UDHR does not prohibit fees for family-based visa petitions and, in any event, is only a nonbinding, aspirational document.[247] USCIS, moreover, is not limiting individuals' right to marry or build a family. USCIS also disagrees that an increase in the fee disrupts USCIS' humanitarian efforts under this rule.

DHS knows that immigrants make significant contributions to the U.S. economy, and this final rule is in no way intended to impede, reduce, limit, or preclude immigration for any specific population, industry, or group. DHS agrees that immigrants are an important source of labor in the United States and contribute to the economy. Acknowledging that downward adjustments for some groups may result in upward adjustments for other groups, DHS saw no decreases in benefit requests which it can attribute to the fee adjustments in 2016 and has no data that would indicate that the fees for family-based benefit requests in this final rule would prevent applicants from submitting petitions [248] While DHS shifts some of the costs of humanitarian programs in this rule to other benefit requests based on the ability to pay, there are many benefit requests that are used by families and low-income individuals, and shifting all family-based benefit request costs to non-family-based requests would increase non-family based fees to the point of being unbalanced and unsustainable. DHS recognizes the burden that fee increases may impose on some families and low-income individuals. As a general matter, DHS does not waive fees for petitions that require the petitioners to demonstrate that they will be able to support their beneficiary financially, or that eventually require the beneficiary to file of an affidavit of support. In order to consular process or adjust status, the Form I–130 beneficiary must submit Form I–864, Affidavit of Support Under Section 213A of the INA with their visa petitions or adjustment of status applications, to document the petitioner's or joint sponsor's ability to financially support the noncitizen beneficiary. A fee waiver would be inconsistent with this financial support requirement; therefore, DHS declines to allow fee waivers for the Form I–130. With that context in mind, and following review of the public comments received, DHS has determined that the final fee for Form I–130 is not inordinately high.

DHS acknowledges that it allows fee waivers for Form I–751, Petition to Remove Conditions on Residence, even though in most cases the petitioning relative's obligation to support the conditional permanent resident (CPR) will still exist when the CPR files Form I–751. However, there are multiple differences between these forms that justify the difference in fee-waiver availability. First, having a sufficient level of financial support is not a legal requirement for removal of conditions on residence, whereas it is a legal requirement for admission as a lawful permanent resident under a family-based visa category. *Compare* INA 216, 8 U.S.C. 1186a, *with* INA 212(a)(4)(C), 8 U.S.C. 1182(a)(4)(C). Although the sponsor of Form I–864, Affidavit of Support Under Section 213A of the INA, has an ongoing responsibility to support the CPR, their inability or unwillingness to do so has no legal bearing on the CPR's eligibility to have their conditions removed. Also, there may be intervening circumstances after a noncitizen obtains CPR status that would make it impossible or impractical for them to obtain financial support from sponsor(s) of their Form I–864 (*e.g.,* death or divorce). Second, Form I–130 receipts are significantly larger than I–751 receipts. In fact, Form I–130 was the most common form received by USCIS in FY 2022.[249] For these reasons,

[245] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Affidavit of Support web page, *https://www.uscis.gov/green-card/green-card-processes-and-procedures/affidavit-of-support* (last updated Mar. 19, 2021).

[246] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Humanitarian web page, *https://www.uscis.gov/humanitarian* (last visited Aug. 22, 2023).

[247] *See* United Nations, ''Universal Declaration of Human Rights,'' *https://www.un.org/en/about-us/universal-declaration-of-human-rights* (last visited Aug. 22, 2023). The Declaration is only a resolution of the U.N. General Assembly and thus is only a non-binding, aspirational document. *See Sosa* v. *Alvarez-Machain,* 542 U.S. 692, 734 (2004) (observing that declarations like the UDHR are merely aspirational and that ''do[ ] not of [their] own force impose obligations as a matter of international law,'' and thus are of ''little utility'' in discerning norms of customary international law).

[248] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''2020 USCIS Statistical Annual Report,'' *https://www.uscis.gov/sites/default/files/document/reports/2020-USCIS-Statistical-Annual-Report.pdf* (last visited Aug. 22, 2023).

[249] *See* U.S. Citizenship and Immigr. Servs, U.S. Dep't of Homeland Security, ''Number of Service-

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allowing a fee waiver for Form I–130 would likely result in a much higher level of uncollected fees that would have to be transferred to other fee payers. Finally, petitioners have greater flexibility in deciding when to file Form I–130, whereas in general Form I–751 must be filed within a specific 90-day window. *See* INA 216(d)(2)(A), 8 U.S.C. 1186a(d)(2)(A). Therefore, Form I–130 petitioners possess greater flexibility in accumulating funds to pay the fee for the petition. For these reasons, DHS makes Form I–751 eligible for a fee waiver but does not do so for Form I–130.

Comment: Another commenter stated that the proposed I–130 fee increase was disproportionate and that the fee should be kept at its current level, without providing further explanation.

Response: Fees do not merely cover the cost of adjudication time. The fees also cover the resources required for intake of immigration benefit requests, customer support, and administrative requirements. DHS recognizes that fees impose a burden on individuals seeking benefits, and it takes steps to mitigate the cost as appropriate. At the same time, absent an alternative source of revenue, DHS must recover the full costs of the services that USCIS provides, or else risk reductions in service quality, including potential delays in processing. As noted in the final rule, the fee increases for an electronically filed Form I–130 has been reduced to $625 (17 percent increase). *See* Table 1; 8 CFR 106.2(a)(6).

Comment: Another comment said that an equitable way of raising revenue would be to increase the cost for Forms I–130 filed by an LPR and decrease the cost for Forms I–130 filed by citizens.

Response: Creating a separate fee schedule within the I–130 form based on the filer's status would create additional burden on processing time to validate the filer's status. In addition, the fee schedule suggested would be more regressive in nature since many LPR filers who seek to file for family members already have a longer wait time for the visa to become available than their U.S. citizen counterparts where an immediate relative under INA 201(b)(2)(A)(i), 8 U.S.C. 1151(b)(2)(A)(i), would have a visa immediately available.[250] Placing additional financial burden on LPR filers would be regressive because it may delay their ability to file and, together with the longer wait for visa availability for LPR filers, has the potential to extend the amount of time it will take to reunite with family members. Therefore, DHS declines to make any changes based on this comment.

c. Remove Conditions on Residence

Several commenters discussed the proposed fee increase for Form I–751. Those comments are summarized as follows:

- The proposed fee increase would create burdens for low-income individuals, immigrants, and their families, and particularly be a burden on applicants seeking to file Form I–751 on the grounds of divorce who are ineligible for fee waivers.
- The fee is cruel because an applicant must apply before the 2-year anniversary of their marriage to protect against deportation and separation from their spouse.
- The fee would be a barrier for victims of domestic violence who need to file Form I–751 on their own.
- The fee for Form I–751 along with other proposed fee increases undermines the rule's objective to balance the competing beneficiary-pays and ability-to-pay models, promote immigrant integration, and reduce barriers to immigration benefits.
- The fee would be a barrier to citizenship and lawful permanent residence.
- There is no rational basis for a fee increase that is 73 percent higher than the last proposed increase.
- The I–751 fee is unreasonable because applicants have already proven their eligibility for permanent residence and only must demonstrate that their family relationship has continued.
- A large fee increase is unreasonable because Form I–751 is only a reapproval of a previously successful application and is redundant when applicants are shortly afterwards applying for naturalization, and yet it requires USCIS an average of 18 months to complete.
- The proposed fee increase for Form I–751 is much greater than for other forms requiring similar levels of effort to adjudicate.
- The increase in the I–751 fee is too large and creates a large burden on petitioners.
- USCIS should extend the validity of conditional marriage-based Green Cards from 24 months to 36 months to streamline the Green Card process, allow applicants to skip unnecessary paperwork required for the removal of conditions by directly applying for naturalization, and eliminate unnecessary work for USCIS and fees on families.

Response: DHS acknowledges the increased Form I–751 fee will render the process of removing conditions on residence more expensive and has considered the comments. As previously mentioned, USCIS is primarily fee based and therefore must recover operating costs through fees, including the cost of fee waived or exempt workloads. DHS acknowledges commenters' concerns about the proposed fee increase for the Form I–751 and has decreased the form fee from the proposed $1,195 to $750, capping it at approximately 26 percent for inflation. *See* 8 CFR 106.2(a)(43). Fees are created to cover the resources required for intake of immigration benefit requests, customer support, fraud detection, background checks, administrative processing, and the Form I–751 interview by an officer if it is not waived. DHS offers fee waivers for Form I–751 petitioners who are unable to pay and there is no filing fee for conditional permanent residents seeking to remove conditions on their status by filing for battery or extreme cruelty waivers under INA section 216(c)(4). *See* 8 CFR 106.3(a)(3)(i)(C); 8 CFR 106.2(a)(43). In addition, DHS has recently reduced the financial burden on Form I–751 petitioners by automatically extending the validity period of conditional Green Cards for 48 months beyond the card's expiration date when the Form I–751 is properly filed.[251] This reduces potential fees for filing a Form I–90, Application to Replace Permanent Resident Card, ($415 online) while an applicant's Form I–751 is pending. DHS believes this policy addresses most of the commenter's concerns and declines to make any further changes.

Comment: Some commenters wrote that the Form I–751 fee should be less than the fee for Form I–130, Petition for Alien Relative. One commenter stated that Form I–751 is redundant, and the proposed fee is disproportionately expensive relative to the time that it takes to adjudicate Forms I–751 and I–130. Another commenter suggested that if the cost of filing the form is based on the level of effort required by DHS to process the form, then filing the form

wide Forms By Quarter, Form Status, and Processing Time, July 1, 2022—September 30, 2022'', available at *https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2022_Q4.pdf* (last updated Oct. 2022) (In FY 2022, USCIS received 873,073 Form I–130s, but only 122,803 Form I–751s.).

[250] See Bureau of Consular Affairs, U.S. Dep't of State, ''Travel.State.Gov., The Visa Bulletin,'' *https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html* (last visited Sept. 8, 2023).

[251] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''USCIS Extends Green Card Validity for Conditional Permanent Residents with a Pending Form I–751 or Form I–829'' (Jan. 23, 2023), *https://www.uscis.gov/newsroom/alerts/uscis-extends-green-card-validity-for-conditional-permanent-residents-with-a-pending-form-i-751-or.*

should only cost 28 percent more than Form I–130, rather than the proposed 41 percent difference.

Response: In passing the Immigration Fraud Amendments of 1986, Public Law 99–639, 100 Stat. 3537, Congress recognized short-duration marriages as presenting a higher risk for immigration fraud and requiring additional scrutiny.[252] The higher proposed fee for Form I–751 than Form I–130 was based in part on completion time for Form I–751 (1.54 hours) in comparison Form I–130 (1.11 hours).[253] As previously mentioned, DHS acknowledges commenters' concerns about the Form I–751 fee and has decreased the proposed $1,195 fee to $750, capping it at 26 percent for inflation; likewise, the Form I–130 paper-based filing has also been capped at 26 percent ($675) and the discounted rate for online filing is $625 (17 percent). *See* 8 CFR 106.2(a)(6), 106.2(a)(43); Table 1. DHS notes that it limits most fees by inflation and offers a $50 online filing fee discount in most cases, as explained elsewhere in this rule.

d. Adoption-Related Forms

Some commenters requested that DHS provide more fee exemptions and free services for adoption related benefit requests. In response to the public comments, DHS reexamined the fees for adoptions and decided that some services could be provided for free. Consistent with past fee rules, DHS proposed to limit the increase of adoption-related fees. *See* 88 FR 503; 81 FR 73298. DHS reduces fee burdens on adoptive families by covering some of the costs attributable to the adjudication of certain adoption-related requests with fees collected from other immigration benefit requests. *Id.* In this rule, that includes a free first and second extension or change in country or a request for a duplicate notice. A summary of the new exemptions is listed in Table 8 below. Although other forms may not need to be filed by adoptees, fee waivers are available for adoptees for Forms I–90, N–400, N–336, N–565, N–600,[254] N–600K.

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[252] *See generally* INA section 216, 8 U.S.C. 1186a.

[253] *See* 88 FR 402, 448, Table 10 (Jan. 4, 2023).

[254] USCIS issues a Certificate of Citizenship to adopted children who are admitted to the United States with an IR–3 visa (visa category for children from non-Hague Adoption Convention countries adopted abroad by U.S. citizens) or an IH–3 visa (visa category for children from Hague Adoption Convention countries adopted abroad by U.S. citizens) without the filing of a Form N–600, Application for Certificate of Citizenship, and fee, if the child meets all requirements of section 320 of the Act, 8 U.S.C. 1431.

Table 7: Adoption Fees			
Immigration Benefit Request	**Current Fee**	**Proposed Rule Fee**	**Final Fee**
• I-600 Petition to Classify Orphan as an Immediate Relative [255]	$775 ($860 with biometric services for one adult)	$920 (with all biometric) (19% increase)	$920
○ First Form I-600 with approved and valid Form I-600A	$0	$0	$0
○ If more than one Form I-600 is filed based on an approved and valid Form I-600A for children who are birth siblings before the proposed adoption	$0	$0	$0
○ If more than one Form I-600 is filed based on an approved and valid Form I-600A for children who are not birth siblings	$775 (for each additional petition)	$920	$920

before the proposed adoption			
○ Form I-600 combination filing exemption: Change in marital status while Form I-600 combination filing suitability determination is pending	$0	$0	$0
○ Form I-600 combination filing change in marital status after suitability approval	$775 ($860 with biometrics services for one adult)	$920 (19% increase)	$920
• I-600A Application for Advance Processing of an Orphan Petition	$775 ($860 with biometric services for one adult)	$920 (18% increase)	$920
○ Change in marital status while Form I-600A is pending	$0	$0	$0
○ Change in marital status after Form I-600A approval	$775 ($860 with biometric services)	$920 (18% increase)	$920
• Form I-600A/I-600 Supplement 1 (Listing of Adult Member of the Household)	$0	$0	$0
• Form I-600A/I-600 Supplement 2 (Consent to Disclose Information)	$0	$0	$0

• Form I-600A/I-600 Supplement 3 (Request for Action on Approved Form I-600A/I-600)	(N/A)[256]	$455	$455
○ First extension of Form I-600A approval or first change of country	(N/A)	$455	$0
○ Second extension of Form I-600A Approval	(N/A – must file a new Form I-600A with fee of $775 plus biometrics)	$455	$0
○ Second change of country	(N/A - must use the Form I-824 with $465 fee)	$455	$0
○ Third and subsequent extension of Form I-600A Approval	(N/A – must file a new Form I-600A with fee of $775 plus biometrics)	$455	$455
○ Third and subsequent change of country	(N/A - must use the Form I-824 with $465 fee)	$455	$455

Significant change and updated home study and there is no request for a first or second extension of Form I-600A approval or a first or second change of non-Hague Adoption Convention country on the same Supplement 3.[257]	(N/A) [258]	$455[259]	$455[260]
Duplicate Approval Notice	(N/A – must use the Form I-824 with $465 fee)	$455	$0
• Form I-800 Petition to Classify Convention Adoptee as an Immediate Relative	$775	$920 (19% increase)	$920
○ First Form I-800 with an approved and valid Form I-800A.	$0	$0	$0
○ If more than one Form I-	$0	$0	$0

800 is filed for an approved and valid Form I-800A for children who are birth siblings before the proposed adoption			
○ If more than one Form I-800 is filed based on an approved and valid Form I-800A for children who are not birth siblings before the proposed adoption	$755 (for each additional petition)	$920	$920
○ Form I-800 Supplement 1, Consent to Disclose Information.	$0	$0	$0
• Form I-800A Application for Determination of Suitability to Adopt a Child from a Convention Country	$775 ($860 with biometrics for one adult)	$920 (includes biometric fee) (18% increase)	$920
○ Change in marital status while Form I-800A is pending	$0	$0	$0
○ Change in marital status after approval of Form I-800A	$775 ($860 with biometrics services for one adult)	$920 (19% increase)	$920
• Form I-800A Supplement 1	$0	$0	$0

Listing of Adult Member of the Household			
• Form I-800A Supplement 2, Consent to Disclose Information.	$0	$0	$0
• Form I-800A Supplement 3 (Request for Action on Approved Form I-800A) ○ First extension of the approval of Form I-800A ○ First change in Convention country after the approval of Form I-800A	$0	$0	$0
○ Second extension of the approval of Form I-800A ○ Second change in Convention country after the approval of Form I-800A	$385 ($470 with biometrics fee for 1)	$455	$0
○ Third or subsequent extension of Form I-800A approval ○ Third or subsequent change in Convention country after the approval	$385 ($470 with biometrics fee for 1)	$455	$455

of Form I-800A			
• Request for duplicate approval notice	$385	$455	$0
• Significant change and updated home study and there is no request for a first or second extension of Form I-800A approval or first or second change of Hague Adoption Convention country on the same Supplement 3[261]	$385[262]	$455[263]	$455[264]
Form N-600, Application for Certificate of Citizenship • For certain adoptees	$1,170	$1385 $1335 (online filing)	$0
Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 • For certain adoptees	$1,170	$1385 $1335 (online filing)	$0

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[255] A biometric services fee is required for each petitioner, spouse, and any adult household member aged 18 or older unless you filed Form I-600A and any adult members of your household are within the 15-month biometric services validity period.

[256] Currently being submitted through a written request.

[257] The petitioner would be seeking a reissuance of the approval notice after the adjudication and review of the significant change and updated home study.

[258] Currently being submitted through written request.

[259] In the proposed rule, DHS proposed to require the $455 Supplement 3 fee unless the prospective adoptive parent is also filing a first request for an extension of Form I-600A approval or first change of country request.

The final rule also addresses the omission of concurrent filings under 8 CFR 204.3(d)(3) in two places. First, the final rule addresses a discrepancy between current 8 CFR 204.3(h)(13), which provides that an orphan petition will be denied if filed after the advanced processing application approval has expired, and current 8 CFR 204.3(d)(3), which permits concurrent filing of an orphan petition with an advanced processing application. Under current practice, concurrent filing is permitted even if a prior advanced processing application expired. Therefore, DHS is revising 8 CFR 204.3(h)(13) to clarify that an orphan petition filed after approval of the advanced processing application has expired will not be denied on that basis if the petition is a concurrent filing under 8 CFR 204.3(d)(3) with a new advanced processing application. Second, the final rule adds a reference to concurrent filing at 8 CFR 204.3(h)(14), acknowledging that after a Form I–600 petition is revoked, a new Form I–600A may be filed rather than a Form I–600 combination filing. See 8 CFR 204.3(h)(14)(iii).

Comment: Multiple commenters expressed opposition to the proposed fees for adoption-related Forms I–600A, I–600, I–800A, and I–800, indicating that the fees are an additional expense without an increase in services or efficiencies. Some commenters stated that adopted children should be considered vulnerable populations and granted fee exemptions just like other groups DHS considered vulnerable populations meriting fee exemptions. A few commenters suggested that DHS provide an additional fee exemption for non-related children being adopted by the same family. Some commenters agreed with DHS' conclusion that by incorporating biometrics fees into filing fees most households would experience a slight cost savings in their application filings, but still had overall concerns with perceived fee increases.

Response: DHS has included additional fee exemptions in this final rule as discussed above. DHS notes that the proposed fees and final fees for adoption forms limit the increase of adoption-related fees in this rule consistent with previous fee rules. This fee increase is in part a result of inflation and being implemented with the intent to maintain current services. The average two-parent adoptive family will generally pay less for filing Form I–600A, Application for Advanced Processing of an Orphan Petition, Form I–600, Form I–800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, and Form I–800 than they pay now because the biometrics services fees will be incorporated into the filing fee. This continues the DHS policy of reducing the fee burden on adoptive families by covering some of the costs attributable to the adjudication of certain adoption-related petitions and applications through the fees collected from other immigration benefit requests. To reduce the burden on adoptive families, DHS applied the reduced weighted average increase of 18 percent, which may vary slightly because of rounding fees to the nearest $5. *See* 88 FR 402, 450–451 (Jan. 4, 2023).

If DHS used the estimated fee-paying unit cost from the ABC model, the Form I–600A, would have a fee of at least $1,333 in this final rule.[265] Applying the reduced weighted average of 18 percent to the current fee of $775 increases the main filing fee by just $145 to $920 for Forms I–600, I–600A, I–800 and I–800A. However, because the biometrics will be incorporated in the filing fee, most applicant households will experience a cost savings in their application filings. A two-parent household pays $945 under the current fee structure (for a suitability application, biometric services fees, and a petition for a child filed while the suitability approval is still valid). The $920 proposed fee with biometrics incorporated would be $25 less than the current fee of $775 plus two separate $85 biometrics fees for such household.

In addition, DHS already provides, and will continue to provide, the following fee exemptions for Forms I–600A, I–600, I–800A, and I–800:

- First beneficiary for a Form I–600 or Form I–800 petition (provided it is filed while the Form I–600A or Form I–800A suitability approval is still valid).
- Birth siblings for a Form I–600 or Form I–800 petition (provided it is filed while the Form I–600A or Form I–800A suitability approval is still valid).
- Filing fee for a new I–600A, I–800A, or I–600 combination filing because the marital status of the applicant changed while their request for a suitability determination was pending.

The proposed rule and final rule approach of providing a fee exemption for birth siblings, but not for non-birth siblings, is consistent with the special treatment afforded in the INA to ''natural siblings.'' The INA allows a Form I–600 or Form I–800 petition to be filed for a child up to age 18, rather than up to age 16, only if the beneficiary is the ''natural sibling'' of another foreign-born child who has immigrated (or will immigrate) based on adoption by the same adoptive parents. *See* sections 101(b)(1)(F)(ii) and (G)(iii) of the INA; 8 U.S.C. 1101(b)(1)(F)(ii) and (G)(iii). While the INA uses the term ''natural sibling,'' DHS generally uses the term ''birth sibling'' synonymously, which includes half-siblings but does not include adoptive siblings. The INA does not afford special treatment to non-birth siblings, and the proposed and final rule are consistent with the spirit of the INA. The adjudication of an adoption petition is extensive and unique to the circumstance of the child. The adjudication of an adoption petition is not less extensive for unrelated children because they are being adopted by the same adoptive parents and therefore a fee is required to recover costs. Otherwise, even more costs of adoption adjudications would have to be shifted to people applying for other immigration benefits.

Although DHS will not provide additional fee exemptions for the main Forms I–600A, I–600, I–800A or I–800, DHS will provide additional fee exemptions for:

- Form I–600A/I–600, Supplement 3, Request for Action on Approved Form I–600A/I–600 (in certain scenarios).
- Form I–800A, Supplement 3, Request for Action on Approved Form I–800A.
- Form N–600, Application for Certificate of Citizenship (for certain adoptees).
- Form N–600K, Application for Citizenship and Issuance of Certificate (for adopted children).

[260] In the final rule, the $455 Supplement 3 fee is required unless the prospective adoptive parent is also filing a first or second request for an extension of Form I-600A approval or first or second change of country request.

[261] The petitioner would be seeking the issuance of an updated approval notice after the adjudication and review of the significant change and updated home study.

[262] Prospective adoptive parents currently must pay the $385 Supplement 3 fee to request a new approval notice unless they are also filing a first-time request for an extension of Form I-800A approval or change of country on the same Supplement 3.

[263] In the proposed rule, DHS proposed to require the $455 Supplement 3 fee unless the prospective adoptive parent is also filing a first request for an extension of Form I-800A approval or first change of country request on the same Supplement 3.

[264] In the final rule, the $455 Supplement 3 fee is required unless the prospective adoptive parent is also filing a first or second request for an extension of Form I-800A approval or first or second change of country request on the same Supplement 3.

[265] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Immigration Examinations Fee Account, Fee Review Supporting Documentation with Addendum, Nov. 2023, Appendix Table 4.

We address these new few exemptions in the following discussion on specific adoption-related comments.

Comment: Commenters opposed the proposed Form I–600A/I–600 Supplement 3 fee for certain requests for action on suitability applications for the orphan process combined with the proposed reduction to suitability approval validity time on Form I–600A from 18 months to 15 months. Commenters disagreed with DHS's rationale that shortening the validity period would reduce the burden on adoptive parents and service providers who must deal with multiple expiration dates, reasoning that this would instead create a burden and that DHS should instead align all validity periods to an 18-month timeframe. Although some commenters agreed with DHS's conclusion that by incorporating biometrics fees into filing fees most households would experience a slight cost savings in their application filings, they stated that shortened suitability approval timeframes (from 18 months to 15 months) for orphan cases would impact the number of needed additional extensions and therefore fees. However, commenters expressed support for the proposed fee exemption for the initial extension, reasoning that it appropriately recognizes applicants' additional paperwork and the lighter workload of such cases.

Response: The proposed rule and the final rule create some efficiencies for the orphan process like efficiencies already in place for Hague Adoption Convention cases. The rule aligns the suitability approval validity periods for both Orphan and Hague adoptions to the suitability approval, therefore, limiting to only one date to review both for applicants and USCIS. It also creates a dedicated supplement (Form I–600A/ Form I–600 Supplement 3) for requests for action on suitability applications so that adoptive parents do not have to draft their own written correspondence or use Form I–824, Application for Action on an Approved Application or Petition. The fee exemption has been expanded to the second extension as well.

Although this rule creates a new supplemental form for the orphan process, having a fee for certain requests for action on suitability applications will not be new. The proposed fee structure will be the same type of process and will be the same as the existing fee structure for the Hague Adoption Convention process. Adoptive parents have been required to use Form I–824 for certain requests for action for the orphan process, for which they paid a current fee of $465, and would have paid the new $590 fee for Form I–824 set in this final rule. In comparison, the new Supplement 3 fee of $455 is $10 less than the current fee for Form I–824.

Under the proposed rule, the only scenario where adoptive families would have paid more was if they requested a new suitability determination separately from a first-time extension or a change of country request. Petitioners would have paid less under the proposed rule for many scenarios where they request action on a suitability application for the orphan process.

The proposed fees would have been a reduction in fees for petitioners for change of country requests for the orphan process. There would have been a $0 change in fee for a first-time change of county request because those have been, and would have continued to be, fee exempt. Petitioners would have paid $10 less for subsequent change of country requests.

The proposed fees would have also been a reduction in fees for petitioners for duplicate approval notices for the orphan process. Petitioners would have paid $10 less. The proposed fees would have also been a reduction in fees for extension requests. Even with reducing the validity period from 18 months to 15 months for the orphan process, provided petitioners filed their Form I–600 petition within 2.5 years (30 months) of their Form I–600A approval, they would not have had any extension fees. This is because USCIS does not require petitioners to continue to file extensions of their suitability application approval after they file the petition. Petitioners would also have paid less for a subsequent suitability approval. Currently, after a prospective adoptive parent has used the one-time, no fee extension, the prospective adoptive parent cannot further extend the orphan suitability approval and must begin with a new suitability application or combination filing, with a current fee of $775 plus a biometric services fee. Under the proposed process with the new Supplement 3, they would have the option to pay $320 less for a second extension ($455 to extend via new supplement instead of having to file a new Form I–600A with full fee of $775 plus the biometric services fee).

As explained in the section II.C. Changes from the Proposed Rule, DHS is providing additional fee exemptions for adoptive families in this final rule. Specifically, DHS will also provide fee exemptions for:

- Second extensions.
- Second change of country requests.
- Duplicate approval notices for both the orphan and the Hague process.

Comment: Some commenters stated that DHS should not place limitations on using the Supplement 3 to extend Form I–600A approval to use the orphan process when countries transition to the Hague Adoption Convention process.

Response: Generally, other countries have requested that DHS limit the ability of transition cases to continue indefinitely to limit the confusion that having two simultaneously running adoption processes causes to its administrative bodies and judicial systems. The DHS proposal and Final Rule allows adoptive parents who have taken certain steps to begin the intercountry adoption process with a country before the Convention entered into force additional time to complete the adoption process under the non-Hague process. The final rule will also permit adoptive parents to use the Supplement 3 to request an increase in the number of children they are approved to adopt from a transition country, but only if the additional child is a birth sibling of a child they have already adopted or are in the process of adopting as a transition case and the birth sibling is identified and petitioned for before the Form I–600A approval expires, unless the Convention country prohibits such birth sibling cases from proceeding as transition cases. However, DHS reasonably limits the ability of adoptive parents to indefinitely request extensions of the validity period of the Form I–600A approval, the ability of adoptive parents to request an increase in the number of non-birth sibling children they are approved to adopt, and the processing of transition cases under the non-Hague process. DHS will maintain the provision as proposed.

Comment: A commenter opposed removing the regulation that provides for DHS to extend suitability approvals under the orphan process without the prospective adoptive parents requesting one in certain scenarios.

Response: DHS is responsible for ensuring adoptive parents are suitable throughout the intercountry adoption process, and therefore does not believe we should extend approvals without determining whether the prospective adoptive parents remain suitable. Furthermore, DHS does not have such a provision for the Hague Adoption Convention process. Removing this provision for the orphan process will help further align the orphan process with the Hague Adoption Convention process, a process which is designed to provide safeguards for all parties to an adoption.

f. Other Comments on Family-Based Benefits

Comment: Commenters stated that raising the fees for family-based applications will make it more difficult to reunite with family members abroad. The fee increases would undermine the well-being of immigrants and family unity, force families to choose between the peace, unity, and security that family-based immigration was created to support, and paying for more immediate necessities like food, housing, and healthcare. USCIS should distinguish between single and family applicants because family applications take more effort to process, and individual applications should be less expensive. Applicants should be made aware of how long the maximum wait time could be.

Response: DHS acknowledges the difficulties that come with being separated from family members abroad. However, case processing backlogs make it difficult for all family members to reunite. USCIS is funded by fees and it cannot make progress in alleviating backlogs without raising fees to at least keep up with the rate of inflation and recovering the costs to process applications with approved fee waivers. Additionally, creating and maintaining a new system of tiered pricing would be administratively complex and may require even higher costs than outlined in the proposed rule as well as delay intake and exacerbate backlogs. The fee increases for many family-based petitions (Forms I–129F, I–130, and all adoption-related petitioners/applications) are limited to inflation or less. *See* 8 CFR 106.2.

6. Adjustment of Status and Waivers

a. I–485: Application To Register Permanent Residence or Adjust Status

(1) Form I–485 and Separate Form I–131 and I–765 Fees

Comment: Many comments were submitted about the proposed fee increases for Forms I–485, I–765, and I–131 and the separation of fees for Forms I–131 and I–765 when filed with Form I–485. Many commenters expressed concern that the increased fees for Form I–485 and unbundled interim benefits would be unduly burdensome and render these benefits unaffordable to many eligible applicants, including those who are low or middle income or working class. Specifically, commenters stated the following:

- The Form I–485 fee is not waivable in most cases that do not involve humanitarian exemptions or exemptions from public charge inadmissibility.
- The fee changes run counter to the ability-to-pay principal and the President's directive to reduce barriers to immigration.
- The proposed fees would impede family unity and harm the public interest by forcing families to either exclude certain members (most likely children) from applying with the entire family, by delaying or foregoing applying altogether.
- The higher fees would force some adjustment of status applicants to forego or delay filing Form I–765, which would prevent them from working and supporting themselves, paying for basic human needs such as food, housing, medical care, and transportation, obtaining other government-issued documents (such as a driver's license, State identification card, or a Social Security number), or accessing public benefits and community services.
- Adjustment of status applicants who forego an EAD would be more likely to rely on public benefits or charity while their Form I–485 is pending, or pursue unauthorized employment where they would be vulnerable to exploitation.
- Without an EAD, employed adjustment of status applicants would have to endure the stress of potentially losing their job.
- Higher fees would result in more Form I–485 applicants being unable to afford legal representation, which would increase processing times and administrative costs due to RFEs, and in more applicants turning to unscrupulous lending institutions or relying on credit cards or other high-interest mechanisms to pay their expenses and benefit fees.

Response: DHS acknowledges the difficulty some individuals and families encounter in balancing paying for the rising costs of basic needs and benefits, and that employment authorization is often key to the success of immigrants in the United States. However, DHS believes that we have balanced the filing options with separate costs and discounts in this final rule to further mitigate the cost burden to applicants. *See* 8 CFR 106.2(a)(7), (21), (44). The new separate fees represent DHS's best effort to reduce barriers to immigration through balancing affordability, benefits, family unity, and ability to pay, while maintaining adequate services.[266]

DHS is not codifying the proposed fees about which the commenters are commenting, and the separate fees are only increased by inflation or less (which is less than the full cost of adjudicating these applications). DHS disagrees that an increase in fees proportionate to the level of inflation would necessarily result in more Form I–485 applicants being unable to afford legal representation. The inflation-only increase means that the Form I–485 fee is the same in real dollars as the current fee was when it was last updated in 2016. Thus, assuming that attorneys' fees increased consistent with inflation, an applicant who could have afforded to hire an attorney in 2016 would generally be able to afford an attorney today, all other things remaining equal. Furthermore, USCIS designs its forms with the goal of making them usable by the general public without the need to hire counsel. USCIS also continues to make efforts to reduce the frequency of RFEs, including revising forms and instructions using plain language to reduce the burden of information collections, and through rulemakings that clarify and modernize ambiguous definitions or inconsistent adjudication. Therefore, DHS disagrees that the fee increase for Form I–485 would directly result in an inability to pay for legal representation when necessary or borrowing from unscrupulous lenders, and finds no evidence to support commenters' contention that fewer applicants choosing to pay for legal representation would result in quantifiable impacts to RFEs or processing times. Currently, Form I–485 and interim benefits are separated and adjudicated by different units. USCIS's practice of adjudicating these forms is not expected to change with the separation of these benefits; therefore, it is not expected that requests will have any additional impact on processing times or administrative costs.

Based on the comments and further review of the fees, DHS has decided to:

- Reduce the fee for Form I–485 from $1,540 in the proposed rule to $1,440 in the final rule.
- Limit the Form I–765 fee for those who filed USCIS Form I–485 after the effective date of this rule to $260, half the cost for filing Form I–765 on paper.
- Provide a $490 discount for applicants (principal or derivative) under age 14 when they file Form I–485 concurrently with a parent.
- Continue to charge Form I–485 applicants who want an advance parole document a full fee for Form I–131 ($630).

See 8 CFR 106.2(a)(21); 8 CFR 106.2(a)(44)(i); 8 CFR 106.2(a)(7)(iii) and (iv).

DHS has determined that unbundling the forms will assist USCIS making processing times more efficient by

[266] *See* 88 FR 402, 492, Table 16 (Jan. 4, 2023); 88 FR 402, 433–442, 491–495.

eliminating Form I–765s filed for individuals who are not in need of employment authorization or Form I–131s for individuals who have no intention of traveling outside the United States. Bundling Forms I–765, I–131, and I–485 transfers the cost of fees not paid by these applicants and results in other applicants paying for forms in a bundle they may not need. Applicants who are unable to pay the fee and exempt from the public charge ground of inadmissibility may apply for a waiver of the fee for Form I–485. *See* 8 CFR 106.3(a)(3)(iv)(C). Many humanitarian and protection-based classifications pay no fee for Form I–485. *See* 8 CFR 106.3(b); Table 5C. DHS believes the discounted Form I–765 fee may limit burden for low, middle-income, or working-class members. DHS also notes that the fee for Form I–765 is waivable for any I–485 applicant who is unable to pay the fee, *see* 8 CFR 106.3(a)(3)(ii)(F), and Forms I–131 and I–765 are fee exempt for certain categories of applicants, *see* 8 CFR 106.3(b); Table 5C.

Comment: Commenters also expressed concerns that adjustment of status applicants would forego or delay filing Form I–131. Specifically, commenters stated the following:

• Some wrote that these Form I–485 applicants would be trapped in the United States while their adjustment of status applications were pending, and be unable to travel to see family or leave the United States temporarily if they faced urgent issues.

• A commenter wrote that DHS should end the requirement that I–485 applicants obtain advance parole before travel if they possess lawful nonimmigrant status.

• A commenter said that advance parole is more critical than ever given increased Form I–485 processing times.

• Another stated it was ''borderline extortion'' to require Form I–485 applicants to pay for travel authorization given the long wait time for Form I–485.

• A commenter said the adjustment process is ''illusory'' because adjustment applications require several years for adjudication and associated applications for travel and employment authorization require over 15 months.

• Travel authorization would alleviate family separation for adjustment of status applicants who have been unable to travel outside the United States for many years.

• Unbundling of interim benefits would force more I–485 applicants to seek emergency travel requests if emergencies arose, which would put additional strain on USCIS field offices.

• USCIS should drop the requirement for lawful nonimmigrants to apply for advance parole.

• USCIS could better manage the process of providing advance parole by dropping the requirement for lawful nonimmigrants to apply for and receive advance parole incident to the filing of Form I–485, allowing for travel with a pending Form I–485, extending the validity of Advance Parole Documents (APDs) for individuals with a pending Form I–485 until USCIS can render a decision or to coincide with current processing times.

• Employment and travel authorization is important given long processing times for Form I–485, and the I–131 and I–765 should not be separated from the I–485 fee, as this will increase the filing costs and may make adjustment of status unattainable for some.

• Some I–485 applicants wait long periods of time to have their applications adjudicated due to processing times, backlogs, and visa retrogression, and these applicants must pay for I–765 and I–131 renewals.

• The proposed Form I–485 fee increases were unjustified considering USCIS backlogs and processing delays. Commenters said that, to justify the fee increases, USCIS would need to improve its processing of Form I–485 and related applications so that they are adjudicated within a reasonable timeframe.

Response: It is correct that some applicants must obtain advance parole before departing the United States with a pending Form I–485 to avoid abandoning the adjustment of status application. *See* 8 CFR 245.2(a)(4)(ii)(A). The advance parole document is generally issued for one year to allow for the processing of an applicant's Form I–485. USCIS does not have the ability to administratively track all Form I–131 applicants continually to determine whether the Form I–485, is still pending, has been abandoned, or denied. Therefore, USCIS cannot extend an Advance Parole Document validity to coincide with a pending Form I–485.

Separating the Form I–131 fee from the Form I–485 fee does not alter what has always been true—noncitizens requesting the benefit of advance parole are generally required to pay a fee to USCIS for the adjudication of the benefit request. While recovering the costs for the adjudication of that benefit request was previously accomplished through a bundled fee, the fee was still present. Separating the fees ensures that noncitizens are only paying for the benefits that they want or need. If an applicant has no need for an advance parole document, they would no longer be required to pay a bundled fee which includes a benefit they do not want or need. Continuing to provide the Form I–131, Application for Travel Document, with no fee increases I–131 processing times by creating incentive to apply for a benefit that an applicant may not need, leading to longer wait times to those who are truly in need and may be unable to leave. The approach taken by DHS in this final rule ensures that only those noncitizens who want or need advance parole pay the associated fee. Separating the fees and ensuring that only those who want or need the benefit pay the fee would not prevent individuals from traveling. It will provide an adequate cost recovery mechanism for USCIS and reduce unnecessary fee burdens on applicants who do not seek travel authorization. DHS strongly rejects the commenter's suggestion that charging a fee in association with the adjudication of a benefit request is ''extortion,'' as USCIS has the statutory authority to establish and charge fees to ensure recovery of the full cost of providing services. *See* INA section 286(m) and 8 U.S.C. 1356(m). DHS declines to adopt the proposal not to require advance parole for Form I–485 applicants who possess nonimmigrant status, which could result in excessive continuances of Form I–485s for applicants who can freely travel outside the country while their applications are pending and who for good cause find themselves unable to return in time for their interview [267] DHS disagrees with the characterization of the adjustment process as ''illusory,'' noting that USCIS adjudicated 608,734 Form I–485s in FY 2022.[268]

Comment: Commenters expressed concern for the effect that the increased fees for Forms I–485, I–765, and I–131 would have on certain groups, including:

• Asylees and other vulnerable groups, who tend to be low income or have limited financial resources, and require a refugee travel document to travel internationally and an EAD to obtain a REAL ID compliant form of identification.

• Victims of sexual and domestic violence and trafficking who do not pursue, or are ineligible for, survivor-

[267] *See* 8 CFR 103.2(b)(9)(ii), (13)(ii) (allowing interview continuances for good cause).

[268] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Number of Service-wide Forms By Quarter, Form Status, and Processing Time, July 1, 2022—September 30, 2022,'' *https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2022_Q4.pdf* (last updated Oct. 2022).

specific adjustment of status or do not qualify for a fee exemption.

- Afghan applicants and their families, many of whom served alongside U.S. troops and have been paroled into the United States, whose adjustment of status and interim benefit fees would not be waived.
- Student applicants with limited financial resources.
- International religious workers.
- K–1 fiancé(e)s, who have already gone through a long review process before entry.
- Conflicts with DHS's goal of treating all who apply for interim benefits the same and conflicts with the INA, which ''states a clear preference for family-based immigration by completely eliminating quotas for select family-based categories.''
- Proposed fees for Form I–485 and interim benefits were unjustified or unreasonable.
- Many commenters expressed concern with the size of the fee increases, which some characterized as ''exorbitant,'' particularly when filing Forms I–485, I–765, and I–131 together.
- Fee increases significantly outpace the rate of inflation since the last fee increase in 2016.
- Fees are already set at a level sufficient to cover the cost of adjudicating the Forms I–131 and I–765 filed with them.
- Filers are ''shouldering the burden'' of fee waivers and exemptions for other immigration forms.

Response: Although fee increases may impact individuals differently, DHS believes that it has balanced the new fee schedule by providing a reduced fee for Form I–765 when filed with Form I–485 and separating the fee for Form I–131, which some people may not need. As indicated in the proposed rule, continuing to combine the fees together would increase the fees dramatically. DHS in its fee review did not target specific groups and recognizes that fees impose a burden on individuals seeking benefits, and it takes steps to mitigate the cost as appropriate. At the same time, DHS must recover the full costs of the services that USCIS provides, or else risk reductions in service quality, including potential delays in processing.

Comment: One commenter stated that, if Congress were to pass the Dream Act, *see* S. 264, 117th Cong. (2021), or similar legislation, the Act's beneficiaries would have to pay these additional fees to obtain permanent resident status.

Response: As the commenter indicated, Congress has not passed the Dream Act and therefore DHS has not made any changes based on this comment. Congress may choose to provide for specific fees in the Dream Act or similar legislation.

Comment: One commenter alleged that the new fees were ''clear punishment'' for employment-based applicants from India who filed Form I–485s during fiscal years 2021–22 but who have not been approved due to visa retrogression. Some commenters said that expecting employment-based adjustment applicants to pay a fee every time they renew their Form I–765 or Form I–131 is unfair because as they are stuck in this limbo due to visa date or retrogression and for no fault of their own. Others expressed concern that individuals who filed Forms I–485, I–765, and I–131 before the effective date of the fee change would be subject to additional fees for Forms I–765 and I–131 renewals as a result of the unbundling.

Response: DHS disagrees that this fee is a punishment for any specific groups who have not been approved due to visa retrogression or membership in a class of individual and recognizes that many individuals of various nationalities filing the Form I–485 have experienced long wait times to be reunited with family. Congress determines the policy on visa limitations, and eliminating quotas is outside the purview of this rulemaking. DHS notes again that individuals who filed a Form I–485 after July 30, 2007 (the FY 2008/2009 fee rule), and before this change takes effect will continue to be able to file Form I–765 and Form I–131 without additional fees while their Form I–485 is pending. *See* 8 CFR 106.2(a)(7)(iv), (44)(ii)(A).

Comment: A commenter wrote that USCIS was passing along the costs of mismanagement from prior administrations to current and future Form I–485 applicants. Another wrote that, by separating the Form I–485 from interim benefit fees, USCIS was getting extra income from its processing backlogs. Commenters questioned the rationale and assumptions underlying DHS's justification for unbundling the fees for Forms I–485, I–765, and I–131. Some asserted that these forms are usually filed concurrently, so the combined fee increase for those forms is more important than the increase for Form I–485 alone. Another commenter stated that raising the Form I–485 fee would bring no financial benefit to USCIS because adjustment applicants are relatively low compared to other visas and immigration applications.

Response: USCIS did not realize the operational efficiencies that DHS envisioned when it combined fees for Form I–485 and interim benefits, which was implemented to address the same commenter accusation of a revenue incentive.[269] In fiscal year 2022, USCIS received 599,802 Form I–485s. USCIS has no data to indicate that it takes less time to adjudicate interim benefits bundled with a Form I–485 than it does to adjudicate standalone Form I–131 and I–765 filings. Individuals applying for adjustment of status are not required to request a travel document or employment authorization. With combined interim benefit fees, individuals may have requested interim benefits that they did not intend to use because it was already included in the bundled price. Unbundling allows individuals to pay for only the services requested. Thus, many individuals may not pay the full combined price for Forms I–485, I–131, and I–765. DHS recently increased the maximum validity period to 5 years for initial and renewal Employment Authorization Documents (EADs) for applicants for asylum or withholding of removal, adjustment of status under INA 245, and suspension of deportation or cancellation of removal, among other categories.[270] This new policy could reduce the number of EAD extensions an applicant might need to file, further reducing an applicant's financial burden.[271]

Comment: A commenter asserted that applicants should not have to pay for an EAD or Advance Parole when they are entitled to them because of their pending Form I–485, while another stated that it makes no sense to charge separate fees for Form I–485 and interim benefits if they are all being processed as part of the same package.

Response: DHS notes that an EAD, when issued in connection with a pending I–485, and Advance Parole are discretionary benefits, and as such there is no ''entitlement'' to them under the statute or regulations. *See* 8 CFR 223.2(e); 8 CFR 274a.13(a)(1). Although applicants may submit forms together in one envelope or online, each receipt and adjudication have a different process and associated cost as they are separate

[269] *See* Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, 72 FR 4888, 4894 (Feb. 1, 2007) (stating, ''This creates the perception that USCIS gains by processing cases slowly.'').

[270] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''USCIS Increases Employment Authorization Document Validity Period for Certain Categories,'' *https://www.uscis.gov/newsroom/alerts/uscis-increases-employment-authorization-document-validity-period-for-certain-categories* (last updated Sept. 27, 2023).

[271] *See* Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, 87 FR 26614 (May 4, 2022).

benefits and have separate eligibility requirements. To improve efficiency and reduce Form I–765 processing times for Form I–485 applicants, USCIS may decouple Form I–765s from Form I–131s filed at the same time. Since February 1, 2022, when possible, USCIS adjudicates an applicant's Form I–765 first. If approved, USCIS will issue an EAD without any notation about advance parole. Form I–131s are adjudicated separately and if approved, USCIS will issue an advance parole document.[272]

Comment: Some commenters stated that the DHS's rationale for the current fee increases conflict with is rationale for originally bundling the forms in 2007. Some said that DHS raised the Form I–485 fee in 2007 to include fees for Forms I–765 and I–131, yet DHS is now raising the fee for the Form I–485 while unbundling the other benefits. One commenter stated that DHS originally justified bundling these forms to allow applicants to work and travel during the long Form I–485 processing times, but these processing times are even longer now.

Response: In the FY 2008/2009 fee rule, the decision was made to allow applicants who properly file and pay for the Form I–485 to file for interim benefits for no additional fee. During the 2016/2017 fee review, DHS reviewed the cost of bundling the benefits with the Form I–485. *See* 81 FR 26903, 26918 (May 4, 2016). However, USCIS has determined that continuing the practice of bundling will further contribute to backlogs by incentivizing unnecessary filings, increase the cost of the Form I–485 for all filers, and increase the cost of Forms I–765 and I–131 for other filers. *See* 88 CFR 491–495.

By continuing to bundle the forms, the weighted average fee increases for Form I–485 and interim benefits would have been 51 percent. Therefore, applicants would have paid much more to bundle Forms I–485, I–131 and I–765. DHS is separating fees for interim benefit applications and Form I–485 applications to keep the fees lower for most the greatest number of applicants.

Based on the data and comments, DHS will provide for separate fees for each form to account for people who may not file for all three forms. However, DHS understands that most people would request an EAD with their Form I–485 filing and therefore has provided for a lower fee for Form I–765 that is concurrently filed with Form I–485.

Comment: Commenters claimed that maintaining a bundled fee for Forms I–485, I–765, and I–131 would be more efficient. A commenter claimed that DHS had not specified how a separate fee for the Forms I–765 and I–131 would decrease processing times. Another commenter stated that, by requiring separate benefit requests for interim benefits, the changes will increase processing times and result in inconsistent adjudications. Another commenter said that unbundling Forms I–485, I–765, and I–131 will cause applicants to file these forms at different times as needed, which reduces early, systematic processing of packets systematically in mail rooms and service centers. A commenter wrote that unbundling would require adjustment applicants to submit multiple individual applications, which would increase work and costs for USCIS and potentially negate the benefits sought by USCIS. A commenter asserted that keeping Forms I–485, I–765, and I–131 bundled would incentivize USCIS to process Form I–485s in a timely manner to avoid Forms I–131 and I–765 renewals, while another stated that separate fees would create a perverse incentive for USCIS to delay adjudication of benefits and Form I–485 applications as a financial reward for inefficiency.

Response: DHS maintains that the unbundling of Forms I–485, I–765, and I–131 would help decrease processing times. Currently, some applicants file all three forms without needing the benefits of advance parole or employment authorization while they await the adjudication of their adjustment of status application because of the one-fee model. This results in the adjudication of benefits that applicants may not otherwise want or need. By unbundling the forms, DHS is trying to limit the cost for certain benefits for those who do not need them. By limiting the number of individuals applying for unnecessary benefits, DHS will also decrease the total number of applications filed, direct resources toward adjudicating those benefit requests that are needed and decrease overall processing times for advance parole and employment authorization. DHS notes that separating the fees for Forms I–485, I–765, and I–131 would not prevent applicants from submitting these forms concurrently. DHS agrees that, in some cases, applicants may choose to file Forms I–765 or I–131 at different times as needed, which aligns with DHS's goal for applicants to only apply for those benefits they want or need without having other fee-paying applicants subsidize those benefits. DHS disagrees that this will reduce orderly, systematic processing of these applications. Applicants are already required to submit individual forms for the different benefits of adjustment of status, employment authorization, and advance parole.

DHS disagrees that unbundling the Forms I–485, I–765, and I–131 creates an incentive for DHS to increase processing times. Rather, the fees listed in this rule reflect the cost of adjudication of the specific benefits requests, accounting for increased costs to USCIS since the publication of the last fee rule and limiting fees for those applicants who do not need certain ancillary benefits.

Comment: Some commenters said that the new unbundled fees would confuse applicants. One said that separating the fees would impact nonprofit organizations that help applicants by requiring them to retrain staff to adapt to the change.

Response: DHS understands changes in fees impact organizations that help applicants file forms and new fees may be confusing. Form G–1055 will provide a list of all fees, fee exemptions, reduced fees, and fee waiver eligible forms which should clarify all the fee provisions for applicants and nonprofit organizations. As previously indicated, DHS generally reviews fees every two years, as required by the CFO Act, 31 U.S.C. 901–03, but has not been able to increase fees since 2016 to keep up with increased costs. DHS did not make any changes based on this comment.

Comment: Commenters expressed concern that the increased fees for Forms I–485 and I–765 would adversely affect the U.S. workforce and economy. Commenters said it would cause fewer individuals to work, which would reduce tax revenues and otherwise harm the U.S. economy. A commenter stated that this could lead to more individuals working without authorization and decreased economic gains for the United States. Another commenter predicted that increased cost for these applications would encourage individuals to move to other countries and lead to brain drain. Another stated that the Form I–485 fee increase would hurt businesses' ability to sponsor highly skilled workers who are crucial to STEM-related sectors. More generally, one commenter cited research showing the economic gains and poverty reduction when migrants obtain LPR status.

Response: DHS understands the vital role our immigrant communities play in the workforce and economy. DHS

[272] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland, ''I–765, Application for Employment Authorization'' *https://www.uscis.gov/i-765* (last updated Mar. 8, 2022).

appreciates the comments and data provided which cited research depicting economic gains and poverty reduction when LPR status is obtained; however, there was no analysis or discussion provided by commentors how individuals and businesses make difficult trade-offs to afford valuable immigration benefits. DHS is aware of research suggesting that employment authorization, LPR status, and citizenship are associated with higher incomes despite little consensus concerning how much of these differences remain after controlling for abilities and other factors. DHS continues to follow research on high-skill migration but finds no basis supporting commenters' claims that fee increases under this rule could be reasonably expected to result in a ''brain drain.''

Before the FY 2008/2009 fee rule, applicants paid separate fees for Forms I–765 and I–131 benefits while waiting for their Form I–485 to be adjudicated. The 2008/2009 fee rule allowed applicants to pay for the I–485 and file the interim benefits at no additional cost. Due to inflation and the enjoined 2020 fee rule, USCIS recognized that the fee was insufficient to recover costs associated with these filings. In addition, with no filing fees for the interim benefits, it provided adverse incentive for filers who may not need the benefits and contributed to longer processing times. For these reasons, USCIS has calculated the fee for the Form I–485 to allow applicants to file and pay the interim benefits separately and as needed. In 2023, USCIS increased the maximum validity period to 5 years for initial and renewal EADs for applicants for asylum or withholding of removal, adjustment of status under INA 245, and suspension of deportation or cancellation of removal, among other categories.[273]

Comment: Commenters stated that the increased fees for adjustment of status and interim benefits undermine USCIS' goal of promoting naturalization by preventing or delaying people from obtaining permanent residency. Some commenters suggested that the increased fees for Forms I–485, I–765, and I–131 were intended to discourage immigration and naturalization. A commenter wrote that obtaining LPR status also facilitates deeper integration and allows migrants to more fully participate in civic life, and therefore fees for lawful permanent residence should be as low as possible. A commenter stated that, by delaying or preventing individuals from filing applications, the fee increases would negatively impact USCIS, which is primarily funded by application fees.

Response: DHS does not believe that the new fees undermine the goals of promoting naturalization or prevent people from obtaining lawful permanent residence. As previously indicated, USCIS is mostly dependent on form fees without appropriations. DHS must balance increased costs and burdens to applicants but does not intend to discourage immigration or naturalization. After recent fee increases, USCIS did not see a decrease in filings that it can attribute to fee increases. DHS notes that it continues to set the fee for Form N–400 below full cost recovery to promote naturalization and immigrant integration. *See* 88 FR 402, 487 (Jan. 4, 2023).

Comment: A few commenters expressed frustration with situations where the I–485 is adjudicated before the I–765 or I–131, potentially resulting in wasted applications fees if the applications are unbundled, and asked whether fees would be refunded in these situations.

Response: DHS understands that an applicant may receive the final notice that their Form I–765 or I–131 has been adjudicated after receiving a decision on their Form I–485; however, costs associated with each application begin at intake and continue through final adjudication. In this final rule, DHS has revised 8 CFR 103.2(a)(1) to provided that filing fees generally are non-refundable regardless of the outcome of the benefit request, or how much time the adjudication requires, and any decision to refund a fee is at the discretion of USCIS.[274]

In general, USCIS does not refund a fee or application once it has made it through intake regardless of the decision on the application.[275] There are only a few exceptions, such as refund of the premium processing service fee under 8 CFR 106.4(f)(4), when USCIS made an error which resulted in the application being filed inappropriately, or when an incorrect fee was collected. DHS proposed to revise 8 CFR 103.2(a)(1) to provide that fees are ''generally'' not refunded. This would address concerns that the current regulatory text does not explicitly permit refunds at DHS discretion.

DHS declines to make further policy changes based on these comments.

Comment: Instead of the proposed fees for Form I–485 and interim benefits, commenters proposed the following alternatives:

- Maintain the current policy of allowing applicants to file their I–485 with applications for interim benefits at no additional cost.
- Automatically grant employment authorization and advance parole to applicants for adjustment of status, which USCIS already allows in different situations.
- Issue automatic interim EADs in times of processing delays.
- Restore the fee for Form I–485 to the true cost of processing the form.
- Set the fee for Form I–485 with interim benefits and biometrics fees at $1,540, which is a 35 percent difference from current fees of $1,140.
- Offer a discounted fee and streamlined approval processes for Forms I–765 and I–131 that are concurrently filed with Form I–485.
- Exempt fees for Forms I–765 and I–131 renewals while Form I–485 is pending.
- Maintain the bundled fees for the initial I–765 and I–131, and only charge separate fees for renewals; or at least allow the initial I–765 to remain bundled.
- Apply the fee increases only to I–485 applicants who had not filed their underlying petitions before the effective date.
- Extend EAD and Advance Parole validity periods to the compensate for increased fees for interim benefits.
- Cap the amount of fees paid by immediate family members applying together.
- Waive or reduce fees for Form I–485 and associated interim benefits for family-based petitions.
- Automatically grant interim benefits to K–1 fiancé(e)s.

Response: DHS has reviewed the proposals and determined that providing a lower fee for Form I–765 filed with Form I–485 and maintaining the full Form I–131 fee is appropriate and balances the cost to Form I–485 applicants who wish to also file Forms I–765 and I–131, while limiting the cost burden. Although work is authorized for some individuals because of their immigration status or circumstances, for example, asylees, parolees or U nonimmigrants, USCIS does not provide

[273] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''USCIS Increases Employment Authorization Document Validity Period for Certain Categories,'' *https://www.uscis.gov/newsroom/alerts/uscis-increases-employment-authorization-document-validity-period-for-certain-categories* (last/updated Sept. 27, 2023).

[274] The entirety of 8 CFR 103.2(a)(1) is republished for ease of editing and context but only the fourth sentence in 8 CFR 103.2(a)(1) is revised.

[275] When USCIS rejects an immigration benefit request as required by 8 CFR 103.2(a)(7) the fee is returned to the requestor. DHS does not consider the act of returning a fee for a rejected request that is not provided a receipt number as a ''refund'' because the requestor's payment is not processed.

automatic EAD cards to Form I–485 applicants.[276] However, DHS is providing the following changes to mitigate some of the financial burden to applicants:

- DHS is providing a 50 percent filing discount on the Form I–765 when the I–485 is filed with a fee and the Form I–485 is still pending. *See* 8 CFR 106.2(a)(44)(i).
- Applicants who filed their Form I–485 on or after July 30, 2007, and before the effective date of the rule will not be subject to the new fees for interim benefits. *See* 8 CFR 106.2(a)(7)(iv), (44)(ii)(A).
- USCIS increased the maximum validity period to 5 years for initial and renewal EADs for applicants for asylum or withholding of removal, adjustment of status under INA 245, and suspension of deportation or cancellation of removal, among other categories.[277]

DHS believes that these changes mitigate the proposed fee increases. DHS declines to make any further adjustments based on these comments.

(2) Fees for Children Under 14 Filing With Parent

Comment: Multiple commenters expressed opposition to the elimination of the lower filing fee for derivative children under 14 filing concurrently with a parent. Some commenters disagreed with the DHS's rationale for eliminating the lower fee for Form I–485 applicants under the age of 14. Commenters stated that:

- The increased fee would be significant and overly burdensome, with some remarking that the fee would more than double.
- Given the uncoupled fees for interim benefits and the inclusion of biometrics costs, applicants under 14 would be paying more for less benefits.
- The fee increase for a child's application in addition to unbundling the employment authorization and advance parole document request would make adjustment of status unaffordable to some applicants.
- The fee increase would impede family reunification and runs contrary to other policy objectives.
- The fee increase would force some families to stagger or delay I–485 applications for certain family members.
- Fee changes for applicants under 14 would impose and increase burdens on groups or price out applicants who are low-income or experiencing poverty.
- A fee increase would threaten children's health, education, safety, security, and future.
- They disagreed that there is no cost basis for different I–485 fees for adults and derivative children.
- USCIS' failure to track the difference in adjudication times for I–485s based on the age of the applicant did not justify the assumption that there was no difference in adjudication time based on age.
- DHS failed to consider that young children are less likely to have inadmissibility and discretionary issues that would delay adjudications, such as immigration violations, criminal history, and misrepresentation.
- DHS did not address potential efficiencies in adjudicating two related I–485s submitted concurrently by family members.
- It should take less time to process a child's application after the agency has processed the parents concurrently filed one.
- The fee increase included unnecessary costs for biometrics services since children under 14 are exempt from these requirements.
- They disagreed with DHS' rationale that only a small percentage of adjustment applicants are children.
- DHS's rationale ignored the effects of the fee increase on other family members.
- The increased fee would reduce applications for adjustment of status by children.
- This would undermine DHS's goals of encouraging naturalization and family integration.
- The fee increase would undercut the social and economic benefits of family-based immigration.

Response: DHS agrees with many of the points made by commenters, including that the increased fee may be burdensome to filers and affect family reunification, and that there may be a cost basis for distinguishing a Form I–485 filed by a child in conjunction with a parent from other Form I–485s. After reviewing the comments, DHS is reducing the fee for applicants under age 14 who file concurrently with a parent to $950 (27 percent increase over the current fee). Additionally, children under 14 who have properly filed the Form I–485 with a fee on or after July 30, 2007, and before the effective date of the final rule are not required to pay additional fees for interim benefits. *See* 8 CFR 106.2(a)(7)(iv), (44)(ii)(A). A child filing Form I–485 after the effective date of the final rule, concurrently with a parent or as a standalone, will pay $260 for Form I–765 (50 percent discount) and $630 for an advance parole document, if requested (10 percent increase). *See* 8 CFR 106.2(a)(44)(i); 8 CFR 106.2(a)(7)(iii). Furthermore, applicants who are unable to pay the fee for Form I–485 and who are exempt from the public charge ground of inadmissibility may apply for a waiver of the fee. *See* 8 CFR 106.3(a)(3)(iv)(C).

(3) INA Sec. 245(i) Statutory Sum Clarification

Comment: Another commenter wrote that the penalty fee under INA section 245(i), 8 U.S.C. 1255(i), should be increased to $2,000, but acknowledged that this would require congressional action.

Response: The commenter correctly notes that the additional fee for adjustment of status under INA 245(i), 8 U.S.C. 1255(i), is determined by statute, and so can only be changed by Congress. *See* INA 245(i)(1), 8 U.S.C. 1255(i)(1).

(4) Other Comments on Form I–485 Fees

Comment: One commenter stated that the fee increase was inconsistent with E.O. 14091 because it did not consider the disproportionate impact the change would have on lower income applicants of color, particularly larger families coming from Central and South America.

Response: DHS believes that this rule is consistent with E.O. 14091. DHS recognizes that fees may impose a burden on individuals seeking benefits, and it takes steps to mitigate the cost as appropriate consistent with the ability-to-pay principle. At the same time, DHS must recover the full costs of the services that USCIS provides, or else risk reductions in service quality, including potential delays in processing. The proposed rule included a $1,540 fee for Form I–485. *See* 88 FR 402, 407 (Jan. 4, 2023). In recognition of comments and the impacts on applicants, DHS has decreased the filing fee to $1,440, limiting the fee increase to the change in inflation as of June 2023 (26 percent). To further mitigate the cost burden, the final rule will also continue to provide a discount for children aged 14 and under who concurrently file with a parent, which

[276] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Employment Authorization Document,'' *https://www.uscis.gov/green-card/green-card-processes-and-procedures/employment-authorization-document* (last updated Feb. 11, 2022); *see also* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Certain Afghan and Ukrainian Parolees Are Employment Authorized Incident to Parole,'' *https://www.uscis.gov/newsroom/alerts/certain-afghan-and-ukrainian-parolees-are-employment-authorized-incident-to-parole* (last updated Nov. 21, 2022).

[277] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''USCIS Increases Employment Authorization Document Validity Period for Certain Categories,'' *https://www.uscis.gov/newsroom/alerts/uscis-increases-employment-authorization-document-validity-period-for-certain-categories* (last updated Sept. 27, 2023).

will assist larger families seeking to adjust. *See* 8 CFR 106.2(a)(21)(ii). Under the final rule, applicants who are unable to pay the fee and who are exempt from the public charge ground of inadmissibility may apply for a waiver of the fee. *See* 8 CFR 106.3(a)(3)(iv)(C). USCIS has also proposed additional fee exemptions for certain applicants seeking to adjust under humanitarian and protection-based immigration categories. *See* 8 CFR 106.3(b). DHS acknowledges that many applicants for adjustment of status are not eligible for fee waivers or exemptions. At the same time, various INA provisions contemplate that most adjustment of status applicants will have means of support. *See, e.g.,* INA section 212(a)(4), 8 U.S.C. 1182(a)(4); INA section 213A, 8 U.S.C. 1183a; *see also* E.O. 14019, 11(b) (''This order shall be implemented consistent with applicable law and subject to the availability of appropriations.'').

Comment: Asylee families would be particularly hurt if forced to stagger their Form I–485 filings due to the increase in fees, since the principal asylee would have to delay naturalization until the remaining family members adjust status, otherwise some derivative applicants would become ineligible to adjust status.

Response: DHS recognizes the potential difficulties that result when certain asylee family members decide to adjust and naturalize before others, which requires the remaining unadjusted family members to file *nunc pro tunc* asylum applications. However, DHS notes that the fee for Forms I–485 and I–765 may be waived for asylees (who are exempt from the public charge ground of inadmissibility) who are unable to pay. *See* 8 CFR 106.3(a)(iv)(C), (ii)(F). Therefore, asylee families who are unable to pay the fees for these forms should not have to stagger the adjustment applications of different family members. DHS has considered the comments regarding the Form I–485 and reduced the proposed fee to a 26 percent increase in the filing fee for Form I–485, *see* Table 1, and maintained a lower filing fee for children under the age of 14 filing concurrently with a parent, 8 CFR 106.2(a)(21)(ii). DHS has limited the Form I–485 fee increase by requiring fees for concurrently filed requests for interim benefits (Forms I–765 and I–131) but limited the fee for the Form I–765 while a Form I–485 is pending to $260. 8 CFR 106.2(a)(7), (21) & (44)(i). DHS believes that these changes in the final rule will limit staggering of Form I–485s for asylee families and *nunc pro tunc* asylum applications.

Comment: A commenter recommended narrowing and adding a fee for Supplement J when filed after Form I–485, such that Supplement J would not be required for re-assigning classifications on a pending Form I–485 and would not ''restart the clock'' for Form I–485 portability.

Response: DHS considered the commenter's suggestions concerning the use of Form I–485, Supplement J, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j), and the potential for charging a fee in a new context as described. USCIS has generally not required applicants to pay a fee for many forms that are supplemental in nature, for example, Form I–130A, Supplemental Information for Spouse Beneficiary. The Form I–485, Supplement J, is to confirm a bona fide job offer or transfer the underlying basis of their adjustment of status application to a different petition. Requesting applicants to pay a new fee to port to a new job would present a new financial burden for the applicant that could prevent some intending immigrants from being able to take advantage of the portability provisions in the American Competitiveness in the Twenty-First Century Act of 2000 (AC21). *See* INA section 204(j), 8 U.S.C. 1154(j). The commenter's other suggestions are outside the scope of this rulemaking; therefore, DHS makes no changes based on this comment.

b. Inadmissibility Waivers

Comment: Commenters opposed the proposed fee increase for Forms I–192, I–212, and I–601, writing:

- Fees for these forms are already high relative to other immigration fees.
- These forms are often used by individuals with criminal or immigration violations, the higher fees could exacerbate racial and economic inequities within the criminal and immigration systems.
- Increasing the Form I–192 fee could deter individuals from applying, including Canadian applicants who would continue to reside in Canada but contribute to the U.S. economy if not for the fee increase.
- Raising the fee for Form I–192 could cause many families who do not qualify for a fee waiver to not be able to apply due to limited resources.
- USCIS proposed fee increases for Form I–212 will harm mid- to low-income applicants and survivors of sexual violence and human trafficking.
- Increases in fees for Forms I–212 and I–192 are unreasonable due to the existing delays in processing and the fees applicants must pay for other forms.

Response: As stated elsewhere, DHS examined each fee in the proposed rule and the fees proposed represent DHS's best effort to balance access, affordability, equity, and benefits to the national interest while providing USCIS with the funding necessary to maintain adequate services. DHS notes that the increased fees for Form I–192, Application for Advance Permission to Enter as a Nonimmigrant and Form I–601 are only $170 (18 percent increase) and $120 (13 percent increase), respectively, which are below the rate of inflation since the last fee increase (approximately 26 percent). For these forms, the fee increases (18 percent and 13 percent) remain below that for other benefits.

DHS acknowledges that some proposed fees are significantly higher than the current fees. This is the case for Form I–212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, because DHS proposes to not limit the fee increase as it has done in the past, for policy reasons. *See* 81 FR 26904, 26915–26916 (May 4, 2016). In the FY 2016/2017 fee rule, DHS stopped limiting the fee increase for inadmissibility waivers like Forms I–212 and I–601. *See* 81 FR 73292, 73306–73307 (Oct. 24, 2016). DHS is not proposing to limit the fee increase for Form I–212 because other proposed fees would have to increase to recover the full costs. Additionally, DHS already provides fee exemptions for vulnerable populations, including survivors of sexual violence and human trafficking, for all forms filed through final adjudication for adjustment of status to LPR, including Form I–485 and associated forms. *See* 8 CFR 106.3(b); *see also* Preamble, Table 5C. For example, abused spouses and children filing under CAA and HRIFA are fee exempt for Form I–485 and associated forms, including Form I–212, as they file for VAWA benefits on Form I–485. *See* 8 CFR 106.3(b)(4).

c. Form I–601A, Application for Provisional Unlawful Presence Waiver

Comment: The comments received on the proposed fee for the Form I–601A, are as follows:

- In the absence of legislation, Form I–601A is imperative for mixed-status families to remain together. While a fee adjustment may be appropriate DHS should reconsider and reduce the proposed 75 percent increase.
- The proposed fee increase for Form I–601A is inappropriate given the current processing times and backlog.

• DHS failed to justify why Form I–601A warrants such a high fee because the number of cases and completion rates have decreased.

• The proposed fee increase for Form I–601A would discourage and delay individuals from consular processing and undermine the purpose of the provisional waiver.

• A 75-percent fee increase for Form I–601A is too high because applicants who need a Form I–601A also must pay fees for Form I–130, Form I–485, and consular processing.

• Because Form I–601A requires a demonstration of extreme hardship DHS should treat it like other humanitarian applications and raise its fee only 19 percent.

• The Form I–601A proposed fee increase would disproportionately impact minority communities, because BIPOC individuals are more affected by racial inequities in the immigration justice systems.

Response: DHS acknowledges the increased Form I–601A, Application for Provisional Unlawful Presence Waiver, fee would increase the costs for applicants and has considered the comments. As previously mentioned, USCIS is primarily fee-based and therefore must recover operating costs through fees which must incorporate cost to process forms which have fee waivers or exemptions. DHS notes that applicants filing Form I–601A are only consular processing and are not filing Form I–485 for adjustment of status. DHS does not have data indicating that the new Form I–601A fees would disproportionately impact BIPOC communities, and commenters offered no evidence indicating the form is disproportionately used by BIPOC communities. However, DHS has considered comments regarding the Form I–601A and reduced the proposed fee to the amount of inflation as described in section I.C. of this preamble. DHS agrees that Form I–601A is important for family unity and needed by certain noncitizens who have resided in the United States for a long time to normalize their status. DHS also recognizes that Form I–601A applicants tend to lack employment authorization and so may possess less means to pay a significant fee increase. Therefore, DHS proposes a 26 percent increase in the filing fee for Form I–601A to $795, which limits the fee increase to the change in inflation between December 2016 and June 2023.

7. Genealogy and Records Request Fees, Forms G–1041, Genealogy Index Search Request, G–1041A, Genealogy Records Requests, and G–1566, Request for a Certificate of Non-Existence

Comment: Numerous commenters generally opposed increasing fees for genealogy search and records requests. Some individual commenters expressed opposition to the proposed fees for genealogy records, without providing further rationale. Other commenters, many identifying themselves as professional genealogists or individual genealogists, opposed the proposed increased fees, stating that they oppose the fee increase for the following reasons:

• Current fees are already cost-prohibitive without further increase.

• They opposed the 2020 fee increase and they oppose the new proposed rule.

• The proposed fee increase would create a burden on or entirely deter individuals and amateur researchers seeking to learn more about their family histories.

• The proposed fees are too high or would otherwise be beyond the means of most Americans.

• The USCIS genealogy program is an illegal interpretation of the Freedom of Information Act (FOIA).

• USCIS has not demonstrated the need for its proposed increased fees on genealogy forms with information about the adjudication, other data, or its fee increase methodology.

• The proposed fee does not reflect the cost to USCIS of finding and providing a record or would otherwise effectively serve to shift the costs of other USCIS services to this program to help USCIS meet its budget shortfall.

• USCIS' estimated costs for the genealogy program are incorrect based on the commenter's own analysis and USCIS should provide clarification of the USCIS estimates.

• USCIS should reduce the proposed fee increases based on an hourly rate, in line with other agencies.

• USCIS should provide information on its records management processes and clarify which records have been digitized, the effort required to search the MiDAS system and the reasoning behind wait times for its genealogy records program.

• Commenters supported the proposed fee increase if it would reduce wait times for genealogical record requests.

• USCIS should not raise fees on genealogy records requests until it demonstrates an improvement in services.

• A commenter supported a smaller fee increases to account for inflation and staffing shortages.

• How will individuals who placed index orders before the implementation of the rule be charged for the actual records if they do not receive their index searches until after the rule has been implemented.

• The new fees would disproportionately burden professional genealogical and historical researcher communities, in some cases prevent them from doing their work entirely, harm genealogical businesses because of the high cost and long wait times.

• USCIS records are also important for accessing records in the homeland of an immigrant.

• The proposed fee increase in addition to long wait times would impact the repatriation of veterans' remains by limiting the ability of the U.S. military-hired genealogists to access documents related to kinship that are vital to the process and have a disproportionate impact on immigrant veterans.

• The fee increases would harm citizens seeking dual citizenship because foreign ministries require documents from USCIS. Individuals who cannot afford the fee would be unable to have their legal rights recognized in foreign countries.

• Many individuals undertaking genealogy research for legal purposes are financially constrained thus the proposed fee increases would block access to the records.

• The fee increase would interfere with access to records for kinship and lineage judgments in settling estates.

• Genealogy records are increasingly important in fields such as law and medicine, for racial justice projects, and for law enforcement forensic purposes.

• Moving the program to the National Records Center (NRC) has not helped, hampered efficiency, and added steps to obtain records not located at the NRC, such as for certain C-Files.

• Genealogy Index Search results are often filled with errors in need of correcting, due to inadequate staff training.

Response: DHS recognizes commenters' concerns regarding the scope of the fee increases for Form G–1041, Genealogy Index Search Request, and Form G–1041A, Genealogy Records Request, in the proposed rule. The proposed increase reflected changes in USCIS' methodology for estimating the costs of the genealogy program to improve the accuracy of its estimates. *See* 88 FR 402, 512 (Jan. 4, 2023).

The INA authorizes DHS to set the genealogy fee for providing genealogy

research and information services at a level that will ensure the recovery of the costs of providing genealogy services separate from other adjudication and naturalization service's fees. *See* INA section 286(t)(1), 8 U.S.C. 1356(t)(1). The INA is different and separate from the FOIA. USCIS must estimate the costs of the genealogy program because it does not have a discrete genealogy program operating budget, as explained in the proposed rule. *See* 88 FR 402, 512 (Jan. 4, 2023). USCIS does not discretely identify and track genealogy program expenditures. The same office that researches genealogy requests, the National Records Center, also performs other functions, such as FOIA operations, retrieving, storing, and moving files. In the FY 2016/2017 fee rule, DHS estimated the costs of the genealogy program indirectly using projected volumes and other information. At that time, the projected costs included a portion of lockbox costs and of other costs related to the division that handles genealogy, FOIA, and similar USCIS workloads. *See* 81 FR 26903, 26919 (May 4, 2016). The estimation methodology underestimated the total cost to USCIS of processing genealogy requests by not fully recognizing costs associated with the staff required to process genealogical requests. *See* 88 FR 402, 512. Therefore, other fees have been funding a portion of the costs of the genealogy program, and DHS proposed correcting that in this rule. USCIS estimates that there are approximately 6 genealogy positions out of the total 24,266 positions in the fee review. *Id.*

In the proposed rule and in the 2020 rule, USCIS incorporated a new activity in the ABC model, Research Genealogy, to estimate the cost of the program at the National Records Center (NRC). *See* 88 FR 402, 512. This change enabled USCIS to revise its cost estimation methodology to incorporate a proportional share of the NRC's operating costs based on the staffing devoted to the genealogy program. DHS estimated the costs of the genealogy program using this methodology and subsequently proposed to base the fees for Forms G–1041 and G–1041A on these revised cost estimates. *Id.* As explained in the proposed rule, the revised fees and regulations may allow some customers to file a single search request with a single fee and still receive the genealogy information that they requested. *See* 88 FR 402, 511–512. The proposal to include pre-existing digital records, if they exist, via email in response to the initial search request would also be more efficient than the current process. *Id.*

As explained earlier, DHS limits many of the fee increases in this final rule by inflation, and after considering the above comments, we are including the fees for Forms G–1041 and G–1041A in that group of requests. DHS used the approximate 26 percent inflation between December 2016, the effective month of the FY 2016/2017 fee rule, and June 2023 to increase the current $65 fees. When adjusted for inflation, the fees would be $82.[278] DHS rounded inflation adjusted fees to the nearest $5 dollar increment, consistent with other fees, making them $80. Some online filing fees are $50 less than paper filing fees, as explained earlier in this rule. As such, DHS establishes the fee for Form G–1041, Genealogy Index Search Request, when filed online as $30, the fee for a paper filed G–1041 as $80, the fee for Form G–1041A, Genealogy Records Request, when filed online as $30, and the fee for a paper filed G–1041A as $80. Therefore, DHS is setting the fees at less than the proposed fees, meaning they do not recover the relative cost to USCIS for operating the genealogy program as calculated in the proposed rule, and less than we are authorized to charge under INA section 286(t)(1), 8 U.S.C. 1356(t). The online Form G–1041 and G–1041A filing fees are less than the current fees, which means they do not recover full cost under the methodology that DHS used to calculate them in the FY 2016/2017 fee rule. As such, other immigration benefit request fees will continue to subsidize the genealogy program. DHS declines to make other changes in this final rule in response to these comments.

Comment: Commenters opposed the new records fees, currently stating the Request for a Certificate of Non-Existence is untimely, obtaining the required information often requires multiple requests, and there is no verifiable justification for these proposed increases and fee implementation.

Response: In the proposed rule, DHS proposed a new fee for Form G–1566, Request for a Certificate of Non-Existence. *See* 88 FR 402, 513. Individuals often use this service to gather genealogical records that allow them to claim the citizenship of another nation. Previously, USCIS operated the Certificate of Non-Existence request process informally and at no cost to individuals requesting a certificate. DHS calculated the fee to recover the estimated full cost of processing these requests as $330. *Id.* The proposed fee for a request for a Certificate of Non-Existence is based on the same ABC model used to calculate the other proposed fees. USCIS created a new activity for this workload, called Certify Nonexistence, in the ABC model. *Id.* Previous fee reviews captured this work as part of the Records Management activity. See the supporting documentation accompanying this rule for more information on the activities in the ABC model.

DHS has reviewed our calculations in response to the public comments and determined that this fee is consistent with the full cost recovery model used for this rule to generate revenue to mitigate the need for other fee payers to fund the costs of providing certificates, as explained in the proposed rule. *See* 88 FR 402, 513 (Jan. 4, 2023). DHS appreciates the public's feedback the Form G–1566, Request for a Certificate of Non-Existence fee, but DHS declines to make changes in this final rule in response to these comments. DHS sets the fee for Form G–1566 at $330. *See* 8 CFR 106.2(c)(12).

Comment: Some commenters claimed that taxpayers have already paid to acquire, manage, and store these records. Some commenters felt that taxpayers already support the government substantially and should not be charged for access to records. Many commenters expressed opposition to paying any fees to access genealogical records, because the service is already funded by taxpayers, should be funded by taxpayers, or that the records already ''belong to the American people.''

Response: DHS understands the commenters' concerns regarding the potential for duplicative payment. However, as explained in the proposed rule, USCIS is primarily funded by fees. *See* 88 FR 402, 415–417, 512 (Jan. 4, 2023). USCIS does not receive taxpayer funds for the genealogy program, nor do taxes pay for the acquisition, management, or storage of records in USCIS' custody. Therefore, DHS must recover the estimated full cost of the genealogy and records programs through USCIS' fees. DHS has explicit authority to recover the costs of providing genealogical services via genealogy fees. *See* INA section 286(t), 8 U.S.C. 1356(t). As explained earlier, the fees for Forms G–1041 and G–1041A will not recover their full cost, but other USCIS fees will offset their cost.

Comment: Numerous commenters discussed turning the records over to

[278] DHS calculated the difference between December 2016 CPI–U (241.432) and June 2023 CPI–U (305.109), as 63.677 or 26.37 percent as explained earlier. Multiplying the current fees ($65) by 26.37 percent equals $82.14. Calculation: $65 *1.2637 = 82.1405.

the National Archives and Records Administration (NARA) so the public can access them for free or at a lesser cost. Some of these commenters elaborated further, and we summarize these comments as follows:

- NARA has demonstrated its ability to efficiently respond to records requests, much more quickly and at a lower cost.
- NARA could manage records more efficiently, access them more freely, and reproduce them more economically, as preserving and providing access to historical records of the Federal Government is one of NARA's core missions and areas of expertise.
- Transferring genealogy records to NARA would be a straightforward solution to USCIS' stated reason for raising fees on genealogy records requests, namely that the agency incurs overhead costs associated with storing and managing the records. The commenter additionally recommended that, where applicable, records disposition agreements should be updated to allow the transfer of records to NARA.
- USCIS needs to comply with its own retention schedules and send appropriate records to NARA.
- USCIS should develop a plan to ensure all A-Files are added to USCIS' Central Index System (CIS) to make them eligible for transfer to NARA. Similarly, USCIS records should be adjusted to meet NARA's specifications.
- By not transferring required files to NARA, USCIS is not only hurting individuals requesting documents, but also other Federal Government agencies.
- Commenters indicated general confusion as to why genealogical records are treated differently depending on when a citizen was naturalized, with older records being handled by NARA and newer records by USCIS.
- In addition to transferring additional records to NARA, USCIS has a restriction in place on some records currently possessed by NARA, such as Alien Registration forms, which the commenters recommended that the agency lift.
- NARA's fees are too expensive, without specifying any NARA fee amount.

Response: On June 3, 2009, USCIS signed an agreement to transfer records to NARA.[279] NARA's holdings of A-Files will grow as USCIS continues to transfer records, as allowable under current retention schedules. USCIS strives to adhere to its records retention schedules and transfer files to NARA expeditiously when records are eligible for transfer. Unfortunately, issues such as incomplete or non-existent file indices and other operational difficulties may inhibit and delay such transfers. DHS agrees that NARA is the appropriate repository for permanently retained records as USCIS has deemed necessary. DHS declines to make any changes in this final rule in response to these comments. NARA is not operated or fully funded by USCIS. Therefore, fees and policy associated with NARA are out of scope in this rulemaking.

Comment: Some commenters opined on the relationship between the USCIS genealogy program and the FOIA. Commenters wrote that USCIS' genealogy program was instituted to reduce burdens on FOIA and speed up the records request process, but the genealogy program has failed in its effort and instead delays processing and increased fees. Others wrote that if USCIS considers genealogy records requests to be FOIA requests, they should not carry fees higher than standard FOIA fees. Commenters similarly wrote that USCIS' practices were inefficient because the genealogy program was created to alleviate burdens on FOIA staff, but still relies on FOIA staff to review requests, which results in increased wait times. A commenter wrote that if the genealogy program is intended to serve as an alternative to the standard FOIA process, USCIS should cease subjecting genealogy records requests to FOIA reviews.

Commenters stated that some of USCIS' record requests should be subject to the standard process for FOIA requests, but that instead, USCIS denies FOIA requests to collect revenue from the records requests. Commenters expressed concern that some A-Files are relegated to the genealogy program, where requestors are required to pay a fee for files created before May 1, 1951, while individuals requesting files after that date are not. The commenters added that USCIS places requestors in arbitrary categories and as a result, its processes are inconsistent with FOIA requirements. Similarly, a commenter stated that many genealogy program fees are not authorized by statute and that USCIS cannot force requesters to pay a fee for records that should be available under FOIA. The commenter added that USCIS' genealogy program was illegal on these grounds.

Response: There is no conflict between FOIA and DHS' operation of the USCIS genealogical program, nor is USCIS constrained in establishing fees for its genealogical services to the levels established under FOIA. As stated earlier, USCIS genealogy fees use specific legal authority separate from the FOIA. The INA authorizes DHS to set the genealogy fee for providing genealogy research and information services at a level that will ensure the recovery of the costs of providing genealogy services separate from other adjudication and naturalization service's fees. *See* INA section 286(t)(1), 8 U.S.C. 1356(t)(1).

USCIS formerly processed requests for historical records under FOIA or Privacy Act programs but the demand for historical records grew dramatically. USCIS determined a genealogy request would be a more suitable process as historical records requested through FOIA were usually released in full because the subjects of the requested documents are deceased and therefore no FOIA exemptions applied to withhold the information. *See* 71 FR 20357, 20368 (Apr. 20, 2006). As authorized by law, the USCIS genealogy program was established to relieve the FOIA and Privacy Act programs from burdensome requests that require no FOIA or Privacy Act expertise, place requesters and the Genealogy staff in direct communication, provide a dedicated queue and point of contact for genealogists and other researchers seeking access to historical records, cover expenses through fees for the program, and reduce the time to respond to requests. *Id.* at 20364.

DHS appreciates the commenters' concerns regarding differences between the FOIA process and the genealogical index search and records request processes. Before 2017, the USCIS staff who processed FOIA requests also processed some genealogical records requests, particularly records from 1951 or later. However, USCIS moved the genealogical program to the NRC in 2017. Since that time, dedicated USCIS genealogical staff process all genealogical records requests. Commenters are mistaken in stating that the genealogy program sends appropriately filed genealogy requests through the FOIA process. DHS acknowledges that both FOIA requests and genealogical records requests are subject to review under the Privacy Act of 1974 to ensure that USCIS does not inappropriately release information to third parties. However, USCIS' genealogy program is distinct from the FOIA program and the fees that DHS establishes for Forms G–1041 and G–

[279] *See* National Archives, Alien Files (A-Files) page, available at *https://www.archives.gov/research/immigration/aliens#:~:text=The%20United%20States%20Citizenship%20and%20Immigration%20Service%20%28USCIS%29,100%20years%20after%20the%20immigrant%27s%20year%20of%20birth* (last viewed on Aug. 22, 2023).

1041A are authorized by the INA, not FOIA. DHS declines to make changes in this final rule in response to these comments.

Comment: Multiple commenters stated that the proposed fee increases for record requests seems to be a punishment for citizens who want access to ancestors' records. Multiple commenters stated that records would be ''held hostage'' by demanding exorbitant and unjustified fees to access documents on immigration ancestors. The commenters wrote that these records should already be publicly accessible under the law.

Response: DHS rejects the characterization of the proposed fees to punish or hold hostage individuals who seek records related to their ancestors via the USCIS genealogy program. Rather, and as explained earlier in this section, the fees for Forms G–1041 and G–1041A established by this rule will be set at a level lower than what it costs USCIS to administer them and lower than the INA authorizes. In addition, online filing fees will be less than the current fees. As such, users of these forms will continue to have access to USCIS records.

Comment: Many commenters stated that implementation of increased fees should not occur without careful explanation and discussion of alternatives. Commenters generally recommended digitizing and making genealogy records available free online or at conveniently located government offices. One commenter suggested making a public version of USCIS genealogy records and added that it would result in thousands of saved hours for USCIS and NARA employees. The commenter also stated that privacy concerns associated with USCIS transferring records to NARA are not based on any real risks. A different commenter stated that there is no reason to significantly redact information on such old immigration genealogy records.

A couple of commenters suggested licensing the digitization of these records to a repository, such as Ancestry.com, for the benefit of genealogists if the records must be monetized. A couple of commenters recommended making USCIS genealogy records available according to the same rules as those of the U.S. Census, in that the records can be released without review if they are 72 years old or older.

Multiple other commenters recommended allowing genealogy groups or companies to volunteer to digitize and upload USCIS' records to be made available for free online, or to otherwise rely on genealogists to digitize and publish the records for USCIS. A commenter recommended hiring additional staff to help respond to records requests more efficiently, such as archivists and librarians, or otherwise recruit volunteers to help respond to requests.

Response: DHS agrees with the commenters' reasoning that filing index search requests and records request online increases efficiency and, all else equal, reduces the cost to USCIS of providing the associated services. As explained earlier, DHS limited the fee increases for Forms G–1041 and G–1041A to inflation since the FY 2016/2016 fee rule. There is also $50 difference between the fee for a form filed online and a form filed on paper. DHS appreciates the alternatives suggested by commenters such as licensing the digitization of records, hiring librarians or archivists, or recruiting volunteers to help manage the requests. DHS may consider these alternatives in the future but declines to make any changes to the final rule in response to these comments.

Comment: Some commenters focused on genealogy request processing times. Many stated that USCIS should clear the backlog of genealogy requests or reduce processing times. A commenter stated that genealogists are only asking for fair and reasonable processing times, not expedited ones. Others stated that USCIS should offer specific data on processing times for this form and explain how it plans to reduce the backlog. Numerous commenters addressed frustrations with genealogy wait times and expressed concern for a fee increase without a commitment to service improvements. Other comments on the processing time for genealogical records include the following:

- The backlog is a huge burden on elderly Japanese Americans seeking to recover genealogical records that could explain their families' histories during WWII internment.
- The delays are harmful to the livelihoods of professional genealogists and to the projects of serious researchers.
- The genealogy backlog is because USCIS is tasking itself with a mission outside its purview.
- The longer time to process records during COVID would now become the new standard for service.
- Requestors cannot afford to request records when they do not have clarity of the wait times or process involved.
- Processing delays are unreasonably longer than the current processing times for Alien Files (A-Files) FOIA requests numbered above 8 million, particularly given that the genealogical records are shorter.
- Quicker processing time for A-File requests is court-mandated, leaving fewer USCIS resources available to process non-A-file FOIA requests, thus creating further backlog for those requests. Those backlogs violate FOIA requirements, and the commenter plans to litigate the violation.

Response: In addition to the proposed fee increase, the proposed rule proposes changes to genealogy processing. *See* 88 FR 402, 511–512 (Jan. 4, 2023). Ultimately, DHS expects these changes may allow USCIS to provide genealogy search results and historic records more quickly when pre-existing digital records exist. Currently, the genealogy process consists of two separate forms. When requestors submit Form G–1041, Genealogy Index Search Request, on paper or electronically, USCIS searches for available records. If no record is found, then USCIS notifies the requestor by mail or email. If USCIS identifies available records, then USCIS provides details on the available records, but does not provide the copies of the actual records. Under current regulations, a requestor must file Form G–1041A, Genealogy Records Request, with a fee for each file requested, before USCIS provides any records that it found because of the search request. As such, USCIS staff must search for the records previously identified in an index search to complete a records request. Under the proposed process, USCIS would provide requestors with preexisting digital records, if they exist, in response to a Form G–1041, Genealogy Index Search Request. *Id.* The USCIS process and regulations changes may decrease the time an applicant has to wait for records. For approximately 70 percent of index searches, USCIS may provide electronic copies of digital records, USCIS may not identify any records, or customers may not follow-up with a records request for hardcopies. *See* 88 FR 402, 512 (Jan. 4, 2023). USCIS anticipates that these changes will help to reduce processing times and reduce the backlog of genealogy requests. DHS declines to make any changes to the final rule in response to these comments.

8. Other Fees

a. Form I–90 Replace Permanent Resident Card

Comment: Commenters said that the proposed rule further discouraged naturalization by proposing a Form N–400 fee that is higher than the Form I–90 fee. Similarly, a commenter said fees for Forms I–90 and N–400 should be comparable instead of the proposed $295–305 difference between the two

fees. The commenter stated that potential applicants might decide which benefit to pursue based on fees, particularly those unable to qualify for a fee waiver or reduced fee request. The commenter added that making the Form N–400 fee comparable to the Form I–90 fee would also reduce financial barriers to naturalization. Another commenter expressed concern that, as fees increase over time, renewing permanent residency status is becoming more burdensome for long-term permanent residents.

Response: DHS acknowledges that this final rule establishes a Form N–400 fee which is higher than the Form I–90 fees. DHS does not intend to discourage naturalization and seeks to achieve full cost recovery. As explained in the proposed rule, DHS used its discretion to limit fee increases for certain immigration benefit request fees that would be overly burdensome on applicants, petitioners, and requestors if set at ABC model output levels. *See* 88 FR 402, 450–451 (Jan. 4, 2023). In the case of Form I–90 when filed online, DHS maintained the current fee to some forms and limits the fee increase for those other forms. *See* 88 FR 402, 451 (Jan. 4, 2023). One of the forms with a limited fee increase is Form N–400. As such, if an applicant chooses to renew their permanent residence card, commonly called a Green Card, some part of their fee helps maintain a more affordable Form N–400 fee for others.[280] By keeping Form I–90 fees lower than Form N–400 fees, DHS avoids passing an additional burden to LPRs that may never wish to naturalize. Form N–400 also requires more adjudication time than Form I–90. Additionally, an LPR may need to pay the fee for Form I–90 every 10 years to renew their Green Card, whereas a naturalization applicant may only need to pay the fee once. DHS believes maintaining separate fees for both Forms I–90 and N–400 allows applicants to pay only the fee for the benefit they request. By limiting the fee for Form N–400, but allowing it to be higher than Form I–90, DHS believes it strikes the right balance of both the beneficiary pays and ability-to-pay principles. DHS declines to make any changes in this final rule in response to these comments.

Comment: A commenter commended USCIS for extending permanent residence cards for 2 years for LPRs who file Form N–400, thus avoiding the extra expense of filing Form I–90.[281] However, they urged USCIS to implement an automatic extension to all expiring Green Cards with a pending Form N–400, stating that this would improve efficiency in processing Forms N–400 and I–90. A commenter strongly encouraged USCIS to remove the proposed fee increase and eliminate the requirement to renew a Green Card.

Response: In December 2022, USCIS announced an automatic two-year extension of Green Cards for LPRs who have applied for naturalization.[282] The extension applies to all applicants who filed Form N–400 on or after December 12, 2022. LPRs who filed for naturalization before December 12, 2022, will not receive a Form N–400 receipt notice with the extension. If their Green Card expires, they generally must still file Form I–90 or receive an Alien Documentary Identification and Telecommunication (ADIT) stamp in their passport, to maintain valid evidence of their LPR status. While this was not retroactive and it does not apply to LPRs who did not apply for naturalization, DHS agrees that it improved efficiency in processing Forms N–400 and I–90 for LPRs who wish to naturalize.

DHS declines to automatically extend all Green Cards for an additional 2 years. LPRs who lose their Green Card generally must still file Form I–90, even if they have applied for naturalization and received the automatic extension under this updated policy. The INA requires that noncitizens carry within their personal possession proof of registration, such as the Green Card and any evidence of extensions or they may be subject to criminal prosecution. *See* INA sec. 264(e), 8 U.S.C. 1304(e).

DHS observes that a Green Card generally does not expire until 10 years after it is issued to the LPR. For individuals who are familiar with the regulatory requirements,[283] this should be sufficient time for the applicant to take appropriate action, including renewing the card or naturalizing before the card expires.[284] Generally, LPRs become eligible to naturalize after 5 years of obtaining LPR status. *See, e.g.,* INA sec. 316(a), 8 U.S.C. 1427(a); 8 CFR 316.2(a)(3).

b. Form I–131, Application for Travel Document, Form I–131A, Request for Carrier Documentation

Comment: USCIS should charge sponsorship fees for the parole programs for additional revenue that USCIS could use to process EADs.

Response: DHS proposed no changes to the various parole programs which use Form I–131 and makes no changes based on these comments. DHS finalizes the fee exemption for Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, used to request to be a supporter and agree to provide financial support to a beneficiary and undergo background checks as part of certain special parole processes. *See* 8 CFR 106.2(a)(10). As indicated elsewhere in this preamble, DHS does not generally waive or exempt fees where the petitioner must demonstrate the ability to support a beneficiary. However, DHS has previously provided fee exemptions for humanitarian programs and DHS considers these new parole programs humanitarian programs. While being approved as a supporter requires a certain level of financial means, the objective is to establish the supporter for the parolee which is separate from the application. In addition, Form I–134A does not result in an immigration status. In the case of recently instituted FRP processes, the Form I–134A petitioner has already paid the full fee to file Form I–130 on behalf of the beneficiary. *See, e.g.,* 88 FR 43611, 43616 (July 10, 2023). Thus, DHS has decided to maintain a fee exemption for Form I–134A. If a fee becomes necessary, DHS will establish one in a future rulemaking.

[280] To reduce the risk of fraud and counterfeiting, USCIS redesigns the Permanent Resident Card every three to five years. Introduction of new card designs does not mean that cards with previous designs are invalid. Both current and previous cards remain valid until the expiration date shown on the card (unless otherwise noted, such as through an automatic extension of the validity period of a Permanent Resident Card as indicated on a Form I–797, Notice of Action, or in a **Federal Register** notice). These cards are also known as ''Green Cards.'' We will use the term Green Cards when referring to Permanent Resident Cards throughout this rule because it may be clearer to the public.

[281] *See* USCIS, ''USCIS Updates Policy to Automatically Extend Green Cards for Naturalization Applicants,'' available at *https://www.uscis.gov/newsroom/alerts/uscis-updates-policy-to-automatically-extend-green-cards-for-naturalization-applicants* (last updated Dec. 9, 2022).

[282] *See* USCIS, ''USCIS Updates Policy to Automatically Extend Green Cards for Naturalization Applicants,'' available at *https://www.uscis.gov/newsroom/alerts/uscis-updates-policy-to-automatically-extend-green-cards-for-naturalization-applicants* (last updated Dec. 9, 2022).

[283] USCIS also provides educational products and resources to welcome immigrants, promote English language learning, educate on rights and responsibilities of citizenship, and prepare immigrants for naturalization and civic participation. In addition, USCIS provides grants, materials and technical assistance to organizations that prepare immigrants for citizenship. The USCIS Citizenship Resource Center helps users better understand the citizenship process and gain the necessary skills required to be successful during the naturalization interview and test. *See https://www.uscis.gov/citizenship.*

[284] *See* USCIS, *https://www.uscis.gov/green-card/after-green-card-granted/renew-green-card.*

c. Form I–290B, Notice of Appeal or Motion

Comment: A commenter encouraged DHS to maintain the current fee for Form I–290B. They stated that that individuals should not have to pay a higher fee to resolve USCIS errors. They stated that USCIS retains the revenue whether the appeal or motion to reopen succeeds.

Response: DHS appreciates the concerns of the commenters and does not intend to hinder applicants, petitioners, or requestors from receiving benefits for which they are eligible. At the same time, DHS must recover the full costs of the services that USCIS provides. In this case, DHS proposed to limit the fee increase for Form I–290B, Notice of Appeal or Motion, as explained in the proposed rule. *See* 88 FR 402, 450–451 (Jan. 4, 2023). The formula DHS used for the Form I–290B proposed fee was the same as other limited fee increases, such as Form N–400. *Id.* The proposed fee was $800, $125 or 19 percent higher than the current fee of $675. While DHS did not propose the fee based on inflation, the proposed rule noted that the fee increases were less than inflation when discussing the proposed fee for Form N–400. *See* 88 FR 402, 486–487 (Jan. 4, 2023). Because DHS used the same formula to propose fees for Forms I–290B and N–400, the comparison applies here as well.

There is only one fee for Form I–290B regardless of the underlying petition, application, or request. In addition, the final rule has provided a fee exemption for Form I–290B for certain humanitarian forms, and fee waivers are available to some Form I–290B applicants who are receiving a means-tested public benefit, whose household incomes are at or below 150 percent of the FPG, or who are experiencing extreme financial hardship. *See* 8 CFR 106.3(a)(ii)(C) and 8 CFR 106.3(b). USCIS uses the fees to fund adjudication services regardless of whether the petition or application is approved. This applies to all forms and not just Form I–290B.

d. Form I–360 Petition for Amerasian, Widow(er) or Special Immigrant

Comment: Commenters stated that the increase in fees for Form I–360 would discourage individuals who are facing life-threatening events from seeking security and force victims to remain in abusive relationships.

Response: DHS notes that Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant, currently has no fees for noncitizens self-petitioning as a battered or abused spouse, parent, or child of a U.S. citizen or LPR, SIJ, or Iraqi or Afghan national who worked for or on behalf of the U.S. Government in Iraq or Afghanistan. Therefore, DHS does not believe that victims seeking safety would be impacted by the fees as they are already exempt from the fees. *See* 8 CFR 106.3.

e. Form I–539 Extend/Change Nonimmigrant Status

Comment: Several commenters provided input on the proposed fee change for Form I–539. The commenters wrote:

- Form I–539 fee increases would negatively impact international students.
- USCIS should encourage international students to choose the United States for their studies, rather than potentially deter them with higher fees.
- Form I–539 fee increases are fair but suggested USCIS open this form to online filing.
- The Form I–539 application process is already confusing.
- USCIS should consider alternative proposed fees, such that the burden of increases would be shared more equitably among affected individuals.

Response: DHS recognizes the importance of encouraging international students and that attending school in the U.S. can be financially burdensome on students. In addition, DHS recognizes the need for flexibility in allowing other classes of nonimmigrants to change their status. For these reasons, this Final Rule lowers the proposed Form I–539 fee from $620 to $470 for paper filings, and from $525 to $470 for online filings. These final increases (27% paper, 14% online) are near or below the rate of inflation since the last fee increase (26% as of June 2023), and are consistent with one commenter's alternative proposal that all fees be raised by a minimum amount to ensure that everyone's costs have kept up with inflation.

However, before obtaining an F–1 visa, the student must provide documentary evidence of their ability to pay for their course of study and living expenses while enrolled.[285] The new fees include the biometric fees where applicable and the online application process is making filing less complicated with online payment option available.

Comment: An individual commenter said the Form I–539 fee increases are fair. However, this commenter stated that Form I–539 cannot be filed online if it includes a Form I–539A, and that USCIS should allow these to be filed online.

Response: USCIS continues to improve the availability and user experience of online filing. However, recommended changes to USCIS's internal systems for form processing are outside the scope of this rulemaking.

Comment: USCIS should allow appeals of denials of extensions of stay for T and U nonimmigrants.

Response: The Form I–539 is outside the jurisdiction of the AAO and therefore applicants are not able to file an appeal the denials of Form I–539. However, applicants may file a motion to reopen or reconsider the decision within 30 days (33 days if the decision was mailed). Changes to this policy are outside the scope of this rulemaking.

f. Military-Related Benefits

Comment: One commenter asserted that there should be a fee exemption for all applications filed by children, and their mothers, who were fathered in East Asia by U.S. personnel during the Vietnam and Korean Wars, and that the costs for these applications should be charged to the Department of Defense. The commenter said that there should be similar fee exemptions for all children of U.S. military personnel born or conceived during deployment.

Response: Amerasians (born after Dec. 31, 1950, and before Oct. 23, 1982) may file Form I–360. Congress enacted the Amerasian Homecoming Act on October 22, 1982, to allow a person born in Korea, Vietnam, Laos, Kampuchea (Cambodia), or Thailand after December 31, 1950, and before October 22, 1982, and fathered by a U.S. citizen, to seek admission to the United States and adjustment of status to LPR. There is currently no fee for petitioners seeking classification as an Amerasian. *See* 8 CFR 106.2(a)(17)(i). Those who qualify under the Amerasian Homecoming Act, who are not subject to the public charge ground of inadmissibility,[286] may also request a waiver of the Form I–485 fee if they are unable to pay. *See* 8 CFR 106.3(a)(iv)(C). Other Amerasians remain subject to the public charge ground of inadmissibility,[287] however, so DHS cannot exempt or waive their I–485 fee. Policy changes relating to

[285] *See* 22 CFR 41.61(b)(1)(ii); 9 FAM 402.5–5(G), Adequate Financial Resources (last updated Oct. 17, 2023); *see also* 8 CFR 214.2((f)(1)(i)(B).

[286] *See* USCIS Policy Manual, Vol. 7, Adjustment of Status, Part P, Other Adjustment Programs, Chp. 9, Amerasian Immigrants [7 USCIS–PM P.9], available at *https://www.uscis.gov/policy-manual/volume-7-part-p-chapter-9* (last visited Sept. 8, 2023).

[287] *Id.*

eligibility are outside the scope of this rulemaking.

9. Republished Conforming Amendments

As stated in the proposed rule at 88 FR 421, DHS proposed to retain many provisions that were codified in the 2020 fee rule although enjoined. No comments were received on those proposed changes. Thus, this rule codifies them as proposed. In addition, for clarity and to avoid unnecessary length in this rule, DHS is not repeating the amendatory instructions and regulatory text for certain changes that were made by the 2020 fee rule if the provision is ministerial, procedural, or otherwise non-substantive, such as a regulation cross reference, form number or form name.

H. Statutory and Regulatory Requirements

1. Administrative Procedure Act

Comment: A commenter requested that USCIS ensure that implementation of any fee increase, and processing changes take place with adequate advance notice—months rather than days—to petitioners and provide for sufficient time for related adjudicator training. The commenter stated that, in the weeks surrounding the previous fee increases, petitions submitted with the appropriate fee were erroneously rejected by USCIS service centers, jeopardizing time-sensitive performing arts events. The commenter concluded that appropriate steps that must be taken to ensure that fee increases do not result in unwarranted petition rejections. One commenter asked for a postponement of the rulemaking to allow further analysis from the public and better justification from the agency. Another commenter said USCIS should also revise the proposed fee schedule rule so that it does not move away from the notice of public rulemaking and comment process, under APA. Another commenter said USCIS should not change immigration application fees outside of the Administrative Procedure Act (APA) notice of public rulemaking and public comment processes, and removing the public process from fee adjustment would subject USCIS to legal vulnerabilities.

Response: This final rule complies with the APA. DHS issued a proposed rule in the **Federal Register** on January 4, 2023, and accepted public comments on the proposed rule through March 13, 2023. DHS provided a comprehensive explanation in the proposed rule for why the new fees are required and the rationale for the fee adjustment. DHS fully considered the issues raised in the public comments and made some adjustments in response, as detailed in responses throughout this final rule. DHS is unaware of petitions submitted with the appropriate fee being erroneously rejected by USCIS service centers when fees were previously changed. This final rule is effective 60 days from date of publication in the **Federal Register**, consistent with 5 U.S.C. 553(d) and 801(a)(3)(A)(ii), which should provide sufficient notice of the new fees before they are due. Any application, petition, or request postmarked on or after this rule's effective date must be accompanied with the fees established by this final rule.

Comment: Multiple commenters voiced concern that basing future fee increases on the CPI–U while forgoing the comment and rulemaking process would violate the APA and requested that USCIS remove this provision (Section VII, T. Adjusting Fees for Inflation) from the final rule.

Response: USCIS believes that reestablishing 8 CFR 103.7(b)(3) (Oct. 1, 2020), which was removed by the 2020 fee rule, is not in violation of the APA. As described in the proposed rule and reiterated in this final rule, an inflation-adjustment provision was part of the regulations for many years before the 2020 fee rule and, because the 2020 fee rule has been preliminarily enjoined, an inflation-adjustment provision is currently in effect, 8 CFR 103.7(b)(3) (Oct. 1, 2020). In this rule, USCIS is requiring that such future fee changes would be made in a final rule that would document the rate of inflation to be applied and how the new fees are calculated. 8 CFR 106.2(d).

DHS disagrees that applying an inflation adjustment violates the APA. While raising a fee is arguably something the public would want to comment on, the public has had that chance to comment on the method and use of an inflation adjustment in the proposed rule. Notice and comment on future inflation-based adjustments would be unnecessary because DHS's actions would be limited to issuing a final rule that follows a mathematical calculation of an increase in costs and not policy considerations. Inflation affects the entire economy and effectively decreases USCIS's revenue by the rate of inflation for whatever period DHS does not adjust fees for CPI–U.

In this final rule, DHS has revised 8 CFR 106.2(d) to provide that all USCIS fees that DHS has the authority to adjust under the INA (those not fixed by statute) must be adjusted by the rate of inflation. That is, DHS would not shift costs from one payor to another for policy reasons by adjusting only some fees and not others, for instance. Such adjustments would simply use basic math to maintain the value of our revenue dollar and would be procedural, thus not requiring notice and comment.

Comment: Another commenter stated that, if DHS cannot credibly establish the amount of time required to process petitions according to the number of named beneficiaries on the petition, then DHS lacks a rational basis upon which to assign specific fees associated with processing various petitions. The commenter said DHS's assignment of costs and associated fees for petitions is, by definition, arbitrary and capricious in violation of the APA. The commenter also said USCIS does not provide the public with the information that went into the ABC model and consequently the public cannot determine whether DHS's conclusions are justified or reasonable.

Response: DHS is not required to precisely calculate the amount of time required to process petitions according to the number of named beneficiaries on the petition. As stated in the proposed rule, OMB Circular A–25 reflects that activity-based costing (ABC) methodology is a best practice to develop government agency fee schedules, and DHS established a model for assigning costs to specific benefit requests in a manner reasonably consistent with A–25. 88 FR 402, 418 (Jan. 4, 2023). While DHS follows OMB Circular A–25 to the extent possible, INA sec. 286(m), 8 U.S.C. 1356(m), authorizes DHS to charge fees for adjudication and naturalization services at a level to ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Those costs may be affected by the amount of time required to process requests but the law does not require that each specific USCIS fee be based on the costs of the service provided compared to the burden of all other services, or the perceived market rates and values of such services. DHS strives to make its fee schedules equitable, using the best information available, and USCIS will continue to monitor the time spent on specific adjudications to refine the fee setting model for future fee rules. However, while DHS tries to follow ABC (*i.e.,* assign USCIS costs through fees based on where its resources are expended), we do not assert that each of the fees in this rule precisely reflects the

relative time spent, nor are we required to do so.

DHS disagrees that it did not provide information used in the ABC model. As the commenter notes, USCIS used 6 months of FY 2021 adjudication hours in the completion rates that it provided. *See* 88 FR 402, 498 (Jan. 4, 2023). These are actual hours from FY 2021, the first year where USCIS began tracking Form I–129, Petition for Nonimmigrant Worker, adjudication hours by petitions for named or unnamed beneficiaries. *Id.* As explained in the proposed rule, USCIS requires most employees who adjudicate immigration benefit requests to report adjudication hours and case completions by benefit type. *See* 88 FR 402, 446 (Jan. 4, 2023). USCIS used these reported actual hours from FY 2021 as a forecast for FY 2022 and FY 2023 because it was the best information available at the time of the fee review.

Comment: A commenter wrote that the administrative record for the rule is incomplete, and the rule does not contain sufficient data to allow informed comments. The commenter said the charts and tables included in the proposed rule's supporting documents are not illuminating on the need for the proposed fee increase, and a meaningful commentary is impossible without access to the true data the agency relied upon. The commenter also noted that the phone number referenced in the rule to call and make an appointment to view the data was never answered, and the only other number listed was incorrect. The commenter stated that, only after threats of litigation was an appointment gained, and even then, the commenter did not have access to the system, but were essentially limited to an ''infomercial'' on the system's features. The commenter concluded that the agency's conduct raises serious questions about the legitimacy of the data on which it claims to rely.

Response: DHS has posted all public comments and supporting documents for the proposed rule in the public docket for review, scrutiny, and comment. USCIS also used a software program and spreadsheets to perform certain calculations, and offered the public a chance to review the software, as we have historically done as a courtesy for fee rules.

It is unfortunate that a commenter had difficulty arranging an appointment to review the fee model. Despite those issues, DHS understands that the appointment with this specific commenter was still arranged, and the meeting occurred as requested. During the software demonstration, USCIS often asked whether there were any questions or whether anything was unclear.[288] USCIS received very few questions during the meeting and demonstrated both how the ABC model software works and how it uses or produces the information in the docket. At one point, according to the transcript of the meeting in the docket, the attendees stated that ''So far everything is clearer than what we were expecting.'' USCIS cannot grant the public access to its USCIS financial systems directly including the USCIS ABC model software. USCIS pays for a limited license of the software and additional capacity for external stakeholder access would increase the cost of the software licenses, the number of servers required, and require additional support for managing access and security. Those costs would be paid from USCIS fee revenue, further increasing fees. Regardless, the software is highly technical, so public access may not be meaningful. DHS believes that the presentation provided on how USCIS uses the software, the model documentation and other supporting documentation available in the docket, and the explanations provided in the proposed rule and this rule, provide sufficient transparency for the public to review and comment on how USCIS fees are established.

The commenter's second assertion—that the proposed rule's supporting documents do not explain the need for the proposed fee increase—does not appear to be supported by the facts or the record. The operating budget of USCIS, as reflected in the supporting documents, the President's annual budget and the annual DHS appropriation bills, reflect that USCIS needs more money. The commenter may disagree with or not understand how the USCIS budget will be allocated among immigration benefit requests for which a fee will be paid, but how the USCIS budget will be funded by the total fee-paying requests is left to DHS discretion. While that discretion must be exercised in a rational manner as required by the APA, DHS has clearly explained in the proposed rule, and this final rule, how we have assigned and shifted USCIS operating costs based on relative complexity of the adjudication and value judgments about the specific benefit request.

Comment: A commenter stated that in the proposed rule, USCIS did not propose an increase to the current $85 filing fee for form I–821D. The commenter stated that, if USCIS increases this fee in the final rule, DHS must engage in a new rulemaking and comment period because such a change would not be a logical outgrowth of the current proposed rule to satisfy the APA notice requirement.

Response: DHS has not changed the fee for Form I–821D, Consideration of Deferred Action for Childhood Arrivals, in this rule. *See* 8 CFR 106.2(a)(51).

2. Impacts and Benefits (E.O. 12866 and 13563)

a. Costs/Transfers

(1) Impacts on Applicants

Comment: A commenter stated that the increased fees would have a detrimental impact on their large immigrant population already struggling with the effect of the COVID–19 pandemic. One commenter stated the recent increases in rents (upwards of 10.6 percent year over year) and the rise in inflation and prices (consumer prices up 9.1 percent over the year ended June 2022) while salaries have not increased at the same rate or in some cases not at all (the federal minimum wage has remained stagnant at $7.25 since 2009 and a survey of U.S. companies reported an overall average salary increase of 3.4 percent in 2022). The commenter reported that it is unfair to immigrant applicants who are more financially burdened than they have been in the past to confront significant fee increases. It is especially unreasonable to expect that immigrants who do not currently have employment authorization would have the means to pay these heightened fees when they are unable to legally earn wages in the United States.

Response: DHS understands that inflation has had a profound effect on the U.S. economy and on the finances of immigrant populations and has carefully considered it throughout the final rule, especially when setting fees. Additionally, DHS understands that the federal minimum wage has been at $7.25 per hour since 2009. Nevertheless, many states also have minimum wage laws and in cases where an employee is subject to both state and federal minimum wage laws, the employee is entitled to the higher of the two minimum wages.[289] In the final rule, DHS will set USCIS fees at the level required to recover the full cost of providing immigration adjudication and naturalization services, as permitted or required by law, with adjustments to

[288] For a transcript of the meeting, see *Regulations.gov*, Comment Submitted by USCIS, available at *https://www.regulations.gov/comment/USCIS-2021-0010-4141* (Mar. 2, 2023).

[289] DOL, ''Minimum Wage,'' available at *https://www.dol.gov/general/topic/wages/minimumwage* (last visited Sept. 21, 2023).

provide certain fee exemptions and waivers for low-income immigrants. The final rule also provides for many requests that an applicant whose income is less than 150 percent of the FPG may request that their fee be waived. Furthermore, DHS is implementing new fee structures to mitigate some of the costs, making employment authorization more attainable. For example, DHS is providing a $50 discount for the Form I–765, Application for Employment Authorization, when filed online for most EAD classifications. Additionally, applicants who file Form I–485, Application to Register Permanent Residence or Adjust Status, will pay $260 (half of the regular Form I–765 fee) for their Form I–765 to request employment authorization when filed concurrently with their Form I–485 or while the Form I–485 is pending.

Comment: One commenter stated that the proposed fee structure potentially reinforces rather than eliminates barriers facing Denver's immigrant and refugee communities, particularly those who wish to apply for adjustment of status or naturalization. The commenter stated that Denver's immigrant and refugee communities work hard to navigate the immigration and naturalization processes, but often fall short due to numerous barriers, including the high cost of filing fees, where most of the nearly 60 processes USCIS listed fees for are over $400.00. This cost remains significant for many individuals who live on a fixed income and often must choose between caring for themselves, their families, or maintaining expenses. Seventeen percent of Denver's immigrant and refugee families were living below the federal poverty level in 2019. Denver's immigrant and refugee residents are still recovering financially from the COVID–19 pandemic, making the high cost of immigration paperwork and filing fees inaccessible to many.

Response: DHS is aware of the potential impact of fee increases on certain populations including low-income individuals and is sympathetic to these concerns. As a result, DHS not only offers fee waivers and fee exemptions, but also uses its fee-setting discretion to adjust certain immigration benefit request fees down if USCIS believes they may be overly burdensome on applicants, petitioners, and requestors (*e.g.,* Form N–400, Application for Naturalization, and the adoptions forms as discussed previously). As discussed in the final rule and consistent with past practice, USCIS will limit fee adjustments for certain benefit requests to a set percentage increase above current fees and many other fees are adjusted only by the amount of inflation.

Comment: Citing research from the Cato Institute, a commenter wrote that the increase in fees will have a disproportionately harmful effect on communities and students of color, many of whom are already facing issues of food insecurity and homelessness.

Response: DHS recognizes that the fee increases may create an economic hardship for some families. Furthermore, DHS acknowledges the studies and data cited suggesting that many families struggle to afford healthcare and face other financial challenges relating to food and shelter. In the final rule, after considering public comments, DHS has increased the availability of fee waivers, has added fee exemptions, and has limited the fee increases for certain immigration benefit requests that we have determined may be overly burdensome.

(2) Impacts on Employers/Sponsors

Comment: A trade association wrote that accumulated costs from filing repeated petitions for workers and their families would harm U.S. businesses. Citing statistics from the 2023 Envoy Immigration Trends Report, the commenter wrote that increased fees may cause U.S. companies to rethink their strategic planning and investment forecasts with respect to their U.S.-based operations and moved some of their operations offshore, which could hurt the U.S. economy.

Response: On page 31 of the cited report, the following question was presented to U.S. companies in the survey: ''In January 2023, the U.S. government proposed fee increases for several common immigration applications (H–1B, Adjustment of Status, etc.). What changes do you plan to make to your company's global immigration strategy in response to the planned increase in U.S. immigration filing fees?'' Seventy-two percent of respondents said they plan to reduce immigration-related costs for employees; 67 percent plan to look abroad to hire, transfer, or relocate foreign national employees; 48 percent plan to hire fewer employees requiring sponsorship; 23 percent had not assessed changes to company policies; and 23 percent reported no impact. The responses to this direct question do not clearly indicate that U.S. businesses will increase offshoring as a direct result of changes in the USCIS fee schedule. Further, the survey did not ask the financial burden that U.S. companies would experience from changes in the fee schedule. Thus, the survey does not clearly indicate that the new fee schedule would have any negative impacts on U.S. companies. Additionally, DHS has determined that adjusting the fee schedule is necessary to fully recover costs. Adjustments are necessary for administering the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values. DHS adopted methodology results in some requests paying no fee, others paying more, and others paying less. DHS tries to be fair, precise, transparent, and thoughtful within reasonable margins of accuracy and precision.

Comment: A commenter wrote that the proposal to cap the number of beneficiaries on Form I–129 petitions to 25 beneficiaries, based on USCIS data from March 2023, would increase costs on H–2 employers by $30.1 million annually. The 25 named worker cap and the 2023 DOL rule requiring employers to file separately for each type of worker could increase that amount to over $40 million. Many employers, often small businesses, cannot pass these costs onto customers because of consumer preferences and the competition from employers that hire unauthorized labor.

Response: DHS acknowledges that the higher Form I–129 fees must be paid by U.S. companies that hire foreign nationals. However, USCIS must fund itself through fees unless DHS receives a congressional appropriation to do so. In the final rule, DHS sets the fees in this final rule for all nonimmigrant classifications petitioned for using Form I–129 after considering comments provided on the proposed rule based on the average cost of adjudication for the relevant visa classes. DHS data indicate (see RIA Section 3H, tables 23 through 25 and SEA, tables 6 through 9) that the limit of 25 named beneficiaries per petition established in this final rule will significantly limit the amount of cross-subsidization between petitions with few named workers and many named workers. Previously a single petition might contain a single named worker or hundreds of named workers, meaning that the fees paid for petitions for a few employees were covering the processing costs for petitions for many employees. Given the disparity between the cost of adjudicating a petition with a single named worker and the cost of adjudicating a petition with hundreds of named workers, limiting the number of named beneficiaries per petition to 25 effectively limits the amount of cross-subsidization per petition, and overall cost of adjudications between petitions.

Nevertheless, as described in section II.C, DHS is reducing the fees for Form I–129 for small employers and nonprofits in this final rule.

Comment: Commenters cited statistics, including a study from the USDA, demonstrating that the rise in H–2A fees would exacerbate the shift of agricultural production to foreign countries.

Response: While imports of fruits and vegetables have generally increased since the year 2000, no data directly or indirectly links immigration fees, such as for H–2A workers, to this rise. It is even more uncertain how the current fees would contribute to this rise, given many other factors in play, such as U.S. consumer demand for year-round availability of fresh fruits and vegetables and free trade agreements that provide access to increased supplies of fresh fruit and vegetables.[290]

Comment: Commenters involved in the agricultural industry wrote that the proposed rule does not account for already high costs of operation, including from new DOL regulations, that would be exacerbated by increased fees.

Response: DHS understands that farm production expenditures have generally increased in recent years and that farmers face numerous challenges in managing the costs of operations. Similarly, USCIS needs to manage its own operating expenditures and needs to adjust the fee schedule as necessary to fully recover increasing costs and maintain adequate service.

Comment: An advocacy group wrote that the fees would create barriers for research institutions to hire workers in STEM fields. The commenter cited studies to demonstrate the importance of foreign workers to STEM research in the United States.

Response: DHS recognizes that immigrants and international students make significant contributions to the U.S. technology industry and appreciates the concern that the fees might create hiring barriers. However, we do not believe there is an established causal relationship between higher fees and a decline in highly skilled foreign-born scientific researchers in academia. The SEA details the economic impact of the fees by classification, 25 or fewer, 25 or more FTE, non-profits, and by NAICS code, see Discussion on of Impact Section 4(C)(I–IV) tables 6 through 18.

[290] Davis, Wilma and Gary Lucier, Vegetable and Pulses Outlook: April 2021, VGS–366, U.S. Department of Agriculture, Economic Research Service, April 16, 2021. Kenner, Bart, Statistic: Macroeconomics & Agriculture, Amber Waves Magazine, U.S. Department of Agriculture, Economic Research Service, September 1, 2020.

3. Paperwork Reduction Act

Comment: USCIS received approximately 34 comments requesting a reduction in form length and reduced frequency of form revision changes. One commenter wrote that USCIS should return forms to their streamlined lengths, avoid collecting unnecessary quantities of information, and eliminate redundancies.

Response: As part of the proposed rule, USCIS proposed removing fee, fee waiver, fee exemption, and fee payment information from the individual information collection (IC) instructions by consolidating it into the USCIS Form G–1055, Fee Schedule, and placing it online on the USCIS website *www.uscis.gov/.* This proposed consolidation of information into USCIS Form G–1055 and the reduction in individual IC instruction content, reduces the number of IC revisions related to content, reduces the administrative burden of processing those Paperwork Reduction Act (PRA) actions, eliminates duplication and management of information across multiple resources, and reduces the time burden for all impacted information collections. Outside of this rule, USCIS continually analyzes all its collections of information to minimize the time and cost burden to respondents, confirms the utility of the content and requirements, and ensures compliance with the regulations, statutes, and policies that govern the benefit. Only the information needed to adjudicate the benefit properly and efficiently is collected. An imbalance of information collection has negative effects on both the applicant and adjudicators. USCIS information collections are analyzed on a scheduled basis, as technologies evolve, and as laws change. USCIS makes attempts to consolidate as many changes as possible into a single Paperwork Reduction Act of 1995 (PRA) action to limit the number of editions published. When a new edition is published—unless the new version is required immediately, for example, by statute or regulation—USCIS generally allows time for the previous edition of a request form submitted or in-transit to process, before enforcing a no prior edition rejection.

Comment: USCIS received three comments requesting fee waiver, reduced fee, and fee exemption information be retained in the individual information collection instructions.

Response: As part of the proposed rule, USCIS proposed removing fee, fee waiver, fee exemption, and fee payment information from the individual IC instructions by consolidating it into the USCIS Form G–1055, Fee Schedule. This proposed consolidation of information into USCIS Form G–1055 and the reduction in individual IC instruction content, reduces the number of IC revisions related to content, reduces the administrative burden of processing those PRA actions, eliminates duplication and management of information across multiple resources, and reduces the time burden for all impacted information collections. The USCIS Form G–1055 provides a centralized resource of information, accessible information, and promotes the use of innovative tools like the Fee Calculator for an enhanced user experience. DHS realizes that this change will require requestors to either have the current printed version of Form G–1055 or access to *www.uscis.gov/* to determine the fee for their request and if it is eligible for a fee waiver. However, all USCIS forms must either be accessed via the internet, or a paper version ordered by calling the USCIS Contact Center, including a paper Form G–1055.

Comment: USCIS received several comments requesting changes to content contained in specific ICs.

Response: The changes that USCIS is making to forms or instructions in conjunction with this final rule are limited to those that are related to this rulemaking. Changes to USCIS immigration benefit request forms requested by commenters that are outside of the scope of this rule will not be made at this time, but they may be considered for future form revisions.

4. Alternatives

Comment: A commenter stated that USCIS is increasing fees in a thoughtful manner but requested that USCIS earmark fee increases for H–1B and EB–5 applications to increase staffing for review of the backlog.

Response: As explained in the proposed rule, the FY 2022/2023 fee review budget does not include separate line items budgeted directly for backlog reduction. *See* 88 FR 402, 416 (Jan. 4, 2023). USCIS uses the premium processing revenue to fund backlog reduction, in addition to any appropriations for backlog reduction that may be provided, such as in FY 2022. *Id.* DHS is aware of the problems that our backlog presents, and we are making a concerted effort to address them, but we make no changes to the rule in response to these comments.

Comment: A commenter requested that USCIS consider significant alternatives that would provide it with the funding it needs to operate

efficiently. The commenter stated the regulatory analyses needs to be republished by USCIS and provide stakeholders with both notice of revisions in their analysis and an opportunity for public comment on those revisions.

Response: DHS addressed planned increases in efficiency in the proposed rule and other alternatives to increasing fees. *See* 88 FR 402, 529 (Jan. 4, 2023). In this preamble, DHS addresses similar comments to this in section IV.D.4. DHS makes no changes to this final rule based on these comments.

Comment: A commenter stated that USCIS did not consider more modest alternatives at its disposal in developing the proposed rule. While citing case law, the commenter reasoned that agencies are required to ''examine the relevant data and articulate a satisfactory explanation for [the] action, including a 'rational connection between the facts found and the choice made.'' The commenter went on to list several alternatives to the rule, such as allowing O–1B visa portability, modifying the O–1B visa validity period, allowing visa waiver requests, and allowing B–1 visa exceptions for promotional appearances and unscripted programming.

Response: The commenter's suggestions are beyond the scope of this fee rule or would be overly administratively burdensome to implement and would exacerbate costs and backlogs. As discussed previously, DHS prepared a fee study, analyzed all the relevant data, and has clearly articulated a rational basis for adjusting USCIS fees in this rule. However, as discussed elsewhere in this final rule, DHS sets lower fees for Form I–129 and the Asylum Program Fee that may reduce the burden for small businesses and nonprofits. DHS declines to make any other changes based on this comment.

Comment: Many commenters wrote that DHS should consider seeking appropriations for USCIS. Commenters opined that appropriations could reduce backlogs, subsidize costly fees, fund asylum processing, and generally support processing humanitarian applications. Similar comments about Federal appropriations as an alternative to increased fees include:

- Congress should fix USCIS operations and financial standing, funding backlog reduction efforts, hiring officers, and officer training.
- The biennial review process provides an important opportunity for Congress to review the IEFA.
- Transfer funding to USCIS from the budgets of other DHS components, like CBP.
- Redirect DoD funds to USCIS.
- Provide appropriations for the USCIS genealogy program.
- DHS should avoid any Form N–400 fee increase by seeking congressional appropriations for naturalization processing.

Similarly, commenters stated that USCIS should cut costs before proposing increased fees.

Response: DHS agrees that added congressional appropriation would lower USCIS fees. However, USCIS is currently mostly a fee-funded agency. Recent congressional appropriations for USCIS were limited to specific programs such as grants for promotion and education related to U.S. citizenship or E-Verify. DHS will continue seeking congressional appropriations where appropriate. In the meantime, DHS needs to establish fees for the continued operations of the USCIS. DHS believes that increased USCIS fees are necessary for it to effectively achieve its mission and fulfil statutory mandates. USCIS faithfully adheres to the immigration laws and carefully considers the pros, cons, costs, and ramifications of all policy initiatives it undertakes. In its FY 2022/2023 fee review, USCIS estimated total costs to the agency of providing immigration adjudication and naturalization services. As explained earlier in this preamble, DHS reduced the fee review budget but there is still a significant difference between revenue with current fees and estimated future costs. As such, DHS adjusts fees as explained in this rule.

Comment: Many commenters suggested alternative approaches to the proposed fee changes. Several commenters requested that USCIS consider phasing in fee increases over time, because the proposed fee changes would negatively impact artists and performing arts organizations. For example, a business association requested a phased-in approach for H–1B and O–1 applicants over the course of the next 3 to 5 years. Other commenters suggested that USCIS implement a progressive or ''sliding scale'' fee structure, including reduced fees for smaller, independent entities. A commenter suggested the genealogy fees increases be implemented over a 3-year period, reducing shock and impact to the genealogical community. The commenter went onto further suggest after a 3-year period establish a standard annual increase in the fees to cover increased operation costs.

Response: DHS understands the concept of rate shock, and we agree that not having adjusted fees in 7 years makes the impact seem more severe. However, USCIS is risking a revenue deficit, and gradually adjusting the USCIS fee schedule over multiple years would ensure that USCIS would not recover full cost and would be unable to fully fund its operational requirements. DHS is addressing this concern in part by codifying the inflation adjustment provision in 8 CFR 106.2(d) so we can adjust USCIS fees on a timelier basis to match cost and provide smoother fee increases. In addition, because of the volume of requests that USCIS receives, intake must be automated and programming the system to search for multiple fees indexed based on varying characteristics (a sliding scale) would add delays and costs to USCIS intake of requests. Nevertheless, as stated earlier and as requested by these commenters, DHS has decided to provide a lower fee for Forms I–129, I–140, Immigrant Petition for Alien Workers, and Asylum Program Fee for small employers and nonprofit entities. In addition, DHS considered other reasonable alternatives to this final rule in response to comments, but we decline to make more changes in this final rule.

Comment: A few commenters suggested fee changes for musical artists be calculated by generated revenue, reasoning that higher income artists could afford the fees compared to independent artists. Similarly, an individual commenter proposed to raise the percentage of income taxes on higher earning workers; in the case of performing artists with major foreign corporate backing, the commenter said an additional fee or restrictions could be applied, such as a percentage guaranteed from the promoter or corporate entity in exchange for allowing operations or artists to enter the United States. Additionally, a company suggested, instead of increasing the visa fees, that USCIS collect fees on the back end by charging foreign bands a small percentage of their earnings, which would be withheld by the venues and sent to the government. Many commenters requested a minimum fee increase instead of the suggested increases, with the suggested amounts ranging from a 50 percent increase to a 10 percent increase or less.

Response: In this section we are responding to comments about the effects of the fees on different nonimmigrant categories. However, these comments may be addressed by the responses that we provided in section IV.G.2.d of this preamble where we address comments on the Form I–129 fees in general. DHS considered the commenters' suggestions for sliding

scales based on income, revenue, etc., and what would provide the relief requested by commenters without adding costs to USCIS, additional burden to petitioners, or causing delays in intake and processing of the submitted requests. USCIS intake must be automated and whether the petitioner meets the criteria for a fee must be instantaneously determined. Too complex of a sliding scale would add delays and costs to USCIS intake of requests. Therefore, as explained earlier in this preamble, DHS has decided to provide a reduced Form I–129 fee for small employer and nonprofits. *See* 8 CFR 106.1(f); 8 CFR 106.2(a)(3)(ix). In addition, this final rule exempts the Asylum Program Fee for nonprofit petitioners and reduces it by half for small employers. *See* 8 CFR 106.2(c)(13).

Comment: To minimize fee increases, a commenter suggested including the additional funds generated from premium processing and requested that USCIS consider all available and anticipated funds when determining final filing fees.

Many commenters wrote about the Emergency Stopgap USCIS Stabilization Act and USCIS premium processing fees. Commenters wrote:

- USCIS has not made a complete analysis of the revenue available to fund operations when setting fee levels, premium processing revenue must be included in the analysis.
- USCIS should consider more premium processing fees before adopting steep fee increases.
- USCIS has recently expanded premium processing and thus has greater resources to consider.
- USCIS should use revenue from premium processing to maintain the premium processing program before using it for other programs.
- Regarding USCIS' position that future revenues from premium processing are too attenuated to incorporate into the fee study requires that USCIS specify plans for such revenues once they are received.
- The USCIS Stabilization Act was passed during a unique point of congressional interaction with USCIS, and that the congressional intent was to avoid destabilization in the agency, such as the difference in the levels of service and processing times experienced between the applicants who can afford premium processing fees and the low-income applicants who cannot.
- USCIS should consider ways to use premium processing revenue to create a more equitable model.
- Revenues and data received from premium processing expansions in recent years provide USCIS sufficient certainty to include these revenues in fee determinations.
- DHS should delay the final rulemaking and fee determinations until it uses all potential streams of premium processing revenue and revenue predictions will be more stable.
- USCIS should use revenue generated by the premium processing program to maintain the program at its current levels of service and processing times.
- Commenters are encouraged that USCIS recognizes the exclusion and left open the possibility that USCIS will apply premium processing revenue to non-premium fees in the final rule.
- USCIS should reject modeling based on premium processing because it favors business immigration.

Response: DHS considered premium processing fees and revenue in the FY 2022/2023 fee review. DHS has determined that premium processing revenue was not sufficient to appreciably affect non-premium fees when it proposed fees. *See* 88 FR 402, 419 (Jan. 4, 2023). As shown in the supporting documentation for the proposed rule, the enacted premium processing budget was approximately $648 million in FY 2019 and approximately $658 million in FY 2020.[291] However, Table 6 of the proposed rule showed that the projected cost and revenue differential was approximately $1,868 million, significantly more than the enacted premium processing budget in FY 2019 or FY 2020. USCIS uses the premium processing revenue to fund backlog reduction, in addition to any appropriations for backlog reduction in FY 2022. *See* 88 FR 402, 416 (Jan. 4, 2023). However, DHS revised the fee review budget in this final rule by transferring additional costs to premium processing revenue, as described earlier in this preamble. See section II.C.1. Reduced Costs and Fees.

Comment: Commenters suggested that USCIS incorporate recommendations from a June 2022 Office of the Ombudsman report into the final rule.

Response: The commenters are likely referring to the Citizenship and Immigration Services Ombudsman 2022 Annual Report to Congress.[292] USCIS responses to the Ombudsman's annual reports are available online.[293] DHS notes that this final rule implements one recommendation from the 2022 report by adjusting fees for inflation. The CIS Ombudsman's 2023 Annual Report to Congress noted that an inflation-adjustment provision was part of the proposed rule.[294] DHS greatly appreciates the insight offered by the Citizenship and Immigration Services Ombudsman. USCIS works closely with the Ombudsman's office in addressing their concerns and improving our services, and we will consider including recommendations from that office in future rulemakings.

Comment: A couple of commenters requested that USCIS create a streamlined process for musician visas and suggested reducing the cost of reoccurring visas for musicians who have previously been granted a visa in the United States. One commenter suggested that USCIS review both O and P visas with the aim of establishing a new reciprocal arrangement between music exporting nations by creating a specific trade agreement that promotes an affordable and efficient system, that fosters access, and increases the mobility of touring musicians, crew, and industry professionals to work between Australia and the United States. Another commenter recommended that USCIS work with stakeholder groups, including immigration advocacy organizations, to develop fair and sustainable funding solutions. One commenter requested that USCIS create an international arts parole application. Others suggested an option for a 3-year visa be offered based on travel history and security profile for those artists who are in high demand reasoning that this would lower the administrative burden on USCIS and lower the overall cost for the artist.

Response: As we stated earlier, DHS greatly appreciates the contributions made to the U.S. by O and P nonimmigrants and we have made changes in the final rule to address comments from the O and P visa stakeholder community. However, the changes that these commenters suggest

[291] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, IEFA Fee Review Supporting Documentation (Jan. 2023), Appendix Table 1: FY 2019–2020 Enacted IEFA by Program/Activity at page 29, available from *https://www.regulations.gov/document/USCIS-2021-0010-0028.*

[292] For this and other CIS Ombudsman annual reports, see DHS, Citizenship and Immigration Services Ombudsman Annual Reports, available at *https://www.dhs.gov/publication/ombudsman-annual-reports* (last updated July 6, 2023).

[293] USCIS, USCIS Responses to Annual Reports to Congress, available at *https://www.uscis.gov/tools/ombudsman-liaison/uscis-responses-to-annual-reports-to-congress* (last reviewed/updated May 5, 2023).

[294] CIS Ombudsman, Annual Report 2023, available at *https://www.dhs.gov/sites/default/files/2023-07/2023%20Annual%20Report%20to%20Congress_0.pdf* (June 30, 2023) at page 103 (page 113 of the PDF).

are largely beyond the scope of a USCIS fee rule. DHS may consider these suggestions in a future rulemaking but declines to make any changes in this final rule based on these comments.

Comment: To overcome budget shortfalls, an individual commenter recommended that USCIS increase visa fees for skilled international workers who earn over $100,000 annually.

Response: As discussed in multiple places in this final rule, DHS is increasing the fees for Forms I–129, I–140 and H–1B Registration from their current amounts in this rule and establishing an Asylum Program Fee, while providing discounts for small employers and nonprofits. DHS declines to base the fees on the salary of the beneficiary because doing so would be very difficult to administer.

I. Out of Scope

Comment: Commenters submitted several comments that suggested changes to immigration laws, policies, programs, and practices that are not related to fees or relevant to any changes proposed in the proposed rule. Thus, they are outside the scope of the rulemaking. The commenters stated:

- DHS should implement effective deterrence policies to enforce Federal law and reduce costs associated with mass undocumented immigration, rather than raise fees for U.S. businesses.
- Policies that deter mass undocumented immigration and related-mass asylum fraud will positively impact USCIS' budget and reduce the scale at which fee-paying applicants and petitioners must pay to support USCIS' asylum program.
- USCIS should broaden eligibility for EADs or reintroduce the automatic grant of EADs during case processing delays.
- USCIS should extend the validity date of benefits to address the financial burdens of renewals (*e.g.,* extending the validity period for EADs and advance parole to 3 years); USCIS should update their records so that FOIA requests or congressional reporting may provide accurate information on fee waiver grant rates for these humanitarian categories.
- DHS should eliminate the rule that adjustment of status applications is considered abandoned if an applicant leaves the country without obtaining advance parole, which contributes significantly to the backlog of advance parole applications.
- It is an ineffective use of USCIS resources to review each I–765 and I–131 petition filed by adjustment applicants as if they are independent applications.
- USCIS should implement simpler language in the Form N–400.
- USCIS should combine Forms N–400 and N–600 to reduce adjudication time and save costs.
- USCIS should adopt remote interviews for naturalization and adjustment applications and oath ceremonies to reduce expenses, delays, and difficulties for applicants.
- DHS should provide clear guidance to adjudicators and in policy that reflects the breadth of its interpretation of the TVPRA and update its records to reflect this for purposes of FOIA requests or congressional reporting.
- With regards to Systematic Alien Verification of Entitlements program fees, that leveraging State resources to fill the gap for agencies seeking to comply with Federal law places the states in the difficult position of satisfying a mandate in the absence of Federal appropriations.
- On Form I–485, question 61, regarding public charges, be changed such that, if an applicant has, or has had, an exempt status, they are not subject to the public charge rule, and allow such applicants to skip to question 69; additionally, the commenter recommended that the instructions be updated to include a list of exempt statuses.
- Change adjustment of status abandonment provisions to only apply to applicants who are not under exclusion, deportation, or removal proceedings.
- USCIS should stop requiring extensions of status when not legally required for dependents of temporary workers and should admit them to the end of the validity of principal applicants' extension as long as the qualifying relationship exists. USCIS already automatically terminates dependent children's status when they reach 21 years of age, and spouses can independently alert USCIS if a marriage ends.
- USCIS should reduce barriers to travel and improve the process of providing APDs and not consider a pending Form I–131 for advance parole to be abandoned by travel abroad.
- Waivers of filing fees should not be interpreted as a public charge admission because not everyone can raise funding for filing fees given that wages are not keeping up with the rate of inflation.

Response: DHS fully considered the comments in this rule and whether their suggestions could be adopted. The comments above request changes that go beyond fees and require either analysis of their impacts or public comment on their effects so that they exceed what DHS can include in this final rule under the APA. DHS may consider the points raised by commenters in future policy changes or rulemakings.

V. Statutory and Regulatory Requirements

A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review) and Executive Order 14094 (Modernizing Regulatory Review)

E.O. 12866, as amended by Executive Order 14094, and E.O. 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if a regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) has designated this rule a ''significant regulatory action'' as defined under section 3(f)(1) of E.O. 12866, as amended by Executive Order 14094, because its annual effects on the economy exceed $200 million in any year of the analysis. Accordingly, OMB has reviewed this rule.

The fee adjustments, as well as changes to the forms and fee structures used by USCIS, will result in net costs, benefits, and transfer payments. For the 10-year period of analysis of the rule (FY 2024 through FY 2033), DHS estimates the annualized net costs to the public will be $157,005,952 discounted at 3 and 7 percent. Estimated total net costs over 10 years will be $1,339,292,617 discounted at 3-percent and $1,102,744,106 discounted at 7-percent.

The changes in the final rule will also provide several benefits to DHS and applicants/petitioners seeking immigration benefits. For the government, the primary benefits include reduced administrative burdens and fee processing errors, increased efficiency in the adjudicative process, and the ability to better assess the cost of providing services, which allows for better aligned fees in future regulations. The primary benefits to the applicants/petitioners include reduced fee processing errors, increased efficiency in the adjudicative process, the simplification of the fee payment process for some forms, elimination of the $30 returned check fee, and for many applicants, limited fee increases and additional fee exemptions to reduce fee burdens.

Fee increases will result in annualized transfer payments from applicants/petitioners to USCIS of approximately $887,571,832 discounted at 3 and 7 percent. The total 10-year transfer payments from applicants/petitioners to USCIS will be $7,571,167,759 at a 3-percent discount rate and $6,233,933,135 at a 7-percent discount rate.

Reduced fees and expanded fee exemptions will result in annualized transfer payments from USCIS to applicants/petitioners of approximately $241,346,879 discounted at both 3-percent and 7-percent. The total 10-year transfer payments from USCIS to applicants/petitioners will be $2,058,737,832 at a 3-percent discount rate and $1,695,119,484 at a 7-percent discount rate.

The annualized transfer payments from the Department of Defense (DoD) to USCIS for Form N–400, Application for Naturalization, filed by military members will be approximately $197,260 at both 3- and 7-percent discount rates. The total 10-year transfer payments from DoD to USCIS will be $1,682,668 at a 3-percent discount rate and $1,385,472 at a 7-percent discount rate.

Adding annualized transfer payments from fee paying applicants/petitioners to USCIS ($887,571,832) and transfer payments from DoD to USCIS ($197,260), then subtracting transfer payments from USCIS to applicants/petitioners ($241,346,879) yields estimated net transfer payments to USCIS of $646,422,213 at both 3 and 7-percent discount rates, an approximation of additional annual revenue to USCIS from this rule.

DHS has prepared a full analysis according to E.O. 12866 and E.O. 13563, which can be found in the docket for this rulemaking. Table 9 presents the accounting statement showing the transfers, costs, and benefits associated with this regulation as required by OMB Circular A–4.

OMB A–4 Accounting Statement

BILLING CODE 9111–97–P

Table 9. OMB A-4 Accounting Statement - ($ in millions, 2022; period of analysis: FY 2024 through FY 2033)

Category	Primary Estimate	Minimum Estimate	Maximum Estimate	Source Citation
BENEFITS				
Annualized Monetized Benefits over 10 years	N/A	N/A	N/A	
	N/A	N/A	N/A	
Annualized quantified, but un-monetized, benefits Unquantified Benefits	The changes in the final rule will provide several benefits to DHS and applicants/petitioners seeking immigration benefits. For the government, the primary benefits include reduced administrative burdens and fee processing errors, increased efficiency in the adjudicative process, and the ability to better assess the cost of providing services, which allows for better aligned fees. Using the CPI-U as the inflation index for fee schedule adjustments between comprehensive USCIS fee rules will allow DHS to publish timely fee adjustments that insure the real value of USCIS fee revenue dollars against future inflation. The primary benefits to applicants/petitioners include the simplification of the fee payment process for some forms, elimination of the $30 returned check fee, expansion of the electronic filing system to include Form G-1041 and Form G-1041A, reduced fees for electronic filings, reduced reapplications for premium processing and for many applicants, limited fee increases and additional fee exemptions and fee waivers to reduce fee burdens. Eliminating the separate payment of the biometric services fee will decrease the administrative burdens required to process both a filing fee and biometric services fee for a single benefit request. DHS also expects a decrease in administrative burden associated with the processing of the Form I-912 (fee waiver) for categories of requestors that will no longer require a fee waiver because they will be fee exempt.			RIA
COSTS				
Annualized monetized costs over 10 years	(3% and 7%) $157			RIA
Annualized quantified, but un-monetized, costs	N/A			
Qualitative (unquantified) costs	Expanding the population of applicants using eligible for N-400 reduced fees and applicants eligible for fee waivers and exemptions will increase the administrative burden on the agency			

	to process these forms.	
TRANSFERS		
Annualized monetized transfers: From the applicants/ petitioners to USCIS	(3% and 7%) $888	RIA
Annualized monetized transfers: From USCIS to applicants/petitioners	(3% and 7%) $241	RIA
Annualized monetized transfers: From DoD to USCIS	(3% and 7%) $0.20	RIA
Miscellaneous Analyses/Category	***Effects***	
Effects on state, local, and/or tribal governments	***None***	Preamble
Effects on small businesses	DHS does not believe that the increase in fees in the rule will have a significant economic impact on a substantial number of small entities that file Forms I-129, I-140, I-910, or I-360. DHS does not have sufficient data on the revenue collected through administrative fees by regional centers to definitively determine the economic impact on small entities that may file Form I-956 (formerly I–924) or Form I-956G (formerly I-924A). DHS also does not have sufficient data on the requestors that file genealogy forms, Forms G–1041 and G–1041A, to determine whether such filings were made by entities or individuals and thus is unable to determine if the fee increase for genealogy searches is likely to have a significant economic impact on a substantial number of small entities.	Final Regulatory Flexibility Analysis (FRFA) and Small Entity Analysis (SEA)
Effects on wages	***None***	None
Effects on Growth	***None***	None

Quantified Annual Economic Impacts of the Fee Schedule: NPRM vs Final Rule

Table 10. Quantified Annual Economic Impacts of the Fee Schedule: NPRM vs Final Rule

Category	NPRM	Final Rule	Difference	Percent Difference
	Undiscounted	Undiscounted		
Total Costs to Applicants/Petitioners	$575,100,190	$302,692,154	-$272,408,036	-47%
Total Cost Savings to Applicants/Petitioners	$42,721,052	$145,686,202	$102,965,150	241%
Net Costs	**$532,379,138**	**$157,005,952**	**-$375,373,186**	-71%
Transfer Payments from applicants/petitioners to USCIS (fee increases)	**$1,612,127,862**	**$887,571,832**	**-$724,556,030**	-45%
Transfer Payments from USCIS to applicants/petitioners (exemptions, waivers, discounts, reduced fees)	**$116,372,429**	**$241,346,879**	**$124,974,450**	107%
Transfer Payments from DoD to USCIS (Military N-400 reimbursements)	**$222,145**	**$197,260**	**-$24,885**	-11%
Net Transfer Payments to USCIS	**$1,495,977,578**	**$646,422,213**	**-$849,555,365**	-57%

Source: USCIS Analysis

Table 10 above shows that total costs were reduced by 47 percent in the final rule. This is mainly a result of the discounted fees given to Form I–129 and I–140 petitioners who are employers with 25 or fewer full-time equivalent (FTE) workers or non-profit entities. There was a significant increase in cost savings mainly because of the lower fees for filing forms electronically as well as lower fees for filing Forms I–90 and I–131. Mainly because of the increase in cost savings, net costs were reduced by 71 percent in the final rule. Transfer payments from applicants/petitioners to USCIS were reduced by 45 percent mainly because of the lower fees for Form I–485 applicants concurrently filing a Form I–765, lower fees for applicant under the age of 14 years filing Form I–485 with a parent and lower fees for the online filing of forms. Transfer payments from USCIS to applicants/petitioners increased significantly by 107 percent. This increase is mainly attributable to changes to fee exemptions (see Table 48 in standalone RIA for additional information). Transfer payments from USCIS to applicants/petitioners as a result of fee exemptions increased by 70-percent ($181,225,564) from the NPRM estimates ($106,821,450). Transfer payments from DoD to USCIS were reduced by 11 percent. Finally, net transfer payments to USCIS were reduced by 57 percent in the final rule, from NPRM estimates. DHS notes that the variation in costs, cost savings and transfer payments from the proposed rule to the final rule is also influenced by the change in annual average populations used throughout the economic analysis. In the proposed rule, DHS generally used 5-year annual averages from FY 2016 through 2020 and in the final rule DHS uses 5-year annual averages from FY 2018 through 2022.

Summary Table of the Economic Impacts of the Final Fee Schedule

Table 11 provides a detailed summary of the final rule and its impacts.

Table 11. Summary of Final rule Provisions and Other Fee Adjustments – Costs, Cost Savings, Transfer Payments and Benefits			
Final Rule Provisions	**Description of Changes**	**Estimated Annual Costs and/or Transfer Payments**	**Estimated Annual Cost Savings and/or Benefits**
1. Resubmission of Dishonored or Returned Payments, Fee Payment Method, and Non-Refundability	If a check or other financial instrument used to pay a fee is dishonored or returned because of insufficient funds, USCIS will resubmit the payment to the remitter institution one time. • If the instrument used to pay a fee is dishonored or returned a second time, USCIS may reject or deny the filing. Financial instruments dishonored or declined or returned for any reason other than insufficient funds, will not be resubmitted, and such filings may be rejected or denied. Credit cards that are declined for any reason will not be resubmitted. • DHS may reject a request that is accompanied by a check or other financial instrument that is dated more than one year before the request is received.	Quantitative: Applicants- • An increase in transfer payments from applicants/petitioners to USCIS of approximately $658,396 (annual average amount USCIS refunds to applicants/petitioners) due to nonrefundable fees. Qualitative: Applicants – • None. DHS/USCIS – • None.	Quantitative: Applicants • None. Qualitative: Applicants – • None. DHS/USCIS – • Clarifying dishonored or returned payment resubmission and non-refundability policies, limiting the age of checks to be presented and limiting payment options will reduce administrative burdens and fee processing errors for USCIS. • USCIS will be able to invoice the responsible party (applicant, petitioner, or requestor) and pursue collection of the unpaid fees when banks that issue credit cards rescind payment. • USCIS will lose fewer credit card disputes.

Table 11. Summary of Final rule Provisions and Other Fee Adjustments – Costs, Cost Savings, Transfer Payments and Benefits			
Final Rule Provisions	**Description of Changes**	**Estimated Annual Costs and/or Transfer Payments**	**Estimated Annual Cost Savings and/or Benefits**
	• Will codify authority to limit payment options so that USCIS may require certain fees be paid using a specific payment method. • Clarifies that fees are generally nonrefundable regardless of the result of the request or how much time the request requires to be adjudicated. • Clarifies that fees paid to USCIS using a credit or debit card cannot be disputed.		
2. Eliminate $30 Returned Check Fee	• Eliminate the $30 charge for dishonored payments.	Quantitative: Applicants • None. Qualitative: Applicants – • None. DHS/USCIS – • There may be an increase in insufficient payments by applicants because the $30 fee may serve as a deterrent for submitting a deficient payment.	Quantitative: Applicants – • DHS estimates the annual cost savings to applicants/petitioners will be $414,150. Qualitative: Applicants – • Applicants who submit bad checks will no longer have to pay a fee. DHS/USCIS – • This change will provide additional cost savings to USCIS as it spends more than $30 to collect the $30 returned payment charges. USCIS hires a financial service provider to provide fee collection services to pursue and collect the $30 fee.

Table 11. Summary of Final rule Provisions and Other Fee Adjustments – Costs, Cost Savings, Transfer Payments and Benefits

Final Rule Provisions	Description of Changes	Estimated Annual Costs and/or Transfer Payments	Estimated Annual Cost Savings and/or Benefits
3. Changes to Biometric Services Fee	• For nearly all benefit types, DHS will incorporate the biometric services cost into the underlying immigration benefit request fees for which biometric services are applicable. • Retain a separate biometric services fee of $30 for initial applications and re-registrations for Temporary Protected Status (TPS).	Quantitative: Applicants • As a result of the $55 reduction in the biometric services fee, TPS and the Executive Office for Immigration Review (EOIR) applicants will experience a total of $10,007,965 in reduced fees annually. This represents transfer payments from USCIS to the fee payers as USCIS will now incur the indirect costs of providing the biometric services. Qualitative: Applicants – • None. DHS/USCIS – • None	Quantitative: Applicants – • None. Qualitative: Applicants – • Incorporating the biometric services fee into the underlying benefit request filing fee will benefit applicants by simplifying the payment process. • May also reduce the probability of applicants submitting incorrect fees and consequently have their benefit requests rejected for failure to include a separate biometric services fee. DHS/USCIS – • Eliminating the separate payment of the biometric services fee will decrease the administrative burdens required to process both a filing fee and biometric services fee for a single benefit request.
4. Naturalization and Citizenship Related Forms	• Limit the increase of Form N-400 fees to $760 for paper filers and $710 for online filers. • Increase fees to Forms N-300, N-336, N-400, N-470, N-600 and N-600K. • Increase the Form N-400 reduced fee to $380. • Make the request for a reduced fee available to applicants with incomes under 400	Quantitative: Applicants • Increase in fees to Forms N-300, N-336, N-400 (paper), N-470, N-565 (paper), N-600 and N-600K will result in an increase in transfer payments from the fee-paying applicants to USCIS of $30,182,790 annually. • Increase in transfer payments from USCIS to Form N-400 reduced fee	Qualitative: Applicants- • Limited fee increases allow more residents, especially those with financial and income constraints to seek citizenship. • Cost savings of $5,981,330 to applicants filing Forms N-400 and N-565 online. • Expanding the eligible population of N-400 reduced fee applicants will benefit an unknown number of applicants who could not afford the full fee, but can

Table 11. Summary of Final rule Provisions and Other Fee Adjustments – Costs, Cost Savings, Transfer Payments and Benefits			
Final Rule Provisions	**Description of Changes**	**Estimated Annual Costs and/or Transfer Payments**	**Estimated Annual Cost Savings and/or Benefits**
	percent of the FPG instead of only applicants that fall within the range of 150 to 200 percent of the FPG. • Keep the existing statutory fee exemptions for military members and veterans who file Forms N-400 and N-600.	applicants of $46,088,170 due to the change in reduced fee eligibility criteria to applicants with incomes under 400 percent of the FPG. • Increase in transfer payments from DoD to USCIS of $197,260 annually for N-400 (military only) reimbursements. Qualitative: Applicants – • None DHS/USCIS – • Expanding the population of N-400 reduced fee applicants will increase the administrative burden on the agency to process these additional forms with 50 percent less in fees.	now pay 50 percent less in fees.
5. Fees for Filing Online	• Lower fees for online filings of immigration benefit requests for which both paper and online filing options are available. The forms include Form I-90, Form I-130, Form I-539, Form I-765, Form N-336, Form N-400, Form N-565, Form N-600, Form N-600K, Form G-1041, and Form G-1041A.	Quantitative: Petitioners • Increase in transfer payments of $17,706,510 from Form I-130 online filers to USCIS. DHS/USCIS- • None. Qualitative: Petitioners – • None. DHS/USCIS – • None.	Quantitative: Petitioners- • Cost savings of $56,796,180 to applicants filing Forms I-90, I-539 and I-765 online. Qualitative: Petitioners- • Encourages electronic processing and adjudications which helps streamline USCIS processes. This could reduce costs and could speed adjudication of cases. DHS/USCIS –

Table 11. Summary of Final rule Provisions and Other Fee Adjustments – Costs, Cost Savings, Transfer Payments and Benefits			
Final Rule Provisions	**Description of Changes**	**Estimated Annual Costs and/or Transfer Payments**	**Estimated Annual Cost Savings and/or Benefits**
			• USCIS will save in reduced intake and storage costs at the USCIS lockbox or other intake facilities. • Decrease the risk of mishandled, misplaced, damaged files or lost paper files because electronic records will not be physically moved around to different adjudication offices. • Increased access to administrative records. USCIS could easily redistribute electronic files among adjudications offices located in different regions, for better management of workload activities.
6. Form I-485, Application to Register Permanent Residence or Adjust Status	• Increase Form I-485 fees for adults and children under the age of 14 concurrently filing with a parent. • Charge separate filing fees for applicants filing Form I-765 and Form I-131 concurrently with Form I-485 or after USCIS accepts their Form I-485 and while it is still pending.	Quantitative: Applicants- • Total increase in transfer payments from applicants filing Form I-485 to USCIS of $391,920,525. This includes the following: • The increase in the Form I-485 fees will result in approximately $18,273,710 in transfer payments annually from applicants filing I-485 (only) to USCIS. • Separate filing fees for applicants filing I-765 and I-131 interim benefits with Form I-485 will result in transfer payments from applicants to USCIS of $367,192,615 annually. • Transfer payments from applicants to	Quantitative: Applicants- • Not estimated. Qualitative: Applicants – • None. DHS/USCIS – • Unbundling the fee for Form I-485 from Forms I-131 and I-765 will better reflect the cost of adjudication.

Table 11. Summary of Final rule Provisions and Other Fee Adjustments – Costs, Cost Savings, Transfer Payments and Benefits			
Final Rule Provisions	**Description of Changes**	**Estimated Annual Costs and/or Transfer Payments**	**Estimated Annual Cost Savings and/or Benefits**
		USCIS of $6,454,200 annually for children under the age of 14 years concurrently filing Form I-485 with a parent. Qualitative: Applicants – • None. DHS/USCIS – • None.	
7. Form I-131A, Application for Travel Document (Carrier Documentation) Changes	• Separate the fee for Form I-131A from other travel document fees.	Quantitative: Applicants- • None. Qualitative: Applicants – • None. DHS/USCIS – • None.	Quantitative: Applicants- • None. Qualitative: Applicants – • None. DHS/USCIS – • Allows USCIS to assess the cost of providing services for this immigration benefit and better align fees in future fee reviews.
8. Separate Fees for Form I-129, Petition for a Nonimmigrant Worker, by Nonimmigrant Classification and Limit Petitions Where Multiple Beneficiaries are Permitted to 25 Named Beneficiaries per Petition	• Charge different fees for Form I-129, based on the nonimmigrant classification being requested in the petition, the number of beneficiaries on the petition and in some cases, according to whether the petition includes named or unnamed beneficiaries. • Increase H-1B registration fees from $10 to $215 • Limit to 25 the number of named beneficiaries that may be included on a single petition for H-2A, H-2B, O, H-3, P, Q and R workers.	Quantitative: Applicants – • Increase in transfer payments from Form I-129/I-129CW petitioners to USCIS of $217,571,880. This includes transfer payments from H-1B registrants to USCIS of $71,428,355. • Costs of $254,764,500 to Form I-129/I-129CW petitioners due to the new Asylum Program fees. DHS/USCIS – • Not estimated. Qualitative: Applicants – • None. DHS/USCIS –	Quantitative: Applicants – • None. DHS/USCIS – • None. Qualitative: Applicants – • None. DHS/USCIS – • A benefit of the different fees for the Form I-129 classifications is that it will allow USCIS to further refine its fee model and better reflect the cost to adjudicate each specific nonimmigrant classification. • Limiting the number of named beneficiaries to 25 per petition simplifies and optimizes the adjudication of these petitions, which can lead to reduced average processing times for a petition.

Table 11. Summary of Final rule Provisions and Other Fee Adjustments – Costs, Cost Savings, Transfer Payments and Benefits

Final Rule Provisions	Description of Changes	Estimated Annual Costs and/or Transfer Payments	Estimated Annual Cost Savings and/or Benefits
	• Charge a new Asylum Program fee to Form I-129/I-129CW petitioners. • Provide reduced Form I-129/I-129CW fees and Asylum Program fees for businesses with 25 or less full-time equivalent employees and nonprofit businesses. • The Asylum Program Fee is $0 for nonprofits, $300 for businesses that have 25 or fewer full-time equivalent employees, and $600 for all other I-129 filers.	• None.	
9. Adjustments to Premium Processing	• Change the premium processing timeframe from 15 calendar days to 15 business days for the immigration benefit request types with a premium processing service. • Permit combined payments of the premium processing service fee with the remittance of other filing fees.	Quantitative: Applicants – • None. DHS/USCIS – • None. Qualitative: Applicants – • None. DHS/USCIS – • None.	Qualitative: Applicants – • The additional days will increase the time frame to adjudicate which in turn might reduce the refunds issued by USCIS and thereby increase the applications adjudicated. DHS/USCIS – • The additional days will increase the time frame to adjudicate which in turn might reduce the refunds issued by USCIS. • USCIS will have additional business days to process petitions when premium processing request volumes are high and the 15 calendar days include multiple non-business days such as weekends and holidays. • USCIS will be able to make premium processing more consistently available and expand this service to the

Table 11. Summary of Final rule Provisions and Other Fee Adjustments – Costs, Cost Savings, Transfer Payments and Benefits

Final Rule Provisions	Description of Changes	Estimated Annual Costs and/or Transfer Payments	Estimated Annual Cost Savings and/or Benefits
			newly designated classifications and categories allowed by the USCIS Stabilization Act. Qualitative: Applicants and DHS/USCIS – • Allowing combined payments reduces unnecessary burdens on petitioners, applicants, and DHS.
10. Intercountry Adoptions	• Clarify and align regulations with current practice regarding when prospective adoptive parents are not required to pay the Form I-600 or Form I-800 filing fee for multiple Form I-600 or Form I-800 petitions. • DHS is altering the validity period for Forms I-600A and I-800A approvals in an orphan case from 18 to 15 months to remove inconsistencies between Forms I-600A and I-800A approval periods and validity of the U.S. Federal Bureau of Investigation (FBI) background check. • Create a new form called Form I-600A/I-600 Supplement 3, Request for Action on Approved Form I-600A/I-600. • Provide fee exemptions for some applicants who file Form I-600A/I-600	Quantitative: Applicants- • DHS estimates that the filing fee and the time to complete and submit Form I-600A/I-600 Supplement 3 will cost $146,954 annually. • The increase to the current fees for Forms I-600/600A/800/800A will result in transfer payments from applicants to USCIS of approximately $265,440 annually. • Transfer payments from USCIS to the public of $4,023,570 due to fee exemptions to Form I-600A/I-600 Supplement 3, Form I-800A Supplement 3 and adoption-based Forms N-600 and N-600K. Qualitative: Applicants – • None. DHS/USCIS- • None.	Quantitative: Applicants – • None. Quantitative: Petitioners- • Cost savings of $3,375 to applicants filing Form I-800A Supplement 3 due to a reduction in fees. Qualitative: Applicants – • Limiting the fee increase helps to reduce the fee burdens on adoptive families by covering some of the costs attributable to the adjudication of certain adoption-related petitions and applications. • The uniform 15-month validity period will also alleviate the burden on prospective adoptive parents and adoption service providers to monitor multiple expiration dates. • These changes also clarify the process for applicants who would like to request an extension of Form I-600A/I-600 and/or certain types of updates or changes to their approval. • Accepting the Form I-800A Supplement 3 extension requests will make subsequent suitability and eligibility adjudication process faster, for

Table 11. Summary of Final rule Provisions and Other Fee Adjustments – Costs, Cost Savings, Transfer Payments and Benefits			
Final Rule Provisions	**Description of Changes**	**Estimated Annual Costs and/or Transfer Payments**	**Estimated Annual Cost Savings and/or Benefits**
	Supplement 3, Form I-800A Supplement 3, Form N-600 or Form N-600K for newly adopted children.		prospective adoptive parents seeking an extension of their Form I-800A approval. DHS/USCIS – • Standardizes USCIS process and provides for the ability to collect a fee. • Improve and align the USCIS adjudication and approval processes for adoptions of children from countries that are party to the Hague Adoption Convention and from countries that are not.
11. Immigrant Investors	• DHS will increase fees to Forms I-526/I-526E[295], I-829, I-956 (formerly I-924), I-956G (formerly I-924A) and I-956F associated with the Employment-Based Immigrant Visa, Fifth Preference (EB-5) program.	Quantitative: Applicants- • Annual transfer payments from EB-5 investors and regional centers to USCIS will be approximately $44,746,040. Qualitative: Applicants – • None. DHS/USCIS – • None.	Quantitative: Applicants- • None. Qualitative: Applicants – • None. DHS/USCIS – • None.
12. Changes to Genealogy Search and Records Requests	• Revise genealogy regulations to encourage requestors to use the online portal to submit electronic versions of Form G-1041. • Change the index search request process so that USCIS may provide requesters with digital records via	Quantitative: Applicants- • Annual transfer payments from fee paying applicants to USCIS of $813,900 due to increased fees. Qualitative: Applicants – • None. DHS/USCIS – • None.	Quantitative: Applicants- • Cost savings of $380,415 to applicants filing Forms G-1041, G-1041A online. Qualitative: Applicants – • Streamlining the genealogy search and records request process increases accuracy due to reduced human error from manual data entry. DHS/USCIS – • Reduce costs for mailing, records processing, and

Table 11. Summary of Final rule Provisions and Other Fee Adjustments – Costs, Cost Savings, Transfer Payments and Benefits			
Final Rule Provisions	**Description of Changes**	**Estimated Annual Costs and/or Transfer Payments**	**Estimated Annual Cost Savings and/or Benefits**
	email in response to the initial search request. • Lower the fees for the online filing of Forms G-1041 and G-1041A, from $65 to $30 to reflect the lower marginal costs to USCIS from online filing. • For requestors who choose to submit via mail option, DHS will increase the fee from $65 to $80, for G-1041 and G-1041A. • Charge a fee of $330 for requests for a Certificate of Non-Existence.		storage costs because electronic versions of records requests will reduce the administrative burden on USCIS. • Streamlining the genealogy search and records request process increases accuracy.
13. Fees Shared by CBP and USCIS	• Increase fees for the following immigration benefit requests it adjudicates with U.S. Customs and Border Protection (CBP): Form I-192, Form I-193, Form I-212, and Form I-824.	Quantitative: Applicants- • Increase in annual transfer payments of $11,826,730 from fee payers to USCIS and CBP. Qualitative: Applicants – • None. DHS/USCIS – • None.	Quantitative: Applicants- • None. Qualitative: Applicants – • A single fee for each shared form will reduce confusion for individuals interacting with CBP and USCIS. DHS/USCIS – • None.
14. Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 [NACARA]	• Adjust the fee for Form I-881 and combine the current multiple fees charged for an individual or family into a single fee of $340 for each filing of Form I-881.	Quantitative: Applicants- • Transfer payments of $18,260 annually from I-881 individual filers to USCIS. • Transfer payments from USCIS to I-881 family applicants of $1,610 since this fee is less than the cost to adjudicate the application.	Quantitative: Applicants- • None. Qualitative: Applicants – • None. DHS/USCIS – • Combining the two Immigration Examinations Fee Account (IEFA) fees into a single fee will streamline the revenue collections and reporting.

Table 11. Summary of Final rule Provisions and Other Fee Adjustments – Costs, Cost Savings, Transfer Payments and Benefits			
Final Rule Provisions	**Description of Changes**	**Estimated Annual Costs and/or Transfer Payments**	**Estimated Annual Cost Savings and/or Benefits**
		Qualitative: Applicants – • None. DHS/USCIS – • None.	• A single Form I-881 fee may help reduce the administrative and adjudication process for USCIS more efficient.
15. Fee Waivers	• Expand the categories of requestors and related forms eligible for a fee waiver. • Codify the existing criteria in USCIS guidance regarding eligibility requirements for a fee waiver.	Quantitative: Applicants – • None. DHS/USCIS – • None. Qualitative: Applicants – • None. DHS/USCIS – • None.	Quantitative: Applicants – • None. DHS/USCIS – • None. Qualitative: Applicants – • More simplified and streamlined system to process fee waivers. DHS/USCIS – • None
16. Fee Exemptions	• Will provide fee exemptions for additional benefit requests filed by the following humanitarian-based immigration beneficiaries[296]: • Victims of Severe Form of Trafficking (T Nonimmigrants) • Victims of Qualifying Criminal Activity (U Nonimmigrants) • Violence Against Women Act (VAWA) Form I-360 Self-Petitioners and Derivatives • Conditional Permanent Residents Filing a Waiver of the Joint Filing Requirement Based on Battery or Extreme Cruelty • Abused Spouses and Children Adjusting Status under the	Quantitative: Applicants- • Transfer payments of approximately $181,225,564annually from USCIS to the public. Qualitative: Applicants – • None. DHS/USCIS – • None.	Quantitative: Applicants- • Cost savings of about $40,184,477 to the public for no longer having to complete and submit Form I-912. Qualitative: Applicants – • Individuals who are unable to afford immigration benefit request fees will benefit from filing a request with no fees. DHS/USCIS – • Decrease in administrative burden associated with the processing of the Form I-912 (fee waiver) for categories of requestors that will no longer require a fee waiver because they will be fee exempt.

Table 11. Summary of Final rule Provisions and Other Fee Adjustments – Costs, Cost Savings, Transfer Payments and Benefits			
Final Rule Provisions	**Description of Changes**	**Estimated Annual Costs and/or Transfer Payments**	**Estimated Annual Cost Savings and/or Benefits**
	Cuban Adjustment Act (CAA) and Haitian Refugee Immigration Fairness Act (HRIFA) • Abused Spouses and Children Seeking Benefits under Nicaraguan Adjustment and Central American Relief Act (NACARA) • Abused Spouses and Children of lawful permanent residents (LPRs) or U.S. Citizens under the Immigration and Nationality Act (INA) Section 240A(b)(2) • Special Immigrant Afghan or Iraqi Translators or Interpreters, Iraqi Nationals Employed by or on Behalf of the U.S. Government, or Afghan Nationals Employed by or on Behalf of the U.S. Government or Employed by the International Security Assistance Forces (ISAF) (SI1 and SI2) • Special Immigrant Juveniles (SIJs) • Temporary Protected Status (TPS) • Asylees • Refugees • Persons Who Served Honorably on Active Duty in The U.S. Armed Forces Filing Under INA Section 101(A)(27)(K)		

Table 11. Summary of Final rule Provisions and Other Fee Adjustments – Costs, Cost Savings, Transfer Payments and Benefits

Final Rule Provisions	Description of Changes	Estimated Annual Costs and/or Transfer Payments	Estimated Annual Cost Savings and/or Benefits
17. Additional Fee Adjustments	DHS will increase fees for the following forms: • I-90 (paper) • I-102 • I-130 (paper) • I-131 • I-140 • I-601 • I-612 • I-290B • I-360 • I-539 (paper) • I-601A • I-687/I-690/I-694 • I-751 • I-765 (paper) • I-817 • I-910 • I-929	Quantitative: Applicants- • An increase in transfer payments from fee payers to USCIS of approximately $171,861,361 annually. • Costs of $47,780,700 for Form I-140 petitioners due to the new Asylum Program fees. Qualitative: Applicants – • None.	Quantitative: Applicants- • Cost savings of $41,926,275 to applicants filing Forms I-90 and I-131 as a result of lower fees. Qualitative: Applicants – • None. DHS/USCIS – • None.
18. Adjusting USCIS Fees for Inflation	• DHS to use the CPI-U as the inflation index for fee adjustments between comprehensive fee rules. The actual impacts of such adjustments will be analyzed in a future rule should DHS exercise this authority.	Quantitative: Applicants- • None. Qualitative: Applicants – • None. DHS/USCIS – • None.	Qualitative: Applicants • None. Qualitative: DHS/USCIS – • Allows DHS to publish timely fee schedule adjustments to insure the real value of USCIS fee revenue dollars against future inflation.

Source: USCIS analysis.
Note: The dollar amounts in this table are undiscounted.

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[295] Combines both Forms I–526, Immigrant Petition by Standalone Investor and I–526E, Immigrant Petition by Regional Center Investor. USCIS revised Form I–526 and created Form I–526E as a result of the EB–5 Reform and Integrity Act of 2022.

[296] These fee exemptions do not impact eligibility for any particular form or when an individual may file the form. They are in addition to the forms listed under 8 CFR 106.2 for which DHS to codify that there is no fee.

B. Regulatory Flexibility Act—Final Regulatory Flexibility Analysis (FRFA)

1. Changes From the Proposed Rule's IRFA

Since the IRFA, the major changes made in the final rule that could affect entities are as follows:

• The Asylum Program Fee is $0 for nonprofits, $300 for employers with 25 or fewer full-time equivalent (FTE) workers, and $600 for all other Form I–129, I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, and those filing Form I–140, Immigrant Petition for Alien Workers. The proposed rule stated that the Asylum Program Fee would be $600 for all such filers.

• Employers with 25 or fewer FTE workers and nonprofits receive a discount on fees for Form I–129, Petition for Nonimmigrant Worker and Form I–129CW.

• A $50 reduced fee for forms filed online, except in limited circumstances,

such as when the form fee is already provided at a substantial discount or USCIS is prohibited by law from charging a full cost recovery level fee. The proposed rule provided various reduced fees for each form filed online.

2. Overview of the FRFA

The Regulatory Flexibility Act of 1980 (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. In accordance with the RFA, USCIS has prepared a FRFA that examines the impacts of the interim final rule on small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. In addition, the courts have held that the RFA requires an agency to perform a FRFA of small entity impacts only when a rule directly regulates small entities. The complete detailed SEA [297] is available in the rulemaking docket at *http://www.regulations.gov.*

Individuals, rather than small entities, submit most of the immigration and naturalization benefit applications and petitions. The final rule would affect small entities that file and pay fees for certain immigration benefit requests. Consequently, there are six categories of USCIS benefits that are subject to a small entity analysis for this final rule: Petition for a Nonimmigrant Worker, Form I–129; Immigrant Petition for an Alien Worker, Form I–140; Civil Surgeon Designation, Form I–910; Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360; Genealogy Forms G–1041 and G–1041A, Index Search and Records Requests; and the Application for Regional Center Designation Under the Immigrant Investor Program, Form I–956 (formerly Form I–924), Application for Approval of an Investment in a Commercial Enterprise, Form I–956F (formerly Form I–924 amendment) and the Regional Center Annual Statement, Form I–956G (formerly Form I–924A).

This FRFA contains the following:

- A statement of the need for, and objectives of, the rule.
- A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule because of such comments.
- The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule based on the comments.
- A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.
- A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.
- A description of the steps the agency has taken to minimize significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

DHS is publishing this FRFA to respond to public comments and provide further information on the likely impact of this rule on small entities. USCIS has discussed related issues in depth in the supplemental RIA (see Section 5: Price Elasticity) and SEA and refers the reader to these analyses where additional detail is available.

a. Summary Findings of the FRFA

- The increase in fees may have a significant economic impact (greater than 1 percent) on some small entities that file I–129, I–140, I–910, or I–360.

During the FRFA, DHS found no comments that provided additional data for the forms below:

- For Forms I–956, I–956F and I–956G, DHS does not have sufficient data on the revenue collected through administrative fees by regional centers to definitively determine the economic impact on small entities that may file these forms.
- For the genealogy forms, DHS also does not have sufficient data on the requestors that file Forms G–1041, Index Search Request and Form G–1041A, Genealogy Records Request, to determine whether such filings were made by entities or individuals. Thus, DHS is unable to determine if the fee increases for genealogy searches are likely to have a significant economic impact on small entities.

Form I–129 Small Entities

- *Form I–129 Small Entities with More than 25 Full-Time Equivalent (FTE) Employees*
  - 302 of the 1,643 matched small entities searched were small entities with more than 25 employees.
  - Among the 302 small entities, 275 (91.0 percent) experienced an economic impact of less than 1 percent and 27 (9.0 percent) experienced an economic impact greater than 1 percent.
  - The small entities with greater than 1 percent impact were mostly H–1B filers (18 of 327) that filed multiple petitions.
  - The greatest economic impact imposed by the fee changes was 7.06 percent and the smallest was 0.002 percent.
  - The average economic impact from the H–1B registration and petition fee increase on all 241 filers was 0.06 percent; the greatest economic impact was 1.35 percent and the smallest was 0.0004 percent.
- *Form I–129 Small Entities with 25 or Fewer Full-Time Equivalent (FTE) Employees*
  - 876 of the 1,643 entities searched, were small entities with 25 or fewer FTE employees.
  - Among the 876 small entities, 781 (89.2 percent) experienced an economic impact of less than 1 percent and 95 (10.8 percent) experienced an economic impact greater than 1 percent.
  - The small entities with greater than 1 percent economic impact were mostly H–1B filers (91 of 95) that mostly filed multiple petitions.
  - The greatest economic impact imposed by the fee changes was 4.21 percent and the smallest was 0.003 percent.
  - The average economic impact from the H–1B registration and petition fee increase on all 682 filers was 0.19 percent; the greatest economic impact was 1.79 percent and the smallest was 0.001 percent.
- *Form I–129 Nonprofit Small Entities*
  - 14 of the 1,643 entities searched were nonprofit small entities. All 14 of these nonprofit small entities petitioned for H–1B workers.
  - All 14 nonprofits small entities experienced an economic impact of less than 1 percent.
  - The greatest economic impact imposed by the fee changes was 0.82 percent and the smallest was 0.003 percent.
  - The average economic impact from the registration and petition fee

[297] DHS, USCIS SEA for the USCIS Fee Schedule Final Rule.

increases on all H–1B filers was 0.13 percent; the greatest economic impact was 0.6 percent and the smallest was 0.003 percent.

Form I–140 Small Entities

- DHS identified 126 small entities with reported revenue data in the sample.
- Of the 126 small entities, 46 had more than 25 FTE employees and 80 had 25 or fewer FTE employees. There were no nonprofit small entities with reported revenue data in the sample.
- All 46 small entities with more than 25 FTE employees experienced an economic impact of less than 1 percent. The greatest economic impact imposed by the fees was 0.25 percent and the smallest was 0.0001 percent.
- For the 80 small entities with 25 or fewer FTE employees, 79 of them experienced an economic impact of less than 1 percent. The other entity experienced an economic impact of 1.002 percent. The smallest economic impact imposed by the fee increase was 0.002 percent.

Form I–910 Small Entities

- 179 matched entities with reported revenues were considered small entities.
- All 179 small entities experienced an economic impact of less than 1 percent.
- The greatest economic impact of the increased fees on small entities was 0.91 percent and the smallest was 0.001 percent.

Form I–360 Small Entities

- 174 entities with reported revenues were considered small entities.
- All 174 small entities experienced an economic impact below 1 percent.
- The greatest economic impact of the increased fees on small entities was 0.08 percent and the smallest was 0.001 percent.

b. A Statement of Need for, and Objectives of the Rule

DHS issues the final rule consistent with INA sec. 286(m),[298] which authorizes DHS to charge fees for adjudication and naturalization services at a level to ''ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants,'' and the CFO Act,[299] which requires each agency's CFO to review, on a biennial basis, the fees imposed by the agency for services it provides, and to recommend changes to the agency's fees. DHS is adjusting the fee schedule for DHS immigration and naturalization benefit applications after conducting a comprehensive fee review for the FY 2022/2023 biennial period and determining that current fees do not recover the full costs of services provided. DHS has determined that adjusting the fee schedule is necessary to fully recover costs. Adjustments are necessary for administering the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.

c. A Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, A Statement of the Assessment of the Agency of Such Issues, and A Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

DHS published the proposed rule along with the IRFA on January 4, 2023, with the comment period ending March 13, 2023. During the comment period, DHS received approximately 260 submissions from interested individuals and organizations on the proposed rule's impacts on small entities regarding the RFA. The comments did result in one major revision to the small entity analysis in the final rule that is relevant to the effects on small businesses, small organizations, and small governmental jurisdictions presented in this FRFA. More specifically, DHS agreed that the random sample size for Form I–129 could be larger due to the size of this population and expanded the sample from 650 entities to 4,746 entities in the FRFA. DHS summarizes and responds to the public comments in this Final Rule.

Comment: Numerous commenters generally opposed the rule on the grounds that it would negatively impact the U.S. economy.

Response: DHS knows that immigrants make significant contributions to the U.S. economy, and this final rule is in no way intended to impede or limit legal immigration. DHS does not have data that would indicate that the fees in this rule would make a U.S. employer that is unable to find a worker in the United States forego filling a vacant position rather than submitting a petition for a foreign worker with USCIS. DHS saw no or limited decreases in the number of benefit requests submitted after its fee adjustments in 2010, 2016, and 2020 and has no data that would indicate that the fees for family-based benefit requests, lawful permanent residence, and naturalization in this final rule would prevent applicants from filing.

DHS agrees that immigrants are crucial for agriculture, construction, healthcare, hospitality, and almost all industries. Immigrants are a source of future U.S. labor growth, many immigrants are successful entrepreneurs, and welcoming new citizens helps the U.S. economy. DHS acknowledges in its analyses accompanying this rule that the higher fees must be paid by U.S. companies that hire foreign nationals, but DHS has no data that indicate that higher fees will affect the supply of lower skilled laborers, impede immigration to the detriment of the labor force, result in noncitizens being unable to work, cause employers to lay off employees, undermine the jobs and wages of domestic workers with limited education performing low-skill jobs, or increase unemployment among immigrant workers. DHS knows that immigrants make important contributions in research and science. However, we have no data that support the assertion that the increased fees would result in many fewer residents accessing a desired immigration status for which they are eligible.

Comment: One commenter stated that businesses would pass costs to consumers, contributing to inflation.

Response: DHS recognizes that some businesses may pass on these increased fees to their customers but cannot determine the exact impact this would have on overall inflation in the United States.

Comment: One commenter wrote that the proposed rule would create barriers to naturalization, which would limit the ability of immigrants to contribute to the economy.

Response: In recognition of the importance of naturalization and integration of new citizens in the U.S., since 2010 DHS has held the fee for Form N–400, Application for Naturalization, below the estimated cost to USCIS of adjudicating the form. DHS recognizes the importance of naturalization to new citizens and the U.S. economy. DHS also understands that the fee increase for the naturalization application may affect those applying. However, DHS continues to offer fee waivers to naturalization applicants who are unable to pay their fee. Additionally, in this rule DHS increases eligibility for the reduced fee N–400 from 200 percent to 400 percent of the FPG. Therefore, DHS does not believe that the fee

[298] See 8 U.S.C. 1356(m).

[299] See 31 U.S.C. 901–03.

increase to Form N–400 will create barriers to naturalization.

Comment: Several commenters generally opposed the rule on the grounds that it would negatively impact employers. Other commenters wrote that the proposed rule would have negative effects on the labor market by discouraging employers from hiring foreign workers. A trade association stated that most significant cost increases for various immigration benefits are targeted at American companies of all sizes and across all industries, and that the exorbitant fee increases would have a profoundly negative impact on the U.S. economy. The commenter adds that the fee hikes will exacerbate their current inability to adequately meet their workforce needs and hinder their ability to compete in the marketplace. The commenter also stated that USCIS failed to comply with the RFA requirements because it did not consider significant alternatives to the proposed rule that would have lessened the negative impact on the business community. The commenter adds that USCIS failed to properly analyze the employer data for companies that filed Form I–129 for needed workers by using a very small random sample.

Response: DHS acknowledges that immigrants are an important source of labor in the United States and contribute to the economy. DHS does not have data that would indicate that the fees in this rule would make a U.S. employer that is unable to find a worker in the United States forego filling a vacant position rather than submitting a petition for a foreign worker with USCIS. DHS saw no or limited decreases in the number of benefit requests submitted after its fee adjustments in 2010, and 2016. Therefore, DHS has no data from previous fee schedules that would indicate that the fees would discourage employers from hiring foreign workers, which would negatively impact the labor market.

DHS disagrees that it failed to comply with the RFA requirements because DHS considered significant alternatives in the proposed rule. In terms of the random sample size for Form I–129, DHS agrees that the sample size could be larger due to the size of this population and for the final rule we have expanded the sample from 650 entities to 4,746 entities. DHS used a 95 percent confidence level and a 2 percent confidence level (margin of error) for the Form I–129 sample size. In the proposed rule, DHS used a 95 percent confidence level and a 5 percent confidence level. The impacts on small entities are discussed in detail in section d of the FRFA.

Comment: Several commenters wrote that the rule would create problems specifically for the labor pool in retail, agriculture, construction, manufacturing, and hospitality. Other commenters stated that the proposed fee increases would negatively impact small businesses by further increasing labor costs associated with hiring immigrants.

Response: DHS agrees that immigrants are crucial for many industries including retail, agriculture, construction, manufacturing, and hospitality. DHS does not believe the fees established in this rule will reduce, limit, or preclude immigration for any specific immigration benefit request, population, industry, or group. DHS acknowledges that the higher fees must be paid by U.S. companies that hire foreign nationals, and that some businesses may pass on these increased fees to their customers. However, DHS must fund USCIS through fees. More importantly, DHS saw no significant or limited decreases in the number of I–129 benefit requests submitted, including H–2A and H–2B after its fee adjustments in 2010, and 2016 and has no data that indicate that increased fees will affect the supply of laborers in these industries. USCIS has discussed related issues in depth in the supplemental RIA (see Section 5: Price Elasticity) and SEA (see Section 4) and refer the reader to these analyses that are posted for public review as supporting documents in the rulemaking docket. In the SEA (see Table 7), DHS calculated the estimated economic impact of the fee increase on a sample of small entities. Guidelines provided by the SBA allows for the use of 1 percent of gross revenues in a particular industry [300] as one of the many ways an agency can determine if the final rule would have a significant economic impact on affected small entities.[301] Among the sample of 1,192 small entities that submitted benefit requests (Form I–129) and had reported revenue data, 80 percent experienced an economic impact of less than 1 percent. Therefore, DHS data indicate that the fees in this rule would not create problems for a significant number of small entities that file Form I–129 petitions to employ foreign nationals.

[300] A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act—SBA's Office of Advocacy, p. 19 (last accessed December 14, 2023). The SEA available in the rulemaking docket fully explains the measures DHS uses in its analysis. The impact could be significant if costs exceed 1% of gross revenue.

[301] DHS has used this same measure of impact in previous fee rules. *See* FR 73318 Vol. 81, No. 205 (Oct. 23, 2016); FR 46900 Vol. 85, No. 149 (Aug. 3, 2020).

Comment: A couple of commenters stated that fees would be an added burden to nonprofits serving immigrant communities.

Response: DHS recognizes the value of the various groups including nonprofits, which assist individuals to navigate its regulations and immigration benefit requests. As previously stated, DHS is changing USCIS fees to recover the costs of administering its adjudication and naturalization services. Nonetheless, DHS understands the importance of maintaining access to immigration benefit requests for individuals and organizations. DHS further notes that this final rule expands the availability of fee exemptions for humanitarian and protection-based immigration categories and fee waivers for individuals who are unable to pay request fees, which should reduce the burden on non-profits that assist individuals who are applying for humanitarian or protection-based status or who are low-income. *See* Tables 4B, 4C.

Comments on Form I–129 (H–1B)

Comment: Several commenters stated that increases in the H–1B fee would be detrimental to employers like medical centers, universities, and technology companies as follows:

- The fees will limit their ability to bring in foreign students and hire healthcare workers, professors, researchers, and other important workers, creating an economic burden for those institutions and stifling innovation.
- The fee increases could have a significant impact on small businesses, nonprofit healthcare facilities, and educational institutions that hire employees on H–1B specialty occupation visas because these entities are not generally able to absorb these enormous increases.
- The fee increases would stifle innovation and hurt start-ups and small businesses, citing data from the U.S. Bureau of Labor Statistics demonstrating that these entities rely on immigrant workers due to labor shortages in the United States.
- The increased fees will decrease the demand for the H–1, O, E–3, and TN visas and create a financial hardship for its performing arts centers.
- The fee increases will make hiring highly skilled workers unaffordable.
- USCIS did not account for funding differences between a venture capital start-up and a university basic science lab in its SEA.
- DHS did not analyze impacts to government research organizations in the SEA for the proposed rule.

Additional analyses on the number of nonimmigrant petitions filed by these organizations would help USCIS better understand the rule's impact on other government organizations.

Response: DHS acknowledges that immigrants are an important source of labor in the United States and contribute to the economy. DHS also acknowledges that the higher fees must be paid by U.S. companies that hire foreign nationals. DHS saw no or limited decreases in the number of benefit requests submitted after its fee adjustments in 2010, and 2016 and has no data that would indicate that the fees would limit employers' ability to hire foreign workers, which would negatively impact the labor market. In fact, H–1B receipts have grown by over 225,000 from FY 2010 through FY 2022. USCIS has discussed related issues in depth in the supplemental RIA (see Section 5: Price Elasticity) and SEA and refer the reader to these analyses where additional detail is available. DHS calculated the estimated economic impact of the fee increase on a sample of small entities including nonprofits that submitted benefit requests (Form I–129). Guidelines provided by the SBA allows for the use of 1 percent of gross revenues in a particular industry [302] as one of the many ways an agency can determine if the final rule would have a significant economic impact on affected small entities.[303] Among the sample of 1,192 [304] small entities that submitted benefit requests (Form I–129) and had reported revenue data, 80 percent experienced an economic impact of less than 1 percent. Therefore, DHS data indicate that the fees in this rule would not create an economic burden and stifle innovation for a significant number of small entities that file H–1B benefit requests to employ foreign nationals.

Comments on Form I–129 (O and P Nonimmigrants and Their Petitioners)

Comment: Numerous commenters, mostly individuals, said the increase in fees for touring artists would have detrimental effects on the performing arts industry and the U.S. economy, including negative impacts to employment within the music industry and financial losses for businesses that benefit from live performances. Commenters stated that music venues, record labels, and booking agencies would suffer financially, and increased fees for touring artists would increase the costs of tickets and merchandise. The proposed fee increases would have a negative impact on U.S. culture and diversity, by harming the performing arts sector. Many commenters expressed support of the arts without stating a position on the rule, requested that DHS keep prices affordable for artists, or structure fee increases in a way that benefits Americans and international artists.

Response: DHS acknowledges that the arts are important and beneficial to the economy. Nevertheless, the fees DHS establishes in this final rule are intended to recover the estimated full cost to USCIS of providing immigration adjudication and naturalization services. Any preferential treatment provided to petitioners for performers and musicians would mean that the costs for their petitions are borne by other petitioners, applicants, and requestors.

For Form I–129 (O and P visa classifications), among the 48 small entities with reported revenue data identified in the SEA, 45 (94 percent) experienced an economic impact of considerably less than 1 percent of revenue in the analysis.[305] While DHS sympathizes with touring artists, small traveling musicians, and other entities in the performing arts industry, our analysis indicates that the additional fee imposed by this rule does not represent a significant economic impact on most of these types of small entities. Therefore, DHS has no data that would indicate that the fees in this rule would have a negative impact on U.S. culture and diversity by harming the performing arts sector.

Comments on Form I–129 (H–2A)

Comment: Some commenters stated that fee increases would impact farms that rely on the H–2A program. Another commenter stated that USCIS does not properly account for small farms in their analysis of costs on livestock producers. A couple of commenters stated that the proposed changes were unfair to farmers and expressed concern with the proposed use of a business's total revenue as the determining factor in how much a business or farm must pay in fees. The commenters added that the practice is ''devoid of economic basis'' because some farms have little to no profit despite high total revenue.

Response: As noted previously, DHS is authorized to set fees at a level that ensures recovery of the full costs of providing immigration adjudication and naturalization services. DHS respectfully disagrees with the commenter who stated that USCIS did not properly account for small farms in their analysis of costs on livestock producers. DHS used recent data to examine the direct impacts to small entities for Forms I–129 and has discussed related issues in depth in the supplemental RIA (see Section 5: Price Elasticity) and SEA (see Section 4) and refer the reader to these analyses where additional detail is available. DHS calculated the estimated economic impact of the fee increase on a sample of small entities who file for H–2A visas. To determine if a final rule would have a significant economic impact on affected small entities, SBA suggests 1 percent of revenue as a measure for determining economic impacts.[306] DHS believes this measure is the most useful for the FRFA, based on the available data for the relevant small entities. All 36 small entities that submitted Form I–129 petitions for H–2A nonimmigrant workers and reported revenue data experienced an economic impact of less than 1 percent.[307] Therefore, the data that DHS has indicate that the fees in this rule would not create problems for a significant number of small entities that file Form I–129 for H–2A temporary agricultural employees.

Comment: Multiple commenters said the regulatory flexibility analysis is flawed because it does not distinguish between petitions for named and unnamed H–2B nonimmigrants in assessing the impact on small entities and it did not consider the 25 named worker limitation in calculating the regulatory impact.

Response: The commenter is correct that the IRFA did not capture the full fee increases to small entities that file for named beneficiaries because DHS did not consider the 25 named worker limitation in its analysis. DHS apologizes for this error. We have incorporated the full estimated fee increases to small entities in the FRFA. The full detailed analysis is found in the

[302] A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act—SBA's Office of Advocacy, p. 19 (last accessed December 14, 2023). The SEA available in the rulemaking docket fully explains the measures DHS uses in its analysis. The impact could be significant if costs exceed 1% of gross revenue.

[303] DHS has used this same measure of impact in previous fee rules. *See* FR 73318 Vol. 81, No. 205 (Oct. 23, 2016); FR 46900 Vol. 85, No. 149 (Aug. 3, 2020).

[304] H–1Bs accounted for about 79% of the entities in the random sample.

[305] The average economic impact on these 45 small entities was 0.11 percent.

[306] SBA Office of Advocacy: A Guide for Government Agencies, How to Comply with the RFA, pg. 19, SBA provides a variety of measures for agencies to determine the impacts of regulatory changes. The SEA available in the rulemaking docket fully explains the measures DHS uses in its analysis. The impact could be significant if costs exceed 1% of gross revenue.

[307] The average economic impact on these 36 small entities was 0.20 percent.

stand-alone SEA in the docket of this final rulemaking, tables 6 through 10 for all I–129 classifications impacts.

Comment: A commenter stated that the proposed fees will have a significant impact on small businesses and DHS incorrectly calculated impacts to small entities because:

- It used gross income of filers as reported on Forms I–129 and I–140 instead of net income.
- It does not consider the impact of additional fees that can be accumulated from premium processing or hiring temporary workers for seasonal jobs.
- Fees would impede small or nonprofit entities' ability to compete with larger entities, hiring and economic growth.
- Many small employers pay for immigration fees of the family members of workers.
- Small businesses will have to file multiple H–1B petitions for workers that move outside of a Metropolitan Statistical Area.

Response: DHS disagrees that its calculations to estimate the economic impacts of the fee increases on small entities are incorrect. Guidelines provided by the SBA allows for the use of 1 percent of gross revenues in a particular industry [308] as one of the many ways an agency can determine if the final rule would have a significant economic impact on affected small entities. [309] [310] DHS believes this measure is the most useful for the FRFA, based on the available revenue data for the relevant small entities. Additionally, DHS has no data that would indicate that the fees in this rule would impede small or nonprofit entities' ability to compete with larger entities in their hiring and economic growth and the commenter provided no study or empirical data to support that assertion.

Comment: Several commenters opposing the proposed Asylum Program Fee wrote:

- ○ USCIS' analysis of the cumulative effect of the increased fees for the Form I–129 and Form I–140 on small businesses in Section X.B of the rule was done specifically in the context of small entities, and it does not assess the full scope of the cumulative effects of the proposed fee increases, which the commenter interpreted as a punitive effect on employers who file both forms.
- ○ Small businesses are less able to pay these fees than large firms, but this fee increase relies mostly on fees levied to small businesses, which contradicts the premise of the program by shifting the burden to those who cannot afford these new costs.
- ○ Many small businesses would not have the ability to pay for all the petitions they need to file to meet their workforce needs.
- ○ The Asylum Program Fee disproportionately impacts small and medium sized businesses that may experience staffing shortfalls, for which Congress designed temporary and permanent worker programs to fill.
- ○ Passing asylum program expenses to other immigrants would only reduce demand for immigration benefits. This would result in a decrease in funding sufficient to provide a long-term solution to the asylum backlog. Additionally, increasing fees will result in fewer immigrants with the necessary resources to obtain or rectify their status.
- ○ USCIS ignores the impact this fee would have on small businesses who will pay this fee, and thus risks creating an arbitrary and capricious rule.
- ○ DHS fails to address differences between large petitioners and smaller employers and relies on a false presumption that employers of all sizes are equally situated to bear the financial burden of the fee increases.
- ○ The proposal is arbitrary and capricious and an unreasonable action without consideration of the facts.
- ○ Small businesses are already struggling to support their immigrant employees and they may be unable to pay these filing fees, which in turn may raise questions related to hiring discrimination.

Response: DHS's rule in no way is intended to reduce, limit, or preclude immigration for any specific immigration benefit request, population, industry, or group. DHS does not have data that would indicate that the fees in this rule would result in fewer immigrants being able to obtain or rectify their status. However, as explained in the preamble responding to comments specific to Forms I–129 and I–140, and the Asylum Program Fee, DHS has reduced fees for Forms I–129 and reduced the Asylum Program Fee for small employers and nonprofit entities. See 8 CFR 106.

c. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments.

A comment was submitted by the Chief Counsel for Advocacy of the U.S. Small Business Administration (Advocacy). Advocacy outlined several concerns and recommendations in its public comment:

- The IRFA erroneously states that small entities will not have significant costs from this rule. The IRFA is deficient and underestimates the economic impact of this rule on small entities, as the rule will be detrimental to thousands of small businesses, undermining their sustainability and competitiveness.
- The IRFA incorrectly averages all industries within a visa category and should identify and individually analyze the top industries that use the H–2B visa by six-digit NAICS code, such as landscaping, hotel, restaurant, and forestry industries. Advocacy further suggested that USCIS breakdown these industries by firm size to assess the impact of the rule on different sized small entities.
- The sample size used in the IRFA to analyze small businesses is too small and is not a representative sample across affected entities by industry. Further, the sample should be randomized based on clear stratification sectors. Advocacy also suggested that USCIS use publicly available economic data of small entities in affected industries from the U.S. Census Bureau to supplement its analysis.
- The number of small nonprofit entities is underestimated. Advocacy suggested that there are many more NAICS codes that could be used, which may include small nonprofits, including theater companies, dance companies, and performing arts.
- USCIS' economic analysis underestimates the compliance costs from the proposed rule, stating that small businesses are less able to pay the fees for temporary visas and the Asylum Program Fee, but the proposed fee increases rely mostly on fees levied to the small business community.
- An RFA analysis requires a detailed categorization of economic impacts by different sizes of small businesses within affected industries, but USCIS used average revenues of all small entities, which underestimates the impact of the proposed rule on the smallest businesses and nonprofits.

[308] A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act—SBA's Office of Advocacy, p. 19 (last accessed Dec. 14, 2023). The SEA available in the rulemaking docket fully explains the measures DHS uses in its analysis. The impact could be significant if costs exceed 1% of gross revenue.

[309] DHS has used this same measure of impact in previous fee rules. *See* 81 FR 73292 (Oct. 24, 2016); 85 FR 46900 (Aug. 3, 2020).

[310] SBA Office of Advocacy: A Guide for Government Agencies, How to Comply with the RFA, pg. 19. SBA provides a variety of measures for agencies to determine the impacts of regulatory changes. The SEA available in the rulemaking docket fully explains the measures DHS uses in its analysis.

◦ The proposed fees will be significant for smaller farm operations that rely upon the H–2A visa as their primary workforce.

◦ Small seasonal H–2B employers with low revenues and profit margins will be unable to afford the proposed fees.

◦ The proposed rule would hinder innovative start-ups that use the H–1B visa from obtaining needed staff in niche areas where there are few American workers.

◦ Small nonprofit employers, such as arts groups, do not have the discretionary funds to pay the proposed fees and Asylum Program Fee surcharge.

• The cost estimates in the IRFA are underestimated because the proposed limit of 25 named workers per petition was not incorporated. For example, an H–2B employer who currently files one petition for 150 named workers would need to file 6 petitions in the proposed rule. The entity would also be paying the Asylum Program Fee surcharge six times.

◦ The IRFA underestimates the number of petitions that H–2A visa employers could file including (a) additional petitions due to the 25 named workers limit, (b) duplicate fees for the same group of workers in the same season, (c) continuing yearly costs for employers, and (d) the impact of the conflicting recent DOL final rule on Adverse Effect Wage Rates [311] that would separate H–2A visa jobs and potentially require small farms and ranches to submit more petitions.

◦ Small businesses utilizing the H–2B visa would be facing increased costs if they (a) file multiple petitions because of the lottery process, (b) filed for an extension of a few weeks for these workers, (c) obtain supplemental visa petitions to obtain returning workers, and (d) transfer workers between winter and summer seasons.

◦ The cost estimates of the registration fee for the H–1B visa lottery are underestimated in the IRFA. USCIS does not adjudicate registrations received through the H–1B registration process because it is automated and the IRFA only estimated the registration costs for small businesses if they obtain a visa. However, the lottery selection rate was 26 percent in FY2023.

◦ The IRFA fails to capture the cumulative yearly costs for an employer filing an H–1B petition for a worker because the petition allows a stay for up to 3 years and can be extended another 3 years with another petition. Further, an employer would face increased costs if it were to amend the employment terms of the worker or petition the same worker to stay permanently with an I–140 petition.

◦ USCIS has failed to analyze the numbers of entities and economic impacts of this rule on O & P visa small employers and nonprofits. The proposed rule would significantly multiply the number and costs of obtaining these visas and shut out these small entities from international talent.

• The IRFA does not consider regulatory alternatives as required by the RFA sec. 603(c).

• USCIS should consider establishing tiered general fees and asylum fees, which can be based on revenue size or employees, to minimize the economic impact of the proposed rule on the smallest businesses.

• USCIS should consider limiting the frequency and number of asylum fee payments, particularly for the same worker.

• USCIS should consider establishing a lower tier of pricing for general fees and asylum fees for small nonprofit entities.

• For small employers utilizing the H–2A, H–2B, O, and P visas, USCIS should consider increasing the limit on the number of workers per petition to 50 instead of 25.

Response: DHS respectfully disagrees with Advocacy, that we failed to comply with the RFA requirements and should publish a Supplemental Initial Regulatory Flexibility Analysis. DHS emphasizes that it has followed the written requirements of the RFA when conducting both the IRFA and FRFA and also reviewed the guidelines [312] provided by the SBA Office of Advocacy to complete both the IRFA and FRFA. The RFA does not require highly prescriptive quantitative analysis. For example, when conducting an IRFA, the RFA simply requires ‘‘a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule [313]. . .’’. In addition, the RFA does not require quantification of impacts when preparing an IRFA or FRFA when the preparing agency believes such quantification is not practicable or reliable ,[314] although DHS did provide such quantification when possible. DHS acknowledges that the higher fees must be paid by U.S. companies that hire foreign nationals. DHS also acknowledges in this FRFA and supplemental SEA that the rule will have a significant economic impact on some small entities. DHS analyzed and updated the FRFA using the same methodology as the IFRA, to analyze the economic impact of fee changes made in the final rule on small entities, for all I–129 classifications and forms listed above. DHS presented evidence through its IRFA analysis, in the NPRM by sampling and estimating the impacts compared to the threshold of 1 percent of revenue, to determine if the final rule will have a significant economic impact on affected small entities. DHS has no evidence, nor has Advocacy provided any evidence to show that this rule will be detrimental to thousands of small businesses by making it cost prohibitive for small businesses and small nonprofits to hire necessary staff, shut them out of vital immigration programs, or undermine their sustainability and competitiveness. DHS has discussed related issues in-depth in both the supplemental RIA (price elasticity) and the comprehensive economic impacts relating to the various fees in SEA and we refer Advocacy to these analyses where a detailed analysis is available. DHS's rule is not intended to reduce, limit, or preclude immigration for any specific immigration benefit request, population, industry, or group. DHS is changing USCIS fees to recover the costs of administering its adjudication and naturalization services because USCIS must fund itself through fees unless it receives a congressional appropriation to do so.

DHS disagrees with Advocacy that USCIS' IRFA failed to identify affected small business industries, underestimates the number of small nonprofit entities, underestimates the economic impact of this rule and that it did not consider regulatory alternatives that minimize the impact of this rule on small entities. DHS respectfully points Advocacy to the detailed SEA that clearly illustrates that DHS identified affected small businesses by NAICS code in its analysis. In the IRFA, USCIS used a statistically valid sample size that drew a large enough population to observe the impacts to small entities/industries with the associated fee increases. The statistically valid sample that DHS conducted (see SEA, Section 3—Source and Methodology) used business and open-access databases to match from NAICS code, revenue, and employee count for each entity in the sample. As a result of the Advocacy comments, USCIS increased the sample sizes to address concerns the IRFA samples were too small. A list of NAICS codes for each entity matched in Forms I–129, I–140, I–910 and I–360 can be

[311] U.S. Department of Labor, Adverse Effect Wage Rate Methodology for the Temporary Employment of H–2A Nonimmigrants in Non-Range Occupations in the United States, 88 FR 12760 (Feb. 28, 2023).

[312] SBA Guide How to Comply with the RFA.

[313] See Section 603(b)(4) of the RFA.

[314] See Section 607 of the RFA.

found in Appendix A, along with the SBA small entity threshold for each industry cluster.[315]

To determine an entity's size, DHS first classified each entity by its NAICS code, and then used the SBA size standards to compare the requisite revenue or employee count threshold for each entity. Based on the NAICS code, some entities are classified as small based on their annual revenue, and some based on the number of employees. In cases where the matched entity was a direct subsidiary, DHS recorded data for the parent organization. In cases where the entity was a single-location franchise, DHS recorded the single location's data. Once entities were matched, those that had relevant data were compared to the size standards provided by the SBA to determine whether they were small or not. Those that could not be matched or compared were assumed to be small under the presumption that non-small entities would have been identified by one of the databases at some point in their existence. As detailed in the proposed rule preamble, and IRFA section, USCIS stated alternatives to the proposed fees, and the likely impacts to applicant, petitioners, and to USCIS.

Based on public comments including Advocacy's, DHS has taken steps to further improve its analyses and has made changes to the final rule within the FRFA and SEA. DHS has increased (tripled) the sample size for the Form I–129 analysis. This expanded sample size will encompass even more small entities and nonprofits in the various visa classifications including H–2A, H–2B, H–3, O, P, L, Q, R, E, TN, and CW, in addition to the H–1B classification. DHS has also updated the Form I–129 section of the SEA by categorizing the economic impacts of small businesses within industries for the various visa classifications. In doing so, USCIS has identified the top industries that use the various visas by six-digit NAICS code. Additionally, DHS has revised the FRFA to incorporate the full estimated fee increases to small entities that file Form I–129 by accurately counting the number of petitions filed for petitions with named beneficiaries. The full analysis is found in the stand-alone SEA in the docket of the final rulemaking. The results of the final rule's SEA with a larger sample size are like the results of the proposed rule's SEA. In general, the fee increases are not economically significant to a substantial number of small entities. However, DHS does recognize and acknowledges that the fee increases may affect some small entities.

USCIS considered the various concerns raised by Advocacy that suggested that the new fees in this rule would cause indirect secondary, tertiary and downstream economic impacts on many facets of the U.S. that were not accounted for in the analysis of the proposed rule. Advocacy repeated the concerns of many other commenters about the fees exacerbating the effects of inflation on consumers and the COVID–19 pandemic, increasing costs for farmers, reducing the food supply, harming information technology and engineering firms, harming religious entities, impacting health care providers, and exacerbating the plight of nationals of certain countries such as India and China. DHS analyzed the effects of the new fees and accounted for the direct costs of the fees as required by the RFA and applicable Executive Orders and our data indicates that the fees will not have the deleterious effects on multiple parts of U.S. economy that Advocacy and commenters state that it will. Nevertheless, as requested by commenters and described in section II.C. of this preamble, DHS is providing relief to nonprofits and small employers in this final rule.

d. A Description of and an Estimate of the Number of Small Entities To Which the Rule Will Apply or an Explanation of Why No Such Estimate is Available

Below is a summary of the SEA. The complete detailed SEA is available in the rulemaking docket at *https://www.regulations.gov.* The SEA has a full analysis of small entities sampled for each form described below, in the FRFA.

Entities affected by the final rule are those that file and pay fees for certain immigration benefit requests on behalf of a foreign national. These petitions/applications include Form I–129, Petition for a Nonimmigrant Worker; Form I–140, Immigrant Petition for an Alien Worker; Form I–910, Civil Surgeon Designation; Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant; Genealogy Forms G–1041 and G–1041A, Index Search and Records Requests; Form I–956 (formerly Form I–924), Application for Regional Center Designation Under the EB–5 Regional Pilot Program, Form I–956F, Application for Approval of an Investment in a Commercial Enterprise (formerly Form I–924 amendment) and Form I–956G (formerly Form I–924A), Regional Center Annual Statement. Annual numeric estimates of the small entities impacted by this fee increase total (in parentheses): Form I–129 (84,814 entities), Form I–140 (14,440 entities), Form I–910 (500 entities), and Form I–360 (1,566 entities).[316] DHS was not able to determine the numbers of regional centers or genealogy requestors that would be considered small entities and therefore, does not provide numeric estimates for Form I–956, Form I–956G, or Forms G–1041 and G–1041A.[317]

The rule applies to small entities, including businesses, nonprofit organizations, and governmental jurisdictions filing for the above benefits. Forms I–129 and I–140 would see a few industry clusters impacted by this rule (see Appendix B through E of the SEA for a list of impacted industry codes for Forms I–129, I–140, I–910, and I–360). The fee for civil surgeon designation would apply to physicians requesting such designation. Any entity petitioning on behalf of a religious worker and filing Form I–360 would pay a fee. Finally, DHS is creating new forms as stated above, as part of the EB–5 Reform and Integrity Act of 2022. Since Form I–956/I–956F/I–956G will be new forms and historical data does not exist; therefore, DHS will use historical data of the previous Form I–924, Application for Regional Center Designation Under the Immigrant Investor Program, and Form I–924A, Annual Certification of Regional Center, as a proxy for the analysis. The Form I–956 would impact any entity seeking designation as a regional center under the Immigrant Investor Program or filing an amendment to an approved regional center application. Captured in the dataset for Form I–956 is also Form I–956F and Form I–956G. I–956F regional centers must file to obtain approval of an Investment in a Commercial Enterprise. Approved regional centers must file I–956G annually to establish continued eligibility for regional center designation.

DHS does not have sufficient data on the requestors for the genealogy forms, Forms G–1041 and G–1041A, to determine if entities or individuals submitted these requests. DHS has previously determined that requests for historical records are usually made by individuals.[318] If professional genealogists and researchers submitted

[315] SBA size standards effective May 2, 2022, located at *https://www.sba.gov/sites/default/files/2022-05/Table%20of%20Size%20Standards_Effective%20May%202%202022_Final.pdf* (last visited Oct. 1, 2023).

[316] Calculation: 100,135 Form I–129 × 84.7% = 84,814 small entities; 27,093 Form I–140 × 54.3% = 14,440 small entities; 500 Form I–910 × 100% = 500 small entities; 1,648 Form I–360 × 95.0% = 1,566 small entities.

[317] Small entity estimates are calculated by multiplying the population (total annual receipts for the USCIS form) by the percentage of small entities, which are presented in subsequent sections of this analysis.

[318] *See* ''Establishment of a Genealogy Program,'' 73 FR 28026 (May 15, 2008).

such requests in the past, they did not identify themselves as commercial requestors and thus could not be segregated in the data. Genealogists typically advise clients on how to submit their own requests. For those who submit requests on behalf of clients, DHS does not know the extent to which they can pass along the fee increases to their individual clients. DHS does not currently have sufficient data to definitively assess the estimate of small entities for these requests.

(1) Petition for a Nonimmigrant Worker, Form I–129 Funding the Asylum Program With Additional Fee To Be Paid by Form I–129 Requestors

In the final rule, DHS will establish a new Asylum Program Fee of $600 to be paid by employers who file either a Form I–129, Petition for a Nonimmigrant Worker, or Form I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker. However, if a small entity employs 25 or fewer FTE workers, it will pay a $300 Asylum Program Fee. Additionally, firms that are approved by the IRS as nonprofit entities will not be required to pay the Asylum Program Fee.[319] The Asylum Program Fee will be used to fund the costs to USCIS of administering the asylum program and would be due in addition to the benefit request fee requestors must pay under USCIS standard costing and fee collection methodologies for their Form I–129 and Form I–140 benefit requests.

DHS will have different fees for Form I–129 based on the nonimmigrant classification being requested in the petition, the number of beneficiaries on the petition, and, in some cases, according to whether the petition includes named or unnamed beneficiaries. Using this single form, requestors can file petitions or applications for many different types of nonimmigrant workers. DHS will have separate H–2A and H–2B fees for petitions with named workers and unnamed workers. DHS will limit the number of named beneficiaries that may be included on a single petition for H–2A, H–2B, O, H–3, P, Q and R workers to 25. Limiting the number of named beneficiaries to 25 per petition simplifies and optimizes the adjudication of these petitions, which can lead to reduced average processing times for a petition. Because USCIS completes a background check for each named beneficiary, petitions with more named beneficiaries require more time and resources to adjudicate than petitions with fewer named beneficiaries. This means the cost to adjudicate a petition increases with each additional named beneficiary. Thus, limiting the number of named beneficiaries may ameliorate the inequity of petitioners filing petitions with fewer beneficiaries who effectively subsidize the cost of petitioners filing petitions with more beneficiaries. USCIS data indicate that it requires less time and resources to adjudicate a petition with unnamed workers than one with named workers. Therefore, the establishment of different fees will better reflect the cost to USCIS to adjudicate each specific nonimmigrant classification.

DHS will charge Form I–129 petitioners a form fee, registration fee (H–1B only), CNMI Educational Fund fee (I–129 CW only)[320] and an Asylum Program Fee. A summary of the fees in the final rule is shown in Table 12a,b below. DHS will establish new fees to be paid by employers who file either a Form I–129 or Form I–129CW based on the number of FTE workers the small entity employs and its nonprofit status. Small entities will pay the associated fee for the visa classification benefit request according to whether it is a:

(1) Small entity with greater than 25 FTE employees,

(2) Small entity with 25 or fewer FTE employees, or

(3) Nonprofit small entity.

Table 12a. Form I-129 Entities by Visa Classifications (Matched and Unmatched)

Visa Classification Immigration Benefit Request	Entities with 25 or fewer FTE Employees	Entities with more than 25 FTE Employees	Entities with Unknown Employees	Total Number of Entities	Total Nonprofit Entities
H-1B	949	556	1,362	2,867	107
H-2A	43	2	106	151	1
H-2B	13	6	26	45	0
O	57	41	113	211	9
L-1A / L-1B / LZ	86	102	238	426	2
H-3/P/Q/R/HSC/E/TN/CW	92	69	161	322	7
Total Number of Entities	**1,240**	**776**	**2,006**	**4,022**	**126**

Source: USCIS Analysis

Note:
Matched entities have reported revenue and employment data, while unmatched entities have no reported revenue or employment data.

[319] *See* 8 CFR 106.2(c)(13).

[320] Employers must pay this fee for every beneficiary that they seek to employ as a CNMI-only transitional worker. The fee is a recurring fee that petitioners must pay every year at the time the petition is filed. USCIS transfers the revenue from the CNMI education funding fee to the treasury of the Commonwealth Government to use for vocational education, apprenticeships, or other training programs for United States workers.

Each H–1B registration will require a $215 registration fee.[321] Petitioners filing H–1B petitions that are not subject to the annual H–1B numerical allocations (*e.g.,* extension petitions or cap-exempt filer petitions) would not have to submit a registration and thus would not pay the registration fee. The Asylum Program Fee ($0 for nonprofits, $300 for small employers with 25 or fewer employees, and $600 for all others filing Forms I–129, Petition for a Nonimmigration Worker, I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, and I–140, Immigrant Petition for Alien Workers) will be included with each Form I–129 classification (if applicable) and will apply to all fee-paying receipts for Forms I–129 and I–129CW. For example, it will apply to all initial petitions, changes of status, and extensions of stay that use Form I–129.

Table 12b. Fee Summary Table for Form I-129 Petitioners (Matched Only)

Visa Classification Immigration Benefit Request	Small Entities with more than 25 FTE Employees	Small Entities with 25 or Fewer FTE Employees	Nonprofit Small Entities	Registration fee for cap-subject H-1B visas
Number of entities in impact analyses with reported revenue and employment data	302	876	14	
H-1B	$995*	$675*	$675*	$215
H-2A – Named Beneficiaries	$1,090	$545	$545	
H-2B – Named Beneficiaries	$1,080	$540	$540	
H-2A – Unnamed Beneficiaries	$530	$460	$460	
H-2B – Unnamed Beneficiaries	$580	$460	$460	
O-1/O-2	$1,055	$530	$530	
L-1A/L-1B/LZ Blanket	$1,385	$695	$695	
CW, H-3, HSC, E, TN, Q, P, and R	$1,015	$510	$510	
Asylum Program Fee	$600	$300	$0	

Note: *The H-1B fee includes the antecedent $215 registration fee that is paid before filing the Form I-129 for cap-subject H-1B visas. This H-1B Registration fee is separate from the I-129H-1B form fee. Note: The CW fee includes a $30 CNMI Educational Fund fee; however, the fee is not included in this analysis because the five entities in the sample that petitioned for a CW nonimmigrant worker visa had no reported revenue data and thus an economic impact could not be estimated.
Note: Asylum Program Fee applies to all Form I-129 petition visa classifications.

The fees are calculated below to better reflect the costs associated with processing the benefit requests for the various categories of nonimmigrant worker by small entity size and nonprofit status.

(1) Small Entities With More Than 25 FTE Employees

DHS will increase the fees paid for all worker types for small entities with more than 25 FTE employees filing Form I–129 from the current filing fee of $460. For H–1B petitions, the registration fee ($215) is added to the base form fee ($780) to make $995. The Asylum Program Fee of $600 will be added to each petition filed regardless of worker type. The addition of the Asylum Program Fee results in an overall fee for cap-subject H–1B classification petitions of $1,595 ($995+ $600). The fee adjustments and percentage increases are summarized in Table 13.

[321] USCIS in this SEA used the H–1B I–129, Petition for a Nonimmigrant Worker fee of $995. This fee includes the $780 proposed fee for H–1B Classification and the $215 fee for H–1B Registration (current $10 to $215; $205 dollar increase). This registration fee of $215 is for each registration, each registration is for a single beneficiary. Registrants or their representative are required to pay the $215 non-refundable H–1B registration fee for each beneficiary before being eligible to submit a registration for that beneficiary for the H–1B cap. The fee will not be refunded if the registration is not selected, withdrawn, or invalidated. H–1B cap-exempt petitions are not subject to registration and are not required to pay the registration fee of $215; therefore, those petitioners would only pay the $780 fee. *See* 84 FR 60307 (Nov. 8, 2019); Regulatory Impact Analysis in the docket on *regulations.gov*, Section (3)(H) Separate Fees for Form I–129, Petition for a Nonimmigrant Worker, by Nonimmigrant Classification and Limit Petitions Where Multiple Beneficiaries are Permitted up to 25 Named Beneficiaries per Petition, Tables 22 and 23, for further detail on the cap and non-cap H–1B petitions. The H–1B registration applies to small entities and non-profits with no difference on employee size.

Table 13. USCIS Final Fees for Form I-129 Petition for Nonimmigrant Worker by Classification, for Small Entities with More than 25 FTE Employees

	A	B	C	D	E	F
Visa Classification Immigration Benefit Request	**Current Fee**	**Final Fee**	**Asylum Program Fee**	**Total Final Fee**	**Difference in Fee Increase**	**Percent Change**
				D=B+C	E=D-A	F=(D–A)/A
H-1B	$470	$995	$600	$1,595	$1,125	239.4%
H-2A – Named Beneficiaries	$460	$1,090	$600	$1,690	$1,230	267.4%
H-2B – Named Beneficiaries	$460	$1,080	$600	$1,680	$1,220	265.2%
H-2A – Unnamed Beneficiaries	$460	$530	$600	$1,130	$670	145.7%
H-2B – Unnamed Beneficiaries	$460	$580	$600	$1,180	$720	156.5%
O-1/O-2	$460	$1,055	$600	$1,655	$1,195	259.8%
L-1A/L-1B/LZ Blanket	$460	$1,385	$600	$1,985	$1,525	331.5%
CW, H-3, HSC, E, TN, Q, P, and R	$460	$1,015	$600	$1,615	$1,155	251.1%

Source: USCIS FY 2022/2023 Fee Schedule (*see* preamble Section (I)(D)).
Note: Employers may apply using Form I-129 also for P-1, P-1S, P-2, P-2S, P-3, P-3S, R1, E-1, E-2, E-3.
Note: The H-1B final fee includes a $780 base fee and a $215 registration fee ($780 + $215 = $995).

To calculate the economic impact of the fee adjustments, DHS estimated the total costs associated with the final fee increase for each small entity with more than 25 FTE employees and divided that amount by the reported sales revenue of that entity.[322] H–1B classification cap-subject petitions will include a $215 registration fee, an increase of $205 from the original $10 fee. This registration fee increase ($205) is added to the base form fee increase ($780) and results in an overall increase for H–1B classification petitioners of $995. Because entities can file multiple petitions, the analysis considers the number of petitions submitted by each entity.

DHS determined that 302 of the 1,643 matched small entities searched, were small entities with more than 25 FTE employees.[323] Depending on the immigration benefit request, the average economic impact on these 302 small entities with revenue and employment data ranges from 0.01 to 0.59 percent as shown in Table 14a. Among the 302 small entities with reported revenue and employment data, 275 (91.0 percent) experienced an economic impact of less than 1 percent and 27 (9.0 percent) experienced an economic impact greater than 1 percent. Table 14b shows the count of small entities with more than 25 FTE employees by Form I–129 Classification and their economic impacts. Those small entities with greater than 1 percent impact were mostly H–1B filers (18 of 27) that filed multiple petitions and collectively had well below average reported revenues compared to the average revenue for all 302 small entities.[324] The average economic impact from the registration fee on all 241 H–1B filers was 0.06 percent; the greatest economic impact was 1.35 percent, and the smallest was 0.0004 percent. The average impact on the 302 small entities with revenue data were 0.33 percent. The greatest economic impact imposed by the fee changes on all 302 small entities with more than 25 FTE employees was 7.06 percent and the smallest was 0.002 percent per entity.

[322] Total Impact to Entity = (Number of Petitions Submitted per Entity × $ Fee Increase) /Entity Sales Revenue. DHS used the lower end of the sales revenue range for those entities where ranges were provided.

[323] Entities in the population without complete or with no EIN information (such as incomplete employee data or revenue information), were removed before the sample was selected for this analysis.

[324] The number of H–1B petitions filed by these 18 entities ranged from 4 to 411. The average annual revenue reported by these 18 entities was $4.9 million whereas the average annual revenue for all 302 entities in the sample was $11.9 million. Thus, the increase in the H–1B registration fee had a more pronounced economic impact on those 18 entities that filed multiple petitions.

Table 14a: Form I-129 Classifications Economic Impacts on Small Entities with More than 25 FTE Employees with Revenue Data.

Visa Classification Immigration Benefit Request	Fee Increase	Average Economic Impact Percentage*
H-1B	$995	0.31%
H-2A – Named Beneficiaries	$1,230	0.02%
H-2B – Named Beneficiaries	$1,220	0.32%
H-2A – Unnamed Beneficiaries	$670	0.01%
H-2B – Unnamed Beneficiaries	$720	0.18%
L-1A/L-1B/LZ Blanket	$1,195	0.29%
O-1/O-2	$1,525	0.38%
CW, H-3, HSC, E, TN, Q, P, and R	$1,155	0.59%

Source: USCIS calculation.
*These figures are percentages, not proportions.
Note: Employers may apply using Form I-129 also for P-1, P-1S, P-2, P-2S, P-3, P-3S, R1, E-1, E-2, E-3.
Note: The H-1B fee increase includes a $780 base fee increase and a $205 registration fee increase ($780 + $205 = $995).

Table 14b: Count of Small Entities with More than 25 FTE Employees with Revenue Data by Form I-129 Classification and Economic Impact.

Visa Classification Immigration Benefit Request	Economic Impact Less than 1 percent	Economic Impact Greater than 1 percent	Total
H-1B	223	18	241
H-2A – Named Beneficiaries	1	0	1
H-2B – Named Beneficiaries	3	1	4
L-1A/L-1B/LZ Blanket	23	3	26
O-1/O-2	11	2	13
CW, H-3, HSC, E, TN, Q, P, and R	14	3	17
Total	**275**	**27**	**302**

Source: USCIS analysis.

(2) Small Entities With 25 or Fewer FTE Employees

DHS will increase the base form fee filed for all worker types for small entities with 25 or fewer FTE employees filing Form I–129 from the current base filing fee of $460, apart from H–1B, H–2A-Unnamed Beneficiaries, and H–2B-Unnamed Beneficiaries. For H–1B petitions, the registration fee ($215) is added to the base form fee ($460), totaling $675. The Asylum Program Fee of $300 will be added to each petition filed regardless of worker type. The addition of the Asylum Program Fee results in an overall increase for cap-subject H–1B classification petitions of $975 ($675 + $300). The fee adjustments and percentage increases are summarized, shown in Table 15.

Table 15. USCIS Final Fees for Form I-129 Petition for Nonimmigrant Worker by Classification, for Small Entities with 25 or Fewer FTE Employees

	A	B	C	D	E	F
Visa Classification Immigration Benefit Request	**Current Fee**	**Final Fee**	**Asylum Program Fee**	**Total Final Fee**	**Difference in Fee Increase**	**Percent Change**
				D=B+C	E=D-A	F=(D–A)/A
H-1B	$470	$675	$300	$975	$505	107.4%
H-2A – Named Beneficiaries	$460	$545	$300	$845	$385	83.7%
H-2B – Named Beneficiaries	$460	$540	$300	$840	$380	82.6%
H-2A – Unnamed Beneficiaries	$460	$460	$300	$760	$300	65.2%
H-2B – Unnamed Beneficiaries	$460	$460	$300	$760	$300	65.2%
L-1A/L-1B/LZ Blanket	$460	$530	$300	$830	$370	80.4%
O-1/O-2	$460	$695	$300	$995	$535	116.3%
CW, H-3, HSC, E, TN, Q, P, and R	$460	$510	$300	$810	$350	76.1%

Source: USCIS FY 2022/2023 Fee Schedule (see preamble Section (I)(D)).
Note: Employers may apply using Form I-129 also for P-1, P-1S, P-2, P-2S, P-3, P-3S, R1, E-1, E-2, E-3.
Note: The H-1B final fee includes a $460 base fee and a $215 registration fee ($460 + $215 = $675).

To calculate the economic impact of the fee increases, DHS estimated the total costs associated with the final fee increase for each small entity with 25 or fewer FTE employees and divided that amount by the sales revenue of that entity.[325] H–1B classification cap-subject petitions will include a $215 registration fee, an increase of $205 from the original $10 fee. This registration fee is added to the fee increase and results in an overall fee for H–1B classification petitions of $505 ($300 + $205). Because entities can file multiple petitions, the analysis considers the number of petitions submitted by each entity. DHS determined that 876 of the 1,643 entities searched, were small entities with fewer than 25 FTE employees.[326]

Table 16a: Form I-129 Classifications Economic Impacts on Small Entities with 25 or Fewer FTE Employees with Revenue Data.

Visa Classification Immigration Benefit Request	Fee Increase	Average Economic Impact Percentage*
H-1B	$505	0.45%
H-2A – Named Beneficiaries	$385	0.21%
H-2B – Named Beneficiaries	$380	0.08%
H-2A – Unnamed Beneficiaries	$300	0.16%
H-2B – Unnamed Beneficiaries	$300	0.06%
L-1A/L-1B/LZ Blanket	$370	0.16%
O-1/O-2	$535	0.21%
CW, H-3, HSC, E, TN, Q, P, and R	$350	0.14%

Source: USCIS calculation.
*These figures are percentages, not proportions.
Note: Employers may apply using Form I-129 also for P-1, P-1S, P-2, P-2S, P-3, P-3S, R1, E-1, E-2, E-3.
Note: The H-1B fee increase includes a $300 base fee increase and a $205 registration fee increase ($300 + $205 = $505).

Depending on the immigration benefit request, the average economic impact on the 876 small entities with revenue and employment data ranges from 0.06 to 0.45 percent as shown in Table 16a. The average economic impact on all 876 small entities was 0.39 percent. Table 16b shows that among the 876 small entities, 781 (89.2 percent) experienced an economic impact of less than 1 percent and 195 (10.8 percent) experienced an economic impact greater than 1 percent. Those small entities with greater than 1 percent economic impact were mostly H–1B filers (91 of 195) that mostly filed multiple petitions and collectively had well below average reported revenues compared to the

[325] Total Impact to Entity = (Number of Petitions Submitted per Entity × $ Fee Increase) /Entity Sales Revenue. DHS used the lower end of the sales revenue range for those entities where ranges were provided.

[326] Entities in the population without complete or with no EIN information (such as incomplete employee data or revenue information), were removed before the sample was selected for this analysis.

average revenue for all 876 small entities.[327] The average economic impact from the registration fee on all 682 H–1B filers was 0.19 percent; the greatest economic impact was 1.79 percent and the smallest was 0.001 percent. The greatest economic impact imposed by the fee changes on all 876 small entities with 25 or fewer FTE employees was 4.21 percent, and the smallest was 0.003 percent per entity.

Table 16b: Count of Small Entities with 25 or Fewer FTE Employees with Revenue Data by Form I-129 Classification and Economic Impact.

Visa Classification Immigration Benefit Request	Economic Impact Less than 1 percent	Economic Impact Greater than 1 percent	Total
H-1B	591	91	682
H-2A – Named Beneficiaries	35	0	35
H-2B – Named Beneficiaries	12	0	12
L-1A/L-1B/LZ Blanket	51	2	53
O-1/O-2	31	1	32
CW, H-3, HSC, E, TN, Q, P, and R	61	1	62
Total	**781**	**95**	**876**
Source: USCIS analysis.			

(3) Nonprofit Small Entities

DHS will increase the base fee filed for all worker types for nonprofit small entities filing Form I–129 from the current base filing fee of $460, except for H–1B, H–2A-Unnamed Beneficiaries, and H–2B-Unnamed Beneficiaries.[328] For H–1B petitions, the registration fee ($215) is added to the base fee ($460) and results in an overall fee for cap-subject H–1B classification petitions of $675. Nonprofit small entities are exempt from paying the Asylum Program Fee. The fee adjustments and percentage increases are summarized, shown in Table 17.

Table 17. USCIS Final Fees for Form I-129 Petition for Nonimmigrant Worker by Classification, for Nonprofit Small Entities

	A	B	C	D	E	F
Visa Classification Immigration Benefit Request	**Current Fee**	**Final Fee**	**Asylum Program Fee**	**Total Final Fee**	**Difference in Fee Increase**	**Percent Change**
				D=B+C	E=D-A	F=(D–A)/A
H-1B	$470	$675	$0	$675	$305	43.6%
H-2A – Named Beneficiaries	$460	$545	$0	$545	$85	18.5%
H-2B – Named Beneficiaries	$460	$540	$0	$540	$80	17.4%
H-2A – Unnamed Beneficiaries	$460	$460	$0	$460	$0	0.0%
H-2B – Unnamed Beneficiaries	$460	$460	$0	$460	$0	0.0%
L-1A/L-1B/LZ Blanket	$460	$530	$0	$530	$70	15.2%
O-1/O-2	$460	$695	$0	$695	$235	51.1%
CW, H-3, HSC, E, TN, Q, P, and R	$460	$510	$0	$510	$50	10.9%

Source: USCIS FY 2022/2023 Fee Schedule (see preamble Section (I)(D)).
Note: Employers may apply using Form I-129 also for P-–1, P-–1S, P-–2, P-–2S, P-–3, P-–3S, R1, E-–1, E-–2, E—3.
Note: The H-1B final fee includes a $460 base fee and a $215 registration fee ($460 + $215 = $675).

To calculate the economic impact of the fee increase, DHS estimated the total costs associated with the final fee increase for each nonprofit small entity and divided that amount by the sales revenue of that entity.[329] H–1B

[327] The number of H–1B petitions filed by these 91 entities ranged from 1 to 60 (86 of 91 entities filed five or more H–1B petition). The average annual revenue reported by these 91 entities was $0.6 million whereas the average annual revenue for all 876 entities in the sample was $2.5 million. Thus, the increase in the H–1B registration fee had a more pronounced economic impact on those 91 entities.

[328] Nonprofits in this analysis include entities that identify with NAICS codes 611110 (Elementary and Secondary Schools), 611310 (Colleges, Universities and Professional Schools), 624190 (Other Individual and Family Services), 813110 (Religious Organizations), 813311 (Human Rights Organizations), 813312 (Environment, Conservation and Wildlife Organizations), 813319 (Other Social Advocacy Organizations), 813910 (Business Associations), and 813930 (Labor Unions and Similar Labor Organizations).

[329] Total Impact to Entity = (Number of Petitions Submitted per Entity × $ Fee Increase) /Entity Sales Revenue. DHS used the lower end of the sales revenue range for those entities where ranges were provided.

classification cap-subject petitions will include a $215 registration fee, an increase of $205 from the original $10 fee. Since there was no increase in the H–1B form fee for nonprofit small entities, the $205 registration fee is the only increase for these petitioners. Because entities can file multiple petitions, the analysis considers the number of petitions submitted by each entity. DHS determined that 14 of the 1,643 entities searched were nonprofit small entities.[330]

All 14 of these nonprofit small entities petitioned for H–1B workers; there were no recorded petitions for the other classifications. Table 18 shows that the average economic impact on the 14 entities was 0.23 percent. All 14 nonprofit small entities experienced an economic impact of less than 1 percent. The average economic impact from the registration fee on all 14 H–1B filers was 0.13 percent; the greatest economic impact was 0.6 percent and the smallest was 0.003 percent. The greatest economic impact imposed by the fee changes on all 14 nonprofit small entities was 0.82 percent and the smallest was 0.003 percent per entity.

Table 18: Form I-129 Classifications Economic Impacts on Nonprofit Small Entities with Revenue Data.

Visa Classification Immigration Benefit Request	Fee Increase	Average Economic Impact Percentage*
H-1B	$205	0.23%
H-2A – Named Beneficiaries	$85	N/A
H-2B – Named Beneficiaries	$80	N/A
H-2A – Unnamed Beneficiaries	$0	N/A
H-2B – Unnamed Beneficiaries	$0	N/A
L-1A/L-1B/LZ Blanket	$70	N/A
O-1/O-2	$235	N/A
CW, H-3, HSC, E, TN, Q, P, and R	$50	N/A

Source: USCIS calculation.
*These figures are percentages, not proportions.
Note: Employers may apply using Form I-129 also for P-1, P-1S, P-2, P-2S, P-3, P-3S, R1, E-1, E-2, E-3.
Note: The H-1B fee increase only includes the $205 registration fee increase because the base fee was unchanged.

(4) Impacts by NAICS Code

DHS analyzed the average economic impact imposed by the fee increases on the 1,643 small entities with reported sales revenue data by NAICS code. Table 19 shows the top 10 NAICS industries that use the Form I–129 for all classifications by the number of petitions filed during FY 2022 and the average impact on those entities. All the top 10 NAICS industries that use Form I–129 experienced an economic impact of less than 1.0 percent of revenue.

[330] Entities in the population without complete or with no EIN information (such as incomplete employee data or revenue information), were removed before the sample was selected for this analysis.

Table 19. Top 10 Industries that Use the Form I-129 by Six-Digit NAICS Code.		
NAICS Industry	**Number of Petitions in Sample**	**Average Impact Percentage**
541618-Other Management Consulting Services	303	0.87%
541211-Offices of Certified Public Accountants	748	0.82%
541512-Computer Systems Design Services	260	0.60%
541511-Custom Computer Programming Services	1,880	0.50%
621111-Offices of Physicians (except Mental Health Specialists)	306	0.49%
541611-Administrative Management and General Management Consulting Services	227	0.35%
541612-Human Resources Consulting Services	422	0.35%
518210-Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services	258	0.26%
513210-Software Publishers	1,721	0.22%
541330-Engineering Services	309	0.17%
Source: USCIS, OP&S PRD, Computer-Linked Application Information Management System (CLAIMS) 3 and Electronic Immigration System (ELIS) database (Jan. 31, 2023).		

The top NAICS industries that utilize the Form I–129 for H–1B [331] classification experienced an economic impact of less than 1.0 percent of revenue in the analysis (Table 20).

[331] U.S. Citizenship & Immigr. Servs., U.S. Dep't of Homeland Sec., ''H–1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models,'' *https://www.uscis.gov/working-in-the-united-states/h-1b-specialty-occupations* (last updated Sept. 15, 2023).

Table 20. Top 10 Industries that Use the Form I-129 for H-1B by Six-Digit NAICS Code.

NAICS Industry	Number of Petitions in Sample	Average Impact Percentage
621111-Offices of Physicians (except Mental Health Specialists)	15	0.38%
541612-Human Resources Consulting Services	7	0.29%
541511-Custom Computer Programming Services	28	0.20%
541600-Management, Scientific, and Technical Consulting Services	9	0.14%
541330-Engineering Services	20	0.11%
541990-All Other Professional, Scientific and Technical Services	6	0.06%
621210-Offices of Dentists	6	0.06%
561400-Business Support Services	17	0.05%
541618-Other Management Consulting Services	6	0.04%
513210-Software Publishers	9	0.02%

Source: USCIS, OP&S, PRD, Computer-Linked Application Information Management System (CLAIMS) 3 and Electronic Immigration System (ELIS) databases (Jan. 31, 2023).

The top NAICS industries that use Form I–129 H–2A [332] classification for named beneficiaries experienced an economic impact of considerably less than 1.0 percent of revenue (Table 21).

Table 21. Top Industries that Use the Form I-129 H-2A for Named Beneficiaries by Six-Digit NAICS Code.

NAICS Industry	Number of Petitions in Sample	Average Impact Percentage
445230-Fruit and Vegetable Retailers	3	0.35%
111998-All Other Miscellaneous Crop Farming	26	0.30%
112111-Beef Cattle Ranching and Farming	4	0.15%
111991-Sugar Beet Farming	2	0.10%
112990-All Other Animal Production	1	0.08%
115111-Cotton Ginning	4	0.02%
115113-Crop Harvesting, Primarily by Machine	3	0.02%

Source: USCIS, OP&S, PRD, Computer-Linked Application Information Management System (CLAIMS) 3 and Electronic Immigration System (ELIS) databases (Jan. 31, 2023).

Most of the top NAICS industries that use the Form I–129 H–2B [333] classification for named beneficiaries experienced an economic impact of considerably less than 1.0 percent of revenue (Table 22). One of the top NAICS industries experienced an impact of greater than 1.0 percent.

[332] U.S. Citizenship & Immigr. Servs., U.S. Dep't of Homeland Security, ''H–2A Temporary Agricultural Workers,'' available *https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers* (last updated Nov. U.S. Dep't of Homeland Security, ''H–2A Temporary Agricultural Workers,'' *https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers* (last updated Nov. 8, 2023).

[333] U.S. Citizenship & Immigr. Servs., U.S. Dep't of Homeland Security, ''H–2B Temporary Non-Agricultural Workers,'' *https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers* (last updated Jan. 12, 2024).

Table 22. Top Industries that Use the Form I-129 H-2B for Named Beneficiaries by Six-Digit NAICS Code.

NAICS Industry	Number of Petitions in Sample	Average Impact Percentage
713930-Marinas	3	1.14%
112512-Shellfish Farming	1	0.31%
111421-Nursery and Tree Production	2	0.26%
541940-Veterinary Services	1	0.05%
561730-Landscaping Services	11	0.06%
236220-Commercial and Institutional Building Construction	4	0.03%
444240-Nursery, Garden Center, and Farm Supply Retailers	1	0.01%
561400-Specialized Design Services	1	0.01%
484110-General Freight Trucking, Local	1	0.01%

Source: USCIS, OP&S PRD, Computer-Linked Application Information Management System (CLAIMS) 3 and Electronic Immigration System (ELIS) databases (Jan. 31, 2023).

For Form I–129 (O [334] and P [335] classifications), among the 1,643 small entities with reported revenue data identified in the SEA, most of the top industries by NAICS code experienced an economic impact of considerably less than 1.0 percent of revenue in the analysis. Three of the top NAICS industries experienced an impact of greater than 1.0 percent (Table 23).

[334] U.S. Citizenship & Immigr. Servs., U.S. Dep't of Homeland Security, ''O–1 Visa: Individuals with Extraordinary Ability or Achievement,'' *https://www.uscis.gov/working-in-the-united-states/temporary-workers/o-1-visa-individuals-with-extraordinary-ability-or-achievement* (last updated Mar. 3, 2023).

[335] U.S. Citizenship & Immigr. Servs., U.S. Dep't of Homeland Security, ''P–1A Athlete,'' *https://www.uscis.gov/working-in-the-united-states/temporary-workers/p-1a-athlete* (last updated Mar. 26, 2021); U.S. Citizenship & Immigr. Servs., U.S. Dep't of Homeland Security, ''P–1B A Member of an Internationally Recognized Entertainment Group,'' *https://www.uscis.gov/working-in-the-united-states/temporary-workers/p-1b-a-member-of-an-internationally-recognized-entertainment-group* (July 19, 2021); U.S. Citizenship & Immigr. Servs., U.S. Dep't of Homeland Security, ''P–2 Individual Performer or Part of a Group Entering to Perform Under a Reciprocal Exchange Program,'' *https://www.uscis.gov/working-in-the-united-states/temporary-workers/p-2-individual-performer-or-part-of-a-group-entering-to-perform-under-a-reciprocal-exchange-program* (Feb. 24, 2021); U.S. Citizenship & Immigr. Servs., U.S. Dep't of Homeland Security, ''P–3 Artist or Entertainer Coming to Be Part of a Culturally Unique Program,'' *https://www.uscis.gov/working-in-the-united-states/temporary-workers/p-3-artist-or-entertainer-coming-to-be-part-of-a-culturally-unique-program* (last visited Feb. 24, 2021).

Table 23. Top Industries that Use the Form I-129 (O&P) by Six-Digit NAICS Code.

NAICS Industry	Number of Petitions in Sample	Average Impact Percentage
721310-Rooming and Boarding Houses, Dormitories, and Workers' Camps	35	1.73%
112120-Dairy Cattle and Milk Production	6	1.55%
541890-Other Services Related to Advertising	4	1.05%
236115-New Single-family Housing Construction (Except For-Sale Builders)	18	0.54%
622210-Psychiatric and Substance Abuse Hospitals	7	0.37%
621511-Medical Laboratories	8	0.34%
621111-Offices of Physicians (except Mental Health Specialists)	23	0.24%
516120-Television Broadcasting Stations	5	0.15%
621493-Freestanding Ambulatory Surgical and Emergency Centers	6	0.09%
523940-Portfolio Management and Investment Advice	5	0.08%
Source: USCIS, OP&S PRD, Computer-Linked Application Information Management System (CLAIMS) 3 and Electronic Immigration System (ELIS) databases (Jan. 31, 2023).		

Small Entity Classifications

With an aggregated total of 4,022 small entities out of a sample size of 4,746 entities, DHS inferred that 84.7 percent of the entities filing Form I–129 petitions were small entities. Small entities filing petitions could be for-profit businesses or not-for-profit entities. To understand the extent to which not-for-profits were included in the samples selected for each form DHS categorized entities as for-profit or not-for-profit. The business data provider databases do not distinguish if entities are for-profit or not-for-profit, so DHS used the assumption that entities with NAICS codes 611110 (Elementary and Secondary Schools), 611310 (Colleges, Universities and Professional Schools), 624190 (Other Individual and Family Services), 813110 (Religious Organizations), 813311 (Human Rights Organizations), 813312 (Environment, Conservation and Wildlife Organizations), 813319 (Other Social Advocacy Organizations), 813910 (Business Associations), and 813930 (Labor Unions and Similar Labor Organizations) were not-for-profit. Most of the sample consisted of small businesses when looked at by type of small entity. There are 4 small governmental jurisdictions in the sample and 126 small not-for-profits.

(2) Immigrant Petition for an Alien Worker, Form I–140

a. Funding the Asylum Program With Form I–140 Petition Fees

In the final rule, DHS will establish a new Asylum Program Fee of $600 to be paid by employers who file a Form I–140, Immigrant Petition for Alien Worker. However, if a small entity employs 25 or fewer FTE workers, it will pay a $300 Asylum Program Fee. Additionally, firms that are approved by the IRS as nonprofit entities will not be required to pay the Asylum Program Fee.[336] The Asylum Program Fee will be used to fund the costs to USCIS of administering the asylum program and would be due in addition to the fee those petitioners would pay under USCIS standard costing and fee collection methodologies for their Form I–129 and Form I–140 benefit requests.

DHS will increase fees for Form I–140 from $700 to $715, an increase of 2 percent ($15). The total fees for each entity in the analysis will include the I–140 form fee and the relevant Asylum Program Fee. The Asylum Program Fee will be dependent on the number of FTE employees and nonprofit status of the entity. Hence, calculation of fees in this analysis will be as follows:

- The total fee for small entities that employ more than 25 FTE workers will include the $600 Asylum Program Fee for a total of $1,315 ($715 + $600). This is an overall increase of $615 (88 percent) per petition, from current costs of $700.
- The total fee for small entities that employ 25 or fewer FTE employees will include the $300 Asylum Program Fee for a total of $1,015 ($715 + $300), an overall increase of $315 (45 percent) per petition, from current costs of $700.
- The total fee for nonprofit small entities will consist of only the I–140 form fee as there are no Asylum Program Fees to be paid by nonprofit entities. Total fees will be $715, an increase of $15 (2 percent).

To calculate the economic impact of the final rule fees, USCIS estimated the total costs associated with the fee increase for each entity and divided that amount by the sales revenue of that entity.[337] Because entities can file multiple petitions, the analysis considers the number of petitions submitted by each entity. Entities that were considered small based on employee count with missing revenue data were excluded. DHS identified 126 small entities with reported revenue data in the sample. Of the 126 small entities, 46 had greater than 25 FTE employees and 80 had 25 or fewer FTE

[336] *See* 8 CFR 106.2(c)(13).

[337] Total Impact to Entity = (Number of Petitions Submitted per Entity × $ Fee Increase)/Entity Sales Revenue. USCIS used the lower end of sales revenue range for those entities where ranges were provided.

employees. There were no nonprofit small entities with reported revenue data in the sample. All 46 small entities with greater than 25 FTE employees experienced an economic impact of less than 1 percent. The average impact on these 46 entities was 0.03 percent. The greatest economic impact imposed by the fees in the final rule was 0.25 percent and the smallest was 0.0001 percent.

For the 80 small entities with 25 or fewer FTE employees, 79 of them experienced an economic impact of less than 1 percent. The other entity experienced an economic impact of 1.002 percent, which was the greatest economic impact imposed by the fees in the final rule. The smallest economic impact imposed by the fee increase was 0.002 percent.

a. Small Entity Classification

With an aggregated total of 299 out of a sample size of 550, DHS inferred that most, or 54.3 percent, of the entities filing Form I–140 petitions were small entities. Small entities filing petitions could be for-profit businesses or not-for-profit entities. To understand the extent to which not-for-profits were included in the samples selected for each form, DHS categorized entities as for-profit or not-for-profit. The business data provider databases do not distinguish if entities are for-profit or not-for-profit, so DHS used the assumption that entities with NAICS codes 611110 (Elementary and Secondary Schools), 611310 (Colleges, Universities and Professional Schools), 712110 (Museums), 813319 (Other Social Advocacy Organizations), 813410 (Civic and Social Organizations), 813910 (Business Associations), and 813940 (Political Organizations) were not-for-profit. The sample of Form I–140 consisted mainly of small businesses, with no small governmental jurisdictions in the sample and 13 small not-for-profits.

b. Cumulative Impact of Form I–129 and Form I–140 Petitions

In addition to the individual Form I–129 and Form I–140 analyses, USCIS analyzed any cumulative impacts of these form types to determine the economic impacts to small entities when analyzed together. Based on the samples in the individual analyses, USCIS isolated those entities that overlapped in both samples of Forms I–129 and I–140 by EIN and revenue. Ninety entities had an EIN that overlapped in both samples; there were 59 large entities and 31 small entities that submitted both Form I–129 petitions and Form I–140 petitions.[338] Of the 31 small entities, 8 entities had revenue data reported in databases Data Axle, *Manta.com, Cortera.com, or Guidestar.org*.

Three of the 8 overlapping sample entities with revenue data had Form I–129 economic impacts of greater than 1 percent. Of the sample entities that overlapped, 3 entities had Form I–129 economic impacts of 1.95 percent, 6.62 percent, and 6.92 percent, respectively. All 8 overlapping sample entities had Form I–140 economic impacts of less than 1 percent. Although 3 overlapping small entities had Form I–129 economic impacts of greater than 1 percent, USCIS does not expect the combined impacts of Form I–129 and Form I–140 to be an economically significant burden on most small entities. This is due to little overlap in entities in the samples and the mostly minor economic impacts from the Forms I–129 and I–140 fee increases and Asylum Program Fees.

(3) Application for Civil Surgeon Designation, Form I–910

USCIS will increase fees for Form I–910 to $990. This is an increase of 26 percent ($205) from the current fee of $785. To calculate the economic impact of this increase, USCIS estimated the total costs associated with the fee increase for each entity and divided that amount by the sales revenue of that entity.[339] Because entities can file multiple requests, the analysis considers the number of requests submitted by each entity. Entities that were considered small based on employee count with missing revenue data were excluded. In the sample, 179 matched entities with reported revenues were considered small entities. All 179 small entities experienced an economic impact of less than 1 percent. The greatest economic impact of the increased fee was 0.91 percent, and the smallest was 0.001 percent per entity. The average impact on all 179 small entities with revenue data was 0.05 percent.

a. Small Entity Classification

With an aggregated total of 300 out of a sample size of 300, DHS inferred that most, or 100.0 percent, of the entities filing Form I–910 requests were small entities. Small entities filing petitions could be for-profit businesses or not-for-profit entities. To understand the extent to which not-for-profits were included in the samples selected for each form DHS categorized entities as for-profit or not-for-profit. The business data provider databases do not distinguish if entities are for-profit or not-for-profit, so DHS used the assumption that entities with NAICS codes 611310 (Colleges, Universities and Professional Schools), 624190 (Other Individual and Family Services), and 813990 (Other Similar Organizations (except Business, Professional, Labor, and Political Organizations)) were not-for-profit. The sample of Form I–910 consisted of all small businesses, with no small governmental jurisdictions in the sample and no small not-for-profits.

(4) Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360

DHS will increase the fees for entities that file Form I–360 from $435 to $515, an increase of $80 (18.4 percent). Using the business provider databases, DHS determined that 174 entities matched and were considered small entities. To calculate the economic impact of the increase for each entity, DHS divided the costs associated with the fee increase by the sales revenue of that entity.[340] The results indicated that all 174 small entities with reported revenue data experienced an economic impact well below 1 percent. The greatest economic impact imposed by this final fee change was 0.08 percent and the smallest was 0.001 percent per entity. The average impact on all 174 small entities with revenue data was 0.01 percent.

DHS also analyzed the costs of the final rule on the petitioning small entities relative to the costs of the typical employee's salary. The SBA

[338] Total Impact to Entity = (Number of Petitions Submitted per Entity × Fee Increase)/Entity Sales Revenue. USCIS used the lower end of sales revenue range for those entities where ranges were provided.

[339] Total Impact to Entity = (Number of Petitions Submitted per Entity × $ Fee Increase)/Entity Sales Revenue.

[340] Total Economic Impact to Entity = (Number of Petitions Submitted per Entity × $ Fee Increase)/Entity Sales Revenue. USCIS used the lower end of the sales revenue range for those entities where ranges were provided.

Guidelines provide that the impact of a rule could be significant if the cost of the regulation exceeds 5 percent of the labor costs of the small entities in the sector.[341] According to the Bureau of Labor Statistics (BLS), the mean annual salary is $60,180 for clergy,[342] $60,540 for directors of religious activities and education,[343] and $45,420 for other religious workers.[344] Based on an average of 1.29 religious workers[345] petitioned-for per entity, the additional average annual cost will be $103.20 per small entity.[346] The additional costs per small entity in this final rule represents only 0.17 percent of the average annual salary for clergy, 0.17 percent of the average annual salary for directors of religious activities and education, and 0.23 percent of the average annual salary for all other religious workers.[347]

a. Small Entity Classification

With an aggregated total of 399 out of a sample size of 420, DHS inferred that most, or 95 percent, of the entities filing Form I–360 petitions were small entities. Small entities filing petitions could be for-profit businesses or not-for-profit entities. To understand the extent to which not-for-profits were included in the samples selected for each form DHS categorized entities as for-profit or not-for-profit. The business data provider databases do not distinguish if entities are for-profit or not-for-profit, so DHS used the assumption that entities with NAICS codes 813110 (Religious Organizations), 813410 (Civic and Social Organizations), 813920 (Professional Organizations), and 813990 (Other Similar Organizations except Business, Professional, Labor, and Political Organizations) were not-for-profit. The sample population of Form I–360 consisted mainly of small businesses. There were no small governmental jurisdictions in the sample and 145 small not-for-profits primarily composed of religious institutions.

(5) Genealogy Requests—Genealogy Index Search Request, Form G–1041, Genealogy Records Request, Form G–1041A and Certificate of Non-Existence, Form G–1566

In the final rule, DHS increased the fee for the Genealogy Index Search Request, Form G–1041 and Form G–1041A, from $65 to $80, an increase of $15 (23 percent) for those who mail in this request on paper. The fee for requestors who use the online electronic Form G–1041 or G–1041A version decreased from $65 to $30, a decrease of $35 (−54 percent). DHS will also establish a fee of $330 for individuals submitting a Form G–1566, Request for a Certificate of Non-Existence, once approved by OMB.[348]

The affected population includes individuals who use Form G–1041 to request a search of USCIS historical indices, individuals who use Form G–1041A to obtain copies of USCIS historical records found through an index request, and individuals who request a Certificate of Non-Existence to document that USCIS has no records indicating that an individual became a naturalized citizen of the United States. DHS estimates that an annual average of 6,755 Form G–1041 index search requests and 4,608 Form G–1041A records requests were received during FY 2018 through FY 2022 as shown in Table 24. For both forms, more than 90 percent of the requests were submitted electronically. DHS estimates that an annual average of 2,443 receipts for Form G–1566 will be made.

[341] Office of Advocacy, SBA, ''A Guide for Government Agencies, How to Comply with the Regulatory Flexibility Act,'' p. 19 *https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf* (last visited Aug. 22, 2023).

[342] BLS, U.S. Department of Labor, ''Occupational Employment Statistics, May 2022, ''Clergy,'' *https://www.bls.gov/oes/2022/may/oes212011.htm* (last visited Aug. 22, 2023).

[343] BLS, U.S. Department of Labor, ''Occupational Employment Statistics, May 2022, ''Directors of Religious Activities and Education,'' *https://www.bls.gov/oes/2022/may/oes212021.htm* (last visited Aug. 22, 2023).

[344] BLS, U.S. Department of Labor, ''Occupational Employment Statistics, May 2022, ''Religious Workers, All Other,'' *https://www.bls.gov/oes/2022/may/oes212099.htm* (last visited Aug. 22, 2023).

[345] USCIS calculated the average filing per small entity of 1.29 petitions, from the Form I–360 Sample with Petition Totals in Appendix E of this analysis. Calculation: (total number of petitions from each sample id)/(total number of sample Form I–360 petitions) = 224/174 = 1.29 average petitions filed per small entity. Note, this calculation includes only small entities with reported revenue data, *i.e.,* matched small entities.

[346] Calculation: 1.29 average petitions per small entity × $80 increase in petition fees = approximately $103.20 additional total cost per small entity.

[347] Calculation: ($103.20 additional cost per small entity/$60,180 clergy salary) × 100 = 0.17 percent; ($103.20 additional cost per small entity/$60,540 directors of religious activities and education) × 100 = 0.17 percent; ($103.20 additional cost per small entity/$45,420 other religious workers) × 100 = 0.23 percent.

[348] The fee will be established in the FY 2022/2023 rule and will be required with the submission of Form G–1566 if it is approved by OIRA before this rule takes effect. If the form is not approved before the rule takes effect, the fee will be due with the submission of a non-form request until the form is prescribed by DHS as provided in 8 CFR 299.1.

Table 24. Receipts of Form G-1041, Genealogy Index Search Request, Form G-1041A, Genealogy Records Request and Form G-1566, Request for a Certificate of Non-Existence for FY 2018 through FY 2022

Fiscal Year	Form G-1041 (Paper Filing)	Form G-1041 (Online Filing)	Total	Percentage Filed Online
2018	228	3,602	3,830	94%
2019	218	5,295	5,513	96%
2020	318	7,764	8,082	96%
2021	207	7,220	7,427	97%
2022	124	8,901	9,025	99%
5-year Total	**1,095**	**32,782**	**33,877**	
5-year Annual Average	**219**	**6,556**	**6,775**	97%
Fiscal Year	**Form G-1041A (Paper Filing)**	**Form G-1041A (Online Filing)**	**Total**	**Percentage Filed Online**
2018	298	2,645	2,943	90%
2019	333	3,407	3,740	99%
2020	344	4,895	5,239	93%
2021	309	5,451	5,760	95%
2022	190	5,168	5,358	96%
5-year Total	**1,474**	**21,566**	**23,040**	
5-year Annual Average	**295**	**4,313**	**4,608**	94%
Fiscal Year	**Certificate of Non-Existence Form G-1566**			
2018	1,442			
2019	1,516			
2020	1,784			
2021	2,948			
2022	4,527			
5-year Total	**12,217**			
5-year Annual Average	**2,443**			

Source: USCIS, Immigration Records and Identity Services (IRIS) Directorate, Records Information Systems Branch (RISB). Feb. 2, 2023.
Note: IRIS tracks the online percentage of index searches and records requests.

DHS has previously determined that requests for historical records are usually made by individuals.[349] If professional genealogists and researchers submitted such requests in the past, they did not identify themselves as commercial requestors and, therefore, DHS could not separate these data from the dataset. Genealogists typically advise clients on how to submit their own requests. For those who submit requests on behalf of clients, DHS does not know the extent to which they can pass along the fee increases to their individual clients. DHS currently does not have sufficient data to definitively assess the impact on small entities for these requests. DHS asked for comment on this in the proposed rule and received no comments or data. DHS recognizes that some small entities may be impacted by the increased fees but cannot determine how many or the exact impact.

(6) Application for Regional Center Designation Under the EB–5 Regional Center Pilot Program, Form I–956 (Formerly Form I–924), Application for Approval of an Investment in a Commercial Enterprise, Form I–956F (Formerly Form I–924 Amendment) and I–956G (Formerly Form I–924A)

Congress created the EB–5 program in 1990 to stimulate the U.S. economy through job creation and capital investment by immigrant investors. The EB–5 regional center program was later added in 1992 by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993. Public Law 102–395, sec. 610, 106 Stat 1828 (Oct. 6, 1992). As amended, the EB–5 program makes approximately 10,000 visas available annually to foreign nationals (and their dependents) who invest at least $1,050,000 or a discounted amount of $800,000 if the investment is in a targeted employment area (TEA) (which includes certain rural areas and areas of high unemployment) or infrastructure project in a U.S. business that will create at least 10 full-time jobs in the United States for qualifying employees. *See* INA sec. 203(b)(5), 8 U.S.C. 1153(b)(5). Such investment amounts are not necessarily

[349] *See* 73 FR 28026 (May 15, 2008).

indicative of whether the regional center is characterized appropriately as a small entity for purposes of the RFA. Due to the lack of regional center revenue data, DHS assumes regional centers collect revenue primarily through the administrative fees charged to investors.

On March 5, 2022, the President signed the EB–5 Reform and Integrity Act of 2022, Div. BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103). The EB–5 Reform and Integrity Act of 2022, which repealed the Regional Center Pilot Program and authorized a new EB–5 Regional Center Program.[350] *See* 88 FR 402, 420 (Jan. 4, 2023). (EB–5 stands for Employment-Based Immigrant Visa, Fifth Preference.) The EB–5 Reform and Integrity Act of 2022 requires DHS to conduct a fee study not later than 1 year after the date of the enactment of this Act and, not later than 60 days after the completion of the study, set fees for EB–5 program related immigration benefit requests at a level sufficient to recover the costs of providing such services, and complete the adjudications within certain time frames. *See* Public Law 117–103, sec. 106(b). DHS has begun the fee study required by the EB–5 Reform and Integrity Act of 2022 and has initiated a working group to begin drafting the rule. However, that effort is still in its early stages. How the EB–5 Reform and Integrity Act of 2022 and the fee study it requires relate to this rule and the fees it sets are explained in section IV.G.2.b. of this preamble in responses to comments on those fees and related polices.

The various program fees and changes as a result of the EB–5 Reform Integrity Act of 2022 will be discussed in a separate future EB–5 rulemaking.

Despite the changes in the law and program, DHS' final fees are based on the currently projected staffing needs to meet the adjudicative and administrative burden of the IPO pending the fee study required by section 106(a) of the EB–5 Reform and Integrity Act of 2022.

The fee for Form I–956 (formerly Form I–924) and Form I–956F[351] (formerly Form I–924 Amendment) is $47,695, a $29,900 or 168-percent increase from the current $17,795 fee. The fee for Form I–956G (formerly Form I–924A) is $4,470, a $1,435 or 47 percent increase from the current $3,035 fee. During the 5-year period from FY 2018 through FY 2022, USCIS received a total of 249 annual Form I–956 (formerly Form I–924) regional centers applications and 3,260 Form I–956G (formerly Form I–924A) annual statements, with annual averages 62 and 652 respectively (see Table 25).

The annual filing volume projections in this rule are based on historical volumes and trends. Section 105(a) of the EB–5 Reform and Integrity Act of 2022 directs USCIS to conduct a study of the fees charged in the administration of the EB–5 program. Form I–956F and other changes are too new for DHS to accurately estimate impacts on filing volumes. DHS will address these additional impacts resulting from the EB–5 Reform and Integrity Act of 2022 in a future rulemaking.[352]

Table 25. Annual Receipts for Form I-956, Application for Regional Center Designation under the Immigrant Investor Program, and Form I-956G, Annual Statements of Regional Center, for FY 2018 through FY 2022

Fiscal Year	Form I-956	Form I-956G
2018	122	787
2019	79	808
2020	34	702
2021	14	434
2022	0[353]	529
5-year Total	**249**	**3,260**
5-year Annual Average	**62**	**652**

Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division, CLAIMS 3 database, Consolidated/ELIS, PAS-SQL Dashboard, Updated Sept. 25, 2023.
Note: I-956G are the annual statements to be submitted by these approved regional centers. For Form I-956, DHS used a 4-year annual average.

Regional centers are difficult to assess because there is a lack of official USCIS data on employment, income, and industry classification for these entities. It is difficult to determine the small entity status of regional centers without such data. Such a determination is also difficult because regional centers can be structured in a variety of different ways, and can involve multiple business and financial activities, some of which may play a direct or indirect role in linking

[350] Consolidated Appropriations Act, 2022, Public Law 117–103, Div. BB.

[351] *See* EB–5 Reform and Integrity Act of 2022, Public Law 117–103, Sec. 106(a) (Mar. 15, 2022) (authorizing the same fee for Form I–956F as Form I–956).

[352] DHS may reevaluate EB–5 fees to meet the additional fee guidelines of EB–5 Reform and Integrity Act of 2022 sec. 106(c). Under the ability-to-pay principle, those who are more capable of bearing the burden of fees should pay more for a service than those with less ability to pay. The requirements of immigrant investor program indicate that immigrant investors and regional centers have the ability-to-pay more than most USCIS customers.

[353] Zero reported receipts in FY2022 were due to EB–5 program and database system changes. DHS acknowledges that these changes may result in slightly lower annual average estimates for this form. There is a separate rulemaking pertaining to the EB–5 program that is currently being drafted and will elaborate more on the populations and various programs changes with the Eb–5 Integrity Act, volume projections and new forms.

investor funds to NCEs [354] and job-creating projects or entities. Regional centers also pose a challenge for analysis as their structure is often complex and can involve many related business and financial activities not directly involved with EB–5 activities. Regional centers can be made up of several layers of business and financial activities that focus on matching foreign investor funds to development projects to capture above-market return differentials.

While DHS attempted to treat regional centers like the other entities in this analysis, DHS was not able to identify most of the entities in any of the public or private online databases. Furthermore, while regional centers are an integral component of the EB–5 program, DHS does not collect data on the administrative fees the regional centers charge to the foreign investors who are investing in one of their projects. DHS did not focus on the bundled capital investment amounts (either a discounted $800,000 if the investment is in a TEA project(s) which includes certain rural areas and areas of high unemployment, or $1,050,000 for a non-TEA project per investor, in a U.S. business that will create or, in certain circumstances, preserve at least 10 full-time jobs in the United States for qualifying employees) [355] that get invested into an NCE. Such investment amounts are not necessarily indicative of whether the regional center is appropriately characterized as a small entity for purposes of the RFA. Due to the lack of regional center revenue data, DHS assumes regional centers collect revenue primarily through the administrative fees charged to investors.

DHS did consider the information provided by regional center applicants as part of the Forms I–956 (formerly Form I–924), I–956F (formerly Form I–924 Amendment), and I–956G (formerly Form I–924A); however, it does not include adequate data to allow DHS to reliably identify the small entity status of individual applicants. Although regional center applicants typically report the NAICS codes associated with the sectors they plan to direct investor funds toward, these codes do not necessarily apply to the regional centers themselves. In addition, information provided to DHS concerning regional centers generally does not include regional center revenues or employment.

DHS was able to obtain some information under some specific assumptions to analyze the small entity status of regional centers. In the DHS proposed rule ''EB–5 Immigrant Investor Program Modernization,'' DHS analyzed estimated administrative fees and revenue amounts for regional centers.[356] DHS found both the mean and median for administrative fees to be $50,000 and the median revenue amount to be $1,250,000 over the period FY 2017 through FY 2020. DHS does not know the extent to which these regional centers can pass along the fee increases to the individual investors. Passing along the costs from this Final Rule can reduce or eliminate the economic impacts to the regional centers. While DHS cannot definitively claim there is no significant economic impact to these small entities based on existing information, DHS would assume existing regional centers with revenues equal to or less than $447,000 per year (some of which DHS assumes would be derived from administrative fees charged to individual investors) could experience a significant economic impact if DHS assumes a fee increase that represents 1 percent of annual revenue is a ''significant'' economic burden under the RFA.[357]

e. A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary For Preparation of the Report or Record

The final rule does not directly impose any new or additional ''reporting'' or ''recordkeeping'' requirements on filers of Form I–129, I–140, I–910, I–360, G–1041, G–1041A, I–956 (formerly Form I–924), or I–956G (formerly I–924A). This final rule does not require any new professional skills for reporting.

f. A Description of the Steps the Agency has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities was Rejected

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other applicants. In addition, DHS must fund the costs of providing services without charge by using a portion of the filing fees collected for other immigration benefits. Without an increase in fees, DHS will not be able to maintain the level of service for immigration and naturalization benefits that it now provides.

DHS has considered the alternative of maintaining fees at the current level with reduced services and increased processing times but has determined that this will not be in the interest of applicants and petitioners. Therefore, this alternative was rejected. While most immigration benefit fees apply to individuals, as described previously, some also apply to small entities. DHS seeks to minimize the impact on all parties, small entities in particular.

Another alternative to the increased economic burden of the fee adjustment is to maintain fees at their current level for small entities. The strength of this alternative is that it assures that no additional fee-burden is placed on small entities; however, small entities will experience negative effects due to the service reductions that will result in the absence of the fee adjustments in this final rule. Without the fee adjustments provided in this final rule, significant operational changes to USCIS would be necessary. Given current filing volume considerations, DHS requires additional revenue to prevent immediate and significant cuts in planned spending. These spending cuts would include reductions in areas such as Federal and contract staff, infrastructure spending on IT and facilities, and training. Depending on the actual level of workload received, these operational changes could result in longer processing times, a degradation in customer service, and reduced efficiency over time. These cuts would

[354] A ''new commercial enterprise'' is ''any for-profit organization formed in the United States for the ongoing conduct of lawful business . . . that receives, or is established to receive, capital investment from [employment-based immigrant] investors.'' INA sec. 203(b)(5)(D)(vi), 8 U.S.C. 1153(b)(5)(D)(vi).

[355] *See* 84 FR 35750, 35808 (July 24, 2019). This amount by investor is determined between a designated Targeted Employment Area and non-Targeted Employment Area.

[356] *Id.*

[357] Calculation: 1% of $447,000 = $4,470 (the new fee for Form I–956G; formerly Form I–924A).

ultimately represent an increased cost to small entities by causing delays in benefit processing and reductions in customer service. In the final rule, DHS will provide reduced fees for Form I–129 nonprofit entities and entities with 25 or less FTE workers. DHS will also reduce Asylum Program fees for Form I–129 and I–140 nonprofit entities and entities with 25 or less FTE workers. While making accommodations in the final rule for small employers and nonprofit entities, DHS is not codifying any exemption from coverage of the rule, or any part thereof, for small entities as that term is defined by the SBA. Determining if the petitioner would be ''small'' under the SBA definition would require USCIS to track many NAICS codes, review revenue, and require an adjudication of the fee discount eligibility before intake. DHS decided to define small employers as employers with 25 or fewer FTE workers because INA sec. 214(c)(9)(B), 8 U.S.C. 1184(c)(9)(B), provides that the American Competitiveness and Workforce Improvement Act (ACWIA fee is reduced by half for any employer with not more than 25 FTE employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer). SBA has determined in accordance with 13 CFR 121.903(a) that the size standard adopted in this rule appropriate. Therefore, for the reasons explained more fully elsewhere in the preamble to the final rule, DHS chose this approach.

C. Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)

The Congressional Review Act (CRA) was included as part of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) by section 804 of SBREFA, Public Law 104–121, 110 Stat. 847, 868, *et seq.* This final rule is covered by the definition provided in section 804 of SBREFA. *See* 5 U.S.C. 804(2)(A).

D. Unfunded Mandates Reform Act

Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on state, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule that includes any Federal mandate that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by state, local, and tribal governments, in the aggregate, or by the private sector.[358] This final rule is not expected to exceed the $100 million expenditure in any one year when adjusted for inflation ($192 million in 2022 dollars), based on the CPI–U.[359] DHS does not believe this proposed rule would impose any unfunded Federal mandates on state, local, and tribal governments, in the aggregate, or on the private sector. This final rule does not contain a Federal mandate as the term is defined under UMRA.[360] The requirements of Title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

E. E.O. 12132 (Federalism)

E.O. 13132 was issued to ensure the appropriate division of policymaking authority between the States and the Federal Government and to further the policies of the Unfunded Mandates Act. This 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. Therefore, in accordance with section 6 of E.O. 13132, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. E.O. 12988 (Civil Justice Reform)

This final rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities to minimize litigation and undue burden on the Federal court system. DHS has determined that this final rule meets the applicable standards provided in section 3(a) and 3(b)(2) of E.O. 12988.

[358] *See* 2 U.S.C. 1532(a).

[359] *See* BLS, ''Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. city average, all items, by month,'' available at *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202212.pdf* (last visited Jan. 19, 2023). Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2022); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2022 − Average monthly CPI–U for 1995)/(Average monthly CPI–U for 1995)] * 100 = [(292.655 − 152.383)/152.383] * 100 = (140.272/152.383) * 100 = 0.92052263 * 100 = 92.05% = 92%(rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars * 1.92 = $192 million in 2022 dollars.

[360] The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6).

G. E.O. 13175 (Consultation and Coordination with Tribal Governments)

This final rule will not have ''Tribal implications'' under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

H. Family Assessment

DHS has reviewed this final rule in line with the requirements of section 654 of the Treasury and General Government Appropriations Act, 1999,[361] enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.[362] DHS has systematically reviewed the criteria specified in section 654(c)(1) of that act, by evaluating whether this proposed regulatory action: (1) impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) only financially impacts families, if at all, to the extent such impacts are justified; (6) may be carried out by state or local government or by the family; or (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the agency determines the regulation may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

By increasing immigration benefit request fees, this action will impose a slightly higher financial burden on some families that petition for family members to join them in the United States. On the other hand, the rule will provide USCIS with the funds necessary to carry out adjudication and naturalization services and provide similar services for free to disadvantaged populations, including asylees, refugees, individuals with TPS, and victims of human trafficking. DHS also limits the fee increases in this rule to inflation for all fees submitted by

[361] See 5 U.S.C. 601 note.

[362] Public Law 105–277, 112 Stat. 2681 (1998).

individuals and sets fees for adoption and naturalization related forms at below their relative cost to USCIS. DHS has no data that indicate that this final rule will have any impacts on disposable income or the poverty of certain families and children, including U.S. citizen children. DHS has also added several fee exemptions in this final rule to what was proposed, and the rule contains a process to waive fees for immigration benefits when the person submitting the request is unable to pay the fee. DHS believes that the benefits of the new fees justify the financial impact on the family, that this rulemaking's impact is justified, and no further actions are required. DHS also determined that this rule will not have any impact on the autonomy or integrity of the family as an institution.

I. National Environmental Policy Act

DHS and its components analyze proposed actions to determine whether the National Environmental Policy Act (NEPA), applies to them and, if so, what degree of analysis is required. DHS's ''Implementation of the National Environmental Policy Act,'' Directive 023–01, Revision 01 (Directive 023–01) [363] and ''Instruction Manual 023–01–001–01 Revision 01, Implementation of the National Environmental Policy Act'' (Instruction Manual) [364] establish the policies and procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (''Categorical Exclusions'') which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require the preparation of an Environmental Assessment or Environmental Impact Statement. 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d).

The Instruction Manual, Appendix A, Table 1 lists Categorical Exclusions that DHS has found to have no such effect. Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the Categorical Exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[365]

This final rule implements the authority in the INA to establish fees to fund immigration and naturalization services of USCIS. DHS is not aware of any significant impact on the environment, or any change in environmental effect that will result from this final rule. DHS finds promulgation of the rule clearly fits within categorical exclusion A3, established in the Department's NEPA implementing procedures.

This final rule is a standalone regulatory action and is not part of any larger action. In accordance with its NEPA implementing procedures, DHS has determined that the final rule would not result in any major Federal action that would significantly affect the quality of the human environment, nor any extraordinary circumstances exist that would create the potential for significant environmental effects requiring further analysis and review. Therefore, this final rule is categorically excluded and no further NEPA analysis or documentation is required.

J. Paperwork Reduction Act

Under the PRA, 44 U.S.C. 3501–12, DHS must submit to OMB, for review and approval, any reporting requirements inherent in a rule, unless they are exempt. In compliance with the PRA, DHS published an NPRM on January 4, 2023, in which comments on the revisions to the information collections associated with this rulemaking were requested. Any comments received on information collection activities were related to the fees being established within the rulemaking. DHS responded to those comments in Section III. of this final rule. The Information Collection table below shows the summary of forms that are part of this rulemaking.

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Table 26: Information Collection

OMB Number	Form Number	Form Name	Type of PRA Action
1615-0096	G-1041	Genealogy Index Search Request	Revision of a Currently Approved Collection
	G-1041A	Genealogy Records Request (For each microfilm or hard copy file)	
1615-0156	G-1566	Request for a Certificate of Non-Existence	Revision of a Currently Approved Collection
1615-0079	I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	Revision of a Currently Approved Collection
1615-0009	I-129	Petition for a Nonimmigrant Worker	Revision of a Currently Approved Collection

[363] *See* DHS, ''Implementation of the National Environmental Policy Act,'' Directive 023–01, Revision 01, Oct. 31, 2014, available at *https://www.dhs.gov/sites/default/files/publications/DHS_Directive%20023-01%20Rev%2001_508compliantversion.pdf.*

[364] *See* DHS, ''Instruction Manual 023–01–001–01, Revision 01, Implementation of the National Environmental Policy Act (NEPA),'' Nov. 6, 2014, available at *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf.*

[365] Instruction Manual 023–01–001–01, Revision 1, at V.B(2)(a) through (c).

Table 26: Information Collection			
OMB Number	Form Number	Form Name	Type of PRA Action
1615-0111	I-129CW	Petition for a CNMI-Only Nonimmigrant Transitional Worker	Revision of a Currently Approved Collection
	I-129CWR	Semiannual Report for CW-1 Worker	
1615-0001	I-129F	Petition for Alien Fiancé(e)	Revision of a Currently Approved Collection
1615-0010	I-129S	Nonimmigrant Petition Based on Blanket L Petition	Revision of a Currently Approved Collection
1615-0012	I-130	Petition for Alien Relative	Revision of a Currently Approved Collection
	I-130A	Supplemental Information for Spouse Beneficiary	
1615-0013	I-131	Application for Travel Document	Revision of a Currently Approved Collection
1615-0135	I-131A	Application for Travel Document (Carrier Documentation)	Revision of a Currently Approved Collection
1615-0015	I-140	Immigrant Petition for Alien Worker	Revision of a Currently Approved Collection
1615-0016	I-191	Application for Relief Under Former Section 212(c) of the INA	Revision of a Currently Approved Collection
1615-0017	I-192	Application for Advance Permission to Enter as Nonimmigrant	Revision of a Currently Approved Collection
1615-0018	I-212	Application for Permission to Reapply for Admission into the United States After Deportation or Removal	Revision of a Currently Approved Collection
1615-0095	I-290B	Notice of Appeal or Motion	Revision of a Currently Approved Collection
1615-0020	I-360	Petition for Amerasian, Widow(er), or Special Immigrant	Revision of a Currently Approved Collection
1615-0023	I-485	Application to Register Permanent Residence or Adjust Status	Revision of a Currently Approved Collection
	I-485A	Supplement A to Form I-485, Adjustment of Status Under Section 245(i)	
	I-485J	Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j)	
1615-0026	I-526	Immigrant Petition by Standalone Investor	Revision of a Currently Approved Collection
	I-526E	Immigrant Petition by Regional Center Investor	
1615-0003	I-539	Application to Extend/Change Nonimmigrant Status	Revision of a Currently Approved Collection
1615-0027	I-566	Interagency Record of Request – A, G or NATO Dependent Employment Authorization or Change/Adjustment to/from A, G or NATO Status	Revision of a Currently Approved Collection

Table 26: Information Collection			
OMB Number	Form Number	Form Name	Type of PRA Action
1615-0028	I-600	Petition to Classify Orphan as an Immediate Relative	Revision of a Currently Approved Collection
	I-600A	Application for Advance Processing of an Orphan Petition	
	I-600A/I-600 Supp1	Form I-600A/I-600 Supplement 1, Listing of Adult Member of the Household	
	I-600A/I-600 Supp 2	Form I-600A/I-600 Supplement 2, Consent to Disclose Information	
	I-600A/I-600 Supp 3	Form I-600A/I-600 Supplement 3, Request for Action on Approved Form I-600A/I-600	
1615-0029	I-601	Application for Waiver of Grounds of Inadmissibility	Revision of a Currently Approved Collection
1615-0123	I-601A	Application for Provisional Unlawful Presence Waiver	Revision of a Currently Approved Collection
1615-0069	I-602	Application by Refugee for Waiver of Grounds of Inadmissibility	Revision of a Currently Approved Collection
1615-0030	I-612	Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	Revision of a Currently Approved Collection
1615-0032	I-690	Application for Waiver of Grounds of Inadmissibility	Revision of a Currently Approved Collection
1615-0035	I-698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	Revision of a Currently Approved Collection
1615-0038	I-751	Petition to Remove Conditions on Residence	Revision of a Currently Approved Collection
1615-0040	I-765	Application for Employment Authorization	Revision of a Currently Approved Collection
1615-0137	I-765V	Application for Employment Authorization for Abused Nonimmigrant Spouse	Revision of a Currently Approved Collection
1615-0005	I-817	Application for Family Unity Benefits	Revision of a Currently Approved Collection
1615-0043	I-821	Application for Temporary Protected Status	Revision of a Currently Approved Collection
1615-0124	I-821D	Consideration of Deferred Action for Childhood Arrivals	Revision of a Currently Approved Collection
1615-0044	I-824	Application for Action on an Approved Application or Petition	Revision of a Currently Approved Collection
1615-0045	I-829	Petition by Investor to Remove Conditions on Permanent Resident Status	Revision of a Currently Approved Collection
1615-0046	I-854A	Inter-Agency Alien Witness and Informant Record	No material or non-substantive change to a currently approved collection

Table 26: Information Collection

OMB Number	Form Number	Form Name	Type of PRA Action
1615-0072	I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal	Revision of a Currently Approved Collection
1615-0082	I-90	Application to Replace Permanent Resident Card	Revision of a Currently Approved Collection
1615-0048	I-907	Request for Premium Processing Service	Revision of a Currently Approved Collection
1615-0114	I-910	Application for Civil Surgeon Designation	Revision of a Currently Approved Collection
1615-0116	I-912	Application for Fee Waiver	Revision of a Currently Approved Collection
1615-0099	I-914	Application for T nonimmigrant status	Revision of a Currently Approved Collection
1615-0104	I-918	Petition for U nonimmigrant status	Revision of a Currently Approved Collection
1615-0106	I-929	Petition for Qualifying Family Member of a U-1 Nonimmigrant	Revision of a Currently Approved Collection
1615-0136	I-941	Application for Entrepreneur Parole	Revision of a Currently Approved Collection
1615-0159	I-956	Application for Regional Center Designation	Revision of a Currently Approved Collection
	I-956F	Application for Approval of an Investment in a Commercial Enterprise	
	I-956G	Regional Center Annual Statement	
	I-956H	Bona Fides of Persons Involved with Regional Center Program	
	I-956K	Registration for Direct and Third-Party Promoters	
1615-0050	N-336	Request for a Hearing on a Decision in Naturalization Proceedings	Revision of a Currently Approved Collection
1615-0052	N-400	Application for Naturalization	Revision of a Currently Approved Collection
1615-0056	N-470	Application to Preserve Residence for Naturalization Purposes	Revision of a Currently Approved Collection
1615-0091	N-565	Application for Replacement of Naturalization/Citizenship Document	Revision of a Currently Approved Collection
1615-0057	N-600	Application for Certificate of Citizenship	Revision of a Currently Approved Collection
1615-0087	N-600K	Application for Citizenship and Issuance of Certificate under Section 322.	Revision of a Currently Approved Collection
1615-0144	OMB-64	H-1B Registration Tool	Revision of a Currently Approved Collection

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This final rule requires additional changes to the following OMB control numbers to collect information necessary to determine fees, fee waivers, and fee exemptions. These changes include updating instructions and data collections. Please see the accompanying PRA documentation for the full analysis. The table below shows

the summary of forms that required additional changes based on this rulemaking.

<table>
<tr><th colspan="4">Table 27: Information Collections Impacted by Final Rule</th></tr>
<tr><th>OMB Number</th><th>Form Number</th><th>Form Name</th><th>Type of PRA Action</th></tr>
<tr><td>1615-0009</td><td>I-129</td><td>Petition for a Nonimmigrant Worker</td><td>Revision of a Currently Approved Collection</td></tr>
<tr><td rowspan="2">1615-0111</td><td>I-129CW</td><td>Petition for a CNMI-Only Nonimmigrant Transitional Worker</td><td rowspan="2">Revision of a Currently Approved Collection</td></tr>
<tr><td>I-129CWR</td><td>Semiannual Report for CW-1 Worker</td></tr>
<tr><td>1615-0015</td><td>I-140</td><td>Immigrant Petition for Alien Worker</td><td>Revision of a Currently Approved Collection</td></tr>
<tr><td rowspan="5">1615-0028</td><td>I-600</td><td>Petition to Classify Orphan as an Immediate Relative</td><td rowspan="5">Revision of a Currently Approved Collection</td></tr>
<tr><td>I-600A</td><td>Application for Advance Processing of an Orphan Petition</td></tr>
<tr><td>I-600/A Supp1</td><td>Form I-600A/I-600 Supplement 1, Listing of Adult Member of the Household</td></tr>
<tr><td>I-600/A Supp 2</td><td>Form I-600A/I-600 Supplement 2, Consent to Disclose Information</td></tr>
<tr><td>I-600/A Supp 3</td><td>Form I-600A/I-600 Supplement 3, Request for Action on Approved Form I-600A/I-600</td></tr>
<tr><td>1615-0116</td><td>I-912</td><td>Application for Fee Waiver</td><td>Revision of a Currently Approved Collection</td></tr>
</table>

Petition for a Nonimmigrant Worker, Form I–129

USCIS received some comments on the Petition for a Nonimmigrant Worker, Form I–129 filing fee and the assigned Asylum Program Fee. DHS responded to those comments in Section III. of this final rule. DHS has decided to change the Asylum Program Fee in the final rule to alleviate the effects of the fee on nonprofit entities and employers with fewer than 25 FTE employees. As a result of these changes, DHS has made changes to the Form I–129 form and instructions. To identify the impacted respondents and apply the appropriate fee amount, additional data collection elements, instructions and evidence requirements were added to the Form I–129 as part of this final rule. These changes required a reassessment of the Form I–129's the time burden.

Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW

USCIS received some comments on the CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW filing fee and the assigned Asylum Program Fee. DHS responded to those comments in Section III. of this final rule. DHS has decided to change the Asylum Program Fee in the final rule to alleviate the effects of the fee on nonprofit entities and employers with fewer than 25 FTE employees. As a result of these changes, DHS has made changes to the Form I–129CW form and instructions. To identify the impacted respondents and apply the appropriate fee amount, additional data collection elements, instructions and evidence requirements were added to the Form I–129CW as part of this final rule. These changes required a reassessment of the Form I–129CW's the time burden.

Immigrant Petition for Alien Workers, Form I–140

USCIS received some comments on the Immigrant Petition for Alien Workers, Form I–140 and the assigned Asylum Program Fee. DHS responded to those comments in Section III. of this final rule. DHS has decided to change the Asylum Program Fee in the final rule to alleviate the effects of the fee on nonprofit entities and employers with 25 or fewer FTE employees. As a result of these changes, DHS has made changes to the Form I–140 form and instructions. To identify the impacted respondents and apply the appropriate fee amount, additional data collection elements, instructions and evidence requirements were added to the Form I–140 as part of this final rule. These changes required a reassessment of the Form I–140's the time burden.

Petition To Classify Orphan as an Immediate Relative, Form I–600 and Application for Advance Processing of Orphan Petition, Form I–600A

USCIS received some comments on the Petition to Classify Orphan as an Immediate Relative, Form I–600 and Application for Advance Processing of Orphan Petition, Form I–600A filling fee. DHS responded to those comments in Section III. of this final rule. In response to the public comments, DHS reexamined the fees for adoptions and decided that some services could be

provided for free. As a result of these changes, DHS has made changes to the Forms I–600 and I–600A, and Form I–600A/I–600, Supplement 3, Request for Action on Approved Form I–600A/I–600 form and instructions. To identify the impacted respondents and apply the appropriate fee amount; additional data collection elements and instructions were added to the Form I–600, I–600A and I–600A/I–600, Supplement 3 as part of this final rule. These changes required a reassessment of the Form I–600 and I–600A's the time burden. There was no impact to and I–600A/I–600, Supplement 3's time burden. Form I–600A/I–600 Supplement 1, Listing of Adult Member of the Household and Form I–600A/I–600 Supplement 2, Consent to Disclose Information.

Request for Fee Waiver, Form I–912

DHS proposed 8 CFR 106.3(a)(2) to require that a request for a fee waiver be submitted on the form prescribed by USCIS in accordance with the instructions on the form. In the final rule, USCIS will maintain the status quo of accepting either Form I–912, Request for Fee Waiver, or a written request, and revert to the current effective language at 8 CFR 103.7(c)(2) (Oct. 1, 2020). Additionally, USCIS received some comments on the Application for Fee Waiver, Form I–912 requesting that USCIS expand the types of means-tested benefits received by a child as evidence for a fee waiver. DHS responded to those comments in Section III. of this final rule. After considering the comments on the proposed rule, DHS has decided to accept evidence of receipt of a means-tested benefit by a household child as evidence of the parent's inability to pay because eligibility for these means-tested benefits is dependent on household income. DHS has made changes to the I–912 instructions. DHS also made changes to the Forms I–912 form and instructions to streamline data collection and clarifying instruction contents as part of this final rule. These changes required a reassessment of the Form I–912's the time burden.

USCIS is consolidating all information related to Form fees, fee exemptions, and how to submit fee payments into Form G–1055, Fee Schedule. Most fee-related language, including language from sections *What is the Filing Fee, How to Check If the Fees Are Correct, Fee Waiver,* and *Premium Processing* content is being removed from individual Form Instructions documents, which results in a per-response hour burden reduction for many USCIS information collections and an overall total hour burden reduction for the USCIS information collection inventory. In accordance with the PRA, DHS included an information collection notice in the proposed rule and each of the proposed, revised information collection instruments were posted for public comment.

Differences in information collection request respondent volume and fee model filing volume projections.

DHS notes that the estimates of annual filing volume in the PRA section of this preamble are not the same as those used in the model used to calculate the fee amounts in this final rule. For example, the fee calculation model projects 1,666,500 Form I–765 filings while the estimated total number of respondents for the information collection I–765 is 2,179,494. As stated in section V.B.1.a of this preamble, the Volume Projection Committee forecasts USCIS workload volume based on short- and long-term volume trends and time series models, historical receipts data, patterns (such as level, trend, and seasonality), changes in policies, economic conditions, or correlations with historical events to forecast receipts. Workload volume is used to determine the USCIS resources needed to process benefit requests and is the primary cost driver for assigning activity costs to immigration benefits and biometric services in the USCIS ABC model. DHS uses a different method for estimating the average annual number of respondents for the information collection over the 3-year OMB approval of the control number, generally basing the estimate on the average filing volumes in the previous 3 or 5-year period, with less consideration of the volume effects on planned or past policy changes. Although the RIA uses similar historic average volumes, RIAs isolate the impacts of proposed policy using models that may use different periods of analysis and often make simplifying assumptions about costs such as information collection burdens not caused by the regulation. When the information collection request is nearing expiration USCIS will update the estimates of annual respondents based on actual results in the submission to OMB. The PRA burden estimates are generally updated at least every 3 years. Thus, DHS expects that the PRA estimated annual respondents will be updated to reflect the actual effects of this rule within a relatively short period after a final rule takes effect.

List of Subjects

8 CFR Part 103

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

8 CFR Part 106

Citizenship and naturalization, Fees, Immigration.

8 CFR Part 204

Administrative practice and procedure, Adoption and foster care, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 212

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

8 CFR Part 214

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

8 CFR Part 240

Administrative practice and procedure, Aliens.

8 CFR Part 244

Administrative practice and procedure, Immigration.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Penalties, Reporting and recordkeeping requirements, Students.

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

PART 103–IMMIGRATION BENEFIT REQUESTS; USCIS FILING REQUIREMENTS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

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

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1356b, 1372; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101 *et seq.*); Pub. L. 112–54, 125

Stat 550 (8 U.S.C. 1185 note); 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 103.2 is amended by revising and republishing paragraphs (a)(1), (a)(7), and (b)(19)(iii)(A) to read as follows:

§ 103.2 Submission and adjudication of benefit requests.

(a) * * *

(1) *Preparation and submission.* Every form, benefit request, or other document must be submitted to DHS and executed in accordance with the form instructions regardless of a provision of 8 CFR chapter I to the contrary. Each form, benefit request, or other document must be filed with the fee(s) required by regulation. Filing fees generally are non-refundable regardless of the outcome of the benefit request, or how much time the adjudication requires, and any decision to refund a fee is at the discretion of USCIS. Except as otherwise provided in this chapter I, fees must be paid when the request is filed or submitted.

* * * * *

(7) *Benefit requests submitted.* (i) USCIS will consider a benefit request received and will record the receipt date as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format.

(ii) A benefit request which is rejected will not retain a filing date. A benefit request will be rejected if it is not:

(A) Signed with valid signature;

(B) Executed;

(C) Filed in compliance with the regulations governing the filing of the specific application, petition, form, or request; and

(D) Submitted with the correct fee(s). Every form, benefit request, or other document that requires a fee payment must be submitted with the correct fee(s).

(*1*) If USCIS accepts a benefit request and determines later that the request was not accompanied by the correct fee, USCIS may reject or deny the request. If the benefit request was approved when USCIS determines the correct fee was not paid, the approval may be revoked upon notice.

(*2*) If a check or other financial instrument used to pay a fee is dishonored, declined, or returned because of insufficient funds, USCIS will resubmit the payment to the remitter institution one time. If the instrument used to pay a fee is dishonored, declined, or returned a second time, the filing may be rejected or denied.

(*3*) Financial instruments dishonored, declined, or returned for any reason other than insufficient funds, including but not limited to when an applicant, petitioner, or requestor places a stop payment on a financial instrument will not be resubmitted, and any immigration benefit request or request for action filed with USCIS may be rejected or denied regardless of whether USCIS has begun processing the request or already taken action on a case. Credit cards that are declined for any reason will not be resubmitted.

(*4*) If a check or other financial instrument used to pay a fee is dated more than one year before the request is received, the payment and request may be rejected.

(iii) A rejection of a filing with USCIS may not be appealed.

(iv) Unless otherwise provided in this title, only one of the same benefit request as defined in 8 CFR 1.2 may be submitted at a time or while the same request is pending. If more than one materially identical requests are submitted, USCIS may reject one at its discretion. For purposes of this section, a motion to reopen or reconsider and an appeal that is filed on the same decision will be considered a duplicate request.

(b) * * *

(19) * * *

(iii) * * *

(A) USCIS will send secure identification documents, such as a Permanent Resident Card or Employment Authorization Document, only to the applicant or self-petitioner unless the applicant or self-petitioner specifically consents to having his or her secure identification document sent to a designated agent or their attorney or accredited representative of record, as specified on the form instructions.

* * * * *

■ 3. Section 103.3 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 103.3 Denials, appeals, and precedent decisions.

(a) * * *

(2) * * *

(ii) *Reviewing official.* The official who made the unfavorable decision being appealed shall review the appeal unless the affected party moves to a new jurisdiction. In that instance, the official who has jurisdiction over such a proceeding in that geographic location shall review it. In the case of a fee waived or exempt appeal under 8 CFR 106.3, USCIS may forward the appeal for adjudication without requiring a review by the official who made the unfavorable decision.

* * * * *

■ 4. Section 103.7 is revised and republished to read as follows:

§ 103.7 Fees.

(a) *Department of Justice (DOJ) fees.* Fees for proceedings before immigration judges and the Board of Immigration Appeals are described in 8 CFR 1003.8, 1003.24, and 1103.7.

(1) *USCIS may accept DOJ fees.* Except as provided in 8 CFR 1003.8, or as the Attorney General otherwise may provide by regulation, any fee relating to any EOIR proceeding may be paid to USCIS. Payment of a fee under this section does not constitute filing of the document with the Board or with the immigration court. DHS will provide the payer with a receipt for a fee and return any documents submitted with the fee relating to any immigration court proceeding.

(2) *DHS–EOIR biometric services fee.* Fees paid to and accepted by DHS relating to any immigration proceeding as provided in 8 CFR 1103.7(a) must include an additional $30 for DHS to collect, store, and use biometric information.

(3) *Waiver of immigration court fees.* An immigration judge may waive any fees prescribed under this chapter for cases under their jurisdiction to the extent provided in 8 CFR 1003.8, 1003.24, and 1103.7.

(b) *USCIS fees.* USCIS fees will be required as provided in 8 CFR part 106.

(c) *Remittances.* Remittances to the Board of Immigration Appeals must be made payable to the ''United States Department of Justice,'' in accordance with 8 CFR 1003.8.

(d) *Non-USCIS DHS immigration fees.* The following fees are applicable to one or more of the immigration components of DHS:

(1) *DCL system costs fee.* For use of a Dedicated Commuter Lane (DCL) located at specific U.S. ports-of-entry by an approved participant in a designated vehicle:

(i) $80.00; or

(ii) $160.00 for a family (applicant, spouse and minor children); plus,

(iii) $42 for each additional vehicle enrolled.

(iv) The fee is due after approval of the application but before use of the DCL.

(v) This fee is non-refundable but may be waived by DHS.

(2) *Petition for Approval of School for Attendance by Nonimmigrant Student* (*Form I–17*). (i) For filing a petition for school certification: $3,000 plus, a site visit fee of $655 for each location required to be listed on the form.

(ii) For filing a petition for school recertification: $1,250, plus a site visit

fee of $655 for each new location required to be listed on the form.

(3) *Form I–68.* For application for issuance of the Canadian Border Boat Landing Permit under section 235 of the Act:

(i) $16.00; or

(ii) $32 for a family (applicant, spouse, and unmarried children under 21 years of age, and parents of either spouse).

(4) *Form I–94.* For issuance of Arrival/Departure Record at a land border port-of-entry: $6.00.

(5) *Form I–94W.* For issuance of Nonimmigrant Visa Waiver Arrival/Departure Form at a land border port-of-entry under section 217 of the Act: $6.00.

(6) *Form I–246.* For filing application for stay of deportation under 8 CFR part 243: $155.00. The application fee may be waived by DHS.

(7) *Form I–823.* For application to a PORTPASS program under section 286 of the Act:

(i) $25.00; or

(ii) $50.00 for a family (applicant, spouse, and minor children).

(iii) The application fee may be waived by DHS.

(iv) If fingerprints are required, the inspector will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks before accepting the application fee.

(v) The application fee (if not waived) and fingerprint fee must be paid to CBP before the application will be processed. The fingerprint fee may not be waived.

(vi) For replacement of PORTPASS documentation during the participation period: $25.00.

(8) *Fee Remittance for F, J, and M Nonimmigrants (Form I–901).* The fee for Form I–901 is:

(i) For F and M students: $350.

(ii) For J–1 au pairs, camp counselors, and participants in a summer work or travel program: $35.

(iii) For all other J exchange visitors (except those participating in a program sponsored by the Federal Government): $220.

(iv) There is no Form I–901 fee for J exchange visitors in federally funded programs with a program identifier designation prefix that begins with G–1, G–2, G–3, or G–7.

(9) *Special statistical tabulations.* The DHS cost of the work involved.

(10) *Monthly, semiannual, or annual ''Passenger Travel Reports via Sea and Air'' tables.*

(i) For the years 1975 and before: $7.00.

(ii) For after 1975: Contact: U.S. Department of Transportation, Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

(11) *Request for Classification of a citizen of Canada to engage in professional business activities under section 214(e) of the Act (Chapter 16 of the North American Free Trade Agreement).* $50.00.

(12) *Request for authorization for parole of an alien into the United States.* $65.00.

(13) *Global Entry.* Application for Global Entry: $100.

(14) *U.S. Asia-Pacific Economic Cooperation (APEC) Business Travel Card.* Application fee: $70.

(15) *Notice of Appeal or Motion (Form I–290B) filed with ICE SEVP.* For a Form I–290B filed with the Student and Exchange Visitor Program (SEVP): $675.

■ 5. Section 103.17 is revised and republished to read as follows:

§ 103.17 Biometric services fee.

DHS may charge a fee to collect biometric information, to provide biometric collection services, to conduct required national security and criminal history background checks, to verify an individual's identity, and to store and maintain this biometric information for reuse to support other benefit requests. When a biometric services fee is required, USCIS may reject a benefit request submitted without the correct biometric services fee.

■ 6. Section 103.40 is revised and republished to read as follows:

§ 103.40 Genealogical research requests.

(a) *Nature of requests.* Genealogy requests are requests for searches and/or copies of historical records relating to a deceased person, usually for genealogy and family history research purposes.

(b) *Forms.* USCIS provides on its website at *https://www.uscis.gov/records/genealogy* the required forms in electronic versions: Genealogy Index Search Request or Genealogy Records Request.

(c) *Required information.* Genealogical research requests may be submitted to request one or more separate records relating to an individual. A separate request must be submitted for everyone searched. All requests for records or index searches must include the individual's:

(1) Full name (including variant spellings of the name and/or aliases, if any).

(2) Date of birth, at least as specific as a year.

(3) Place of birth, at least as specific as a country and the country name at the time of the individual's immigration or naturalization if known.

(d) *Optional information.* To better ensure a successful search, a genealogical research request may include everyone's:

(1) Date of arrival in the United States.

(2) Residence address at time of naturalization.

(3) Names of parents, spouse, and children if applicable and available.

(e) *Additional information required to retrieve records.* For a Genealogy Records Request, requests for copies of historical records or files must identify the record by number or other specific data used by the Genealogy Program Office to retrieve the record as follows:

(1) C-Files must be identified by a naturalization certificate number.

(2) Forms AR–2 and A-Files numbered below 8 million must be identified by Alien Registration Number.

(3) Visa Files must be identified by the Visa File Number. Registry Files must be identified by the Registry File Number (for example, R–12345).

(f) *Information required for release of records.* (1) Documentary evidence must be attached to a Genealogy Records Request or submitted in accordance with the instructions on the Genealogy Records Request form.

(2) Search subjects will be presumed deceased if their birth dates are more than 100 years before the date of the request. In other cases, the subject is presumed to be living until the requestor establishes to the satisfaction of USCIS that the subject is deceased.

(3) Documentary evidence of the subject's death is required (including but not limited to death records, published obituaries or eulogies, published death notices, church or bible records, photographs of gravestones, and/or copies of official documents relating to payment of death benefits).

(g) *Index search.* Requestors who are unsure whether USCIS has any record of their ancestor, or who suspect a record exists but cannot identify that record by number, may submit a request for index search. An index search will determine the existence of responsive historical records. If no record is found, USCIS will notify the requestor accordingly. If records are found, USCIS will give the requestor electronic copies of records stored in digital format for no additional fee. For records found that are stored in paper format, USCIS will give the requestor the search results, including the type of record found and the file number or other information identifying the record. The requestor can use index search results to submit a Genealogy Records Request.

(h) *Processing of paper record copy requests.* This service is designed for

requestors who can identify a specific record or file to be retrieved, copied, reviewed, and released. Requestors may identify one or more files in a single request.

■ 7. Part 106 is revised and republished to read as follows:

PART 106—USCIS FEE SCHEDULE

Sec.
106.1 Fee requirements.
106.2 Fees.
106.3 Fee waivers and exemptions.
106.4 Premium processing service.
106.5 Authority to certify records.
106.6 DHS severability.

Authority: 8 U.S.C. 1101, 1103, 1254a, 1254b, 1304, 1356; Pub. L. 107–609; 48 U.S.C. 1806; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101 note); Pub. L. 115–218, 132 Stat. 1547; Pub. L. 116–159, 134 Stat. 709.

§ 106.1 Fee requirements.

(a) *General.* Fees must be submitted with any USCIS request in the amount and subject to the conditions provided in this part and remitted in the manner prescribed in the relevant form instructions, on the USCIS website, or in a **Federal Register** document. The fees established in this part are associated with the benefit, the adjudication, or the type of request and not solely determined by the form number listed in § 106.2.

(b) *Remittance source and method.* Fees must be remitted from a bank or other institution located in the United States and payable in U.S. currency. The fee must be paid using the method that USCIS prescribes for the request, office, filing method, or filing location. USCIS will provide at least a 30-day public notice before amending the payment method required for a fee.

(c) *Dishonored payments.* If a remittance in payment of a fee or any other matter is not honored by the bank or financial institution on which it is drawn:

(1) The provisions of 8 CFR 103.2(a)(7)(ii) apply, no receipt will be issued, and if a receipt was issued, it is void and the benefit request loses its receipt date; and

(2) If the benefit request was approved, the approval may be revoked upon notice, rescinded, or canceled subject to statutory and regulatory requirements applicable to the immigration benefit request. If the approved benefit request requires multiple fees, this paragraph (c) would apply if any fee submitted is not honored, including a fee to request premium processing under § 106.4. Other fees that were paid for a benefit request that is revoked upon notice under this paragraph (c) will be retained and not refunded. A revocation of an approval because the fee submitted is not honored may be appealed in accordance with 8 CFR 103.3, the applicable form instructions, and other statutes or regulations that may apply.

(d) *Expired payments.* DHS is not responsible for financial instruments that expire before they are deposited. USCIS may reject any filing for which required payment cannot be processed due to expiration of the financial instrument.

(e) *Credit and debit card disputes.* Fees paid to USCIS using a credit or debit card are not subject to dispute, chargeback, forced refund, or return to the cardholder for any reason except at the discretion of USCIS.

(f) *Definitions.* For the purposes of this part, the term:

(1) Small employer means a firm or individual that has 25 or fewer full-time equivalent employees in the United States, including any affiliates and subsidiaries.

(2) Nonprofit means organizations organized as tax exempt under the Internal Revenue Code of 1986, section 501(c)(3), 26 U.S.C. 501(c)(3), or governmental research organizations as defined under 8 CFR 214.2(h)(19)(iii)(C).

(3) Means tested benefit means, as determined by USCIS, a public benefit where the agency granting the benefit considers income and resources. Means-tested benefits may be federally, state, or locally funded. In general, for a benefit that was granted based on income, USCIS considers it a means-tested benefit.

(4) Federal Poverty Guidelines means the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(g) *Online filing discount.* Unless otherwise provided in this part, the fee for forms filed online with USCIS, using the electronic system prescribed by USCIS, will be an amount that is $50 lower than the fee prescribed in § 106.2.

§ 106.2 Fees.

(a) *I Forms*—(1) *Application to Replace Permanent Resident Card, Form I–90.* For filing an application for a Permanent Resident Card, Form I–551, to replace an obsolete card or to replace one lost, mutilated, or destroyed, or for a change in name $465.

(i) If the applicant was issued a card but never received it: No fee.

(ii) If the applicant's card was issued with incorrect information because of DHS error and the applicant is filing for a replacement: No fee.

(iii) If the applicant has reached their 14th birthday and their existing card will expire after their 16th birthday: No fee.

(2) *Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, Form I–102.* For filing an application for Arrival/Departure Record Form I–94, or Crewman's Landing Permit Form I–95, to replace one lost, mutilated, or destroyed: $560.

(i) For nonimmigrant member of the U.S. armed forces: No fee for initial filing;

(ii) For a nonimmigrant member of the North Atlantic Treaty Organization (NATO) armed forces or civil component: No fee for initial filing;

(iii) For nonimmigrant member of the Partnership for Peace military program under the Status of Forces Agreement (SOFA): No fee for initial filing; and

(iv) For replacement for DHS error: No fee.

(3) *Petition or Application for a Nonimmigrant Worker, Form I–129.* For filing a petition or application for a nonimmigrant worker:

(i) Petition for H–1B Nonimmigrant Worker or H–1B1 Free Trade Nonimmigrant Worker: $780. For small employers and nonprofits: $460.

(ii) Petition for H–2A Nonimmigrant Worker with 1 to 25 named beneficiaries: $1,090.

(iii) Petition for H–2A Nonimmigrant Worker with only unnamed beneficiaries: $530. For small employers and nonprofits: $460.

(iv) Petition for H–2B Nonimmigrant Worker with 1 to 25 named beneficiaries: $1,080.

(v) Petition for H–2B Nonimmigrant Worker with only unnamed beneficiaries: $580. For small employers and nonprofits: $460.

(vi) Petition for L Nonimmigrant Worker: $1,385.

(vii) Petition for O Nonimmigrant Worker with 1 to 25 named beneficiaries: $1,055.

(viii) Petition or Application for E, H–3, P, Q, R, or TN Nonimmigrant Worker with 1 to 25 named beneficiaries: $1,015.

(ix) For small employers and nonprofits as defined in § 106.1(f), the fees in paragraphs (a)(3)(ii), (a)(3)(iv), (a)(3)(vi), (a)(3)(vii), and (a)(3)(viii) of this section will be one-half the amount in those paragraphs rounded to the nearest $5 increment.

(x) Additional fees in paragraph (c) of this section may apply.

(4) *Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW.*

(i) For an employer to petition on behalf of CW–1 nonimmigrant

beneficiaries in the Commonwealth of the Northern Mariana Islands (CNMI): $1,015.

(ii) For small employers and nonprofits: $460. For the Semiannual Report for CW–1 Employers (Form I–129CWR): No fee.

(iii) Additional fees in paragraph (c) of this section may apply.

(5) *Petition for Alien Fiancé(e), Form I–129F.* (i) For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act: $675.

(ii) For a K–3 spouse as designated in 8 CFR 214.1(a)(2) who is the beneficiary of an immigrant petition filed by a U.S. citizen on a Petition for Alien Relative, Form I–130: No fee.

(6) *Petition for Alien Relative, Form I–130.* For filing a petition to classify status of a foreign national relative for issuance of an immigrant visa under section 204(a) of the Act. $675.

(7) *Application for Travel Document, Form I–131.* (i) Refugee Travel Document for asylee and lawful permanent resident who obtained such status as an asylee 16 years or older: $165.

(ii) Refugee Travel Document for asylee or lawful permanent resident who obtained such status as an asylee under the age of 16: $135.

(iii) Advance Parole, Reentry Permit, and other travel documents: $630.

(iv) There is no fee for a travel document for applicants who filed USCIS Form I–485 on or after July 30, 2007, and before April 1, 2024, and paid the Form I–485 fee, while the I–485 remains pending.

(v) There is no fee for parole requests from current or former U.S. armed forces service members.

(vi) The discount in section 106.1(g) does not apply to paragraphs (a)(7)(i) and (ii) of this section.

(8) *Application for Carrier Documentation, Form I–131A.* For filing an application to allow an individual who loses their approved travel document to apply for a travel document (carrier documentation) to board an airline or other transportation carrier to return to the United States: $575.

(9) *Declaration of Financial Support, Form I–134.* To provide financial support to a beneficiary of certain immigration benefits for the duration of their temporary stay in the United States. No fee.

(10) *Online Request to be a Supporter and Declaration of Financial Support, Form I–134A.* To request to be a supporter and agree to provide financial support to a beneficiary and undergo background checks as part of certain special parole processes. No fee.

(11) *Immigrant Petition for Alien Worker, Form I–140.* For filing a petition to classify preference status of an alien based on profession or occupation under section 204(a) of the Act: $715.

(12) *Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA), Form I–191.* For filing an application for discretionary relief under section 212(c) of the Act: $930.

(13) *Application for Advance Permission to Enter as a Nonimmigrant, Form I–192.* For filing an application for discretionary relief under section 212(d)(3), (13), or (14) of the Act, except in an emergency case or where the approval of the application is in the interest of the U.S. Government: $1,100. The online filing discount in § 106.1(g) applies when this form is submitted to USCIS but does not apply to this paragraph when the form is submitted to CBP.

(14) *Application for Waiver of Passport and/or Visa, Form I–193.* For filing an application for waiver of passport and/or visa: $695. The discount in § 106.1(g) does not apply to this section when the form is submitted to CBP.

(15) *Application for Permission to Reapply for Admission into the United States After Deportation or Removal, Form I–212.* For filing an application for permission to reapply for admission by an excluded, deported, or removed alien; an alien who has fallen into distress; an alien who has been removed as an alien enemy; or an alien who has been removed at Government expense: $1,175. The online filing discount in § 106.1(g) does not apply to this section when the form is submitted to CBP.

(16) *Notice of Appeal or Motion, Form I–290B.* For appealing a decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction, and for filing a motion to reopen or reconsider a USCIS decision: $800.

(i) The fee will be the same for appeal of or motion on a denial of a benefit request with one or multiple beneficiaries.

(ii) There is no fee for conditional permanent residents who filed a waiver of the joint filing requirement based on battery or extreme cruelty and filed a Notice of Appeal or Motion (Form I–290B) when their Petition to Remove the Conditions on Residence (Form I–751) was denied.

(17) *Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360:* $515. There is no fee for the following:

(i) A petition seeking classification as an Amerasian;

(ii) A petition seeking immigrant classification as a Violence Against Women Act (VAWA) self-petitioner;

(iii) A petition for Special Immigrant Juvenile classification;

(iv) A petition seeking special immigrant classification as Afghan or Iraqi translator or interpreter, Iraqi national employed by or on behalf of the U.S. Government, or Afghan national employed by or on behalf of the U.S. Government or employed by the International Security Assistance Force (ISAF); or a surviving spouse or child of such a person; or

(v) A petition for a person who served honorably on active duty in the U.S. armed forces filing under section 101(a)(27)(K) of the Act.

(18) *Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian, Form I–361.* Filed in support of Form I–360, Petition to Classify Public Law 97–359 Amerasian as the Child, Son, or Daughter of a United States Citizen. No fee.

(19) *Request to Enforce Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian, Form I–363.* For a beneficiary of a petition for a Public Law 97–359 Amerasian to request enforcement of the guarantee of financial support and legal custody executed by the beneficiary's sponsor. No fee.

(20) *Record of Abandonment of Lawful Permanent Resident Status, Form I–407.* To voluntarily abandon status as a lawful permanent resident. No fee.

(21) *Application to Register Permanent Residence or Adjust Status, Form I–485.* For filing an application for permanent resident status or creation of a record of lawful permanent residence:

(i) $1,440 for an applicant 14 years of age or older; or

(ii) $950 for an applicant under the age of 14 years who submits the application concurrently with the Form I–485 of a parent.

(iii) There is no fee for the following:

(A) An applicant who is in deportation, exclusion, or removal proceedings before an immigration judge, and the court waives the application fee.

(B) An applicant who served honorably on active duty in the U.S. armed forces who is filing under section 101(a)(27)(K) of the Act.

(22) *Application to Adjust Status under Section 245(i) of the Act, Form I–*

485 Supplement A. Supplement A to Form I–485 for persons seeking to adjust status under the provisions of section 245(i) of the Act a sum of $1,000 be paid while the applicant's, ''Application to Register Permanent Residence or Adjust Status,'' is pending, unless payment of the additional sum is not required under section 245(i) of the Act, including:

(i) If applicant is unmarried and under 17 years of age: No fee.

(ii) If the applicant is the spouse or unmarried child under 21 years of age of a legalized alien and attaches a copy of a USCIS receipt or approval notice for a properly filed Form I–817, Application for Family Unity Benefits: No fee.

(23) *Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j), Form I–485J.* To confirm that the job offered in Form I–140, Immigrant Petition for Alien Workers, remains a bona fide job offer that the beneficiary intends to accept once we approve the Form I–485, Application to Register Permanent Residence or Adjust Status, or request job portability under INA section 204(j) to a new, full-time, permanent job offer that the beneficiary intends to accept once we approve the Form I–485. No fee.

(24) *Request for Waiver of Certain Rights, Privileges, Exemptions, and Immunities, Form I–508.* To waive certain diplomatic rights privileges, exemptions, and immunities associated with your occupational status. No fee.

(25) *Immigrant Petition by Standalone or Regional Center Investor, Forms I–526 and I–526E.* To petition USCIS for status as an immigrant to the United States under section 203(b)(5) of the Act.

(i) Immigrant Petition by Standalone Investor, Form I–526: $11,160.

(ii) Immigrant Petition by Regional Center Investor, Form I–526E: $11,160.

(26) *Application To Extend/Change Nonimmigrant Status, Form I–539.* For certain nonimmigrants to extend their stay or change to another nonimmigrant status, CNMI residents applying for an initial grant of status, F and M nonimmigrants applying for reinstatement, and persons seeking V nonimmigrant status or an extension of stay as a V nonimmigrant. $470. There is no fee for Nonimmigrant A, G, and NATO.

(27) *Interagency Record of Request—A, G, or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, or NATO Status, Form I–566.* For dependent employment authorization as an eligible A–1, A–2, G–1, G–3, G–4, or NATO 1–6 dependent; or change or adjustment of status to, or from, A, G or NATO status. No fee.

(28) *Application for Asylum and Withholding of Removal, Form I–589.* To apply for asylum and withholding of removal. No fee.

(29) *Registration for Classification as a Refugee, Form I–590.* To determine eligibility for refugee classification and resettlement in the United States. No fee.

(30) *Petition to Classify Orphan as an Immediate Relative, Form I–600.* For filing a petition to classify an orphan as an immediate relative: $920.

(i) There is no fee for the first Form I–600 filed for a child based on an approved *Application for Advance Processing of an Orphan Petition,* Form I–600A, during the Form I–600A approval period.

(ii) If more than one Form I–600 is filed during the Form I–600A approval period on behalf of beneficiaries who are birth siblings, no additional fee is required.

(iii) If more than one Form I–600 is filed during the Form I–600A approval period on behalf of beneficiaries who are not birth siblings, the fee is $920 for the second and each subsequent Form I–600 petition submitted.

(iv) This filing fee is not charged if a new Form I–600 combination filing is filed due to a change in marital status while the prior Form I–600A or Form I–600 combination filing is pending.

(v) This filing fee is charged if a new Form I–600 combination filing is filed due to a change in marital status after the Form I–600A or Form I–600 combination filing suitability determined is approved.

(31) *Application for Advance Processing of an Orphan Petition, Form I–600A.* For filing an application for determination of suitability and eligibility to adopt an orphan: $920.

(i) This filing fee is not charged if a new Form I–600A is filed due to a change in marital status while the prior Form I–600A is pending.

(ii) This filing fee is charged if a new Form I–600A is filed due to a change in marital status after the Form I–600A is approved.

(32) *Request for Action on Approved Form I–600A/I–600, Form I–600A/I–600 Supplement 3.* To request an extension of a suitability determination; updated suitability determination; change of non-Convention country; or a duplicate approval notice. $455. This filing fee:

(i) Is not charged to obtain a first or second extension of the approval of Form I–600A, or to obtain a first or second change of non-Hague Adoption Convention country during the Form I–600A approval period.

(ii) Is not charged for a request for a duplicate approval notice.

(iii) Is charged to request a new approval notice based on a significant change and updated home study unless there is also a request for a first or second extension of the Form I–600A approval, or a first or second change of non-Hague Adoption Convention country on the same Supplement 3.

(iv) Is charged for third or subsequent extensions of the approval of the Form I–600A and third or subsequent changes of non-Hague Adoption Convention country.

(33) *Application for Waiver of Ground of Inadmissibility, Form I–601.* To seek a waiver of grounds of inadmissibility if you are inadmissible to the United States and are seeking an immigrant visa, adjustment of status, certain nonimmigrant statuses, or certain other immigration benefits. $1,050. For applicants for adjustment of status of Indochina refugees under Public Law 95–145. No fee.

(34) *Application for Provisional Unlawful Presence Waiver, Form I–601A.* To request a provisional waiver of the unlawful presence grounds of inadmissibility under section 212(a)(9)(B) of the Act. $795.

(35) *Application by Refugee for Waiver of Grounds of Inadmissibility, Form I–602.* For a refugee who has been found inadmissible to the United States to apply for a waiver of inadmissibility for humanitarian reasons, family unity, or national interest. No fee.

(36) *Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Immigration and Nationality Act, as Amended), Form I–612.* For J–1 and J–2 visas holders and their families to apply for a waiver of the two-year foreign residence requirement. $1,100.

(37) *Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, Form I–687.* To apply for a waiver of inadmissibility for an applicant for adjustment of status under section 245A or 210 of the Act. $1,240.

(38) *Application for Waiver of Grounds of Inadmissibility, Form I–690.* For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act as amended, in conjunction with the application under section 210 or 245A of the Act: $905.

(39) *Report of Immigration Medical Examination and Vaccination Record (Form I–693).* For adjustment of status applicants to establish they are not inadmissible to the United States on health-related grounds. No fee.

(40) *Notice of Appeal of Decision under Sections 245A or 210 of the*

Immigration and Nationality Act, Form I–694. For appealing the denial of an application under section 210 or 245A of the Act, or a petition under section 210A of the Act: $1,125.

(41) *Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA), Form I–698.* For filing an application to adjust status from temporary to permanent resident (under section 245A of Pub. L. 99–603): $1,670.

(42) *Refugee/Asylee Relative Petition, Form I–730.* For a refugee to request a spouse and unmarried child be approved to join them in the United States. No fee.

(43) *Petition to Remove Conditions on Residence, Form I–751.* For filing a petition to remove the conditions on residence based on marriage: $750. There is no fee for a conditional permanent resident spouse or child who files a waiver of the joint filing requirement based on battery or extreme cruelty.

(44) *Application for Employment Authorization, Form I–765.* To request employment authorization and/or an Employment Authorization Document (EAD). $520.

(i) For an applicant who filed USCIS Form I–485 with a fee after April 1, 2024, and their Form I–485 is still pending: $260. The online filing discount in § 106.1(g) does not apply to this paragraph.

(ii) There is no fee for an initial Employment Authorization Document for the following:

(A) An applicant who filed USCIS Form I–485 on or after July 30, 2007, and before April 1, 2024, and paid the Form I–485 fee;

(B) Dependents of certain government and international organizations or NATO personnel;

(C) N–8 (Parent of alien classed as SK3) and N–9 (Child of N–8) nonimmigrants;

(D) Persons granted asylee status (AS1, AS6);

(E) Citizen of Micronesia, Marshall Islands, or Palau;

(F) Persons granted Withholding of Deportation or Removal;

(G) Applicant for Asylum and Withholding of Deportation or Removal including derivatives;

(H) Taiwanese dependents of Taipei Economic and Cultural Representative Office (TECRO) E–1 employees; and

(I) Current or former U.S. armed forces service members.

(iii) Request for replacement Employment Authorization Document based on USCIS error: No fee.

(iv) There is no fee for a renewal or replacement Employment Authorization Document for the following:

(A) Any current Adjustment of Status or Registry applicant who filed for adjustment of status on or after July 30, 2007, and before April 1, 2024, and paid the appropriate Form I–485 filing fee;

(B) Dependent of certain foreign government, international organization, or NATO personnel;

(C) Citizen of Micronesia, Marshall Islands, or Palau; and

(D) Persons granted withholding of deportation or removal.

(45) *Application for Employment Authorization for Abused Nonimmigrant Spouse, Form I–765V.* Used for certain abused nonimmigrant spouses to request an employment authorization document (EAD). No fee.

(46) *Petition to Classify Convention Adoptee as an Immediate Relative, Form I–800.* For filing a petition to classify a Convention adoptee as an immediate relative:

(i) There is no fee for the first Form I–800 filed for a child based on an approved *Application for Determination of Suitability to Adopt a Child from a Convention Country,* Form I–800A, during the Form I–800A approval period.

(ii) If more than one Form I–800 is filed during the Form I–800A approval period on behalf of beneficiaries who are birth siblings, no additional fee is required.

(iii) If more than one Form I–800 is filed during the Form I–800A approval period on behalf of beneficiaries who are not birth siblings, the fee is $920 for the second and each subsequent Form I–800 petition submitted.

(47) *Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I–800A.* For filing an application for determination of suitability and eligibility to adopt a child from a Hague Adoption Convention country: $920.

(i) This filing fee is not charged if a new Form I–800A is filed due to a change in marital status while the prior Form I–800A is pending.

(ii) This filing fee is charged if a new Form I–800A is filed due to a change in marital status after the Form I–800A is approved.

(48) *Request for Action on Approved Form I–800A, Form I–800A Supplement 3.* To request an extension of a suitability determination; updated suitability determination; change in Convention country; or a request for a duplicate approval notice. $455. This filing fee:

(i) Is not charged to obtain a first or second extension of the approval of Form I–800A, or to obtain a first or second change of Hague Adoption Convention country during the Form I–800A approval period.

(ii) Is not charged for a request for a duplicate approval notice.

(iii) Is charged to request a new approval notice based on a significant change and updated home study unless there is a request for a first or second extension of the Form I–800A approval, or a first or second change of Hague Adoption Convention country on the same Supplement 3.

(iv) Is charged for third or subsequent extensions of the Form I–800A approval and third or subsequent changes of Hague Adoption Convention country.

(49) *Application for Family Unity Benefits, Form I–817.* For filing an application for voluntary departure under the Family Unity Program: $760.

(50) *Application for Temporary Protected Status, Form I–821.* For an eligible national of a designated country or a person without nationality who last habitually resided in the designated country to apply for Temporary Protected Status (TPS).

(i) For first time applicants: $50 or the maximum permitted by section 244(c)(1)(B) of the Act.

(ii) There is no fee for re-registration.

(iii) A Temporary Protected Status (TPS) applicant or re-registrant must pay $30 for biometric services.

(iv) The online filing discount in § 106.1(g) does not apply to paragraphs (a)(50)(i) and (a)(50)(ii) of this section.

(51) *Consideration of Deferred Action for Childhood Arrivals, Form I–821D.* To request that USCIS consider granting or renewing deferred action under 8 CFR 236.21–236.25. $85. The online filing discount in § 106.1(g) does not apply to this section.

(52) *Application for Action on an Approved Application or Petition, Form I–824.* To request additional action on a previously approved benefit request. $590.

(53) *Petition by Investor to Remove Conditions on Permanent Resident Status, Form I–829.* For a conditional permanent resident who obtained status through qualified investment to remove the conditions on their residence. $9,525.

(54) *Inter-Agency Alien Witness and Informant Record, Form I–854.* To request an alien witness and/or informant receive classification as an S nonimmigrant. No fee.

(55) *Affidavit of Support Under Section 213A of the INA, Form I–864.* For immigrants to show they have adequate means of financial support and are not likely to rely on the U.S. government for financial support. No fee.

(i) *Contract Between Sponsor and Household Member, Form I–864A.* For a household member to promise to support sponsored immigrants. No fee.

(ii) *Affidavit of Support Under Section 213A of the INA, Form I–864EZ.* To show that the applying immigrant has adequate means of financial support and is not likely to rely on the U.S. government for financial support. No fee.

(iii) *Request for Exemption for Intending Immigrant's Affidavit of Support, Form I–864W.* To establish that an applicant is exempt from the Form I–864 requirements. No fee.

(iv) *Sponsor's Notice of Change of Address, Form I–865.* To report a sponsor's new address and/or residence. No fee.

(56) *Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100), Form I–881.* To apply for suspension of deportation or special rule cancellation of removal under the Nicaraguan Adjustment and Central American Relief Act.

(i) $340 for adjudication by DHS.

(ii) $165 for adjudication by EOIR. If the Form I–881 is referred to the immigration court by DHS: No fee.

(iii) If filing Form I–881 as a VAWA self-petitioner, including derivatives, as defined under section 101(a)(51)(F) of the Act: No fee.

(57) *Application for Authorization to Issue Certification for Health Care Workers, Form I–905.* For an organization to apply for authorization to issue certificates to health care workers. $230.

(58) *Request for Premium Processing Service, Form I–907.* The Request for Premium Processing Service fee will be as provided in § 106.4. The online filing discount in § 106.1(g) does not apply to a request for premium processing.

(59) *Request for Civil Surgeon Designation, Form I–910.* To apply for civil surgeon designation. $990.

(60) *Request for Fee Waiver, Form I–912.* To request a fee waiver. No fee.

(61) *Application for T Nonimmigrant Status, Form I–914.* To request temporary immigration benefits for a victim of a severe form of trafficking in persons, also known as human trafficking. No fee.

(i) *Supplement A to Form I–914, Application for Immigrant Family Member of a T–1 Recipient.* To request temporary immigration benefits for eligible family members of a victim of a severe form of trafficking in persons. No fee.

(ii) *Supplement B to Form I–914, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.* For a law enforcement agency to certify that a trafficking victim is being helpful to law enforcement during the detection, investigation, or prosecution of the trafficking. No fee.

(62) *Petition for U Nonimmigrant Status, Form I–918.* For a victim of qualifying criminal activity to petition for temporary immigration benefits. No fee.

(i) *Supplement A to Form I–918, Petition for Qualifying Family Member of U–1 Recipient.* To request temporary immigration benefits for qualifying family members of a victim of qualifying criminal activity. No fee.

(ii) *Supplement B to Form I–918, U Nonimmigrant Status Certification.* For a law enforcement agency to certify that an individual is a victim of qualifying criminal activity and has been, is being, or is likely to be helpful to law enforcement in the detection, investigation, or prosecution of the qualifying criminal activity. No fee.

(63) *Petition for Qualifying Family Member of a U–1 Nonimmigrant, Form I–929.* For a principal U–1 nonimmigrant to request immigration benefits on behalf of a qualifying family member who has never held U nonimmigrant status. No fee.

(64) *Application for Entrepreneur Parole, Form I–941.* For filing an application for parole for an entrepreneur. $1,200.

(65) *Application for Regional Center Designation, Form I–956.* To request designation as a regional center or to request an amendment to an approved regional center. $47,695.

(66) *Application for Approval of Investment in a Commercial Enterprise, Form I–956F.* To request approval of each particular investment offering through an associated new commercial enterprise. $47,695.

(67) *Regional Center Annual Statement, Form I–956G.* To provide updated information and certify that a Regional Center under the Immigrant Investor Program has maintained its eligibility. $4,470.

(68) *Bona Fides of Persons Involved with Regional Center Program, Form I–956H.* For each person involved with a regional center to attest to their compliance with section 203(b)(5)(H) of the Act. No fee.

(69) *Registration for Direct and Third-Party Promoters, Form I–956K.* For each person acting as a direct or third-party promoter (including migration agents) of a regional center, any new commercial enterprises, an affiliated job-creating entity, or an issuer of securities intended to be offered to immigrant investors in connection with a particular capital investment project. No fee.

(b) *N Forms.* (1) *Application to File Declaration of Intention, Form N–300.* For a permanent resident to declare their intent to become a U.S. citizen. $320.

(2) *Request for a Hearing on a Decision in Naturalization Proceedings Under Section 336, Form N–336.* To request a hearing before an immigration officer on the denial of Form N–400, Application for Naturalization. $830. There is no fee for an applicant who has filed an *Application for Naturalization* under section 328 or 329 of the Act with respect to military service and whose application has been denied.

(3) *Application for Naturalization, Form N–400.* To apply for U.S. citizenship. $760. The following exceptions apply:

(i) No fee is charged an applicant who meets the requirements of section 328 or 329 of the Act with respect to military service.

(ii) The fee for an applicant whose documented household income is less than or equal to 400 percent of the Federal Poverty Guidelines: $380. The discount in section 106.1(g) does not apply to this section.

(4) *Request for Certification of Military or Naval Service, Form N–426.* To request that the Department of Defense verify military or naval service. No fee.

(5) *Application to Preserve Residence for Naturalization Purposes, Form N–470.* Application for a lawful permanent resident who must leave the United States to preserve their residence to pursue naturalization. $420.

(6) *Application for Replacement Naturalization/Citizenship Document, Form N–565.* To apply for a replacement Declaration of Intention; Naturalization Certificate; Certificate of Citizenship; or Repatriation Certificate; or to apply for a special certificate of naturalization as a U.S. citizen to be recognized by a foreign country. $555. There is no fee when this application is submitted under 8 CFR 338.5(a) to request correction of a certificate that contains an error.

(7) *Application for Certificate of Citizenship, Form N–600.* To apply for a Certificate of Citizenship. $1,385.

(i) There is no fee for any application filed by a current or former member of any branch of the U.S. armed forces on their own behalf.

(ii) There is no fee for an application filed on behalf of an individual who is the subject of a final adoption for immigration purposes and meets (or met before age 18) the definition of child

under section 101(b)(1)(E), (F), or (G) of the Act.

(8) *Application for Citizenship and Issuance of Certificate Under Section 322, Form N–600K.* Application for children who regularly reside outside the United States to apply for citizenship based on a U.S. citizen parent. $1,385. There is no fee for an application filed on behalf of a child who is the subject of a final adoption for immigration purposes and meets the definition of child under section 101(b)(1)(E), (F), or (G) of the Act.

(9) *Application for Posthumous Citizenship, Form N–644.* To request citizenship for someone who died because of injury or disease incurred in or aggravated by service in an active-duty status with the U.S. armed forces during a specified period of military hostilities. No fee.

(10) *Medical Certification for Disability Exceptions, Form N–648.* For a naturalization applicant to request an exception to the English and civics testing requirements for naturalization because of physical or developmental disability or mental impairment. No fee.

(c) *G Forms, statutory fees, and non-form fees*—(1) *Genealogy Index Search Request, Form G–1041.* The fee is due regardless of the search results. $80.

(2) *Genealogy Records Request, Form G–1041A.* USCIS will refund the records request fee when it cannot find any file previously identified in response to the index search request. $80.

(3) *USCIS immigrant fee.* For DHS domestic processing and issuance of required documents after an immigrant visa is issued by the U.S. Department of State: $235.

(4) *American Competitiveness and Workforce Improvement Act (ACWIA) fee.* For filing certain H–1B petitions as described in 8 CFR 214.2(h)(19) and USCIS form instructions: $1,500 or $750.

(5) *Fraud detection and prevention fee.* (i) For filing certain H–1B and L petitions as described in 8 U.S.C. 1184(c) and USCIS form instructions: $500.

(ii) For filing H–2B petitions as described in 8 U.S.C. 1184(c) and USCIS form instructions: $150.

(6) *Fraud detection and prevention fee for Form I–129CW.* For filing certain CW–1 petitions as described in Public Law 115–218 and USCIS form instructions: $50.

(7) *CNMI education funding fee.* For filing certain CW–1 petitions as described in Public Law 115–218 and USCIS form instructions. The fee amount will be as prescribed in the form instructions and:

(i) The employer must pay the fee for each beneficiary and for each year or partial year of requested validity; and

(ii) Beginning in FY 2020, the $200 fee may be adjusted once per year by notice in the **Federal Register** based on the amount of inflation according to the Consumer Price Index for All Urban Consumers (CPI–U).

(8) *9–11 response and biometric entry-exit fee for H–1B Visa.* For certain petitioners who employ 50 or more employees in the United States if more than 50 percent of the petitioner's employees are in H–1B, L–1A, or L–1B nonimmigrant status: $4,000. Collection of this fee is scheduled to end on September 30, 2027.

(9) *9–11 response and biometric entry-exit fee for L–1 Visa.* For certain petitioners who employ 50 or more employees in the United States, if more than 50 percent of the petitioner's employees are in H–1B, L–1A, or L–1B nonimmigrant status: $4,500. Collection of this fee is scheduled to end on September 30, 2027.

(10) *Claimant under section 289 of the Act.* For American Indians who are born in Canada and possess at least 50 percent American Indian blood to request lawful permanent resident status. No fee.

(11) *Registration requirement for petitioners seeking to file H–1B petitions on behalf of cap-subject aliens.* For each registration submitted to register for the H–1B cap or advanced degree exemption selection process: $215.

(iii) This fee is not subject to the online discount provided in § 106.1(g).

(12) *Request for Certificate of Non-Existence, G–1566.* For a certification of non-existence of a naturalization record. $330.

(13) *Asylum Program Fee.* In addition to the fees required by § 106.2(a)(3), (a)(4) and (a)(11), to fund the asylum program, the Asylum Program Fee must be paid by any petitioner filing a *Petition for a Nonimmigrant Worker,* Form I–129 under 8 CFR 214.2, *Petition for a CNMI-Only Nonimmigrant Transitional Worker,* Form I–129CW under 8 CFR 214.2(w), or an *Immigrant Petition for Alien Worker,* Form I–140 under 8 CFR 204.1(a). $600. For petitions:

(i) Filed by a nonprofit as defined in § 106.1(f): No fee.

(ii) Filed by a small employer as defined in § 106.1(f): $300.

(iii) The online filing discount provided in § 106.1(g) does not apply to this fee.

(d) *Inflationary adjustment.* The fees prescribed in this section that are not set or limited by statute may be adjusted, but not more often than once per year, by publication of a rule in the **Federal Register** that:

(1) Is based on the amount of inflation as measured by the difference in the CPI–U as published by the U.S. Department of Labor, U.S. Bureau of Labor Statistics in April of the year of the last fee rule and the year of the adjustment under this section.

(2) Adjusts all fees that are not set by statute based on the amount of inflation.

(3) Rounds the fees calculated by the amount of inflation to the nearest $5 increment.

§ 106.3 Fee waivers and exemptions.

(a) *Waiver of fees.* (1) *Eligibility.* The party requesting the benefit must be unable to pay the prescribed fee. A person demonstrates an inability to pay the fee by establishing at least one of the following criteria:

(i) Receipt of a means-tested benefit as defined in § 106.1(f)(3) at the time of filing;

(ii) Household income at or below 150 percent of the Federal Poverty Guidelines at the time of filing; or

(iii) Extreme financial hardship due to extraordinary expenses or other circumstances that render the individual unable to pay the fee.

(2) *Requesting a fee waiver.* To request a fee waiver, a person requesting an immigration benefit must submit a written request for permission to have their request processed without payment of a fee with their benefit request. The request must state the person's belief that he or she is entitled to or deserving of the benefit requested, the reasons for his or her inability to pay, and evidence to support the reasons indicated. There is no appeal of the denial of a fee waiver request.

(3) *USCIS fees that may be waived.* Only the following fees may be waived:

(i) The following fees for the following forms may be waived without condition:

(A) Application to Replace Permanent Resident Card (Form I–90);

(B) Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (Form I–191);

(C) Petition to Remove the Conditions of Residence (Form I–751);

(D) Application for Family Unity Benefits (Form I–817);

(E) Application for Temporary Protected Status (Form I–821);

(F) Application for Suspension of Deportation or Special Rule Cancellation of Removal (Form I–881) (under section 203 of Pub. L. 105–110);

(G) Application to File Declaration of Intention (Form N–300);

(H) Request for a Hearing on a Decision in Naturalization Proceedings Under Section 336 (Form N–336);

(I) Application for Naturalization (Form N–400);

(J) Application to Preserve Residence for Naturalization Purposes (N–470);

(K) Application for Replacement Naturalization/Citizenship Document (N–565);

(L) Application for Certificate of Citizenship (N–600); and

(M) Application for Citizenship and Issuance of Certificate under section 322 of the Act (N–600K).

(ii) The following form fees may be waived based on the conditions described in paragraphs (a)(3)(ii)(A) through (F) of this section:

(A) Petition for a CNMI-Only Nonimmigrant Transitional Worker (Form I–129CW) for a E–2 CNMI investor. Waiver of the fee for Form I–129CW does not waive the requirement for a E–2 CNMI investor to pay any fees in § 106.2(c) that may apply.

(B) An Application to Extend/Change Nonimmigrant Status (Form I–539), only in the case of a noncitizen applying for CW–2 nonimmigrant status;

(C) Application for Travel Document (Form I–131), when filed to request humanitarian parole;

(D) Notice of Appeal or Motion (Form I–290B), when there is no fee for the underlying application or petition or that fee may be waived;

(E) Notice of Appeal of Decision Under Sections 245A or 210 of the Immigration and Nationality Act (Form I–694), if the underlying application or petition was fee exempt, the filing fee was waived, or was eligible for a fee waiver;

(F) Application for Employment Authorization (Form I–765), except persons filing under category (c)(33), Deferred Action for Childhood Arrivals; and

(G) Petition for Nonimmigrant Worker (Form I–129) or Application to Extend/Change Nonimmigrant Status (Form I–539), only in the case of a noncitizen applying for E–2 CNMI Investor for an extension of stay.

(iii) Any fees associated with the filing of any benefit request under 8 U.S.C. 1101(a)(51) and those otherwise self-petitioning under 8 U.S.C. 1154(a)(1) (VAWA self-petitioners), 8 U.S.C. 1101(a)(15)(T) (T nonimmigrant status), 8 U.S.C. 1101(a)(15)(U) (U nonimmigrant status), 8 U.S.C. 1105a (battered spouses of A, G, E–3, or H nonimmigrants), 8 U.S.C. 1229(b)(2) (special rule cancellation for battered spouse or child), and 8 U.S.C. 1254a(a) (Temporary Protected Status).

(iv) The following fees may be waived only if the person is exempt from the public charge grounds of inadmissibility under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4):

(A) Application for Advance Permission to Enter as Nonimmigrant (Form I–192);

(B) Application for Waiver for Passport and/or Visa (Form I–193);

(C) Application to Register Permanent Residence or Adjust Status (Form I–485); and

(D) Application for Waiver of Grounds of Inadmissibility (Form I–601).

(4) *Immigration Court fees.* The provisions relating to the authority of the immigration judges or the Board to waive fees prescribed in paragraph (b) of this section in cases under their jurisdiction can be found at 8 CFR 1003.8 and 1003.24.

(b) *Humanitarian fee exemptions.* Persons in the following categories are exempt from paying certain fees as follows:

(1) Persons seeking or granted Special Immigrant Juvenile classification who file the following forms related to the Special Immigrant Juvenile classification or adjustment of status under section 245(h) of the Act, 8 U.S.C. 1255(h):

(i) Application for Travel Document (Form I–131).

(ii) Notice of Appeal or Motion (Form I–290B), if filed for any benefit request filed before adjustment of status or a motion filed for an Application to Register Permanent Residence or Adjust Status (Form I–485) or an associated ancillary form.

(iii) Application to Register Permanent Residence or Adjust Status (Form I–485).

(iv) Application for Waiver of Ground of Inadmissibility (Form I–601).

(v) Application for Employment Authorization (Form I–765).

(vi) Application for Action on an Approved Application or Petition (Form I–824).

(2) Persons seeking or granted T nonimmigrant status who file the following forms related to T nonimmigrant status or adjustment of status under INA section 245(l), 8 U.S.C. 1255(l):

(i) Application for Travel Document (Form I–131).

(ii) Application for Advance Permission to Enter as a Nonimmigrant (Form I–192).

(iii) Application for Waiver of Passport and/or Visa (Form I–193).

(iv) Notice of Appeal or Motion (Form I–290B), if filed for any benefit request filed before adjustment of status or a motion or appeal filed for an Application to Register Permanent Residence or Adjust Status (Form I–485) or an associated ancillary form.

(v) Application to Register Permanent Residence or Adjust Status (Form I–485).

(vi) Application to Extend/Change Nonimmigrant Status (Form I–539).

(vii) Application for Waiver of Ground of Inadmissibility (Form I–601).

(viii) Application for Employment Authorization (Form I–765).

(ix) Application for Action on an Approved Application or Petition (Form I–824). (3) Persons seeking or granted special immigrant visa or status as Afghan or Iraqi translators or interpreters, Iraqi nationals employed by or on behalf of the U.S. Government, or Afghan nationals employed by or on behalf of the U.S. Government or employed by the ISAF and their derivative beneficiaries, who file the following forms related to the Special Immigrant classification or adjustment of status under such classification:

(i) Application for Travel Document (Form I–131).

(ii) Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal (Form I–212).

(iii) Notice of Appeal or Motion (Form I–290B), if filed for any benefit request filed before adjustment of status or a motion filed for an Application to Register Permanent Residence or Adjust Status (Form I–485) or an associated ancillary form.

(iv) Application to Register Permanent Residence or Adjust Status (Form I–485).

(v) Application for Waiver of Ground of Inadmissibility (Form I–601).

(vi) Application for initial Employment Authorization (Form I–765).

(vii) Application for Action on an Approved Application or Petition (Form I–824).

(4) Persons seeking or granted adjustment of status as abused spouses and children under the Cuban Adjustment Act (CAA) and the Haitian Refugee Immigration Fairness Act (HRIFA) are exempt from paying the following fees for forms related to those benefits:

(i) Application for Travel Document (Form I–131).

(ii) Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal (Form I–212).

(iii) Notice of Appeal or Motion (Form I–290B), if filed for any benefit request filed before adjustment of status or a motion filed for an Application to Register Permanent Residence or Adjust

Status (Form I–485) or an associated ancillary form.

(iv) Application to Register Permanent Residence or Adjust Status (Form I–485).

(v) Application for Waiver of Ground of Inadmissibility (Form I–601).

(vi) Application for Employment Authorization (Form I–765).

(vii) Application for Action on an Approved Application or Petition (Form I–824).

(5) Persons seeking or granted U nonimmigrant status who file the following forms related to U nonimmigrant status or adjustment of status under INA section 245(m), 8 U.S.C. 1255(m):

(i) Application for Travel Document (Form I–131).

(ii) Application for Advance Permission to Enter as a Nonimmigrant (Form I–192).

(iii) Application for Waiver of Passport and/or Visa (Form I–193).

(iv) Notice of Appeal or Motion (Form I–290B), if filed for any benefit request filed before adjustment of status or a motion or appeal filed for an Application to Register Permanent Residence or Adjust Status (Form I–485) or an associated ancillary form.

(v) Application to Register Permanent Residence or Adjust Status (Form I–485).

(vi) Application to Extend/Change Nonimmigrant Status (Form I–539).

(vii) Application for Waiver of Ground of Inadmissibility (Form I–601).

(viii) Application for Employment Authorization (Form I–765).

(ix) Application for Action on an Approved Application or Petition (Form I–824).

(x) Petition for Qualifying Family Member of a U–1 Nonimmigrant (Form I–929).

(6) Persons seeking or granted immigrant classification as VAWA self-petitioners and derivatives as defined in section 101(a)(51)(A) and (B) of the Act or those otherwise self-petitioning for immigrant classification under section 204(a)(1) of the Act, 8 U.S.C. 1154(a)(1), are exempt from paying the following fees for forms related to the benefit:

(i) Application for Travel Document (Form I–131).

(ii) Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal (Form I–212).

(iii) Notice of Appeal or Motion (Form I–290B) if filed for any benefit request filed before adjustment of status or a motion filed for an Application to Register Permanent Residence or Adjust Status (Form I–485) or an associated ancillary form.

(iv) Application to Register Permanent Residence or Adjust Status (Form I–485).

(v) Application for Waiver of Grounds of Inadmissibility (Form I–601).

(vi) Application for Provisional Unlawful Presence Waiver (Form I–601A).

(vii) Application for Employment Authorization (Form I–765) for initial, renewal, and replacement requests submitted under 8 CFR 274a.12(c)(9) and (14) and section 204(a)(1)(K) of the Act.

(viii) Application for Action on an Approved Application or Petition (Form I–824).

(7) Abused spouses and children applying for benefits under the Nicaraguan Adjustment and Central American Relief Act (NACARA) are exempt from paying the following fees for forms related to the benefit:

(i) Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100 (NACARA)) (Form I–881).

(ii) Application for Waiver of Grounds of Inadmissibility (Form I–601).

(iii) Application for Employment Authorization (Form I–765) submitted under 8 CFR 274a.12(c)(10).

(iv) Application for Action on an Approved Application or Petition (Form I–824).

(8) Battered spouses and children of a lawful permanent resident or U.S. citizen applying for cancellation of removal and adjustment of status under section 240A(b)(2) of the Act are exempt from paying the following fees for forms related to the benefit:

(i) Application for Employment Authorization (Form I–765) for their initial request under 8 CFR 274a.12(c)(10).

(ii) Application for Action on an Approved Application or Petition (Form I–824).

(9) Refugees, persons paroled as refugees, or lawful permanent residents who obtained such status as refugees in the United States are exempt from paying the following fees:

(i) Application for Travel Document (Form I–131).

(ii) Application for Carrier Documentation (Form I–131A).

(iii) Application for Employment Authorization (Form I–765).

(iv) Application to Register Permanent Residence or Adjust Status (Form I–485).

(c) *Director's waiver or exemption exception.* The Director of USCIS may authorize the waiver of or exemption from, in whole or in part, a form fee required by § 106.2 that is not otherwise waivable or exempt under this section, if the Director determines that such action is in the public interest and consistent with the applicable law. This discretionary authority may be delegated only to the USCIS Deputy Director.

§ 106.4 Premium processing service.

(a) *General.* A person may submit a request to USCIS for premium processing of certain immigration benefit requests, subject to processing timeframes and fees, as described in this section.

(b) *Submitting a request.* A request must be submitted on the form and in the manner prescribed by USCIS in the form instructions. If the request for premium processing is submitted together with the underlying immigration benefit request, all required fees in the correct amount must be paid. The fee to request premium processing service may not be waived and must be paid in addition to other filing fees. USCIS may require the premium processing service fee be paid in a separate remittance from other filing fees and preclude combined payments in the applicable form instructions.

(c) *Designated benefit requests and fee amounts.* Benefit requests designated for premium processing and the corresponding fees to request premium processing service are as follows:

(1) Application for classification of a nonimmigrant described in section 101(a)(15)(E)(i), (ii), or (iii) of the Act: $2,805.

(2) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(i)(b) of the Act or section 222(a) of the Immigration Act of 1990, Public Law 101–649: $2,805.

(3) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(ii)(b) of the Act: $1,685.

(4) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(iii) of the Act: $2,805.

(5) Petition for classification of a nonimmigrant described in section 101(a)(15)(L) of the Act: $2,805.

(6) Petition for classification of a nonimmigrant described in section 101(a)(15)(O)(i) or (ii) of the Act: $2,805.

(7) Petition for classification of a nonimmigrant described in section 101(a)(15)(P)(i), (ii), or (iii) of the Act: $2,805.

(8) Petition for classification of a nonimmigrant described in section 101(a)(15)(Q) of the Act: $2,805.

(9) Petition for classification of a nonimmigrant described in section 101(a)(15)(R) of the Act: $1,685.

(10) Application for classification of a nonimmigrant described in section 214(e) of the Act: $2,805.

(11) Petition for classification under section 203(b)(1)(A) of the Act: $2,805.

(12) Petition for classification under section 203(b)(1)(B) of the Act: $2,805.

(13) Petition for classification under section 203(b)(2)(A) of the Act not involving a waiver under section 203(b)(2)(B) of the Act: $2,805.

(14) Petition for classification under section 203(b)(3)(A)(i) of the Act: $2,805.

(15) Petition for classification under section 203(b)(3)(A)(ii) of the Act: $2,805.

(16) Petition for classification under section 203(b)(3)(A)(iii) of the Act: $2,805.

(17) Petition for classification under section 203(b)(1)(C) of the Act: $2,805.

(18) Petition for classification under section 203(b)(2) of the Act, involving a waiver under section 203(b)(2)(B) of the Act: $2,805.

(19) Application under section 248 of the Act to change status to a classification described in section 101(a)(15)(F), (J), or (M) of the Act: $1,965.

(20) Application under section 248 of the Act to change status to be classified as a dependent of a nonimmigrant described in section 101(a)(15)(E), (H), (L), (O), (P), or (R) of the Act, or to extend stay in such classification: $1,965.

(21) Application for employment authorization: $1,685.

(d) *Fee adjustments.* The fee to request premium processing service may be adjusted by notification in the **Federal Register** on a biennial basis based on the percentage by which the Consumer Price Index for All Urban Consumers for the month of June preceding the date on which such adjustment takes effect exceeds the Consumer Price Index for All Urban Consumers for the same month of the second preceding calendar year.

(e) *Processing timeframes.* The processing timeframes for a request for premium processing are as follows:

(1) Application for classification of a nonimmigrant described in section 101(a)(15)(E)(i), (ii), or (iii) of the Act: 15 business days.

(2) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(i)(b) of the Act or section 222(a) of the Immigration Act of 1990, Public Law 101–649: 15 business days.

(3) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(ii)(b) of the Act: 15 business days.

(4) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(iii) of the Act: 15 business days.

(5) Petition for classification of a nonimmigrant described in section 101(a)(15)(L) of the Act: 15 business days.

(6) Petition for classification of a nonimmigrant described in section 101(a)(15)(O)(i) or (ii) of the Act: 15 business days.

(7) Petition for classification of a nonimmigrant described in section 101(a)(15)(P)(i), (ii), or (iii) of the Act: 15 business days.

(8) Petition for classification of a nonimmigrant described in section 101(a)(15)(Q) of the Act: 15 business days.

(9) Petition for classification of a nonimmigrant described in section 101(a)(15)(R) of the Act: 15 business days.

(10) Application for classification of a nonimmigrant described in section 214(e) of the Act: 15 business days.

(11) Petition for classification under section 203(b)(1)(A) of the Act: 15 business days.

(12) Petition for classification under section 203(b)(1)(B) of the Act: 15 business days.

(13) Petition for classification under section 203(b)(2)(A) of the Act not involving a waiver under section 203(b)(2)(B) of the Act: 15 business days.

(14) Petition for classification under section 203(b)(3)(A)(i) of the Act: 15 business days.

(15) Petition for classification under section 203(b)(3)(A)(ii) of the Act: 15 business days.

(16) Petition for classification under section 203(b)(3)(A)(iii) of the Act: 15 business days.

(17) Petition for classification under section 203(b)(1)(C) of the Act: 45 business days.

(18) Petition for classification under section 203(b)(2) of the Act involving a waiver under section 203(b)(2)(B) of the Act: 45 business days.

(19) Application under section 248 of the Act to change status to a classification described in section 101(a)(15)(F), (J), or (M) of the Act: 30 business days.

(20) Application under section 248 of the Act I to change status to be classified as a dependent of a nonimmigrant described in section 101(a)(15)(E), (H), (L), (O), (P), or (R) of the Act, or to extend stay in such classification: 30 business days.

(21) Application for employment authorization: 30 business days.

(22) For the purpose of this section a business day is a day that the Federal Government is open for business, and does not include weekends, federally observed holidays, or days on which Federal Government offices are closed, such as for weather-related or other reasons. The closure may be nationwide or in the region where the adjudication of the benefit for which premium processing is sought will take place.

(f) *Processing requirements and refunds.* (1) USCIS will issue an approval notice, denial notice, a notice of intent to deny, or a request for evidence within the premium processing timeframe.

(2) Premium processing timeframes will commence:

(i) For those benefits described in paragraphs (e)(1) through (16) of this section, on the date the form prescribed by USCIS, together with the required fee(s), are received by USCIS.

(ii) For those benefits described in paragraphs (e)(17) through (21) of this section, on the date that all prerequisites for adjudication, the form prescribed by USCIS, and fee(s) are received by USCIS.

(3) In the event USCIS issues a notice of intent to deny or a request for evidence of the premium processing timeframe will stop and will recommence with a new timeframe as specified in paragraphs (e)(1) through (21) of this section on the date that USCIS receives a response to the notice of intent to deny or the request for evidence.

(4) Except as provided in paragraph (f)(5) of this section, USCIS will refund the premium processing service fee but continue to process the case if USCIS does not take adjudicative action described in paragraph (f)(1) of this section within the applicable processing timeframe as required in paragraph (e) of this section.

(5) USCIS may retain the premium processing fee and not take an adjudicative action described in paragraph (f)(1) of this section on the request within the applicable processing timeframe, and not notify the person who filed the request, if USCIS opens an investigation for fraud or misrepresentation relating to the immigration benefit request.

(g) *Availability.* (1) USCIS will announce by its official internet website, currently *https://www.uscis.gov,* the benefit requests described in paragraph (c) of this section for which premium processing may be requested, the dates upon which such availability commences or ends, or any conditions that may apply.

(2) USCIS may suspend the availability of premium processing for immigration benefit requests designated for premium processing if circumstances prevent the completion of processing of a significant number of

such requests within the applicable processing timeframe.

§ 106.5 Authority to certify records.

The Director of USCIS, or such officials as he or she may designate, may certify records when authorized under 5 U.S.C. 552 or any other law to provide such records.

§ 106.6 DHS severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, or held unenforceable as to any person or circumstance, the remaining provisions and applications will continue in effect.

PART 204—IMMIGRANT PETITIONS

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

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1324a, 1641; 8 CFR part 2.

■ 8. Section 204.3 is amended by:
■ a. Revising and republishing the definitions of ''Advanced processing application'' and ''Orphan petition'' in paragraph (b);
■ b. Revising and republishing paragraph (d) introductory text; and
■ c. Revising paragraphs (h)(3), (7), (13), and (14).

The revisions and republications read as follows:

§ 204.3 Orphan cases under section 101(b)(1)(F) of the Act (non-Hague Adoption Convention cases).

* * * * *

(b) * * *

Advanced processing application means Form I–600A (Application for Advance Processing of an Orphan Petition) completed in accordance with the form's instructions and submitted with the required supporting documentation and the fee as required in 8 CFR 106.2. The application must be signed in accordance with the form's instructions by the married petitioner and spouse, or by the unmarried petitioner.

* * * * *

Orphan petition means Form I–600 (Petition to Classify Orphan as an Immediate Relative). The petition must be completed in accordance with the form's instructions and submitted with the required supporting documentation and, if there is not a pending, or currently valid and approved advanced processing application, the fee as required in 8 CFR 106.2. The petition must be signed in accordance with the form's instructions by the married petitioner and spouse, or the unmarried petitioner.

* * * * *

(d) *Supporting documentation for a petition for an identified orphan.* Any document not in the English language must be accompanied by a certified English translation. If an orphan has been identified for adoption and the advanced processing application is pending, the prospective adoptive parents may file the orphan petition at the USCIS office where the application is pending. The prospective adoptive parents who have an approved advanced processing application must file an orphan petition and all supporting documents within 15 months of the date of the approval of the advanced processing application. If the prospective adoptive parents fail to file the orphan petition within the approval validity period of the advanced processing application, the advanced processing application will be deemed abandoned under paragraph (h)(7) of this section. If the prospective adoptive parents file the orphan petition after the approval period of the advanced processing application has expired, the petition will be denied under paragraph (h)(13) of this section. Prospective adoptive parents who do not have an advanced processing application approved or pending may file the application and petition concurrently on one Form I–600 if they have identified an orphan for adoption. An orphan petition must be accompanied by full documentation as follows:

* * * * *

(h) * * *

(3) *Advanced processing application approved.* If the advanced processing application is approved:

(i) The prospective adoptive parents will be advised in writing. A notice of approval expires 15 months after the approval date.

(ii) USCIS may extend the validity period for the approval of a Form I–600A if requested in accordance with 8 CFR 106.2(a)(32). Form I–600A/I–600 Supplement 3 cannot be used to:

(A) Seek extension of an approval notice more than 90 days before the expiration of the validity period for the Form I–600A approval but must be filed on or before the date on which the validity period expires if the applicant seeks an extension.

(B) Extend eligibility to proceed as a Hague Adoption Convention transition case beyond the first extension once the Convention enters into force for the new Convention country.

(C) Request a change of country to a Hague Adoption Convention transition country for purposes of becoming a transition case if another country was already designated on the Form I–600A or the applicant previously changed countries.

(iii) Form I–600A/I–600 Supplement 3 may only be used to request an increase in the number of children the applicant/petitioner is approved to adopt from a transition country if: the additional child is a birth sibling of a child whom the applicant/petitioner has adopted or is in the process of adopting, as a transition case, and is identified and petitioned for while the Form I–600A approval is valid, unless the new Convention country prohibits such birth sibling cases from proceeding as transition cases.

(iv) If the Form I–600A approval is for more than one orphan, the prospective adoptive parents may file a petition for each of the additional children, to the maximum number approved.

(v) It does not guarantee that the orphan petition will be approved.

* * * * *

(7) *Advanced processing application deemed abandoned for failure to file orphan petition within the approval validity period of the advanced processing application.* If an orphan petition is not properly filed within the validity period of the advanced processing application:

(i) The application will be deemed abandoned;

(ii) Supporting documentation will be returned to the prospective adoptive parents, except for documentation submitted by a third party which will be returned to the third party, and documentation relating to the biometric checks;

(iii) The director will dispose of documentation relating to biometrics checks in accordance with current policy; and

(iv) Such abandonment will be without prejudice to a new filing at any time with fee.

* * * * *

(13) *Orphan petition denied: petitioner files orphan petition after the approval of the advanced processing application has expired.* If the petitioner files the orphan petition after the advanced processing application has expired, the petition will be denied unless it is filed concurrently with a new advanced processing application under 8 CFR 204.3(d)(3). This action will be without prejudice to a new filing at any time with fee.

(14) *Revocation.* (i) The approval of an advanced processing application or an orphan petition shall be automatically revoked in accordance with 8 CFR 205.1

if an applicable reason exists. The approval of an advanced processing application or an orphan petition shall be revoked if the director becomes aware of information that would have resulted in denial had it been known at the time of adjudication. Such a revocation or any other revocation on notice shall be made in accordance with 8 CFR 205.2.

(ii) The approval of a Form I–600A or Form I–600 combination filing is automatically revoked if before the final decision on a beneficiary's application for admission with an immigrant visa or for adjustment of status:

(A) The marriage of the applicant terminates; or

(B) An unmarried applicant marries.

(iii) Revocation is without prejudice to the filing of a new Form I–600A or Form I–600 combination filing, with fee, accompanied by a new or updated home study, reflecting the change in marital status. If a Form I–600 had already been filed based on the approval of the prior Form I–600A and a new Form I–600A is filed under this paragraph (h)(14) rather than a Form I–600 combination filing, then a new Form I–600 must also be filed. The new Form I–600 will be adjudicated only if the new Form I–600A is approved.

* * * * *

■ 9. Section 204.5 is amended by revising and republishing paragraph (p)(4) to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(p) * * *

(4) *Application for employment authorization.* (i) To request employment authorization, an eligible applicant described in paragraph (p)(1), (2), or (3) of this section must:

(A) File an application for employment authorization with USCIS, in accordance with 8 CFR 274a.13(a) and the form instructions.

(B) Submit biometric information in accordance with the applicable form instructions.

(ii) Employment authorization under this paragraph may be granted solely in 1-year increments.

* * * * *

■ 10. Section 204.312 is amended by revising and republishing paragraphs (e)(1) and (e)(3) to read as follows:

§ 204.312 Adjudication of the Form I–800A.

* * * * *

(e) * * *

(1) A notice of approval expires 15 months after the date of the approval, unless approval is revoked. USCIS may extend the validity period for the approval of a Form I–800A only as provided in paragraph (e)(3) of this section.

* * * * *

(3)(i) If the validity period for a Form I–800A approval is about to expire, the applicant:

(A) May file Form I–800A Supplement 3 as described in 8 CFR 106.2(a)(48) to request an extension.

(B) May not file a Form I–800A Supplement 3 seeking extension of an approval notice more than 90 days before the expiration of the validity period for the Form I–800A approval but must do so on or before the date on which the validity period expires if the applicant seeks an extension.

(ii) Any Form I–800A Supplement 3 that is filed to obtain an extension or update of the approval of a Form I–800A or to request a change of Hague Convention countries must be accompanied by:

(A) A statement, signed by the applicant under penalty of perjury, detailing any changes to the answers given to the questions on the original Form I–800A;

(B) An updated or amended home study as required under 8 CFR 204.311(u); and

(C) A photocopy of the Form I–800A approval notice.

(iii) If USCIS continues to be satisfied that the applicant remains suitable as the adoptive parent of a Convention adoptee, USCIS will extend the approval of the Form I–800A for the same period of validity as the initial filing.

(iv) There is no limit to the number of extensions that may be requested and granted under this section, so long as each request is supported by an updated or amended home study that continues to recommend approval of the applicant for intercountry adoption and USCIS continues to find that the applicant remain suitable as the adoptive parent(s) of a Convention adoptee.

■ 11. Section 204.313 is amended by revising and republishing paragraph (a) to read as follows:

§ 204.313 Filing and adjudication of a Form I–800.

(a) *When to file.* Once a Form I–800A has been approved and the Central Authority has proposed placing a child for adoption by the petitioner, the petitioner may file the Form I–800. The petitioner must complete the Form I–800 in accordance with the instructions that accompany the Form I–800 and sign the Form I–800 personally. In the case of a married petitioner, one spouse cannot sign for the other, even under a power of attorney or similar agency arrangement. The petitioner may then file the Form I–800 with the stateside or overseas USCIS office or the visa issuing post that has jurisdiction under § 204.308(b) to adjudicate the Form I–800, together with the evidence specified in this section and the filing fee specified in 8 CFR 106.2, if more than one Form I–800 is filed for children who are not birth siblings.

* * * * *

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

■ 12. 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, 1185 note (sec. 7209, Pub. L. 108–458, 118 Stat. 3638), 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 CFR part 2. Section 212.1(q) also issued under sec. 702, Pub. L. 110–229, 122 Stat. 754, 854.

■ 13. Section 212.19 is amended by revising and republishing paragraphs (b)(1), (c)(1), (e), (h)(1), and (j) to read as follows:

§ 212.19 Parole for entrepreneurs.

* * * * *

(b) * * *

(1) *Filing of initial parole request form.* An alien seeking an initial grant of parole as an entrepreneur of a start-up entity must file Form I–941, Application for Entrepreneur Parole, with USCIS, with the required fee, and supporting documentary evidence in accordance with this section and the form instructions, demonstrating eligibility as provided in paragraph (b)(2) of this section.

* * * * *

(c) * * *

(1) *Filing of re-parole request form.* Before expiration of the initial period of parole, an entrepreneur parolee may request an additional period of parole based on the same start-up entity that formed the basis for his or her initial period of parole granted under this section. To request such parole, an entrepreneur parolee must timely file an application for entrepreneur parole with USCIS on the form prescribed by USCIS with the required fee and supporting documentation in accordance with the form instructions, demonstrating eligibility as provided in paragraph (c)(2) of this section.

* * * * *

(e) *Collection of biometric information.* An alien seeking an initial grant of parole or re-parole will be

required to submit biometric information.

* * * * *

(h) * * *

(1) The entrepreneur's spouse and children who are seeking parole as derivatives of such entrepreneur must individually file Form I–131, Application for Travel Document. Such application must also include evidence that the derivative has a qualifying relationship to the entrepreneur and otherwise merits a grant of parole in the exercise of discretion. Such spouse or child will be required to appear for collection of biometrics in accordance with the form instructions or upon request.

* * * * *

(j) *Reporting of material changes.* An alien granted parole under this section must immediately report any material change(s) to USCIS. If the entrepreneur will continue to be employed by the start-up entity and maintain a qualifying ownership interest in the start-up entity, the entrepreneur must submit a form prescribed by USCIS, with any applicable fee in accordance with the form instructions to notify USCIS of the material change(s). The entrepreneur parolee must immediately notify USCIS in writing if they will no longer be employed by the start-up entity or ceases to possess a qualifying ownership stake in the start-up entity.

* * * * *

PART 214—NONIMMIGRANT CLASSES

■ 14. 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, 1357, 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, 132 Stat. 1547 (48 U.S.C. 1806).

■ 15. Section 214.1 is amended by republishing paragraph (c)(5) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(c) * * *

(5) *Decision on application for extension or change of status.* Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of USCIS. The denial of an application for extension of stay may not be appealed.

* * * * *

■ 16. Section 214.2 is amended by:

■ a. Revising and republishing paragraphs (e)(8)(iii) through (v), (e)(23)(viii), (h)(2)(i)(A), (h)(2)(ii), (h)(5)(i)(B), and (h)(19)(i) introductory text;

■ b. Revising paragraph (m)(14)(ii) introductory text;

■ c. Revising and republishing paragraphs (o)(2)(iv)(F), (p)(2)(iv)(F), and (q)(5)(ii);

■ d. Republishing the definition for ''Petition'' in paragraph (r)(3);

■ e. Revising paragraph (r)(5);

■ f. Republishing paragraph (w)(5) and (w)(15)(iii); and

■ g. Revising paragraph (w)(16).

The revisions and republications read as follows:

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

* * * * *

(e) * * *

(8) * * *

(iii) *Substantive changes.* Approval of USCIS must be obtained where there will be a substantive change in the terms or conditions of E status. The treaty alien must file a new application in accordance with the instructions on the form prescribed by USCIS requesting extension of stay in the United States, plus evidence of continued eligibility for E classification in the new capacity. Or the alien may obtain a visa reflecting the new terms and conditions and subsequently apply for admission at a port-of-entry. USCIS will deem there to have been a substantive change necessitating the filing of a new application where there has been a fundamental change in the employing entity's basic characteristics, such as a merger, acquisition, or sale of the division where the alien is employed.

(iv) *Non-substantive changes.* Neither prior approval nor a new application is required if there is no substantive, or fundamental, change in the terms or conditions of the alien's employment that would affect the alien's eligibility for E classification. Further, prior approval is not required if corporate changes occur which do not affect the previously approved employment relationship or are otherwise non-substantive. To facilitate admission, the alien may:

(A) Present a letter from the treaty-qualifying company through which the alien attained E classification explaining the nature of the change;

(B) Request a new approval notice reflecting the non-substantive change by filing an application with a description of the change; or

(C) Apply directly to Department of State for a new E visa reflecting the change. An alien who does not elect one of the three options contained in paragraphs (e)(8)(iv)(A) through (C) of this section, is not precluded from demonstrating to the satisfaction of the immigration officer at the port-of-entry in some other manner, his or her admissibility under section 101(a)(15)(E) of the Act.

(v) *Advice.* To request advice from USCIS as to whether a change is substantive, an alien may file an application with a complete description of the change. In cases involving multiple employees, an alien may request that USCIS determine if a merger or other corporate restructuring requires the filing of separate applications by filing a single application and attaching a list of the related receipt numbers for the employees involved and an explanation of the change or changes.

* * * * *

(23) * * *

(viii) *Information for background checks.* USCIS may require an applicant for E–2 CNMI Investor status, including but not limited to any applicant for derivative status as a spouse or child, to submit biometrics as required under 8 CFR 103.16.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(A) *General.* A United States employer seeking to classify an alien as an H–1B, H–2A, H–2B, or H–3 temporary employee must file a petition on the form prescribed by USCIS in accordance with the form instructions.

* * * * *

(ii) *Multiple beneficiaries.* Up to 25 named beneficiaries may be included in an H–1C, H–2A, H–2B, or H–3 petition if the beneficiaries will be performing the same service, or receiving the same training, for the same period, and in the same location. If more than 25 named beneficiaries are being petitioned for, an additional petition is required. Petitions for H–2A and H–2B workers from countries not designated in accordance with paragraph (h)(6)(i)(E) of this section must be filed separately.

* * * * *

(5) * * *

(i) * * *

(B) *Multiple beneficiaries.* The total number of beneficiaries of a petition or series of petitions based on the same

temporary labor certification may not exceed the number of workers indicated on that document. A single petition can include more than one named beneficiary if the total number is 25 or fewer and does not exceed the number of positions indicated on the relating temporary labor certification.

* * * * *

(19) * * *

(i) A United States employer (other than an exempt employer defined in paragraph (h)(19)(iii) of this section, or an employer filing a petition described in paragraph (h)(19)(v) of this section) who files a petition or application must include the additional American Competitiveness and Workforce Improvement Act (ACWIA) fee referenced in 8 CFR 106.2, if the petition is filed for any of the following purposes:

* * * * *

(m) * * *

(14) * * *

(ii) *Application.* An M–1 student must apply for permission to accept employment for practical training on Form I–765, with fee as contained in 8 CFR part 106, accompanied by a properly endorsed Form I–20 by the designated school official for practical training. The application must be submitted before the program end date listed on the student's Form I–20 but not more than 90 days before the program end date. The designated school official must certify on Form I–538 that:

* * * * *

(o) * * *

(2) * * *

(iv) * * *

(F) *Multiple beneficiaries.* More than one O–2 accompanying alien may be included on a petition if they are assisting the same O–1 alien for the same events or performances, during the same period, and in the same location. Up to 25 named beneficiaries may be included per petition.

* * * * *

(p) * * *

(2) * * *

(iv) * * *

(F) *Multiple beneficiaries.* More than one beneficiary may be included in a P petition if they are members of a team or group, or if they will provide essential support to P–1, P–2, or P–3 beneficiaries performing in the same location and in the same occupation. Up to 25 named beneficiaries may be included per petition.

* * * * *

(q) * * *

(5) * * *

(ii) *Petition for multiple participants.* The petitioner may include up to 25 named participants on a petition. The petitioner shall include the name, date of birth, nationality, and other identifying information required on the petition for each participant. The petitioner must also indicate the United States consulate at which each participant will apply for a Q–1 visa. For participants who are visa-exempt under 8 CFR 212.1(a), the petitioner must indicate the port of entry at which each participant will apply for admission to the United States.

* * * * *

(r) * * *

(3) * * *

Petition means the form or as may be prescribed by USCIS, a supplement containing attestations required by this section, and the supporting evidence required by this part.

* * * * *

(5) *Extension of stay or readmission.* An R–1 alien who is maintaining status or is seeking readmission and who satisfies the eligibility requirements of this section may be granted an extension of R–1 stay or readmission in R–1 status for the validity period of the petition, up to 30 months, provided the total period spent in R–1 status does not exceed a maximum of 5 years. A Petition for a Nonimmigrant Worker to request an extension of R–1 status must be filed by the employer with a supplement prescribed by USCIS containing attestations required by this section, the fee specified in 8 CFR part 106, and the supporting evidence, in accordance with the applicable form instructions.

* * * * *

(w) * * *

(5) *Petition requirements.* An employer who seeks to classify an alien as a CW–1 worker must file a petition with USCIS and pay the requisite petition fee plus the CNMI education funding fee and the fraud prevention and detection fee as prescribed in the form instructions and 8 CFR part 106. If the beneficiary will perform services for more than one employer, each employer must file a separate petition with fees with USCIS.

* * * * *

(15) * * *

(iii) If the eligible spouse and/or minor child(ren) are present in the CNMI, the spouse or child(ren) may apply for CW–2 dependent status on Form I–539 (or such alternative form as USCIS may designate) in accordance with the form instructions. The CW–2 status may not be approved until approval of the CW–1 petition.

(16) *Biometrics and other information.* The beneficiary of a CW–1 petition or the spouse or child applying for a grant or extension of CW–2 status, or a change of status to CW–2 status, must submit biometric information as requested by USCIS.

* * * * *

■ 17. Section 214.14 is amended by revising and republishing paragraph (c)(1) introductory text to read as follows:

§ 214.14 Alien victims of certain qualifying criminal activity.

* * * * *

(c) * * *

(1) *Filing a petition.* USCIS has sole jurisdiction over all petitions for U nonimmigrant status. An alien seeking U–1 nonimmigrant status must submit a Petition for U Nonimmigrant Status on the form prescribed by USCIS, and initial evidence to USCIS in accordance with this paragraph (c)(1) and the form instructions. A petitioner who received interim relief is not required to submit initial evidence with a Petition for U Nonimmigrant Status if he or she is relying on the law enforcement certification and other evidence that was submitted with the request for interim relief.

* * * * *

PART 240—VOLUNTARY DEPARTURE, SUSPENSION OF DEPORTATION AND SPECIAL RULE CANCELLATION OF REMOVAL

■ 18. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

■ 19. Section 240.63 is amended by revising and republishing paragraph (a) to read as follows:

§ 240.63 Application process.

(a) *Form and fees.* Except as provided in paragraph (b) of this section, the application must be made on the form prescribed by USCIS for this program and filed in accordance with the instructions for that form. An applicant who submitted to EOIR a completed, Application for Suspension of Deportation, before the effective date of the form prescribed by USCIS may apply with USCIS by submitting the completed Application for Suspension of Deportation attached to a completed first page of the application. Each application must be filed with the required fees as provided in 8 CFR 106.2.

* * * * *

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

■ 20. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

■ 21. Section 244.6 is revised and republished to read as follows:

§ 244.6 Application.

(a) An application for Temporary Protected Status (TPS) must be submitted in accordance with the form instructions, the applicable country-specific **Federal Register** notice that announces the procedures for TPS registration or re-registration and, except as otherwise provided in this section, with the appropriate fees as described in 8 CFR part 106.

(b) An applicant for TPS may also request an employment authorization document under 8 CFR part 274a by filing an Application for Employment Authorization in accordance with the form instructions and in accordance with 8 CFR 106.2 and 106.3.

■ 22. Section 244.17 is amended by republishing paragraph (a) to read as follows:

§ 244.17 Periodic registration.

(a) Aliens granted Temporary Protected Status must re-register periodically in accordance with USCIS instructions. Such registration applies to nationals of those foreign states designated for more than one year by DHS or where a designation has been extended for a year or more. Applicants for re-registration must apply during the period provided by USCIS. Re-registration applicants do not need to pay the fee that was required for initial registration except the biometric services fee, unless that fee is waived in the applicable form instructions, and if requesting an employment authorization document, the application fee for an Application for Employment Authorization. By completing the application, applicants attest to their continuing eligibility. Such applicants do not need to submit additional supporting documents unless USCIS requests that they do so.

* * * * *

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

■ 23. The authority citation for part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1252, 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.

■ 24. Section 245.1 is amended by:

■ a. Revising paragraph (f); and

■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 245.1 Eligibility.

* * * * *

(f) *Concurrent applications to overcome grounds of inadmissibility.* Except as provided in 8 CFR parts 235 and 249, an application under this part shall be the sole method of requesting the exercise of discretion under sections 212(g), (h), (i), and (k) of the Act, as they relate to the inadmissibility of an alien in the United States.

* * * * *

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

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

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

■ 26. Section 245a.2 is amended by republishing paragraph (e)(3) to read as follows:

§ 245a.2 Application for temporary residence.

* * * * *

(e) * * *

(3) A separate application must be filed by each applicant with the fees required by 8 CFR 106.2.

* * * * *

■ 27. Section 245a.3 is amended by republishing paragraph (d)(3) to read as follows:

§ 245a.3 Application for adjustment from temporary to permanent resident status.

* * * * *

(d) * * *

(3) A separate application must be filed by each applicant with the fees required by 8 CFR 106.2.

* * * * *

■ 28. Section 245a.4 is amended by republishing paragraph (b)(5)(iii) to read as follows:

§ 245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.

* * * * *

(b) * * *

(5) * * *

(iii) A separate application must be filed by each applicant with the fees required by 8 CFR 106.2.

* * * * *

■ 29. Section 245a.12 is amended by republishing paragraph (d) introductory text to read as follows:

§ 245a.12 Filing and applications.

* * * * *

(d) *Application and supporting documentation.* Each applicant for LIFE Legalization adjustment of status must submit the form prescribed by USCIS completed in accordance with the form instructions accompanied by the required evidence.

* * * * *

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

■ 30. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1303–1305; 8 CFR part 2.

■ 31. Section 264.5 is amended by revising paragraph (a) to read as follows:

§ 264.5 Application for a replacement Permanent Resident Card.

(a) *Filing instructions.* A request to replace a Permanent Resident Card must be filed in accordance with the appropriate form instructions and with the fee specified in 8 CFR 106.2.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 32. The authority citation for part 274a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 114–74, 129 Stat. 599 (28 U.S.C. 2461 note); 8 CFR part 2.

■ 33. Section 274a.12 is amended by revising and republishing paragraphs (b)(9), (13), and (14) to read as follows:

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

* * * * *

(b) * * *

(9) A temporary worker or trainee (H–1, H–2A, H–2B, or H–3), under 8 CFR 214.2(h), or a nonimmigrant specialty occupation worker under section 101(a)(15)(H)(i)(b)(1) of the Act. An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional H–2B athlete who is traded from one organization to another

organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the new organization is expected to file a new petition for H–2B classification. If a new petition is not filed within 30 days, employment authorization will cease. If a new petition is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease. In the case of a nonimmigrant with H–1B status, employment authorization will automatically continue upon the filing of a qualifying petition under 8 CFR 214.2(h)(2)(i)(H) until such petition is adjudicated, in accordance with section 214(n) of the Act and 8 CFR 214.2(h)(2)(i)(H).

* * * * *

(13) An alien having extraordinary ability in the sciences, arts, education, business, or athletics (O–1), and an accompanying alien (O–2), under 8 CFR 214.2(o). An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional O–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after the acquisition by the new organization, within which time the new organization is expected to file a new petition for O nonimmigrant classification. If a new petition is not filed within 30 days, employment authorization will cease. If a new petition is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

(14) An athlete, artist, or entertainer (P–1, P–2, or P–3), under 8 CFR 214.2(p). An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional P–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after the acquisition by the new organization, within which time the new organization is expected to file a new petition for P–1 nonimmigrant classification. If a new petition is not filed within 30 days, employment authorization will cease. If a new petition is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

* * * * *

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2024–01427 Filed 1–30–24; 4:15 am]

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