DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 106, 204, 211, 212, 214, 216, 223, 235, 236, 240, 244, 245, 245a, 248, 264, 274a, 301, 319, 320, 322, 324, 334, 341, 343a, 343b, and 392

[CIS No. 2627–18; DHS Docket No. USCIS–2019–0010]

RIN 1615–AC18

U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements

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

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security (DHS) proposes to adjust certain immigration and naturalization benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS). USCIS conducted a comprehensive biennial fee review and determined that current fees do not recover the full costs of providing adjudication and naturalization services. DHS proposes to adjust USCIS fees by a weighted average increase of 21 percent, add new fees for certain benefit requests, establish multiple fees for petitions for nonimmigrant workers, and limit the number of beneficiaries on certain forms to ensure that USCIS has the resources it needs to provide adequate service to applicants and petitioners. Adjustments to the fee schedule are necessary to recover the full operating costs associated with administering the nation's immigration benefits system, safeguarding its integrity, and efficiently and fairly adjudicating immigration benefit requests, while protecting Americans, securing the homeland, and honoring our country's values. USCIS also is proposing changes to certain other immigration benefit request requirements.

DATES: Written comments must be submitted on or before December 16, 2019.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2019–0010, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow this site's instructions for submitting comments.
- *Mail:* Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Mailstop #2140, Washington, DC 20529–2140. To ensure proper handling, please reference DHS Docket No. USCIS–2019–0010 in your correspondence. Mail must be postmarked by the comment submission deadline. Please note that USCIS cannot accept any comments that are hand delivered or couriered. In addition, USCIS cannot accept mailed comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives.

FOR FURTHER INFORMATION CONTACT: Kika M. Scott, Deputy Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529–2130, telephone (202) 272–8377.

SUPPLEMENTARY INFORMATION:

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List of Acronyms and Abbreviations

ABC Activity-Based Costing
ASC Application Support Center
BLS Bureau of Labor Statistics
CAT Convention Against Torture and Other Cruel, Unusual or Degrading Treatment or Punishment
CBP U.S. Customs and Border Protection
CEQ Council on Environmental Quality
CFO Chief Financial Officer
CNMI Commonwealth of the Northern Mariana Islands
CPI Consumer Price Index
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
EOIR Executive Office for Immigration Review
FBI Federal Bureau of Investigation
FY Fiscal Year
GAO Government Accountability Office
HHS U.S. Department of Health and Human Services
IEFA Immigration Examinations Fee Account
INA Immigration and Nationality Act of 1952
INS Immigration and Naturalization Service
IPO Investor Program Office
IOAA Independent Offices Appropriations Act
LIFE Act Legal Immigration Family Equity Act
LPR Lawful Permanent Resident
NACARA Nicaraguan Adjustment and Central American Relief Act
NAICS North American Industry Classification System
NBC National Benefits Center
NEPA National Environmental Policy Act
NOID Notice of Intent to Deny
NPRM Notice of Proposed Rulemaking
OIG DHS Office of the Inspector General
OMB Office of Management and Budget
OPQ Office of Performance and Quality
PRC Permanent Resident Card
RAIO Refugee, Asylum, and International Operations Directorate
RFE Request for Evidence
RFA Regulatory Flexibility Act
SAVE Systematic Alien Verification for Entitlements
SBA Small Business Administration
TPS Temporary Protected Status
TVPRA William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
UAC Unaccompanied Alien Child
UMRA Unfunded Mandates Reform Act
USCIS U.S. Citizenship and Immigration Services
VPC Volume Projection Committee

I. Public Participation

DHS invites you to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. Comments providing the most assistance to DHS will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports the recommended change.

Instructions: All submissions should include the agency name and DHS Docket No. USCIS–2019–0010 for this rulemaking. Providing comments is entirely voluntary. Regardless of how you submit your comment, DHS will post all submissions, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov* and will include any personal information you provide. Because the information you submit will be publicly available, you should consider limiting the amount of personal information in your submission. DHS may withhold information provided in comments from public viewing if it determines that such information is offensive or may affect the privacy of an individual. For additional information, please read the Privacy Act notice available through the link in the footer of *http://www.regulations.gov.*

Docket: For access to the docket, go to *http://www.regulations.gov* and enter this rulemaking's eDocket number: USCIS–2019–0010. The docket includes additional documents that support the analysis contained in this proposed rule to determine the specific fees that are proposed. These documents include:

- Fiscal Year (FY) 2019/2020 Immigration Examinations Fee Account Fee Review Supporting Documentation;
- Regulatory Impact Analysis: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements; and
- Small Entity Analysis for Adjustment of the U.S. Citizenship and Immigration Services Fee Schedule notice of proposed rulemaking (NPRM).

You may review these documents on the electronic docket. The software [1] used to compute the immigration benefit request fees [2] and biometric fees [3] is a commercial product licensed to USCIS that may be accessed on-site, by appointment, by calling (202) 272–1969.[4]

II. Executive Summary

DHS proposes to adjust the USCIS fee schedule, which specifies the fee amount charged for each immigration and naturalization benefit request.[5] DHS last adjusted the fee schedule on December 23, 2016, by a weighted average increase of 21 percent. *See* 81 FR 73292 (Oct. 24, 2016) (final rule) (FY 2016/2017 fee rule).

USCIS is primarily funded by immigration and naturalization benefit request fees charged to applicants and

[1] USCIS uses commercially available activity-based costing (ABC) software, SAP Business Objects Profitability and Cost Management, to create financial models as described in the supporting documentation.

[2] Benefit request means any application, petition, motion, appeal, or other request relating to an immigration or naturalization benefit, whether such request is filed on a paper form or submitted in an electronic format, provided such request is submitted in a manner prescribed by DHS for such purpose. *See* 8 CFR 1.2.

[3] DHS uses the terms biometric fees, biometric services fees, and biometric fee synonymously in this rule to describe the cost and process for capturing, storing, or using biometrics.

[4] This proposed rule describes key inputs to the ABC model (for example, budget, workload forecasts, staffing, and completion rates), both here and in the supporting documentation.

[5] For the purposes of this rulemaking, DHS is including all requests funded from the IEFA in the term ''benefit request'' or ''immigration benefit request'' although the form or request may not be to request an immigration benefit. For example, Deferred Action for Childhood Arrivals (DACA) is solely an exercise of prosecutorial discretion by DHS. It is not an immigration benefit and would fit under the definition of ''benefit request'' solely for purpose of this rule. For historic receipts and completion information, see USCIS immigration and citizenship data available at *https://www.uscis.gov/tools/reports-studies/immigration-forms-data.*

petitioners. 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. The focus of this fee review is the IEFA, which comprised approximately 95 percent of USCIS' total FY 2018 enacted spending authority.

In accordance with the requirements and principles of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901–03 and Office of Management and Budget (OMB) Circular A–25, USCIS conducts biennial reviews of the non-statutory fees deposited into the IEFA. If necessary, DHS proposes fee adjustments to ensure full cost recovery. USCIS completed a fee review for the FY 2019/2020 biennial period. The primary objective of the fee review is to determine whether current immigration and naturalization benefit fees will generate sufficient revenue to fund the anticipated operating costs associated with administering the nation's legal immigration system. The results indicate that current fee levels are insufficient to recover the full cost of operations funded by the IEFA. Therefore, DHS proposes to adjust USCIS fees by a weighted average increase of 21 percent.

In addition to the requirements of the CFO Act, there are other important reasons for conducting the FY 2019/2020 fee review. The fee review:

- Allows for an assessment of USCIS policy changes, staffing levels, costs, revenue, etc. USCIS evaluates operational requirements and makes informed decisions concerning program scaling, resource planning, and staffing allocations; and
- Provides those served by USCIS with an opportunity to assess the effect of fee changes.

USCIS calculates its fees to recover the full cost of operations funded by the IEFA. These costs do not include limited appropriations provided by Congress. If USCIS continues to operate at current fee levels, it would experience an average annual shortfall (the amount by which expenses exceed revenue) of $1,262.3 million. This projected shortfall poses a risk of degrading USCIS operations funded by the IEFA. As such, DHS proposes to adjust USCIS fees by a 21 percent weighted average increase to ensure full cost recovery. The weighted average increase is the percentage difference between the current and proposed fees by immigration benefit request.[6] This rule refers to weighted average instead of straight average because the figure represents a more accurate depiction of the overall effect that the proposed fee increase would have on total fee revenue.

The proposed fees would ensure that IEFA revenue covers USCIS' costs associated with adjudicating the immigration benefit requests. The proposed fee schedule accounts for increased costs to adjudicate immigration benefit requests, detect and deter immigration fraud, and thoroughly vet applicants, petitioners, and beneficiaries. DHS also proposes to change fee waiver and fee exemption policies to limit some fee increases. Additionally, DHS proposes to establish multiple fees for different categories of petitions for nonimmigrant workers in response to DHS Office of Inspector General (OIG) audit recommendations to USCIS. DHS proposes a range of fees that vary by the nonimmigrant classification and to limit petitions for nonimmigrant workers to 25 named beneficiaries. DHS believes the proposed fees more accurately reflect the differing burdens of adjudication and enable USCIS to adjudicate these petitions more effectively.

In addition to fee changes, this proposed rule would also make changes in the forms and fee structures used by USCIS. Some of these changes would result in cost savings, and others would result in costs or transfers. For the 10-year implementation period of the proposed rule, DHS estimates the total cost of the rule to applicants/petitioners is $4,730,732,250 undiscounted, $4,035,410,566 discounted at 3-percent, and $3,322,668,371 discounted at 7-percent. DHS estimates the total cost savings (benefits) to the applicants/petitioners is $220,187,510 undiscounted, $187,824,412 discounted at 3-percent, and $154,650,493 discounted at 7-percent. Much of this total is expected to be transfers between applicants and the federal government or between groups of applicants, rather than new, real resource costs to the U.S. economy.

A. Effective Date

The FY 2019/2020 fee review assumes these changes may affect the second year of the biennial period, as FY 2020 began on October 1, 2019.

III. Basis for the Fee Review

A. Legal Authority and Guidance

DHS issues this proposed rule consistent with INA section 286(m), 8 U.S.C. 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 or other immigrants'')[7] and the CFO Act, 31 U.S.C. 901–03 (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 proposed rule is also consistent with non-statutory guidance on fees, the budget process, and federal accounting principles. *See* OMB Circular A–25, available at *https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf,* 58 FR 38142 (July 15, 1993) (establishing federal policy guidance regarding fees assessed by 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 (identifying various classifications of costs to be included and recommending various methods of cost assignment); *see also* OMB Circular A–11, Preparation, Submission, and Execution of the

[6] USCIS uses weighted average instead of a straight average because of the difference in volume by immigration benefit type and the resulting effect on fee revenue. The 21 percent weighted average increase is a change in the average fee for a form that currently requires a fee compared to the average proposed fee per form. The sum of the current fees multiplied by the projected FY 2019/2020 fee-paying receipts for each immigration benefit type, divided by the total fee-paying receipts = $530. The sum of the proposed fees multiplied by the projected FY 2019/2020 receipts for each immigration benefit type, divided by the fee-paying receipts = $640. There is a $110, or approximately 21 percent difference between the two averages. These averages exclude fees that do not receive cost reallocation, such as the separate biometric services fee and the proposed Form I–821D fee.

[7] 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).

Budget, section 20.7(d), (g) (June 29, 2018)), available at *https://www.whitehouse.gov/wp-content/uploads/2018/06/a11_2018.pdf* (providing guidance on the FY 2020 budget and instructions on budget execution, offsetting collections, and user fees). DHS uses OMB Circular A–25 as general policy guidance for determining user fees for immigration benefit requests, with exceptions as outlined in section III.B. of this preamble. DHS also follows the annual guidance in OMB Circular A–11 if it requests appropriations to offset a portion of IEFA costs.[8]

Finally, this rule accounts for, and is consistent with, congressional appropriations for specific USCIS programs. FY 2018 appropriations for USCIS provided funding for only the E-Verify employment eligibility verification program. Congress provided E-Verify with $108.9 million for operations and support and $22.7 million for procurement, construction, and improvements. *See* Consolidated Appropriations Act, 2018, Public Law 115–66, div. F, tit. IV (Mar. 21, 2018) (DHS Appropriations Act 2018). The total E-Verify appropriation was $131.5 million in FY 2018. FY 2019 E-Verify appropriations are $109.7 million for operations and support, plus $22.8 million for procurement, construction, and improvements; the latter sum remains available until the end of FY 2021. *See* Consolidated Appropriations Act, 2019, Public Law 116–6, div. A, tit. IV (Feb. 15, 2019). DHS provides this information only for comparison to the IEFA. E-Verify is not included in this fee review budget because, generally, appropriations, not fees, fund E-Verify. In addition, Congress appropriated $10 million for the Citizenship and Integration Grant Program. *Id.* Together, the total FY 2019 appropriations for USCIS are $142.5 million. For the last several years, USCIS has had the authority to spend no more than $10 million for citizenship grants. The funding for the grant program came from the IEFA fee revenue or a mix of appropriations and fee revenue since 2013.[9] While Congress appropriated funds for grants in FY 2019, it did not reduce authorized IEFA spending to offset the change. As such, the $10 million previously budgeted for citizenship grants remains in the FY 2019/2020 IEFA fee review budget.

B. Full Cost Recovery

Consistent with these authorities and sources, this proposed rule would ensure that USCIS recovers its full operating costs and maintains an adequate level of service in two ways:

First, where possible, the proposed rule would set fees at levels sufficient to cover the full cost of the corresponding services associated with fairly and efficiently adjudicating immigration benefit requests.[10] DHS generally follows OMB Circular A–25, which ''establishes federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources.'' OMB Circular A–25, *User Charges* (Revised), para. 6, 58 FR 38142 (July 15, 1993). A primary objective of OMB Circular A–25 is to ensure that federal agencies recover the full cost of providing specific services to users and associated costs. *See id.,* para. 5. Full costs include, but are not limited to, an appropriate share of:

- Direct and indirect personnel costs, including salaries and fringe benefits, such as medical insurance and retirement;
- Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;
- Management and supervisory costs; and
- Costs of enforcement, collection, research, establishment of standards, and regulation.

Id.

Secondly, this proposed rule would set fees at a level sufficient to fund overall requirements and general operations related to USCIS IEFA programs that are not associated with specific statutory fees or funded by annual appropriations, benefit requests fees that are statutorily set at a level below full cost, or benefit requests that are fee exempt, in whole or in part. As noted, Congress has provided that USCIS may 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. *See* INA section 286(m), 8 U.S.C. 1356(m).[11] DHS interprets this statutory fee-setting authority, including the authorization to collect ''full costs'' for providing ''adjudication and naturalization services,'' as granting DHS broad discretion to include costs other than OMB Circular A–25 generally provides. *See OMB Circular A–25,* para. 6d1; INA section 286(m), 8 U.S.C. 1356(m). In short, DHS may charge fees at a level that will ensure recovery of all direct and indirect costs associated with providing immigration adjudication and naturalization services.[12]

Consistent with the historical position, this proposed rule would set fees at a level that ensures recovery of the full operating costs of USCIS, the entity within DHS that provides almost all immigration adjudication and naturalization services. *See* Homeland Security Act of 2002, Public Law 107–

[8] OMB Circulars A–25 and A–11 provide nonbinding internal Executive Branch direction for the development of fee schedules under the Independent Offices Appropriations Act (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 used the activity-based costing (ABC) methodology supported in Circulars A–25 and A–11 to develop the proposed fee schedule.

[9] 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.

[10] Section 286(m) of the Act, 8 U.S.C. 1356(m), provides broader fee-setting authority and is an exception from the stricter costs-for-services-rendered requirements of the Independent Offices Appropriations Act, 1952, 31 U.S.C. 9701(c) (IOAA). *See Seafarers Int'l Union of N. Am.* v. *U.S. Coast Guard,* 81 F.3d 179 (D.C. Cir. 1996) (IOAA provides that expenses incurred by agency to serve some independent public interest cannot be included in cost basis for a user fee, although agency is not prohibited from charging applicant full cost of services rendered to applicant, which also results in some incidental public benefits). Congress initially enacted immigration fee authority under the IOAA. *See Ayuda, Inc.* v. *Attorney General,* 848 F.2d 1297 (D.C. Cir. 1988). Congress thereafter amended the relevant provision of law to require deposit of the receipts into the separate Immigration Examinations Fee Account of the Treasury as offsetting receipts to fund operations, and broadened the fee-setting authority. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Public law 101–515, sec. 210(d), 104 Stat. 2101, 2111 (Nov. 5, 1990). Additional values are considered in setting IEFA fees that would not be considered in setting fees under the IOAA. *See* 72 FR at 29866–7.

[11] Congress has provided separate, but similar, authority for establishing USCIS genealogy program fees. *See* section 286(t) of the Act, 8 U.S.C. 1356(t). The statute requires that genealogy program fees be deposited into the Immigration Examinations Fee Account and that the fees for such research and information services may be set at a level that will ensure the recovery of the full costs of providing all such services. *Id.* The methodology for calculating the genealogy program fees is discussed in a separate section later in this preamble.

[12] Congress has not defined either term with any degree of specificity for purposes of subsections (m) and (n). *See, e.g., Barahona* v. *Napolitano,* No. 10–1574, 2011 WL 4840716, at **6–8 (S.D.N.Y. Oct. 11, 2011) (''While the term 'full costs' appears self-explanatory, section 286(m) contains both silence and ambiguity concerning the precise scope that 'full costs' entails in this context.''); *see also King* v. *Burwell,* 135 S. Ct. 2480, 2489 (2015) (''[O]ftentimes the 'meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.' So when deciding whether the language is plain, we must read the words 'in their context and with a view to their place in the overall statutory scheme.' '' (quoting *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 132–33 (2000))).

296, sec. 451, 116 Stat. 2142 (Nov. 26, 2002) (6 U.S.C. 271). The statute authorizes recovery of the full costs of providing immigration adjudication and naturalization services. Congress has historically relied on this authority to support the vast majority of USCIS programs and operations conducted as part of adjudication and naturalization service delivery. This conclusion is supported by Congress' historical appropriations to USCIS. The agency receives only a small annual appropriation. USCIS must use other means to fund, as a matter of both discretion and necessity, all other operations.

Certain functions, including the Systematic Alien Verification for Entitlements (SAVE) program [13] and the Office of Citizenship,[14] which USCIS has administered since DHS's inception, are integral parts of fulfilling USCIS' statutory responsibility to provide immigration adjudication and naturalization services. They are not associated with specific fees examined during the biennial fee review, but may be funded by the IEFA. Similarly, when a filing fee for an immigration benefit request such as Temporary Protected Status (TPS) is capped by statute at $50 and does not cover the cost of adjudicating these benefit requests, DHS may recover the difference with fees charged to other immigration benefit requests. *See* INA section 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B); 8 CFR 103.7(b)(1)(i)(NN); proposed 8 CFR 106.2(a)(37)(i). Finally, when DHS exempts certain benefit requests from filing or visa fees, such as, for example, applications or petitions from victims who assist law enforcement in the investigation or prosecution of acts of human trafficking (T nonimmigrant status) or certain other crimes (U nonimmigrant status), USCIS recovers the cost of processing those fee-exempt visas with fees charged to other applicants and petitioners. *See, e.g.,* 8 CFR 103.7(b)(1)(i)(UU)–(VV); proposed 8 CFR 106.2(a)(46)–(47).

In short, the full cost of USCIS operations cannot be as directly correlated or connected to a specific fee as OMB Circular A–25 advises. Nonetheless, DHS follows OMB Circular A–25 to the extent appropriate, including directing that fees should be set to recover the costs of an agency's services in their entirety and that full costs are determined based upon the best available records of the agency. *Id.* DHS applies the discretion provided in INA section 286(m), 8 U.S.C. 1356(m), to: (1) Use Activity-Based Costing (ABC) to establish a model for assigning costs to specific benefit requests in a manner reasonably consistent with OMB Circular A–25; (2) distribute costs that are not attributed to, or driven by, specific adjudication and naturalization services; [15] and (3) make additional adjustments to effectuate specific policy objectives.[16]

By approving DHS's annual appropriations, which provide limited appropriated funds to USCIS, Congress has consistently recognized that the ''full'' costs of operating USCIS, including SAVE and the Office of Citizenship, less any appropriated funding, is the appropriate cost basis for establishing IEFA fees. Nevertheless, in each biennial fee review, DHS adds refinements to its determination of immigration benefit fees, including the level by which fees match directly assignable, associated, and indirect costs.

C. Immigration Examinations Fee Account

USCIS manages three fee accounts:

- The IEFA (includes premium processing revenues),[17]
- The Fraud Prevention and Detection Account,[18] and
- The H–1B Nonimmigrant Petitioner Account.[19]

In 1988, Congress established the IEFA in the Treasury of the United States. *See* Public Law 100–459, sec. 209, 102 Stat. 2186 (Oct. 1, 1988) (codified as amended at INA sections 286(m) and (n), 8 U.S.C. 1356(m) and (n)). Fees deposited into the IEFA fund the provision of immigration adjudication and naturalization services. In subsequent legislation, Congress directed that the IEFA also fund the full costs of providing all such services, including services provided to immigrants at no charge. *See* Public Law 101–515, sec. 210(d)(1) and (2), 104 Stat. 2101, 2121 (Nov. 5, 1990). Consequently, the immigration benefit fees were increased to recover these additional costs. *See* 59 FR 30520 (June 14, 1994). The IEFA comprised approximately 95 percent of total funding for USCIS in FY 2018 and is the focus of this proposed rule.

The Fraud Prevention and Detection Account and H–1B Nonimmigrant Petitioner Account are both funded by statutorily set fees. DHS has no authority to adjust fees for these accounts.

D. Fee Review History

Most recently, DHS published a revised USCIS fee schedule in its FY 2016/2017 fee rule. *See* 81 FR 73292 (Oct. 24, 2016).[20] The rule and associated fees became effective on December 23, 2016. DHS adjusted the USCIS immigration benefits fee schedule for the first time in more than 6 years, increasing fees by a weighted average of 21 percent. The fee schedule adjustment recovered all projected costs for FY 2016–2017, including the Refugee, Asylum, and International Operations Directorate (RAIO), SAVE, and the Office of Citizenship. *See* 81 FR 26911 and 73293.

The fee schedule had been adjusted previously as well. Before the creation of DHS, the Department of Justice (DOJ) Immigration and Naturalization Service (INS) [21] adjusted fees incrementally in 1994. *See* 59 FR 30520 (June 14, 1994).

[13] USCIS funds the SAVE program by user fees and IEFA funds, as Congress has not provided any direct appropriated funds for the program since FY 2007. SAVE provides an ''immigration adjudication . . . service'' under INA sections 286(m) and (n) to Federal, state and local agencies who require immigration adjudication information in administering their benefits.

[14] The Homeland Security Act created the Office of Citizenship at the same time as several other mission essential USCIS offices, such as those for legal, budget, and policy. Like those offices, the Office of Citizenship has always been considered an essential part of the ''adjudication and naturalization services'' USCIS provides under sections 286(m) and (n) of the INA. An integral part of providing such services, as Congress recognized in creating the Citizenship office in section 451(f) of the Homeland Security Act (6 U.S.C. 271(f)), includes providing information to potential applicants for naturalization regarding the process of naturalization and related activities.

[15] The ABC model distributes indirect costs. Costs that are not assigned to specific fee-paying immigration benefit requests are reallocated to other fee-paying immigration benefit requests outside the model. For example, the model determines the direct and indirect costs for refugee workload. The costs associated with processing the refugee workload are reallocated outside the model to fee-paying immigration benefit requests.

[16] DHS may reasonably adjust fees based on value judgments and public policy reasons where a rational basis for the methodology is propounded in the rulemaking. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983).

[17] INA sec. 286(m), (n) & (u); 8 U.S.C. 1356(m), (n) & (u).

[18] INA secs. 214(c)(12)–(13), 286(v); 8 U.S.C. 1184(c)(12)–(13) 1356(v).

[19] INA secs. 214(c)(9), (11), 286(s); 8 U.S.C. 1184(c)(9), (11), 1356(s).

[20] The phrase ''FY 2016/2017 fee rule,'' as used in this proposed rule, encompasses the proposed rule, final rule, fee review, and all supporting documentation associated with the regulations effective as of December 23, 2016.

[21] The Homeland Security Act of 2002 abolished the INS and transferred the INS's immigration administration and enforcement responsibilities from DOJ to DHS. The INS's immigration and citizenship services functions were specifically transferred to the Bureau of Citizenship and Immigration Services, later renamed U.S. Citizenship and Immigration Services. *See* Public Law 107–296, 451 (6 U.S.C. 271).

DOJ conducted a comprehensive fee review using activity-based costing (ABC) and adjusted most IEFA fees in 1998. *See* 63 FR 1775 (Jan. 12, 1998) (proposed rule); 63 FR 43604 (Aug. 14, 1998) (final rule). DOJ adjusted fees for small volume workloads in 2000. *See* 64 FR 26698 (May 17, 1999) (proposed rule); 64 FR 69883 (Dec. 15, 1999) (final rule). DOJ adjusted fees by inflation in 2002. *See* 66 FR 65811 (Dec. 21, 2001). Following the creation of DHS, it adjusted fees in 2004 and 2005. *See* 69 FR 20528 (Apr. 15, 2004); 70 FR 56182 (Sept. 26, 2005). After those incremental changes, DHS published a comprehensive FY 2007 fee rule. *See* 72 FR 29851 (May 30, 2007). DHS further amended USCIS fees in the FY 2010/2011 fee rule. *See* 75 CFR 58962 (Sept. 24, 2010). This rule removed the costs of the RAIO Directorate, SAVE, and the Office of Citizenship from the fee schedule, in anticipation of appropriations from Congress that DHS requested. *See* 75 FR 58961, 58966. These resources did not fully materialize, requiring USCIS to use other fee revenue to support the programs in the FY 2016/2017 fee rule. *See* 81 FR 26910–12.

The supporting documentation accompanying this proposed rule in the rulemaking docket at *www.regulations.gov* contains a historical fee schedule that shows the immigration benefit fee history since October 2005.

Table 1 summarizes the IEFA and biometric services fee schedule that took effect on December 23, 2016. DHS is proposing to change the current fee schedule as a result of the FY 2019/2020 fee review. The table excludes statutory fees that DHS cannot adjust or can only adjust by inflation.

TABLE 1—NON-STATUTORY IEFA IMMIGRATION BENEFIT REQUEST FEES

Form No.[22]	Title	Fee
G–1041	Genealogy Index Search Request	$65
G–1041A	Genealogy Records Request	65
I–90	Application to Replace Permanent Resident Card	455
I–102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	445
I–129/129CW	Petition for a Nonimmigrant Worker	460
I–129F	Petition for Alien Fiancé(e)	535
I–130	Petition for Alien Relative	535
I–131[23]	Application for Travel Document	575
I–131A	Application for Carrier Documentation	575
I–140	Immigrant Petition for Alien Worker	700
I–191	Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)[24]	930
I–192	Application for Advance Permission to Enter as Nonimmigrant	[25]930/585
I–193	Application for Waiver of Passport and/or Visa	585
I–212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	930
I–290B	Notice of Appeal or Motion	675
I–360	Petition for Amerasian, Widow(er), or Special Immigrant	435
I–485	Application to Register Permanent Residence or Adjust Status	1,140
I–485	Application to Register Permanent Residence or Adjust Status (certain applicants under the age of 14 years)[26].	750
I–526	Immigrant Petition by Alien Entrepreneur	3,675
I–539	Application to Extend/Change Nonimmigrant Status	370
I–600	Petition to Classify Orphan as an Immediate Relative	775
I–600A	Application for Advance Processing of an Orphan Petition	775
I–601	Application for Waiver of Grounds of Inadmissibility	930
I–601A	Application for Provisional Unlawful Presence Waiver	630
I–612	Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended).	930
I–687	Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act	1,130
I–690	Application for Waiver of Grounds of Inadmissibility	715
I–694	Notice of Appeal of Decision under Section 210 or 245A	890
I–698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)[27]	1,670
I–751	Petition to Remove the Conditions of Residence	595
I–765	Application for Employment Authorization	410
I–800	Petition to Classify Convention Adoptee as an Immediate Relative	775
I–800A	Application for Determination of Suitability to Adopt a Child from a Convention Country	775
I–800A Supp. 3	Request for Action on Approved Form I–800A	385
I–817	Application for Family Unity Benefits	600
I–824	Application for Action on an Approved Application or Petition	465
I–829	Petition by Entrepreneur to Remove Conditions on Permanent Resident Status	3,750
I–881	Application for Suspension of Deportation or Special Rule Cancellation of Removal[28]	285/570
I–910	Application for Civil Surgeon Designation	785
I–924	Application for Regional Center Designation Under the Immigrant Investor Program	17,795
I–924A	Annual Certification of Regional Center	3,035
I–929	Petition for Qualifying Family Member of a U–1 Nonimmigrant	230
I–941	Application for Entrepreneur Parole[29]	1,200
N–300	Application to File Declaration of Intention	270
N–336	Request for a Hearing on a Decision in Naturalization Proceedings	700
N–400	Application for Naturalization	640
N–400	Application for Naturalization (Reduced Fee)	320
N–470	Application to Preserve Residence for Naturalization Purposes	355
N–565	Application for Replacement Naturalization/Citizenship Document	555
N–600	Application for Certification of Citizenship	1,170
N–600K	Application for Citizenship and Issuance of Certificate Under Section 322	1,170
	USCIS Immigrant Fee	220

TABLE 1—NON-STATUTORY IEFA IMMIGRATION BENEFIT REQUEST FEES—Continued

Form No.[22]	Title	Fee
	Biometric Services Fee	85

IV. FY 2019/2020 Immigration Examinations Fee Account Fee Review

A. USCIS Projected Costs and Revenue

The primary objective of the fee review is to determine whether current immigration and naturalization benefit fees will generate sufficient revenue to fund anticipated operating costs associated with administering USCIS' role in the nation's legal immigration system. USCIS examines its recent budget history, service levels, and immigration trends to forecast costs, revenue, and operational metrics. This data helps USCIS identify the difference between anticipated costs and revenue as well as calculate proposed fees. The FY 2019/2020 fee review encompasses three core elements:

- Cost projections;
- Revenue projections; and
- Cost and revenue differential (the difference between cost and revenue projections).

1. Cost Projections

USCIS' FY 2018 annual operating plan (AOP) is the basis for the FY 2019/2020 cost projections. These estimates reflect the funding necessary to maintain an adequate level of operations and do not include program increases for new development, modernization, or acquisition. Cost projections also include funding for enhancements that facilitate the processing of additional workload. Examples of items in the cost projections include:

- *Transfer of funding to U.S. Immigration and Customs Enforcement ($207.6 million in FY 2019 and FY 2020).* This item is explained in section IV.A.1.a., Use IEFA Fee Collections to Fund Immigration Adjudication Services Performed by ICE.
- *Pay and benefits adjustments for on-board staff ($280.2 million in FY 2019 and $89.8 million in FY 2020).* Pay adjustments account for cost of living adjustments, within-grade pay increases, and the annualization of prior-year vacancies. The government-wide cost of living adjustment rate assumption is 2.0 percent for both FY 2019 and FY 2020. Within-grade pay increases are routine raises awarded to general schedule employees, based on length of service and performance at an acceptable level of competence. Annualization of prior-year vacancies account for a full-year cost of salaries and benefits for positions that were on-board for only a portion of FY 2018.
- *Pay and benefits for new staff ($116.7 million in FY 2019 and $128.8 million in FY 2020).* Projected FY 2019 and FY 2020 workloads exceed current workload capacity, thereby requiring additional staff. The FY 2018 Staffing Allocation Model [30] and new staff enhancement requests yield an additional 2,098 positions necessary to meet adjudicative processing goals and other USCIS mission objectives, including administrative functions. In total, the FY 2016/2017 fee rule assumed a total authorized staffing level of 14,543, whereas estimates used for this proposed rule reflect 20,958. This represents an increase of 6,415 or 44 percent. This additional staffing requirement reflects the facts that it takes USCIS longer to adjudicate many workloads than was planned for in the FY 2016/2017 fee rule and that workload volumes, particularly for work types that do not currently generate fee revenue, have grown.
- *Net additional costs ($150.8 million in FY 2019 and $6.2 million in FY 2020).* In addition to non-pay general expenses associated with on-boarding the new staff described above, these costs include other enhancement requests such as secure mail shipping for permanent resident cards, increased background investigations, headquarters consolidation, etc. The additional resources are to sustain current operations necessary for achieving USCIS' strategic goals. USCIS considered all cost data that was available at the time it conducted this fee review, including data on cost-saving measures. It does not account for recent cost-savings initiatives for which data were not yet available at the time of this fee review. However, USCIS intends to fully evaluate and capture any relevant cost-savings data during its next biennial fee review.

Table 2 is a crosswalk summary of the FY 2018 AOP to the FY 2019/2020 cost projections. It accounts for pay and non-pay general expenses for on-board and new staff, other resource requirements or adjustments, and the removal of costs associated with temporary programs such as TPS. FY 2019 cost projections are 20 percent higher than FY 2018 costs. FY 2020 cost projections are 5 percent higher than FY 2019 cost projections. The FY 2019/2020 average annual budget is $4,670.5 million. This represents a $1,632.5 million, or 54 percent, increase over the FY 2016/2017 fee rule average annual budget of $3,038.0 million. The primary cost driver is payroll, which accounts for 30.9 percent of the increase from the prior fee rule average annual budget.

[22] Form, when used in connection with a benefit or other request to be filed with DHS to request an immigration benefit, means a device for the collection of information in a standard format that may be submitted in a paper format or an electronic format as prescribed by USCIS on its official internet website. The term ''Form'' followed by an immigration form number includes an approved electronic equivalent of such form as made available by USCIS on its official internet website. *See* 8 CFR 1.2 and 299.1. The word ''form'' is used in this final rule in both the specific and general sense.

[23] As described in the NPRM, the United States' obligations under the 1967 Protocol relating to the Status of Refugees (incorporating by reference Article 28 of the 1951 Convention relating to the Status of Refugees) guide the Application for Travel Document fees for a Refugee Travel Document. The USCIS ABC model does not set these fees. *See* 8 CFR 103.7(b)(1)(i)(M)(*2*) and (*3*).

[24] Form I–191 was previously titled Application for Advance Permission to Return to Unrelinquished Domicile. *See* 8 CFR 103.7(b)(1)(i)(O).

[25] The Form I–192 fee remained $585 when filed with and processed by CBP. *See* 8 CFR 103.7(b)(1)(i)(P).

[26] This reduced fee is applied to ''an applicant under the age of 14 years when [the application] is (i) submitted concurrently with the Form I–485 of a parent, (ii) the applicant is seeking to adjust status as a derivative of his or her parent, and (iii) the child's application is based on a relationship to the same individual who is the basis for the child's parent's adjustment of status, or under the same legal authority as the parent.'' 8 CFR 103.7(b)(1)(i)(U)(*2*).

[27] The form's name in the current fee provision at 8 CFR 103.7(b)(1)(i)(GG) is ''Application to Adjust Status from Temporary to Permanent Resident (Under section 245A of Public Law 99–603).''

[28] Currently there are two USCIS fees for Form I–881: $285 for individuals and $570 for families. *See* 8 CFR 103.7(b)(1)(i)(QQ)(*1*). DOJ's Executive Office for Immigration Review (EOIR) has a separate $165 fee.

[29] USCIS excluded Form I–941, Application for Entrepreneur Parole, from the FY 2019/2020 fee review. As such, it will not appear in tables for workload, fee-paying volume, or elsewhere in this NPRM. DHS published a separate NPRM that proposed to terminate the program. *See* 83 FR 24415 (June 28, 2018). DHS does not propose any changes to this fee.

[30] The Staffing Allocation Model is a Microsoft Excel-based workforce planning tool that estimates the staffing requirements necessary to adjudicate workload receipt (for example, applications and petitions) forecasts at target processing times.

The funding transfer to ICE accounts for about 6 percentage points (*i.e.,* 28.5 percent) of the 21 percent total weighted average fee increase.

TABLE 2—COST PROJECTIONS

[FY 2019/2020 fee review IEFA non-premium budget (in millions)]

Total Base FY 2018 IEFA Non-Premium Budget	$3,585.6
Plus: Spending Adjustments	217.2
Total Adjusted FY 2018 IEFA Non-Premium Budget	3,802.8
Plus: Transfer to ICE	207.6
Plus: Pay Inflation and Promotions/Within Grade Increases	280.2
Plus: Net Additional Costs	267.5
Total Adjusted FY 2019 IEFA Non-Premium Budget	4,558.1
Plus: Pay Inflation and Promotions/Within Grade Increases	218.6
Plus: Net Additional Costs	6.2
Total Adjusted FY 2020 IEFA Non-Premium Budget	4,782.9
FY 2019/2020 Average Non-Premium Budget	4,670.5

a. Use IEFA Fee Collections To Fund Immigration Adjudication Services Performed by ICE

The President's FY 2019 and FY 2020 budget requests include a $207.6 million transfer of IEFA funds to ICE. DHS proposes to use USCIS fees to recover the full amount of this proposed transfer.[31]

DHS may use fees deposited into the IEFA to fund the expenses of providing immigration adjudication and naturalization services and the cost of collection, safeguarding, and accounting for the IEFA funds. *See* INA section 286(m), 8 U.S.C. 1356(m). Funds deposited into the IEFA are primarily used by USCIS, but they may also be used to reimburse other DHS components, including ICE, for qualifying costs. DHS proposes to recover, via USCIS' fee schedule, the full amount of the proposed transfer from past budget requests. *See* INA section 286(n); 8 U.S.C. 1356(n). DHS will transfer funds annually from the IEFA to ICE's appropriations so as to reimburse those appropriations for the cost of providing qualifying services, which will increase the level of service provided beyond current levels.

DHS ''immigration adjudication and naturalization services'' do not end with a decision to approve or deny a request. USCIS and ICE, as components of DHS, share a responsibility to ensure the integrity of the U.S. immigration system beyond the moment of adjudication. DHS believes that ICE investigations of potential immigration fraud perpetrated by individuals and entities who have sought immigration benefits before USCIS and efforts to enforce applicable immigration law and regulations with regard to such individuals and entities constitute direct support of immigration adjudication and naturalization services. Thus, the IEFA may fund ICE enforcement and support positions, as well as ancillary costs, to the extent that such positions and costs support immigration adjudication and naturalization services. ICE HSI could use funds transferred from the IEFA to support investigations of immigration benefit fraud via Document and Benefit Fraud Task Forces (DBFTFs), Operation Janus, and the HSI National Lead Development Center. DBFTFs facilitate information sharing and coordination among ICE, USCIS, other federal entities, as well as state and local law enforcement for the purpose of investigating document and benefit fraud in support of immigration and naturalization services. Operation Janus is a joint initiative including USCIS and ICE to ensure that individuals who have a previous order of removal have not and will not be able to fraudulently obtain immigration benefits under an alternate identity, thus ensuring the integrity of the immigration adjudication and naturalization services provided by USCIS. The HSI National Lead Development Center will receive referrals and review investigative leads as part of investigations into immigration fraud. Considering what constitutes immigration adjudication and naturalization services and collection, safeguarding, and accounting expenses under INA sections 286(m), (n), 8 U.S.C. 1356(m), (n), adjudication and naturalization services includes all costs for work related to determining or adjudicating whether applicants may receive such services. The cost of the services provided includes the cost of any investigatory work necessary to adjudicate applications or provide services, including investigations of fraud. Therefore, these activities constitute support of immigration adjudication and naturalization services.

Moreover, while transfers between appropriations are generally prohibited absent statutory authority, INA section 286(n), 8 U.S.C. 1356(n), expressly authorizes the use of the fees deposited in the IEFA to reimburse any appropriation for expenses in providing immigration adjudication and naturalization services. DHS has determined that the IEFA may be used to reimburse appropriations that fund enforcement and support positions to the extent that such positions support adjudication and naturalization services. Therefore, DHS proposes to recover the costs through the USCIS fee schedule. To see how the ICE transfer affects proposed fees, see section VII. Other Possible Fee Scenarios in this preamble.[32]

The aforementioned cost projections serve as the basis for the additional ICE revenue of $207.6 million covered by this rule. DHS recognizes that the

[31] For additional information on ICE's FY 2019 costs, see pages 46 and 254–263 (called ICE—O&S–20 and ICE—IEFA–1–10, respectively, in the presentation) of the DHS ICE FY 2019 Congressional Justification located at *https://www.dhs.gov/sites/default/files/publications/U.S.%20Immigration%20and%20Customs%20Enforcement.pdf*. For information of ICE's FY 2020 costs, see pages 261–270 (called ICE—IEFA–3) of the DHS ICE FY 2020 Congressional Justification located at *https://www.dhs.gov/sites/default/files/publications/19_0318_MGMT_CBJ-Immigration-Customs-Enforcement_0.pdf*.

[32] The Administration has notified Congress of its intention to shift the cost of these ICE activities from annual appropriations to IEFA. See previous footnotes. If Congress rejects the Administration's proposal, or if DHS does not ultimately shift these costs from annual appropriations to IEFA, USCIS will not include this use of these funds in its fee model for the final rule.

$207.6 million previously identified in budget requests may propose to transfer more funding to ICE than is needed to fund activities that are reimbursable through the IEFA. DHS continues to study which ICE costs would be reimbursable through the IEFA, and may announce more precise cost estimates prior to publication of a final rule. To the extent that such cost estimates are lower than the $207.6 million figure currently accounted for in the rule, fee levels would be revised downward.[33]

DHS proposes to establish all USCIS fees at a level necessary to recover the full amount of this proposed transfer. However, in the final rule, DHS may establish a separate surcharge for the amount necessary to recover the estimated funds to be transferred to ICE. The surcharge would be separately codified, but collected along with the fee for each benefit request for which a fee is established in the final rule. DHS encourages comments on the method used to recover the ICE adjudication and naturalization service costs.

2. Revenue Projections

USCIS' revenue projections are informed by internal immigration benefit request receipt forecasts and 12 months of historical actual fee-paying receipts to account for fee-waiver/fee-exemption trends. USCIS uses actual revenue collections from June 2016 to May 2017 as a basis for the fee-paying assumptions in the FY 2019/2020 revenue projections.

USCIS' current fee schedule is expected to yield $3.41 billion of average annual revenue during the FY 2019/2020 biennial period. This represents a $0.93 billion, or 38 percent, increase from the FY 2016/2017 fee rule projection of $2.48 billion. *See* 81 FR 26911. The projected revenue increase is due to higher fees as a result of the FY 2016/2017 fee rule and more anticipated fee-paying receipts. The FY 2016/2017 fee rule forecasted 5,870,989 total workload receipts and 5,140,415 fee-paying receipts. *See* 81 FR 26923–4. However, the FY 2019/2020 fee review forecasts 9,336,015 total workload receipts and 7,789,861 fee-paying receipts. This represents a 59 percent increase to workload and 52 percent increase to fee-paying receipt volume assumptions. Despite the increase in projected revenue above the FY 2016/2017 fee rule projection, this additional revenue is insufficient to recover USCIS' increased costs, as discussed in the next section.

3. Cost and Revenue Differential

USCIS identifies the difference between anticipated costs and revenue, assuming no changes in fees, to determine whether the existing fee schedule is sufficient to recover full costs or whether a fee adjustment is necessary. Table 3 summarizes the projected cost and revenue differential. Summary values may vary due to rounding.

TABLE 3—IEFA NON-PREMIUM COST AND REVENUE COMPARISON

[Dollars in millions]

Fiscal year	FY 2019	FY 2020	FY 2019/2020 average
Non-Premium Revenue	$3,408.2	$3,408.2	$3,408.2
Non-Premium Budget	4,558.1	4,782.9	4,670.5
Difference	−1,149.9	−1,374.7	−1,262.3

Historically, and for the purpose of the fee review, USCIS reports costs and revenue as an average over the 2-year period. In Table 3, FY 2019 and 2020 costs and revenue are averaged to determine the projected amounts to be recovered through this rule. Based on current immigration benefit and biometric services fees and projected volumes, USCIS expects fees to generate $3.41 billion in average annual revenue in FY 2019 and FY 2020. For the same period, the average annual cost of processing those immigration benefit requests and providing biometric services is $4.67 billion. This yields an average annual deficit of $1.26 billion. In other words, USCIS expects projected FY 2019/2020 total operating costs to exceed projected total revenue.

Because projected costs are higher than projected revenue, USCIS has several options to address the shortfall:

1. Reduce projected costs;

2. Use carryover funds or revenue from the recovery of prior year obligations; or

3. Adjust fees with notice and comment rulemaking.

DHS believes that reducing the projected costs to equal the projected revenue would risk degrading USCIS operations funded by the IEFA. However, DHS did assess several possible fee review budgets. For example, the effect of the $207.6 million transfer from USCIS to ICE is shown below in section VII. Other Possible Fee Scenarios. Projected carryover is negative in both FY 2019 and FY 2020 and thus eliminating this transfer is insufficient to bridge the gap between projected costs and revenue.[34] Likewise, USCIS estimates that recovered revenue from prior year obligations will be insufficient. USCIS estimates that it may recover $91.9 million in FY 2019 and $94.2 million in FY 2020 for the non-premium IEFA. Therefore, DHS proposes to increase revenue through the fee adjustments described in detail throughout this rule.

B. Methodology

When conducting a fee review, USCIS reviews its recent operating environment to determine the appropriate method to assign costs to immigration benefit requests, including biometric services. USCIS uses activity-based costing (ABC), a business management tool that assigns resource costs to operational activities and then to products and/or services. USCIS uses commercially available ABC software to create financial models. These models determine the cost of each major step towards processing immigration benefit requests and providing biometric services. This is the same methodology that USCIS used in the last five fee reviews, and it is the basis for the current fee structure. Following the FY 2016/2017 fee rule, USCIS identified several key methodology changes to improve the accuracy of its ABC model.

[33] The possible effects of a different level of ICE costs to be funded by USCIS benefit request fees is discussed further in VII. Other Possible Fee Scenarios.

[34] In the docket for this proposed rule, the FY 2019/2020 Immigration Examinations Fee Account Fee Review Supporting Documentation has more information. See the section titled IEFA Non-Premium Carryover Projections & Targets.

Please refer to the Methodology Changes Implemented in the FY 2019/2020 Fee Review section of the Supporting Documentation located in the docket of this rule.

1. Volume

USCIS uses two types of volume data in the fee review: Workload and fee-paying volume. Workload volume is a projection of the total number of immigration benefit requests that USCIS will receive in a fiscal year. Fee-paying volume is a projection of the number of applicants, petitioners, and requestors that will pay a fee when filing requests for immigration benefits. Not all applicants, petitioners, or requestors pay a fee. Those applicants, petitioners, and requestors for whom USCIS grants a fee waiver or to whom an exemption applies are represented in the workload volume, but not the fee-paying volume. Applicants, petitioners, and requestors who pay a fee fund the cost of processing requests for fee-waived or fee-exempt immigration benefit requests.

a. Workload Volume and Volume Projection Committee

USCIS uses statistical modeling, immigration receipt data from the last 15 years, and internal assessments of future developments (such as annualized data prepared by the USCIS Office of Performance and Quality) to develop workload volume projections. All relevant USCIS directorates and program offices are represented on the USCIS Volume Projection Committee (VPC). The VPC forecasts USCIS workload volume using subject matter expertise from various directorates and program offices, including the Service Centers, National Benefits Center, RAIO, and regional, district, and field offices. Input from these offices helps refine the volume projections. The VPC reviews short- and long-term volume trends. In most cases, time series models provide volume projections by form type. Time series models use historical receipts data to determine patterns (such as level, trend, and seasonality) or correlations with historical events to forecast receipts. When possible, models are also used to determine relationships between different benefit request types. Workload volume is a key element used to determine the USCIS resources needed to process benefit requests within established adjudicative processing goals. It is also the primary cost driver for assigning activity costs to immigration benefits and biometric services [35] in the USCIS ABC model.

TABLE 4—WORKLOAD VOLUME COMPARISON

Immigration benefit request	Average annual FY 2016/2017 projected workload receipts	Average annual FY 2019/2020 projected workload receipts	Difference
I–90 Application to Replace Permanent Resident Card	810,707	767,020	−43,687
I–102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	10,143	7,700	−2,443
I–129 Petition for a Nonimmigrant Worker Subtotal	432,156	553,266	121,110
I–129H1	N/A	423,304	N/A
I–129H2A—Named Beneficiaries	N/A	3,962	N/A
I–129H2B—Named Beneficiaries	N/A	2,256	N/A
I–129L	N/A	41,502	N/A
I–129O	N/A	25,456	N/A
I–129CW, I–129E&TN, and I–129MISC	N/A	43,491	N/A
I–129H2A—Unnamed Beneficiaries	N/A	8,981	N/A
I–129H2B—Unnamed Beneficiaries	N/A	4,315	N/A
I–129F Petition for Alien Fiancé(e)	45,351	52,000	6,649
I–130 Petition for Alien Relative	911,349	984,107	72,758
I–131/I–131A Application for Travel Document Subtotal	256,622	480,834	224,212
I–131 Application for Travel Document	N/A	449,073	N/A
I–131 Refugee Travel Document for an individual age 16 or older	N/A	20,714	N/A
I–131 Refugee Travel Document for a child under the age of 16	N/A	1,248	N/A
I–131A Application for Carrier Documentation	N/A	9,799	N/A
I–140 Immigrant Petition for Alien Worker	88,602	161,000	72,398
I–290B Notice of Appeal or Motion	24,706	24,050	−656
I–360 Petition for Amerasian, Widow(er) or Special Immigrant	26,428	42,873	16,445
I–485 Application to Register Permanent Residence or Adjust Status	593,717	632,500	38,783
I–526 Immigrant Petition by Alien Entrepreneur	14,673	14,000	−673
I–539 Application to Extend/Change Nonimmigrant Status	172,001	231,000	58,999
I–589 Application for Asylum and for Withholding of Removal	N/A	163,000	N/A
I–600/600A; I–800/800A Intercountry Adoption-Related Petitions and Applications	15,781	11,776	−4,005
I–600A/I–600 Supplement 3 Request for Action on Approved Form I–600A/I–600	N/A	1,500	N/A
I–601A Provisional Unlawful Presence Waiver	42,724	67,000	24,276
I–687 Application for Status as a Temporary Resident	18	0	−18
I–690 Application for Waiver of Grounds of Inadmissibility	21	30	9
I–694 Notice of Appeal of Decision	39	10	−29
I–698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	91	100	9
I–751 Petition to Remove Conditions on Residence on Permanent Resident Status	173,000	156,000	−17,000
I–765 Application for Employment Authorization	747,825	2,851,000	2,103,175
I–800A Supplement 3 Request for Action on Approved Form I–800A	1,585	1,500	−85
I–817 Application for Family Unity Benefits	2,069	1,400	−669
I–821D Consideration of Deferred Action for Childhood Arrivals (Renewal)	N/A	396,000	N/A
I–824 Application for Action on an Approved Application or Petition	10,921	11,303	382
I–829 Petition by Entrepreneur to Remove Conditions on Permanent Resident Status	3,562	3,500	−62
I–881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	N/A	340	N/A
I–910 Application for Civil Surgeon Designation	609	530	−79

[35] As fully explained later in this preamble, DHS is removing biometric services as a separate fee in this rule, except as associated with an Application for Temporary Protected Status and certain other programs. Accordingly, N/A is included in the average annual FY 2019/2020 projected workload receipts and difference columns for biometrics in Table 4.

TABLE 4—WORKLOAD VOLUME COMPARISON—Continued

Immigration benefit request	Average annual FY 2016/2017 projected workload receipts	Average annual FY 2019/2020 projected workload receipts	Difference
I–924 Application For Regional Center Designation Under the Immigrant Investor Program	400	520	120
I–924A Annual Certification of Regional Center	882	950	68
I–929 Petition for Qualifying Family Member of a U–1 Nonimmigrant	575	2,200	1,625
N–300 Application to File Declaration of Intention	41	4	−37
N–336 Request for a Hearing on a Decision in Naturalization Proceedings	4,666	4,700	34
N–400 Application for Naturalization	830,673	913,500	82,827
N–470 Application to Preserve Residence for Naturalization Purposes	362	110	−252
N–565 Application for Replacement Naturalization/Citizenship Document	28,914	28,000	−914
N–600/600K Application for Certificate of Citizenship Subtotal	69,723	64,000	−5,723
N–600 Application for Certificate of Citizenship	N/A	61,000	N/A
N–600K Application for Citizenship and Issuance of Certificate Under Section 322	N/A	3,000	N/A
Inadmissibility Waiver Subtotal	71,527	105,492	33,965
I–191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	N/A	260	N/A
I–192 Application for Advance Permission to Enter as Nonimmigrant	N/A	69,557	N/A
I–193 Application for Waiver of Passport and/or Visa	N/A	7,763	N/A
I–212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	N/A	6,132	N/A
I–601 Application for Waiver of Ground of Excludability	N/A	21,000	N/A
I–612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	N/A	780	N/A
USCIS Immigrant Fee	472,511	594,000	121,489
G–1041 Genealogy Index Search Request	3,605	4,650	1,045
G–1041A Genealogy Records Request	2,410	2,550	140
Subtotal	5,870,989	9,336,015	3,508,026
Biometric Services	3,028,254	N/A	N/A
Total	8,899,243	9,336,015	479,772

b. Fee-Paying Volume

USCIS uses historical revenue and receipt data to determine the number of individuals who paid a fee for each immigration benefit request. Total revenue for an immigration benefit request is divided by its fee to determine the number of fee-paying immigration benefit requests. Fee-paying receipts are compared to the total number of receipts (workload volume) to determine a fee-paying percentage for each immigration benefit request. When appropriate, projected fee-paying volume is adjusted to reflect filing trends and anticipated policy changes. These projections include the effects of changes that DHS is proposing in this rule to fee waiver policies, the discontinuation of free interim benefits while an Application to Register Permanent Residence or Adjust Status is pending, as well as the introduction of fees for Form I–589, Application for Asylum and for Withholding of Removal and Form I–182D, Consideration of Deferred Action for Childhood Arrivals (Renewal).[36] Some immigration benefit request volumes include estimated fee-paying volumes from CBP.[37]

TABLE 5—FEE-PAYING PROJECTION COMPARISON

Immigration benefit request	Average annual FY 2016/2017 fee-paying projection	Average annual FY 2019/2020 fee-paying projection	Difference
I–90 Application to Replace Permanent Resident Card	718,163	682,722	−35,442
I–102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	9,499	7,155	−2,344
I–129 Petition for a Nonimmigrant Worker Subtotal	427,778	553,266	125,488
I–129H1	N/A	423,304	N/A
I–129H2A—			
Named Beneficiaries	N/A	3,962	N/A
I–129H2B—Named Beneficiaries	N/A	2,256	N/A
I–129L	N/A	41,502	N/A
I–129O	N/A	25,456	N/A
I–129CW, I–129E&TN, and I–129MISC	N/A	43,491	N/A
I–129H2A—Unnamed Beneficiaries	N/A	8,981	N/A
I–129H2B—Unnamed Beneficiaries	N/A	4,315	N/A
I–129F Petition for Alien Fiancé(e)	39,277	47,923	8,646
I–130 Petition for Alien Relative	907,512	976,398	68,886
I–131/I–131A Application for Travel Document Subtotal	194,461	322,829	128,368
I–131 Application for Travel Document	N/A	291,068	N/A
I–131 Refugee Travel Document for an individual age 16 or older	N/A	20,714	N/A
I–131 Refugee Travel Document for a child under the age of 16	N/A	1,248	N/A
I–131A Application for Carrier Documentation	N/A	9,799	N/A
I–140 Immigrant Petition for Alien Worker	88,602	161,000	72,398
I–290B Notice of Appeal or Motion	20,955	20,705	−250

[36] See section V.C. Fee Waivers of this preamble for more information on the proposed changes.

[37] See section V.R. Fees Shared by CBP and USCIS of this preamble for more information.

TABLE 5—FEE-PAYING PROJECTION COMPARISON—Continued

Immigration benefit request	Average annual FY 2016/2017 fee-paying projection	Average annual FY 2019/2020 fee-paying projection	Difference
I–360 Petition for Amerasian, Widow(er) or Special Immigrant	8,961	4,224	−4,737
I–485 Application to Register Permanent Residence or Adjust Status	473,336	510,926	37,590
I–526 Immigrant Petition by Alien Entrepreneur	14,673	14,000	−673
I–539 Application to Extend/Change Nonimmigrant Status	171,616	223,903	52,287
I–589 Application for Asylum and for Withholding of Removal	N/A	163,000	N/A
I–600/600A; I–800/800A Orphan Petitions and Applications	5,811	6,142	331
I–600A/I–600 Supplement 3 Request for Action on Approved Form I–600A/I–600	N/A	768	N/A
I–601A Provisional Unlawful Presence Waiver	42,724	67,000	24,276
I–687 Application for Status as a Temporary Resident	0	0	0
I–690 Application for Waiver of Grounds of Inadmissibility	17	25	8
I–694 Notice of Appeal of Decision	39	10	−29
I–698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	91	100	9
I–751 Petition to Remove Conditions on Residence	162,533	148,918	−13,615
I–765 Application for Employment Authorization	397,954	1,846,491	1,448,537
I–800A Supplement 3 Request for Action on Approved Form I–800A	746	768	22
I–817 Application for Family Unity Benefits	1,988	1,368	−620
I–821D Consideration of Deferred Action for Childhood Arrivals (Renewal)	N/A	396,000	N/A
I–824 Application for Action on an Approved Application or Petition	10,828	11,147	319
I–829 Petition by Entrepreneur to Remove Conditions on Permanent Resident Status	3,562	3,500	−62
I–881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	N/A	340	N/A
I–910 Application for Civil Surgeon Designation	609	530	−79
I–924 Application For Regional Center Designation Under the Immigrant Investor Program	400	520	120
I–924A Annual Certification of Regional Center	882	950	68
I–929 Petition for Qualifying Family Member of a U–1 Nonimmigrant	257	1012.5	756
N–300 Application to File Declaration of Intention	36	4	−32
N–336 Request for a Hearing on a Decision in Naturalization Proceedings	3,593	3,873	280
N–400 Application for Naturalization	631,655	811,730	180,075
N–470 Application to Preserve Residence for Naturalization purposes	360	107	−253
N–565 Application for Replacement Naturalization/Citizenship Document	23,491	23,458	−34
N–600/600K Naturalization Certificate Application Subtotal	46,870	49,826	2,956
N–600 Application for Certificate of Citizenship	N/A	46,857	N/A
N–600K Application for Citizenship and Issuance of Certificate Under Section 322	N/A	2,970	N/A
Inadmissibility Waiver Subtotal	41,902	58,098	16,196
I–191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	N/A	260	N/A
I–192 Application for Advance Permission to Enter as Nonimmigrant	N/A	22,780	N/A
I–193 Application for Waiver of Passport and/or Visa	N/A	7,672	N/A
I–212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	N/A	6,085	N/A
I–601 Application for Waiver of Ground of Excludability	N/A	20,711	N/A
I–612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	N/A	590	N/A
USCIS Immigrant Fee	472,511	572,425	99,914
G–1041 Genealogy Index Search Request	3,605	4,650	1,045
G–1041A Genealogy Records Request	2,410	2,550	140
Subtotal	4,929,707	7,789,861	2,860,154
Biometric Services	2,598,639	N/A	N/A
Grand Totals	7,528,346	7,789,861	261,515

2. Completion Rates

USCIS completion rates are the average hours per adjudication of an immigration benefit request. They identify the adjudicative time required to complete (render a decision on) specific immigration benefit requests. The completion rate for each benefit type represents an average. Completion rates reflect what is termed ''touch time,'' or the time an employee with adjudicative responsibilities actually handles the case. This does not reflect ''queue time,'' or time spent waiting, for example, for additional evidence or supervisory approval. Completion rates do not reflect the total processing time applicants, petitioners, and requestors can expect to wait for a decision on their case after USCIS accepts it.

USCIS requires employees who adjudicate immigration benefit requests to report adjudication hours and case completions by benefit type. Adjudication hours are divided by the number of completions for the same time period to determine an average completion rate. In addition to using this data to determine fees, completion rates help determine appropriate staffing allocations to handle projected workload. The USCIS Office of Performance and Quality (OPQ), field offices, and regional management scrutinize the data to ensure accuracy. When data is inconsistent and/or anomalies are identified, the OPQ contacts the reporting office to resolve and make necessary adjustments. USCIS has confidence in the data, given the consistency of reporting over the last several years. The continual availability of the information enables USCIS to update cost information for each fee review.

TABLE 6—COMPLETION RATES PER BENEFIT REQUEST

[Projected adjudication hours/completion]

Immigration benefit request	Service-wide completion rate
I–90 Application to Replace Permanent Resident Card	0.19
I–102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	0.77
I–129H1	1.10
I–129H2A—Named Beneficiaries	1.92
I–129H2B—Named Beneficiaries	2.00
I–129L	2.23
I–129O	1.90
I–129CW, I–129E&TN, and I–129MISC	1.62
I–129H2A—Unnamed Beneficiaries	0.50
I–129H2B—Unnamed Beneficiaries	0.58
I–129F Petition for Alien Fiancé(e)	0.67
I–130 Petition for Alien Relative	0.86
I–131 Application for Travel Document	0.25
I–131 Refugee Travel Document for an individual age 16 or older	0.27
I–131 Refugee Travel Document for a child under the age of 16	0.25
I–131A Application for Carrier Documentation	1.01
I–140 Immigrant Petition for Alien Worker	1.46
I–290B Notice of Appeal or Motion	1.32
I–360 Petition for Amerasian, Widow(er) or Special Immigrant	1.65
I–485 Application to Register Permanent Residence or Adjust Status	1.63
I–526 Immigrant Petition by Alien Entrepreneur	8.65
I–539 Application to Extend/Change Nonimmigrant Status	0.51
I–589 Application for Asylum and for Withholding of Removal	4.10
I–600/600A; I–800/800A Orphan Petitions and Applications	2.22
I–600A/I–600 Supplement 3 Request for Action on Approved Form I–600A/I–600	1.90
I–601A Provisional Unlawful Presence Waiver	2.64
I–687 Application for Status as a Temporary Resident	N/A
I–690 Application for Waiver of Grounds of Inadmissibility	1.05
I–694 Notice of Appeal of Decision	1.10
I–698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	3.76
I–751 Petition to Remove Conditions on Residence	1.30
I–765 Application for Employment Authorization	0.20
I–800A Supplement 3 Request for Action on Approved Form I–800A	1.90
I–821D Consideration of Deferred Action for Childhood Arrivals (Renewal)	0.12
I–817 Application for Family Unity Benefits	0.91
I–824 Application for Action on an Approved Application or Petition	0.78
I–829 Petition by Entrepreneur to Remove Conditions on Permanent Resident Status	8.15
I–881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	2.00
I–910 Application for Civil Surgeon Designation	1.81
I–924 Application For Regional Center Designation Under the Immigrant Investor Program	34.95
I–924A Annual Certification of Regional Center	10.00
I–929 Petition for Qualifying Family Member of a U–1 Nonimmigrant	2.60
N–300 Application to File Declaration of Intention	2.68
N–336 Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA)	3.05
N–400 Application for Naturalization	1.57
N–470 Application to Preserve Residence for Naturalization purposes	4.02
N–565 Application for Replacement Naturalization/Citizenship Document	0.89
N–600 Application for Certificate of Citizenship	1.08
N–600K Application for Citizenship and Issuance of Certificate Under Section 322	1.57
I–191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	2.10
I–192 Application for Advance Permission to Enter as Nonimmigrant	0.97
I–193 Application for Waiver of Passport and/or Visa	0.30
I–212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	2.71
I–601 Application for Waiver of Ground of Excludability	3.29
I–612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	0.53
USCIS Immigrant Fee	N/A

USCIS does not list completion rates for the following immigration benefit requests, forms, or other services, due to the special nature of their processing as explained below:

• *USCIS Immigrant Fees.* USCIS does not adjudicate applications for an immigrant visa. Rather, individuals located outside of the United States apply with a Department of State (DOS) overseas consular officer for an immigrant visa. If DOS issues the immigrant visa, the individual may apply with a U.S. Customs and Border Protection (CBP) officer at a port of entry for admission to the United States as an immigrant. This fee represents USCIS' costs to create and maintain files and to issue permanent resident cards to individuals who go through this process. *See* 8 CFR 103.7(b)(1)(i)(D), proposed 8 CFR 106.2(c)(3).

• *Refugee Processing and Other Forms Exempt from Fees.* These immigration benefit requests may use completion rates to determine staffing

levels. However, USCIS does not list completion rates for these workloads because these are exempt from paying a fee:

- Credible Fear;
- Reasonable Fear;
- Registration for Classification as a Refugee, Form I–590;
- Application By Refugee For Waiver of Grounds of Excludability, Form I–602;
- Refugee/Asylee Relative Petition, Form I–730;
- Application for T Nonimmigrant Status, Form I–914;
- Petition for U Nonimmigrant Status, Form I–918; and
- Application for Posthumous Citizenship, Form N–644.

• *Temporary Protected Status (TPS).* DHS proposes not to rely on TPS fee revenue for recovering USCIS' operational expenses, consistent with previous fee rules. *See* 81 FR 73312–3. TPS designations may be terminated under current law or may cease due to a reduction in the eligible population. Termination of the program, in whole or in part, after the fees are set would result in unrealized revenue and a commensurate budgetary shortfall. After the fee schedule is effective, fees cannot be adjusted until the next fee schedule notice and comment rulemaking. Thus, temporary programs subject to termination based on changed circumstances are generally not included in the fee setting model. As such, USCIS excludes the completion rate for Form I–821, Application for Temporary Protected Status, from discussion in this rule because DHS cannot change the initial statutory registration fee permitted under section 244(c)(1)(B) of the INA or establish a re-registration fee for TPS. USCIS will continue to charge the biometric services fee, where required, and the fee for an employment authorization document, as permitted under 8 U.S.C. 1254b.

3. Assessing Proposed Fees

Historically, as a matter of policy, DHS uses 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 recommended ABC model output levels.[38] Previous proposed IEFA fee schedules referred to limited fee increases as ''low volume reallocation'' or ''cost reallocation.'' [39] Despite the two separate phrases, the calculation for both is the same. In the FY 2016/2017 fee rule, USCIS calculated an 8 percent limited fee increase for certain immigration benefit request fees.[40] For this proposed rule, USCIS calculated a limited fee increase of 5 percent using the same methodology as the previous rule.[41]

As such, DHS proposes that the following immigration benefit request fees are limited to a 5 percent increase above the current fees:

- Form I–290B, Notice of Appeal or Motion.
- Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant.
- Form I–600, Petition to Classify Orphan as an Immediate Relative.
- Form I–600A, Application for Advance Processing of an Orphan Petition.
- Form I–600A/I–600, Supplement 3, Request for Action on Approved Form I–600A/I–600.[42]
- Form I–800, Petition to Classify Convention Adoptee as an Immediate Relative.
- Form I–800A, Application for Determination of Suitability to Adopt a Child from a Convention Country.
- Form I–800A, Supplement 3, Request for Action on Approved Form I–800A.

The proposed increase of approximately 5 percent may vary slightly due to rounding. DHS rounds all IEFA fees to the nearest $5 increment.

In order for the proposed fee schedule to recover full cost, DHS proposes that other fees be increased to offset the projected cost of the 5 percent limited fee increase. Similarly, DHS proposes that other fees increase to offset a projected increase in workloads that are exempt from paying fees or that are capped at a fee less than what the ABC model indicates that they should pay. In this proposed rule, DHS refers to the process of recovering full cost for workloads without fees or the shifting of cost burdens among benefit request fees as a result of other policy decisions as cost reallocation.

Some proposed fees are significantly higher than the current fees. In some cases, this is because DHS proposes to not limit those fee increases, as it has done in the past, for policy reasons. Previous fee schedules limited the increase for certain immigration benefit requests, such as most naturalization related forms.[43] *See* 81 FR 26915–6. In this proposed rule, DHS proposes to not limit the fee increase to 5 percent for the following immigration benefit requests:

- Form I–601A, Provisional Unlawful Presence Waiver.
- Form I–765, Application for Employment Authorization.
- Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant.
- Form N–300, Application to File Declaration of Intention.
- Form N–336, Request for a Hearing on a Decision in Naturalization Proceedings.
- Form N–400, Application for Naturalization.
- Form N–470, Application to Preserve Residence for Naturalization Purposes.

If DHS were to propose limited fee increases for these immigration benefit requests, then other proposed fees would have to increase to recover full cost. For example, if DHS were to propose limited fee increases for all of the immigration benefit request fees that were limited in the previous fee rule, then some proposed fees could increase by as much as $1,185, with the average of those changes being an increase of $12 per immigration benefit request. The rationale for some of these proposed changes is further discussed later in the preamble. See section V. Proposed Changes in the FY 2019/2020 Fee Schedule.

Public commenters generally do not support fee increases. A fee decrease may be more popular. Generally, there are several potential ways to reduce IEFA fees:

1. Reduce projected costs or use other funding sources (such as appropriations, other fee accounts, carryover, or recoveries of prior year obligations);

2. Increase projected fee-paying receipts; or

3. Reduce completion rates.

As discussed earlier, reducing the projected costs to equal the projected revenue would risk degrading USCIS

[38] See footnotes 15 and 16.

[39] The FY 2016/2017 proposed fee schedule used both phrases. *See* 81 FR 26915. The FY 2010/2011 and FY 2008/2009 proposed fee schedules used the phrase ''low volume reallocation.'' *See* 75 FR 33461 and 72 FR 4910, respectively.

[40] The 8 percent increase was the percentage difference between the current fees and the model output before reallocation, weighted by fee-paying volume. *See* 81 FR 73296. The model output is a projected fee-paying unit cost from the ABC model. It is projected total cost divided by projected fee-paying receipts. While each fee review may calculate a different percentage, the formula for the calculation remains the same.

[41] In the docket for this proposed rule, the FY 2019/2020 Immigration Examinations Fee Account Fee Review Supporting Documentation has more information. See the Cost Reallocation column of Appendix Table 3: Proposed Fees by Immigration Benefit Request.

[42] DHS explains the purpose of this new proposed form in section V.M.3 of this preamble. Request for Action on Approved Application for Advance Processing of an Orphan Petition or Petition to Classify Orphan as an Immediate Relative, Form I–600A/I–600 Supplement 3.

[43] *See* V.O. Naturalization (discussion on the proposed naturalization fees).

operations funded by the IEFA.[44] Likewise, other funding sources are insufficient or unavailable.[45] Some of the proposed fees would be even higher without an increase to projected fee-paying receipts.[46] As discussed in the previous section, completion rates are based on reported adjudication hours and completions. USCIS does not believe the level of effort for future adjudications will decrease.

C. Fee-Related Issues Noted for Consideration

DHS identifies a number of issues that do not affect the FY 2019/2020 fee review but do merit some discussion. DHS does not propose any changes related to the issues discussed in this section. USCIS may discuss these issues in future biennial fee reviews or in conjunction with other USCIS fee rules. DHS welcomes comments on all facets of the FY 2019/2020 fee review, this proposed rule, and USCIS fees in general, regardless of whether changes have been proposed here.

1. Accommodating E-Filing and Form Flexibility

DHS attempts, as it did in the FY 2016/2017 fee rule, to propose fees based on form titles instead of form numbers to avoid prescribing fees in a manner that could undermine the conversion of USCIS to electronic processing. *See* proposed 8 CFR 106. Form numbers are included for informational purposes, but are not intended to restrict the ability of USCIS to collect a fee for a benefit request that falls within the parameters of the adjudication for which the fee is published. As USCIS modernizes its processes and systems to allow more applicants, petitioners, and requestors to file applications online, the agency may collect fees for immigration benefit requests that do not have a form number or do not have the same form number as described in regulations. This could occur, for example, if USCIS developed an online version of a request that individuals often submit with applications for employment authorization. In this situation, USCIS may find it best to consolidate the two requests without separately labelling the different sections related to the relevant form numbers. DHS would still collect the required fee for the underlying immigration benefit request as well as the request for employment authorization, but the actual online request would not necessarily contain form numbers corresponding to each separate request.

Similarly, USCIS may determine that efficiency would be improved by breaking a paper form into separate paper forms. For instance, USCIS could separate Form I–131, Application for Travel Document, into a separate form and form number for advance parole, humanitarian parole, refugee travel documents, or reentry permits. In this example, USCIS could continue to charge the current Form I–131 fee. This structure permits USCIS to change forms more easily without having to perform a new fee review each time the agency chooses to do so.

2. Processing Time Outlook

As discussed in the Cost and Revenue Differential section of this preamble, USCIS anticipates having insufficient resources to process its projected workload. USCIS estimates that it will take several years before USCIS backlogs decrease measurably. USCIS experienced an unexpectedly high volume of immigration benefit requests in FY 2016 and FY 2017. In FY 2018, USCIS implemented measures to reduce the backlog, such as adjudicating asylum workload on a last-in-first out basis.[47] As explained in the Cost Projections section of this preamble, projected workloads for FY 2019 and FY 2020 exceed current workload capacity, thereby requiring additional staff.

A number of uncertainties remain that impede efficient case processing and timely decision making. One uncertainty is how to define the specific elements of the screening and national security vetting that USCIS will employ. This new framework will likely involve greater use of social media screenings and more in-person interviews of applicants for certain immigration benefits.[48] In addition, USCIS believes that the growing complexity of the case adjudication process over the past few years has also contributed to higher completion rates. For example, it takes more time for officers to adjudicate each case. (See section IV.B.2. Completion Rates.)

Through this rule, USCIS expects to collect sufficient fee revenue to fund additional staff that will support FY 2019/2020 workload projections as well as perform more national security vetting and screening. While USCIS is committed to ensuring the integrity of the immigration system and safeguarding national security, it is also committed to reducing processing times and the current backlog, without sacrificing proper vetting checks, by identifying ways to increase efficiency, ensuring the successful transition from paper-based to electronic processing, and increasing adjudicative resources. For example, USCIS is transitioning non-adjudicative work from adjudicators to other staff, centralizing the delivery of information services through the USCIS Contact Center, and leveraging electronic processing and automation.

Applicants, petitioners, and requestors can track the status of their immigration benefit requests online by using their receipt number or by creating an online account at *https://uscis.gov/casestatus*. They may also make an ''outside normal processing time'' case inquiry for any benefit request pending longer than the time listed for the high end of the range by submitting a service request online at *https://egov.uscis.gov/e-request/Intro.do* or calling the USCIS Contact Center at 1–800–375–5283.

USCIS also expects to improve the user experience as it continues to transition to online filing and electronic processing of immigration applications and petitions. With the new person-centric electronic case processing environment, USCIS will possess the data necessary to provide near-real-time processing updates on the status and time period lapsed between actions for each individual case. This enables greater transparency to the public on how long it will take to process each case as it moves from stage to stage (for example, biometrics collection, interview, and decision).

USCIS is committed to providing applicants, petitioners, and requestors with relevant information when they need it. As a result, USCIS is transforming how it calculates and posts processing time information in an effort to improve the timeliness of such postings, but more importantly to achieve greater transparency. USCIS will continue to provide processing times in an accurate and transparent fashion.

[44] See section IV.A.3., Costs and Revenue Differential, of this preamble.

[45] See *id.* and section III. Basis for the Fee Review.

[46] See section V.C.3., Proposed Fee Waiver Changes, for more information.

[47] U.S. Citizenship and Immigration Services, *USCIS to Take Action to Address Asylum Backlog,* available at *https://www.uscis.gov/news/news-releases/uscis-take-action-address-asylum-backlog* (last reviewed/updated Feb. 2, 2018).

[48] USCIS, *USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants, https://www.uscis.gov/news/news-releases/uscis-to-expand-in-person-interview-requirements-for-certain-permanent-residency-applicants* (last reviewed/updated Aug. 28, 2017).

V. Proposed Changes in the FY 2019/2020 Fee Schedule

A. Clarify Dishonored Fee Check Re-Presentment Requirement and Fee Payment Method

In the FY 2016/2017 fee rule, DHS amended the regulations regarding how USCIS treats a benefit request accompanied by fee payment (in the form of check or other financial instrument) that is subsequently returned as not payable. *See* 81 FR 73313–15 (Oct. 24, 2016); 8 CFR 103.2(a)(7)(ii) and 8 CFR 103.7(a)(2). If a financial instrument used to pay a fee is returned as unpayable after one re-presentment, USCIS rejects the filing and imposes a standard $30 charge. *See id.* In the preamble to the FY 2016/2017 fee rule, DHS stated that, to make sure a payment rejection is the result of insufficient funds and not due to USCIS error or network outages, USCIS (through the U.S. Department of the Treasury (Treasury)) will resubmit rejected payment instruments to the appropriate financial institution one time. *See* 8 CFR 103.2(a)(7)(ii)(D). While DHS's intent was to submit only checks that were dishonored due to insufficient funds, some stakeholders have interpreted the re-presentment as applying to any check DHS has deposited that is returned as unpayable. Although the Treasury check clearance regulations permit an agency to re-deposit a check dishonored due to insufficient funds, they prohibit submitting checks dishonored for other reasons for clearance a second time. *See* 31 CFR 210.3(b); 2016 NACHA Operating Rules & Guidelines: A Complete Guide to Rules Governing the ACH Network, Subsection 2.5.13.3 (limiting re-depositing a check to those that are returned due to ''Not Sufficient Funds,'' ''NSF,'' ''Uncollected Funds,'' or comparable). To comply with the Treasury regulations, DHS is proposing in this rule that if a check or other financial instrument used to pay a fee is returned as unpayable *because of insufficient funds,* USCIS will resubmit the payment to the remitter institution one time. If the remitter institution returns the instrument used to pay a fee as unpayable a second time, USCIS will reject the filing. USCIS will not re-deposit financial instruments returned as unpayable for a reason other than insufficient funds. Proposed 8 CFR 103.2(a)(7)(ii)(D).

In addition, DHS proposes that it may reject a request that is accompanied by a check that is dated more than 365 days before the receipt date. Currently, USCIS policy is to reject a check that is dated more than a year before it is submitted. However, that policy is not codified, and DHS has been sued or threatened with litigation multiple times when a check that was dated more than a year before it was submitted was the basis of a rejection that caused the requestor to miss an important deadline. For example, USCIS has permitted an applicant to submit Form I–821 after the deadline [49] and adjudicated a Form I–485 filed after the applicant's U nonimmigrant status had expired because his initial, timely filing was rejected because it contained a check that was more than one year old. *See* 8 CFR 245.24(b)(2)(ii) (requiring the applicant to hold U nonimmigrant status at the time of application.). While most personal and business checks do not expire, they become what is known as ''stale dated'' six months after they are written. This is because many things may change in six months that may affect the check's validity or the original reason that it was written. Accordingly, the Uniform Commercial Code [50] provides that a bank may delay access to the funds from or is not obligated to deposit, cash, honor, or pay a stale check. USCIS projects that it will receive an average 7,789,861 fee payments per year.[51] It is important that its requirements for payment instruments provide certainty and minimize the likelihood of a payment being dishonored. Although commercial banks use a guideline of six months, DHS proposes to reject only year-old checks to provide requestors with more flexibility in case there are delays with their filing. Rejecting a check that is dated more than a year earlier is also consistent with the time limit for a check issued by the U.S. Treasury. *See* 31 CFR 245.3(a) (''Any claim on account of a Treasury check must be presented to the agency that authorized the issuance of such check within one year after the date of issuance of the check or within one year after October 1, 1989, whichever is later.''). Rejection of a stale check will not be mandatory, so USCIS will still have the authority to waive the check date requirement in exigent circumstances.

DHS also proposes that USCIS may require that certain fees be paid using a certain payment method or that certain fees cannot be paid using a particular method. Proposed 8 CFR 106.1(b). For example, USCIS may require that a request be submitted by using *Pay.gov*, a secure portal which transmits an applicant's payment information directly to the U.S. Treasury for processing, or may preclude the use of certain payment types such as cashier's check and money orders for the payment of a particular form or when payments are made at certain offices. The proposed change provides that payment method will be provided in the form instructions (including for online filing) or by individual notice (a bill, invoice, appointment confirmation, etc.); therefore, requestors will be clearly notified of any limitations on the payment method for the request they are filing. About 80 percent of all USCIS filings are received via a Lockbox that is well versed in intake and depositing of multiple payment types. However, the requirements and circumstances for the filing of some requests do not permit lockbox submission and intake, and the request must be filed at a particular office or in person. Various offices, such as field offices, embassies, and consulates, are limited in the method of payment that they can receive or process. Additionally, certain payment methods such as checks or cash require time-intensive procedures for cashiers and their supervisors to input, reconcile, and verify their daily receipts and deposits. Generally, federal agency offices must deposit money that they receive on the same day that it is received. *See* 31 U.S.C. 3720(a); 31 CFR 206.5; Treasury Financial Manual Vol. 1, Part 5, Chapter 2000, Section 2055.[52] There are additional requirements and guidance for timely record keeping and redundancy in personnel that similarly increase workload and processing costs. *See* 31 U.S.C. 3302(e); Treasury Financial Manual Vol. 1, Part 5, Chapter 2000, Section 2030; *see also* U.S. Government and Accountability Office (GAO) GAO–14–704G Standards for Internal Control in the Federal Government (2014).[53] The time that USCIS spends complying with payment processing requirements can be used to adjudicate cases. This proposed change would also permit USCIS to reduce

[49] *See* 8 CFR 244.17(a) (''Applicants for periodic re-registration must apply during the registration period provided by USCIS.'').

[50] A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith. UCC 4–404 (2002).

[51] See section IV.B.1.b. Fee-Paying Volume in this preamble.

[52] Agencies may accumulate deposits less than $5,000 until they reach $5,000 or a given Thursday. U.S. Treasury, Treasury Financial Manual Vol 1, Part 5, Chapter 2000, *https://tfm.fiscal.treasury.gov/v1/p5/c200.html.*

[53] Principal 10, Design Control Activities, states that management should control information processing and segregation of duties to reduce risk, and accurate and timely record transactions. GAO, Standards for Internal Control in the Federal Government (Sept. 10, 2014), *https://www.gao.gov/assets/670/665712.pdf.*

administrative burdens and processing errors associated with fee payments.

DHS is also clarifying that fees are non-refundable regardless of the result of the immigration benefit request or how much time the request requires to be adjudicated. As provided in 8 CFR 103.2(a)(1) USCIS filing fees generally are non-refundable and must be paid when the benefit request is filed. As discussed fully in this rule, DHS is authorized to establish fees to recover the costs of providing USCIS adjudication and naturalization services. While the fees are to recover the processing costs of adjudications, the fees are due when filing an immigration benefit request before the request will be considered received and the requestor will receive a receipt date. *See* 8 CFR 103.2(a)(7)(ii)(D). A benefit request will be rejected if it is not submitted with the correct fee(s). Thus the fee is due at filing and is not refundable, regardless of how much time passed from filing to approval, or if the request is denied or approved. Nevertheless, USCIS has recently, greatly, expanded acceptance of credit cards for the payment of USCIS fees. To our misfortune, the increased acceptance of credit cards for the payment of USCIS fees has resulted in a sizeable increase in the number of disputes filed with credit card companies challenging the retention of the fee by USCIS. Disputes are generally filed by requestors whose request was denied, who have changed their mind about the request, or assert that the service was not provided or unreasonably delayed. Troublingly, USCIS loses many of these dispute because the credit card companies agree with the cardholder and have determined that USCIS fails to adequately warn the cardholder that the fee is not refundable and due regardless of the result or time required. As the dollar amount of fees paid with credit cards continues to increase, this result has the potential to have a significant negative fiscal effect on USCIS fee receipts. Therefore, DHS is proposing to clarify that fees will not be refunded no matter the result of the benefit request or how much time the adjudication requires. Proposed 8 CFR 103.2(a)(1). In the event that the bank that issues the credit card rescinds the payment of the fee to USCIS, USCIS reserves the authority to invoice the responsible party (applicant, petitioner, requestor) and pursue collection of the unpaid fee in accordance with 31 CFR 900–904 (Federal Claims Collection Standards).

B. Eliminate $30 Returned Check Fee

DHS also proposes to amend its regulations to remove the $30 charge for dishonored payments. *See* 8 CFR 103.7(a)(2)(i). USCIS data indicates that the cost of collecting the $30 fee outweighs the benefits to the government derived from imposing and collecting the fee. For example, in FY 2016, USCIS collected a total of $416,541 from the $30 returned check fee while the financial service provider billed $508,770 to collect the $30 fee. Furthermore, USCIS does not retain the $30 fee for deposit into the IEFA with other immigration benefit request fees; thus the $30 fee does not provide revenue to USCIS. Agencies may prescribe regulations establishing the charge for a service or thing of value provided by the agency. *See* 31 U.S.C. 9701. However, federal agencies are not required to impose fees as a general matter, nor does DHS or USCIS have a specific statutory authorization or requirement to do so. Therefore, DHS is not required to charge a returned check fee. DHS proposes to remove the $30 fee from regulations.

C. Fee Waivers

1. Background

Currently, USCIS may waive the fee for certain immigration benefit requests when the individual requesting the benefit is unable to pay the fee. *See* 8 CFR 103.7(c). To request a fee waiver, the individual must submit a written waiver request for permission to have their benefit request processed without payment. Under the current regulation, the waiver request must state the person's belief that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay and include evidence to support the reasons indicated. *See* 8 CFR 103.7(c)(2). There is no appeal of the denial of a fee waiver request. *See id.*

The statute authorizing USCIS to establish fees does not specifically mention fee waivers and fee exemptions for any type of applicant or group, or any criteria for fee waivers.[54] The statute does not require that DHS provide certain services for free, but it authorizes DHS to set USCIS fees at a level that will recover the full costs of adjudication and naturalization services provided ''including the costs of similar services provided without charge to asylum applicants or other immigrants.'' [55] DHS interprets that provision as authorizing it to provide certain services for free in all cases in the form of fee exemptions,[56] or free when certain criteria are met in the form of a waiver. DHS has always implemented fee waivers based on need, and since 2007, has precluded fees waivers for individuals that have financial means as a requirement for the status or benefit sought. *See* 72 FR 4912. However, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) [57] requires DHS to permit certain applicants to apply for fee waivers for ''any fees associated with filing an application for relief through final adjudication of the adjustment of status.'' [58] DHS interprets ''any fees associated with filing an application for relief through final adjudication of the adjustment of status'' [59] to mean that, in addition to the main immigration benefit request that accords a status, (such as Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant or Form I–485, Application to Register Permanent Residence or Adjust Status) applicants must have the opportunity to request a fee waiver for any form associated with the main benefit application up to and including the adjustment of status application.[60] Table 7 lists the immigration categories for which DHS must provide an opportunity to request a fee waiver for main immigration benefit requests and associated forms in accordance with TVPRA.[61]

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[54] USCIS is primarily funded by application and petition fees. Under INA 286(m), 8 U.S.C. 1356(m), DHS has the authority to establish the fees it charges for immigration and naturalization services to recover the full costs of such services, including those provided without charge, and to recover costs associated with the administration of the fees collected. Therefore, the fees are set at a level that is intended to recover the full cost of USCIS operations.

[55] *See* INA sec. 286(m), 8 U.S.C. 1356(m).

[56] See, *e.g.,* proposed 8 CFR 106.2(a)(45) and (46) (codifying no fee for an *Application for T Nonimmigrant Status* and *Petition for U Nonimmigrant Status*).

[57] *See* title II, subtitle A, sec. 201(d)(3), Public Law 110–457, 122 Stat. 5044 (2008); INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7).

[58] *See id.*

[59] *See id.*

[60] Certain USCIS forms are not listed in 8 CFR 103.7(b) and therefore have no fee. *See* proposed 8 CFR 106.2 for proposed fees.

[61] INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7).

TABLE 7—STATUTORY FEE WAIVER CATEGORIES AND ASSOCIATED FORMS

Category	Main immigration benefit requests[62]	Associated forms
Violence Against Women Act (VAWA) self-petitioners.[63]	• Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant (no fee). • Form I–485, Application to Register Permanent Residence or Adjust Status. • Form I–751, Petition to Remove Conditions on Residence.	• Form I–131, Application for Travel Document.[64] • Form I–212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal. • Form I–290B, Notice of Appeal or Motion. • Form I–601, Application for Waiver of Grounds of Inadmissibility. • Form I–765, Application for Employment Authorization (no fee for principals).[65]
Victims of Severe Form of Trafficking (T visas).[66]	• Form I–914, Application for T Nonimmigrant Status (no fee). • Form I–914, Supplement A, Application for Family Member of T–1, Recipient (no fee). • Form I–914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (no fee). • Form I–485, Application to Register Permanent Residence or Adjust Status.	• Form I–131, Application for Travel Document. • Form I–192, Application for Advance Permission to Enter as a Nonimmigrant. • Form I–193, Application for Waiver of Passport and/or Visa. • Form I–290B, Notice of Appeal or Motion. • Form I–539, Application to Change/Extend Nonimmigrant Status. • Form I–601, Application for Waiver of Grounds of Inadmissibility. • Form I–765, Application for Employment Authorization (no fee for principals).
Victims of Criminal Activity (U visas).[67]	• Form I–918, Petition for U Nonimmigrant Status (no fee). • Form I–918, Supplement A, Petition for Qualifying Family Member of U–1 Recipient (no fee). • Form I–918, Supplement B, U Nonimmigrant Status Certification (no fee). • Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant. • Form I–485, Application to Register Permanent Residence or Adjust Status.	• Form I–131, Application for Travel Document. • Form I–192, Application for Advance Permission to Enter as a Nonimmigrant. • Form I–193, Application for Waiver of Passport and/or Visa. • Form I–290B, Notice of Appeal or Motion. • Form I–539, Application to Extend/Change Nonimmigrant Status. • Form I–765, Application for Employment Authorization (no fee for principals).
Battered spouses of A, G, E–3, or H nonimmigrants.[68]	• Form I–765V, Application for Employment Authorization for Abused Nonimmigrant Spouse (no fee).	• None.
Battered spouses or children of a lawful permanent resident or U.S. citizen under INA 240A(b)(2).[69]	• EOIR–42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (DOJ form and immigration judge determines fee waiver).	• Form I–601, Waiver of Grounds of Inadmissibility.
Temporary Protected Status.[70]	• I–821, Application for Temporary Protected Status. • Biometric Services Fee	• Form I–131, Application for Travel Document. • Form I–601, Application for Waiver of Grounds of Inadmissibility. • Form I–765, Application for Employment Authorization.

Before 2007, USCIS couldwaive any fee, even if a fee waiver was inconsistent with the underlying immigration benefit request. For example, before 2007, USCIS could waive fees for companies seeking to sponsor foreign workers, individuals seeking status based on substantial business investments, or individuals seeking to sponsor foreign relatives to whom the sponsors must provide financial support. *See* 72 FR 4912. Since 2007, USCIS has limited the fees that may be waived under 8 CFR 103.7(c)(3) based on the general premise that fee waivers must be consistent with any financial considerations that apply to the status or benefit sought. *See* 8 CFR 103.7(c)(1)(ii).

Following the FY 2010/2011 fee rule, USCIS also issued policy guidance to streamline fee waiver adjudications and make them more consistent across offices and form types nationwide. *See* 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) (''Fee

[62] Some immigration benefit requests may not have a fee for the specific category.

[63] *See* INA sec. 101(a)(51), 8 U.S.C. 1101(a)(51); INA section 245(l)(7), 8 U.S.C. 1255(l)(7). Public Law 110–457, 122 Stat. 5044 (Dec. 23, 2008); 22 U.S.C. 7101 *et seq.*

[64] Currently, fees for Form I–131 are exempt if filed in conjunction with a pending or concurrently filed Form I–485 with fee that was filed on or after July 30, 2007. *See* 8 CFR 103.7(b)(1)(i)(M)(4). However, DHS proposes changes to this policy in this rule as explained later in this preamble.

[65] Form I–360 allows a principal self-petitioner to request an EAD incident to case approval without submitting a separate Form I–765. Form I–765 is required for employment authorization requests by derivative beneficiaries.

[66] *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).

[67] *See* INA sec. 101(a)(15)(U), 8 U.S.C. 1101(a)(15)(U) (U nonimmigrant status for victims of certain criminal activity).

[68] *See* INA sec. 106, 8 U.S.C. 1105a.

[69] *See* INA sec. 240A(b)(2), 8 U.S.C. 1229b(b)(2), and INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7).

[70] See INA sec. 244, 8 U.S.C. 1254a.

Waiver Policy''). The Fee Waiver Policy clarified acceptable measures of income and documentation that individuals may present to demonstrate they are unable to pay a fee when requesting a fee waiver. In June 2011, USCIS issued Form I–912, Request for Fee Waiver, as a standardized form with instructions to request a fee waiver in accordance with the Fee Waiver Policy.[71] USCIS previously engaged in a holistic analysis of the individual's finances to determine inability to pay. *See, e.g.,* William R. Yates, *Field Guidance on Granting Fee Waivers Pursuant to 8 CFR 103.7(c)* (Mar. 4, 2004). The 2011 Fee Waiver Policy established a streamlined process where USCIS would usually waive the entire fee and the biometric services fee for forms listed in 8 CFR 103.7(c)(3) for applicants who at time of filing the fee waiver request with the benefit application: [72]

- Were receiving a means-tested benefit;
- Had a household income at or below 150 percent of the Federal Poverty Guidelines (FPG); or
- Were experiencing extreme financial hardship such as unexpected medical bills or emergencies.

The FY 2010/2011 fee rule also authorized the USCIS director to approve and suspend exemptions from fees or provide that the fee may be waived for a case or class of cases that is not otherwise provided in 8 CFR 103.7(c). *See* 75 FR 58990; 8 CFR 103.7(d).

On October 25, 2019, USCIS published the updated Form I–912 [73] and corresponding policy guidance in the USCIS Policy Manual [74] that removed the means-tested benefit as a criterion in the fee waiver request determination, clarified that the submission of Form I–912 is required to request a fee waiver, and clarified some of the evidence requirements. The new policy will be effective on December 2, 2019. Therefore, as of December 2, 2019 an individual would be eligible to request a fee waiver based on one of two criteria for inability to pay, *i.e.,* if he or she:

- Has a household income at or below 150 percent of the FPG; or
- Is experiencing extreme financial hardship such as unexpected medical bills or emergencies.

This proposed rule further limits forms eligible for a fee waiver and the criteria to establish eligibility for a fee waiver.

2. Cost of Fee Waivers

The U.S. Government Accountability Office (GAO), an independent, nonpartisan agency that works for Congress, describes equity of federal user fees as a balancing act between two principles:

- Beneficiary-pays; and
- Ability-to-pay.[75]

This proposed rule emphasizes the beneficiary-pays principle. Under the beneficiary-pays principle, the beneficiaries of a service pay for the cost of providing that service. *See* GAO–08–386SP at pp. 7–12.

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. 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.

In prior years, USCIS fees have given significant weight to the ability-to-pay principle. In the FY 2016/2017 fee rule, DHS noted that the estimated annual forgone revenue from fee waivers and exemptions has increased markedly, from $191 million in the FY 2010/2011 fee review to $613 million in the FY 2016/2017 fee review. *See* 81 FR 26922 and 73307. In the FY 2016/2017 proposed rule, DHS estimated that the increase in fee waiver accounted for 9 percent of the 21 percent weighted average fee increase. *See* 81 FR 26910. In the same proposed rule, DHS provided notice that in the future it may revisit the USCIS fee waiver guidance with respect to what constitutes inability to pay under 8 CFR 103.7(c). *See* 81 FR 26922.

Each fee review plans for a certain level of fee waivers, fee exemptions, and other fee-paying policy decisions. Ideally, no IEFA revenue is lost due to fee waivers because USCIS plans for a certain level of fee waivers and fee exemptions. IEFA fees recover full cost, including the estimated cost of fee-waived and fee-exempt work. However, USCIS does forgo revenue by allowing fee waivers and fee exemptions. Forgone revenue represents the total fees that fee waiver or fee exempt applicants, petitioners, and requestors would have paid if they had paid the fees.

In the FY 2019/2020 fee review, USCIS determined that without changes to fee waiver policy, it would forgo revenue of approximately $1,494 million. The proposed fee schedule estimates $962 million forgone revenue from fee waivers and fee exemptions. The difference in forgone revenue is $532 million. Without changes to fee waiver policy, fees would increase by a weighted average of 31 percent, which is 10 percent more than in the proposed fee schedule.

3. Proposed Fee Waiver Changes

As previously stated, INA sec. 286(m), 8 U.S.C. 1356(m) authorizes but does not require that DHS set fees to recover the costs of administering USCIS adjudication and naturalization services. That statute also authorizes setting such fees at a level that will recover the costs of services provided without charge, but it does not require that DHS provide services without charge.[76] Nevertheless, DHS (and previously the INS) has provided fee waivers based on need. *See, e.g.,* 63 FR 43604, 43607 (stating, ''The Service often waives fees for this application when the economic need exists. The proposed rule stated, 'For FY 1998, the Service estimates that approximately 50 percent of the Form I–765 applications will be processed at no charge to applicants, at a total cost of $35.9 million.' ''). For the reasons stated in this rule, DHS has determined that it is necessary to utilize this statutory discretion to establish the following new requirements for waiving USCIS fees.

[71] The form and its instructions may be viewed at *http://www.uscis.gov/i-912.* The proposed version is available for review in the docket for this proposed rule.

[72] *See* 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); AFM Chapter 10.9(b).

[73] The Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) approved the form changes on October 24, 2019, available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201910-1615-006#* (last visited October 25, 2019).

[74] See USCIS, Policy Alert PA 2019–06, Fees for Submission of Benefit Requests, available at *https://www.uscis.gov/sites/default/files/policymanual/updates/20191025-FeeWaivers.pdf* (last visited Oct. 25, 2019) (revising the USCIS interpretation of unable to pay in 8 CFR 103.7(c)).

[75] GAO, *Federal User Fees: A Design Guide* (May 29, 2008), available at *https://www.gao.gov/products/GAO-08-386SP.*

[76] Legislation enacted in 2008 requires that a fee waiver be considered for certain requests. INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7).

a. Limits on Eligible Forms and Categories

Because of the costs of fee waivers, and the inconsistency of current fee waiver regulations with the beneficiary pays principal, DHS proposes to limit fee waivers to immigration benefit requests for which USCIS is required by law to consider a fee waiver or where the USCIS Director exercises favorable discretion as provided in the proposed regulation. *See* proposed 8 CFR 106.3. The proposed regulation would limit the eligible forms and categories to those listed in Table 7: Statutory Fee Waiver Categories and Associated Forms.[77] Accordingly, many forms will generally no longer be eligible for a fee waiver,[78] except in limited circumstances where the law requires that a waiver be made available based on the circumstances of the applicant. Forms that would generally no longer be eligible for a fee waiver include the following:

- Form I–90, Application to Replace Permanent Resident Card;
- Form I–765, Application for Employment Authorization;
- CNMI related petitions and applications; [79]
- Form I–485, Application to Register Permanent Residence or Adjust Status; [80]
- Forms for applicants exempt from the public charge inadmissibility ground; [81]
- Form I–751, Petition to Remove Conditions on Residence;
- Naturalization and citizenship-related forms.[82]

The Senate Appropriations Committee Report that accompanied the fiscal year 2017 Department of Homeland Security Appropriations Act [83] expressed concern about the increased use of fee waivers, which force those paying fees to absorb costs for which they receive no benefit.[84] DHS believes that these changes would make the fee increase more equitable for all immigration benefit requests by requiring fees for the service to be paid by those who benefit.

b. Eligibility Requirements

Further, DHS proposes to generally limit fee waivers to individuals who have an annual household income of less than 125 percent of the FPG as defined by the U.S. Department of Health and Human Services (HHS). Notwithstanding these general limitations, however, a fee waiver may be authorized in the USCIS Director's discretion, even for those benefit requests not normally amenable to a fee waiver,[85] if an individual meets all three of the following requirements:

- Has an annual household income at or below 125 percent of the FPG as defined by HHS;
- Is seeking an immigration benefit for which he or she is not required to submit an affidavit of support under INA section 213A, 8 U.S.C. 1183a, or is not already a sponsored immigrant as defined in 8 CFR 213a.1; and
- Is seeking an immigration benefit for which he or she is not subject to the public charge inadmissibility ground under INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

In addition, DHS would update the language in the regulation to codify that a person must submit a request for a fee waiver on the form prescribed by USCIS, as provided in the previous Form I–912 notice and provide evidence of household income such as federal income tax transcripts.

USCIS believes that making these changes to the fee waiver policy would assure that fee paying applicants do not bear the increasing costs caused by application fees being waived.

c. Income Requirements

The poverty guidelines are used as an eligibility criterion by many Federal public benefit programs and USCIS to determine income levels. The poverty guidelines are a simplified version of the poverty thresholds that the Census Bureau uses to prepare its estimates of the number of individuals and families in poverty.[86] Some federal programs use a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines), as noted in relevant authorizing legislation or program regulations.[87] The poverty threshold or line (100 percent of the FPG) is the primary version of the federal poverty measure, as updated by the Census Bureau every year, and generally used to estimate the number of Americans in poverty each year.[88]

In the immigration context, USCIS uses 125 percent of the FPG as the standard for public charge and affidavit of support purposes.[89] Congress also identified 125 percent of FPG as a threshold for a sponsor to support an individual immigrant to meet the requirements an affidavit of support in the public charge inadmissibility determination.[90] The threshold for fee waiver eligibility under current regulations of 150 percent of the FPG is higher than the threshold used in the public charge and affidavit of support context. DHS believes limiting fee waivers to households with incomes at or below 125 percent of the FPG, as proposed in this rule, would be appropriate because it would be consistent with the affidavit of support requirements under INA sections 212(a)(4) and 213A, 8 U.S.C. 1182(a)(4).

d. Subject to INA Section 212(a)(4) and Affidavit of Support Requirements

The current fee waiver regulation allows people who are applying for several immigration benefits—advance permission to enter as a nonimmigrant, a waiver for passport and/or visa, adjustment of status, or for a waiver of grounds of inadmissibility—to file a fee waiver request if they are not subject to the public charge inadmissibility ground. *See* 8 CFR 103.7(c)(4) (stating that certain fees may be waived ''only for an alien for which a determination

[77] Under the settlement agreement concluded in *American Baptist Churches* v. *Thornburgh,* 760 F. Supp. 976 (N.D. Cal. 1991) (*ABC*), ''eligible class members who can demonstrate that they fall within the poverty guidelines as set forth in 45 CFR 1060.2 will not be required to pay the fee.'' DHS will continue to allow these applicants to request a fee waiver. In 1991, the U.S. Department of Health and Human Services (HHS) codified at 45 CFR 1060.2 (1990) the federal poverty guidelines issued by the former HHS Office of Economic Opportunity/Community Services Administration. The *ABC* settlement agreement requires USCIS to waive fees for those covered by the agreement who fall squarely within the Federal Poverty Guidelines. The requirements for a fee waiver proposed in this rule are less restrictive than the subject settlement agreement. *See* proposed 8 CFR 106.3(d).

[78] Fee waivers would still be available at the discretion of the USCIS Director, or as provided by INA 245(l)(7), 8 U.S.C. 1255(l)(7). *See* proposed 8 CFR 106.3. An applicant, petitioner, or requestor may not independently request that the Director exercise this authority.

[79] For example, Form I–129CW, Petition for CNMI-Only a Nonimmigrant Transitional Worker, and Form I–539, Application to Extend/Change Nonimmigrant Status.

[80] Certain categories may still be eligible for fee waivers of an I–485, as identified in Table 7, as provided by INA 245(l)(7), 8 U.S.C. 1255(l)(7).

[81] For example, Form I–601, Application for Waiver of Grounds of Inadmissibility, Form I–192, Application for Advance Permission to Enter as Nonimmigrant, and Form I–193, Application for Waiver for Passport and/or Visa.

[82] Including Form N–400, Application for Naturalization; Form N–470, Application to Preserve Residence for Naturalization Purposes; Form N–336, Request for a Hearing on a Decision in Naturalization Proceedings; Form N–565, Application for Replacement of Naturalization/Citizenship Document; Form N–600, Application for Certification of Citizenship; and Form N–600K, Application for Citizenship and Issuance of Certificate Under section 322.

[83] *See* Public Law 115–31, div. F, 131 Stat. 135, 404.

[84] *See* S. Rep. No. 114–264, at 125 (2016).

[85] *See* proposed 8 CFR 106.3(b) and (c).

[86] *See* Annual Update of the HHS Poverty Guidelines 84 FR 1167, 1168, available at *https://www.govinfo.gov/content/pkg/FR-2019-02-01/pdf/2019-00621.pdf.*

[87] *See id.*

[88] *See* ASPE, Poverty Guidelines, available at *https://aspe.hhs.gov/poverty-guidelines* (last visited Aug. 16, 2019).

[89] *See* 8 CFR 212.22(b)(4)(i)(A).

[90] *See* INA sec. 213A(f)(1)(E), 8 U.S.C. 1183a(f)(1)(E).

of their likelihood of becoming a public charge under section 212(a)(4) of the Act is not required at the time of an application for admission or adjustment of status''). Consistent with this provision, DHS is proposing that fee waivers will not be available to applicants who are subject to the public charge inadmissibility ground.[91]

DHS also proposes to preclude fee waivers for applicants who are subject to an affidavit of support under INA section 213A, 8 U.S.C. 1183a, or is already a sponsored immigrant as defined in 8 CFR 213a.1. Under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress provided that the affidavit of support could be legally required and enforced for certain immigration categories.[92] A sponsor generally must demonstrate that he or she is able to maintain the sponsored alien at an annual income of not less than 125 percent of the FPG.[93] Although sponsors are not required to assist an alien with immigration fees, a sponsor is generally financially responsible for the alien; thus, an alien with a sponsor should not need a fee waiver. DHS has decided that it is inconsistent with that law and its stated objective that aliens be able to meet their needs for applicants who have a sponsor through an affidavit of support to receive immigration benefits for free, funded by others who are paying their full immigration benefit request fee. Therefore, USCIS believes that limiting fee waivers to those applicants who are not subject to affidavit of support requirements is consistent with congressional intent under IIRIRA.'' [94]

DHS notes that the House Report on Department of Homeland Security Appropriations Bill, 2019 stated, ''USCIS is expected to continue the use of fee waivers for applicants who can demonstrate an inability to pay the naturalization fee. USCIS is also encouraged to consider whether the current naturalization fee is a barrier to naturalization for those earning between 150 percent and 200 percent of the federal poverty guidelines, who are not currently eligible for a fee waiver.'' H. Rep. No. 115–948 at 61 (2018). USCIS appreciates the concerns of this recommendation and fully considered it before publishing this proposed rule. Nevertheless, DHS determined that the current trends and level of fee waivers are not sustainable. Work that USCIS provides for free or below cost impacts other fee-paying applicants by making their fees higher so DHS can recover USCIS full cost. DHS is trying to make the USCIS fee schedule more equitable for all applicants and petitioners. As shown in the supporting documentation for this rule, the number and dollar volume of fee waiver requests and foregone revenue has trended upward during periods of economic improvement. That indicates that, should the economy worsen, the number of fee waiver requests will increase to a level that could threaten the ability of USCIS to deliver programs without disruption.

Violence Against Women Act (VAWA) self-petitioners as defined under INA 101(a)(51); T nonimmigrants; U nonimmigrants; battered spouses of A, G, E–3, or H nonimmigrants; battered spouses or children of a lawful permanent resident or U.S. citizen as provided under INA sec. 240A(b)(2); and TPS applicants are not subject to the public charge inadmissibility provision or the affidavit of support requirements.

e. USCIS Director's Discretionary Fee Waivers and Emergency and Disaster Relief

DHS proposes to retain the authority in regulations for the Director of USCIS to 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. 8 CFR 103.7(d); proposed 8 CFR 106.3(b). DHS is concerned that the current authority provides too much discretion, however, and thus proposes to limit a Director's discretionary waiver to cases related to one of the following: (1) Asylees; (2) Refugees; (3) National security; (4) Emergencies or major disasters declared in accordance with 44 CFR part 206, subpart B; (5) An agreement between the U.S. government and another nation or nations; or (6) USCIS error.

DHS also proposes to clarify the discretionary authority of the Director to authorize fee waiver requests for a case or specific class of cases such as for emergency and disaster relief including tsunamis, wildfires, and hurricanes in accordance with 44 CFR part 206, subpart B. USCIS would continue to notify the general public of eligibility for fee waivers for specific forms under this provision through policy or website updates. Individuals who would qualify for such a fee waiver would still need to meet the requirements to request a fee waiver as provided in proposed 8 CFR 106.3(d). Proposed 8 CFR 106.3(d) complies with 42 U.S.C. 5174b. That law provides that the President, in consultation with the Governor of a State, may waive certain fees for an individual or household who lives in a federally declared disaster area, including the following USCIS fees: Form I–90, Form I–193, Form I–765, Form N–300, Form N–565, and the biometric services fee, which are forms and services related to establishing immigration status. DHS plans to carry out this permissive authority through the USCIS Director's exercise of his or her discretion to provide a specific class of fee waivers for emergency and disaster relief. *See* 84 FR 3957 (Feb. 13, 2019).

DHS acknowledges that the proposed changes to the fee waiver policies would be a significant change from past fee waiver regulations and policies. Section 286(m) of the INA, 8 U.S.C. 1356(m), authorizes DHS to set USCIS fees at an amount necessary to recover the costs of free adjudication and naturalization services provided. It does not require that DHS provide free services. In past fee rules, DHS has made clear that it would not authorize fee waivers where such a waiver is inconsistent with the benefit requested and that fee waiver policy was based on economic necessity, rather than providing certain applicants with an advantage over another. *See* 75 FR 58974. In addition, DHS has responded to comments requesting that it expand USCIS fee waivers by stating that the financial circumstances required to be eligible for certain benefits, such as intercountry adoptions, directly contradict the rationale for shifting costs related to such applications to others through fee waivers. *See* 72 FR 29863. As previously stated, fee waiver increases accounted for 9 percent of the 21 percent weighted average fee increase in the FY 2016/2017 fee rule, and DHS stated that it may revisit the USCIS fee waiver guidance with respect to what constitutes inability to pay under 8 CFR 103.7(c) because of the increasing costs of providing free services through fee waivers. *See* 81 FR 26922. Therefore, DHS is not basing the proposed changes to USCIS fee waiver policies upon factual findings that contradict those underlying the prior policy. In fact, the changes proposed in this rule are consistent with the direction that DHS previously took regarding fee waivers for emergency and disaster relief.

DHS appreciates that individuals who in the past may have received a free

[91] *See generally* 8 CFR 103.7(c)(4).

[92] *See* Div. C, Title V of Public Law 104–208, 110 Stat. 3009, 3009–670 (September 30, 1996).

[93] *See* INA 213A. A sponsor who is on active duty (other than active duty for training) in the U.S. armed forces and who is petitioning for a spouse or child only has to demonstrate the means to maintain an annual income equal to at least 100 percent of the FPG.

[94] See Div. C, Title V of Public Law 104–208, 110 Stat. 3009, 3009–670 (September 30, 1996).

service from USCIS may no longer be able to have their USCIS fees waived after these proposed changes take effect. However, to the extent that a person is in the process of completing and filing an immigration benefit request, has paid for assistance in preparing their request, including gathering necessary evidence to support the request, this rule provides public notice of the impending policy change. As for applicants who are not in the process of preparing a benefit request, there is no action that they would take as a result of assuming they will receive a fee waiver after the publication of this rule because they will be placed on notice of the likelihood of the proposed fee waiver changes and provided sufficient time to conform their behavior to the new requirements before they take effect.

f. Conforming Edits and Request for Comments

DHS also proposes to make conforming edits in its regulations to remove references to fee waivers. *See, e.g.,* proposed 8 CFR 240.63(a), 8 CFR 244.17(a), and 8 CFR 245.15(c)(2)(iv)(B). DHS also proposes to remove fee waivers for Commonwealth of the Northern Mariana Islands (CNMI) fees. *See* proposed 8 CFR 214.2(e)(23)(xv), (w)(14)(iii). DHS welcomes comment on the proposed limits on who may file a fee waiver request and for which forms a fee waiver may be requested.

D. Fee Exemptions

The fee-setting authority under INA section 286(m), 8 U.S.C. 1356(m), authorizes DHS to set its fees for adjudication and naturalization services at a level to ensure recovery of the full costs of providing all such services. That provision does not require that USCIS charge a fee for all of its services, and it provides that USCIS may set fees at less than full cost or provide services for free. That authority necessarily means that DHS may fund or subsidize discounted or free USCIS operations through the fees charged to other unrelated filings. DHS has exercised its discretion to provide free services in a number of ways, such as by codifying ''no fee,'' $0 fee, or simply leaving the fee regulations silent and not codifying a fee for a particular service that it provides.

In addition, the current 8 CFR 103.7(d) provision provides that the USCIS Director may create an exemption from certain fees ''for a case or specific class of cases that is not otherwise provided in this section, if the Director determines that such action would be in the public interest and the action is consistent with other applicable law.'' This authority is limited to the Director and may only be delegated to the USCIS Deputy Director.

An individual would not be permitted to independently submit a request to the USCIS Director to waive his or her fee. Previous USCIS Directors have used this authority to provide fee exemptions for specific categories and groups of immigrants.

Consistent with the discussion above about the TVPRA, no law requires USCIS to provide fee exemptions for any immigration category listed below. Application fees from other form types have always been used to fund the costs of processing fee-exempt filings. *See, e.g.,* 81 FR 73295. Continuing to exempt these populations from paying associated fees would result in the costs of their requests being borne by the other proposed fees.

DHS proposes to clarify the Director's fee exemption provision in proposed 8 CFR 106.3(f) to specify that fee exemptions must be related to one of the following:

- Asylees;
- Refugees;
- National security;
- Emergencies or major natural disasters declared in accordance with 44 CFR part 206, subpart B; [95]
- A diplomatic agreement or to further relations between the U.S. Government and other nations; or
- USCIS error.

Consistent with the proposed change to the Director's exemption criteria, DHS proposes to remove the fee exemptions for an initial request for an employment authorization document (Form I–765) for the following classifications:

- Citizen of Micronesia, Marshall Islands, or Palau;
- Granted Withholding of Deportation or Removal;
- Temporary Protected Status if the individual is filing an initial TPS application and is under 14 years of age or over 65 years of age; and
- Applicant for Asylum and Withholding of Deportation or Removal.

The proposed changes for asylum applicants and an Application for Asylum and Withholding of Deportation or Removal are discussed in a later section of this preamble, V.P.2. Fee for the Initial Application for Employment Authorization while an Asylum Claim is Pending.

DHS is proposing to continue to exempt the following categories that are consistent with the proposed criteria for a Director's exemption:

- Form I–102, Application for Replacement/Initial Nonimmigrant Arrival/Departure Document: Nonimmigrant military members of the U.S. Armed Forces, noncitizen participating in NATO or Partnership for Peace Military Program under the Status of Forces Agreement (SOFA).
- Form I–539, Application to Extend/Change Nonimmigrant Status: Noncitizen with Ambassador, Public Ministry, or Career Diplomatic or Consular Officer and their Immediate Family and Attendant or Servant (A–1, A–2, and A–3), Designated Principal Resident Representative of a Foreign Government and Immediate Family and Attendant or Servant (G–1, G–2, G–3, G–4, and G–5) or NATO nonimmigrants status (NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, NATO–6, NATO–7, and NATO–8).
- Form I–765, Application for Employment Authorization: Asylees, refugees, noncitizens paroled as refugees, N–8 and N–9 Special Immigrants under INA sections 101(a)(27)(I)(i) and (L); [96] Victims of Severe Form of Trafficking in Persons (T–1); Victim of Qualifying Criminal Activity (U–1); dependents of Certain foreign national organizations and NATO; VAWA Self-Petitioner principal; [97] an applicant who filed USCIS Form I–485 on or after July 30, 2007, and before the effective date of this rule, and paid the Form I–485 fee; Taiwanese dependents of Taipei Economic and Cultural Representative Office TECRO E–1 employees.

1. Form I–765 Exemption Related to Asylees and Refugees

USCIS is continuing to provide a fee exemption for Form I–765, Application for Employment Authorization, for individuals who were granted asylum (asylees) or who were admitted as refugees. This long-standing policy is consistent with Article 17(1) of the 1951 Convention relating to the Status of Refugees (as incorporated in the 1967 Protocol relating to the Status of Refugees), which states in pertinent part ''The Contracting State shall accord to refugees lawfully staying in their territory the most favorable treatment accorded to nationals of a foreign

[95] This authority is proposed to extend only to a Presidential declaration of a major disaster or an emergency granted in accordance with 8 CFR part 206, subpart B.

[96] N–8 is a parent of alien classed as SK3 (unmarried son or daughter of retired G–4 (international Organization Officer or Employee, or Immediate Family) and an N–9 is the child of Child of N–8 or SK1 (Retired International Organization Employee, SK2 (spouse of SKI–1), SK4 (unmarried son or daughter of G–3).

[97] DHS notes that derivatives must pay the fees but are eligible to request a fee waiver.

country in the same circumstances, as regards the right to engage in wage-earning employment.''

2. Exemptions Related to International Organization Officers and to Agreement Between the U.S. Government and Other Nations

Under the International Organization Immunities Act,[98] certain representatives of foreign governments may be entitled to enjoy some privileges, exemptions and immunities. USCIS has several forms that provide for NATO participants, ambassadors, and foreign government representatives, as described above. These groups of individuals are limited in number.

DHS believes that continuing to exempt these categories from the fees provides for consistency with agreements between the U.S. Government and another nation or nations, as well as concepts of reciprocity and good relations with other nations. Therefore, USCIS believes that continuing the policy to exclude these categories of applicants is appropriate to comply with agreements and promote good relations with other nations.

3. Exemptions Related to VAWA Benefit Requests and to T and U Nonimmigrant Status Categories

As previously discussed, TVPRA requires DHS to permit certain applicants to apply for fee waivers for ''any fees associated with filing an application for relief through final adjudication of the adjustment of status.'' DHS interprets ''any fees associated with filing an application for relief through final adjudication of the adjustment of status'' to mean that, in addition to the main benefit application, applicants must have the opportunity to request a fee waiver for any form associated with the main benefit application up to and including the adjustment of status application. The fees for the VAWA, T, and U categories for Form I–765 had previously been exempted because of the humanitarian nature of these programs and the likelihood that individuals who file requests related to the VAWA, T and U categories would qualify for a fee waiver if they request it. Thus it is more efficient to exempt that population from fees than to employ staff to review fee waiver requests that would usually be approved. Based on the same reasoning, USCIS will continue to provide a fee exemption for the Form I–765 for VAWA, T and U categories.

[98] 59 Stat. 669, 22 U.S.C. 288.

E. Changes to Biometric Services Fee

1. Incorporating Biometric Activities Into Immigration Benefit Request Fees

DHS proposes to incorporate the biometric services cost into the underlying immigration benefit request fees for which biometric services are applicable. Currently, a separate $85 biometric services fee may apply depending on the immigration benefit request [99] or other circumstances. *See* 8 CFR 103.7(b)(1)(i)(C). USCIS provides tables, forms, instructions and other information to help individuals assess whether they need to pay the biometric services fee. USCIS rejects an application, petition, or request that fails to pay the separate biometric services fee, if it applies. *See* 8 CFR 103.17(b). DHS proposes to incorporate the cost of biometric services into the underlying immigration benefit request fees to simplify the fee structure, reduce rejections of benefit requests for failure to include a separate biometric services fee, and better reflect how USCIS uses biometric information.

DHS has broad statutory authority to collect biometric information when such information is ''necessary'' or ''material and relevant'' to the administration and enforcement of the INA. *See, e.g.,* INA secs. 103(a), 235(d)(3), 264(a); 8 U.S.C. 1103(a), 1225(d)(3), 1304(a). The collection, use, and reuse of biometric data are integral to identity management, excluding people with criminal backgrounds, investigating and addressing national security concerns, and maintaining program integrity.

In previous fee rules, USCIS evaluated the biometric activity cost as a single biometric service fee separate from the underlying application, petition, or request. In the FY 2016/2017 fee review, USCIS called the activity Perform Biometric Services. *See* 81 FR 26913. USCIS clarified that persons filing a benefit request may be required to appear for biometrics services or an interview and pay the biometric services fee. *See* 81 FR 26917 and 81 FR 73325. There has been a single biometric services fee for many years, which includes four separate costs:

- FBI Name Checks;
- FBI fingerprints;
- Application Support Center (ASC) contractual support; and
- Biometric service management overall, including federal employees at the ASC locations.

[99] For a quick reference of the immigration benefit requests that currently require biometric services with the initial submission, see USCIS, Form G–1055, *Fee Schedule,* available at *https://www.uscis.gov/g-1055.*

In the FY 2019/2020 fee review, USCIS identified each of these four costs as distinct activities in the ABC model. These four activities replace the single biometric activity that USCIS used in previous fee reviews.[100] USCIS used volume estimates to allocate these costs to the proposed immigration benefit requests to which they generally apply. The biometric volume estimates were specific to the projected workload for FBI Name Checks, FBI fingerprints, and contractual support at the ASC locations. In most cases, these estimates use the average proportion of workload for each immigration benefit request over the last three years. If USCIS believed the average of the last three years did not reflect current plans, it used more recent data or other assumptions. These proportions of each biometric service to receipts can vary, because there is not always a one-to-one relationship between a specific benefit request and a biometric service. For example, USCIS may not require a new biometric collection at an ASC location if it resubmits existing, stored biometric information to the FBI. As another example, some immigration benefit requests, like adoption petitions and applications, require that all adults in a household submit biometric information. *See, e.g.,* 8 CFR 204.310(a)(3)(ii) and 204.310(b). As such, a single adoption petition or application may require one or more adults to submit biometric information. Using biometric volumes specific to individual biometric activities enables USCIS to better forecast biometric costs. DHS proposes to incorporate biometric costs into IEFA immigration benefit request fees by using this biometric activity-specific information in the proposed fees. *See* proposed 8 CFR 106.2. DHS also proposes conforming edits elsewhere in its regulations to remove references to the separate biometric services fee. *See, e.g.,* proposed 8 CFR 204.5(p)(4), 204.310(a)(3)(ii), 212.19(e), 214.2(e)(23)(viii), 214.14(c)(1), 245.15 (h)(2), and 245a.12(d)(2).

The proposed changes in this rule may assist USCIS when shifting to enterprise-wide person-centric identity management. For example, if USCIS expands FBI Name Checks to additional immigration benefit requests, then DHS may propose to increase the fee as appropriate for the affected immigration benefit requests. This approach may

[100] The single biometric service activity was called Perform Biometric Services in the FY 2016/2017 fee review. *See* 81 FR 26913–4. Previously, USCIS called the activity Capture Biometrics. *See* 75 FR 33459 and 72 FR 4897.

ensure that the affected applicant, petitioner, or requestor would pay the appropriate fee rather than pass the cost burden of all other biometric services to the affected applicants, petitioners, or requestors.

USCIS forecasts biometric workload volumes by immigration benefit request type in order to assign biometrics costs to the appropriate immigration benefit request. Assigning costs to the underlying immigration benefit request type may reduce the administrative burden on USCIS to administer the separate fee and make it easier for applicants, petitioners, and beneficiaries to calculate the total payment that is due. However, USCIS proposes to retain the separate biometric services fee for specific workloads, as described in the next section.

2. Retaining the Separate Biometric Services Fee for Temporary Protected Status

DHS has excluded from USCIS' ABC model for this proposed rule the costs and revenue associated with Temporary Protected Status (TPS), consistent with the previous fee rule. *See* 81 FR 73312–3. In addition, as noted above, DHS proposes generally to eliminate a separate biometric services fee and fund biometric services from the revenue received from the underlying immigration benefit request fees. However, DHS proposes to retain a separate biometric services fee for TPS. Proposed 8 CFR 106.2(a)(37)(iii).

While the TPS registration fee is capped by INA section 244a(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B) at $50, DHS has specific statutory authority to collect ''fees for fingerprinting services, biometric services, and other necessary services'' when administering the TPS program. *See* 8 U.S.C. 1254b. USCIS collects biometrics for TPS registrants. USCIS requires certain TPS initial applicants and re-registrants to pay the biometric services fee in addition to the fees for Form I–821, Application for Temporary Protected Status, and Form I–765, Application for Employment Authorization, if they want employment authorization. *See* Instructions for Form I–821 (''Applicants for both initial TPS and for re-registration who are 14 years of age and older must submit the $85 biometric services fee or a fee waiver request.''). Because the $50 TPS initial application fee is capped by statute and temporary by definition, USCIS has not included it in its ABC model. Nevertheless, the model output of other fees indicates that the $50 amount provided by statute does not recover the full cost of adjudicating these benefit requests.

To reduce the costs of TPS that USCIS must recover from fees charged to other immigration benefit requests, DHS proposes to use the permissive authority in 8 U.S.C. 1254b(a) to require a $30 biometric services fee for TPS initial applications and re-registrations. Proposed 8 CFR 106.2(a)(37)(iii). USCIS based the proposed $30 biometric services fee on the direct costs of collecting, storing, and using biometric information. Currently, USCIS pays approximately $11.50 to the FBI for fingerprinting results. USCIS calculated that biometric collection, storage, and use at an ASC costs approximately $19. USCIS rounded the proposed fee to the nearest $5 increment, similar to other IEFA fees. The proposed fee is less than the current $85 biometric services fee because the current fee includes indirect costs. The FY 2016/2017 fee rule held the biometric services fee to $85, which has not changed since the FY 2010/2011 fee rule.

3. Executive Office for Immigration Review (EOIR) [101] Biometric Services Fee

Similarly, DHS is maintaining the current requirement that applicants filing certain requests with EOIR submit a biometric services fee. Proposed 8 CFR 103.7(a)(2). DHS, including USCIS, handles all aspects of biometrics collection for EOIR and conducts background security checks for individuals in immigration proceedings.[102] This fee is necessary to recover the costs USCIS incurs from performing that service for EOIR. When individuals in immigration proceedings before EOIR seek to file a motion, appeal, or immigration benefit request for relief or protection from removal they are instructed to pay any applicable biometrics and application fees to DHS. *See* 8 CFR 1103.7(a)(3).[103] As previously explained, while DHS proposes to incorporate the costs of biometric services into its underlying immigration benefit request fees, DHS has no authority to change the amounts it receives from EOIR fees to pay the costs it incurs for biometric services (which includes background checks). Under this proposed rule, DHS proposes to adjust only the fee for those requests filed with and processed by USCIS. Consequently, USCIS has calculated and proposes a biometric services fee of $30 that will be required for certain forms for which it performs intake and biometrics services on behalf of EOIR. *See* proposed 8 CFR 103.7(a)(2).

F. Form I–485, Application To Register Permanent Residence or Adjust Status

1. Interim Benefits

DHS proposes to require separate filing fees when filing Form I–765, Application for Employment Authorization and Form I–131, Application for Travel Document concurrently with a Form I–485, Application to Register Permanent Residence or Adjust Status, or after USCIS accepts their Form I–485 and while it is still pending.

Usually, an applicant needs approval of a principal immigration benefit request before receiving ancillary benefits such as employment authorization and a travel document. That is, USCIS only grants those ancillary benefits after or at the same time as it grants the principal immigration status or benefit. In some situations, however, an individual may qualify for an interim ancillary benefit because a benefit request is pending adjudication. For example, a person who applies for adjustment of status, in certain instances, would be able to apply for employment authorization and/or a travel document based on the pending immigration benefit request. *See* 8 CFR 274a.12(c)(9). When this occurs, these ancillary benefits are referred to generally as ''interim benefits.'' [104]

Current DHS regulations provide that applicants who properly file and pay the required fee for a Form I–485 may also file a Form I–765 and/or a Form I–131 without paying any additional fees. *See* 8 CFR 103.7(b)(1)(i)(M)(4) & (II). Applicants may file Form I–765 and/or Form I–131 concurrently with Form I–485. Alternatively, they may file these forms after USCIS accepts their Form I–485 but while the Form I–485 is still pending.

[101] Within the Department of Justice, there is an Executive Office for Immigration Review (EOIR), which includes a Director, the Board of Immigration Appeals, the Office of the Chief Immigration Judge, the Office of the Chief Administrative Hearing Officer, the Office of Legal Access Programs, and other staff as the Attorney General or the Director may provide. *See* 8 CFR 1003.0. USCIS provides intake services for several requests filed with EOIR, for which biometrics may be required.

[102] Guidance is available at Immigration Benefits in EOIR Removal Proceedings, at *https://www.uscis.gov/laws/immigration-benefits-eoir-removal-proceedings* (last reviewed/updated Aug. 22, 2011).

[103] This regulation provides that, except as provided in 8 CFR 1003.8, EOIR does not accept fees, and that fees relating to EOIR proceedings are paid to DHS.

[104] Individuals may derive interim benefits from an Application for Temporary Protected Status, Form I–821. Unless otherwise stated in this proposed rule preamble, DHS uses interim benefits to refer to benefits associated with Form I–485, Application to Register Permanent Residence or Adjust Status.

Before the FY 2008/2009 fee rule, applicants paid separate fees to apply for employment authorization or a travel document while waiting on USCIS to adjudicate Form I–485. Applicants who had not yet received a green card but who may have had to renew these interim benefits paid any associated fees for the renewals. *See* 72 FR 4894. Since the FY 2008/2009 fee rule, USCIS has allowed anyone who files Form I–485 to file Forms I–131 and I–765 concurrently (or after USCIS accepted their Form I–485 but while the Form I–485 was still pending) without a fee if they properly filed a Form I–485 with the required Form I–485 fee. Applicants who had not yet received a green card but who may have had to renew these interim benefits did not have to pay any associated fees. For the FY 2008/2009 fee rule, USCIS determined that calculating fees for Form I–485 at an amount that would include interim benefits would improve efficiency and save most applicants money. *See* 72 FR 4894 and 29861–2. By providing that the fees for interim benefits would be included in the fee for Form I–485, USCIS addressed the perception that it benefits from increased revenue by processing Forms I–485 more slowly. *See* 72 FR 4894 and 29861–2. The FY 2010/2011 fee rule continued the practice of ''bundling'' the fees for interim benefits and Form I–485. *See* 75 FR 58968.

In the FY 2016/2017 fee review, USCIS determined the workload volume and fee-paying percentage of Forms I–765 and Forms I–131 that are not associated with Forms I–485. This enabled USCIS to derive a fee-paying percentage for standalone Forms I–765 and Forms I–131, meaning those forms not filed concurrently with a Form I–485. *See* 81 FR 26918 and 73300. By isolating stand-alone interim benefit applicants from those concurrently filing Form I–485, USCIS more accurately assessed fee-paying percentages, fee-paying volumes, and fees for all three benefit types. *Id.*

DHS proposes to return to charging separate fees for Forms I–485, I–765, and I–131. *See* proposed 8 CFR 106.2(a)(16); 8 CFR 106.2(a)(32); 8 CFR 106.2(a)(7)(iii). The proposed change would be subject to phased implementation. Specifically, individuals who filed a Form I–485 after July 30, 2007 (the FY 2008/2009 fee rule) and before this proposed change takes effect will continue to be able to file Forms I–131 and I–765 without additional fees for as long as their Form I–485 is pending. Individuals who filed before the FY 2008/2009 fee rule or after this proposed change becomes effective would pay separate fees for interim benefits. The proposed changes are summarized in Table 8. Dates are not available for the proposed changes.

TABLE 8—FORM I–485 FILING DATES AND INTERIM BENEFITS

Form I–485 filing date	Bundled fee applies?
Before July 30, 2007	No.
After July 30, 2007, but before [INSERT EFFECTIVE DATE OF THIS RULE]	Yes.
After implementing this proposed change with a final rule	No.

DHS proposes this change in order to reduce the proposed fee increases for Form I–485 and other forms. For example, in the previous fee rule, USCIS isolated the workload volume and fee-paying percentage of Forms I–765 and I–131 that are not associated with Form I–485. *See* 81 FR 26918. Isolating the volumes for interim benefits reduced the overall volume on the fee schedule because we only counted interim benefit volumes as part of the Form I–485 forecast instead of counting them twice (for Form I–485 and the interim benefit). Based on the total number of Form I–485 applications that were concurrently filed with Forms I–131 and I–765 on the same day in FY 2017, USCIS expects approximately 424,000 annual interim benefit applications in FY 2019/2020 forecast. In the proposed fee schedule, USCIS assumes these interim benefit applicants will pay the applicable fees for Forms I–485, I–131, and I–765. If USCIS were to continue the previous approach and assume these applicants only pay the fee for Form I–485, then the proposed fee for Form I–485 would be $1,240, $120 or approximately 11 percent more than the proposed fee of $1,120. *See* 8 CFR 103.7(b)(1)(i)(U); proposed 8 CFR 106.2(a)(16). Other proposed fees would also change on this hypothetical fee schedule. For example, the Form I–90, Application to Replace Permanent Resident Card, fee would remain $455 in this hypothetical fee schedule. The proposed Form I–90 fee is $415, $40 or approximately 9 percent less than the current $455 fee. *See* 8 CFR 103.7(b)(1)(i)(G); proposed 8 CFR 106.2(a)(1). This version of the fee schedule has a weighted average fee increase of 23 percent compared to the 21 percent average fee increase in proposed fee schedule.[105] In general, the fees are higher in a fee schedule with bundled fee interim benefits because it has lower workload and fee-paying volume than the proposed fee schedule. This means there are fewer immigration benefit requests for USCS to recover projected costs in a fee schedule with bundled fee interim benefits. DHS proposes separate fees for interim benefit applications and Form I–485 applications in order to lower the proposed fees for most other applicants, petitioners, and requestors.

DHS proposes to reduce the Form I–485 fee to $1,120, which is $20 or 2 percent less than the current $1,140 fee that includes interim benefits. However, the cost reducing effects of unbundling interim benefit fees is partially offset by several other factors that increase the costs of the Form I–485. For example, background check requirements have increased.[106] USCIS is also interviewing a greater proportion of adjustment of status applicants, requiring more time and effort to adjudicate Form I–485.[107] In addition, USCIS did not realize the efficiency gains anticipated when it bundled interim benefits. *See* 72 FR 4894. This is due to a number of reasons. Mainly, annual numerical visa limits established by Congress and high demand have created long wait times for some visa categories.[108] Many

[105] *See* footnote 6 for more information on the weighted averages in the fee schedule. In a fee schedule with free interim benefits, the sum of the current fees multiplied by the projected FY 2019/2020 fee-paying receipts for each immigration benefit type, divided by the total fee-paying receipts is $533. This is $3 higher than in the proposed fee schedule because the fee-paying volumes are lower when we assume free interim benefits. The weighted average proposed fee is $655, $122 or 23 percent higher than the weighted average current fee of $533 in this hypothetical fee schedule that assumes free interim benefits.

[106] *See, e.g.,* Exec. Order No. 13780, *Protecting the Nation From Foreign Terrorist Entry Into the United States,* 82 FR 13209 (Mar. 6, 2017).

[107] USCIS, *USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants, https://www.uscis.gov/news/news-releases/uscis-to-expand-in-person-interview-requirements-for-certain-permanent-residency-applicants* (last reviewed/updated Aug. 28, 2017).

[108] *See* USCIS, Visa Retrogression at *https://www.uscis.gov/green-card/green-card-processes-*

applicants must wait years for visas to become available. While USCIS has some control over its own allocation of resources to address processing times and backlogs, USCIS has no direct control over delays caused by the U.S. Department of State's allocation of visa numbers and Congress' annual visa numerical limits. USCIS has taken some actions to alleviate the filing burden and fees on those individuals whose Form I–485 applications are still pending due to the lack of available immigrant visas. For example, DHS now provides EADs with 2-year validity periods when the final action date for determining visa availability retrogresses.[109]

New applicants would only pay for the benefits that they wish to receive as a result of this proposal. In the FY 2008/2009 and FY 2010/2011 fee rules, some commenters stated they did not want to pay for additional benefits they did not want, need, or receive. *See* 72 FR 29861–3 and 75 FR 58968. This proposal is in line with the beneficiary-pays principle discussed in the Fee Waivers section of this preamble. Finally, this change would treat Form I–485 applicants similarly to other applicants who apply for interim benefits. In previous fee rules, bundled interim benefit fees were only associated with a pending Form I–485. However, several other applications may warrant interim benefits.[110] DHS has decided it is more equitable to treat all of these petitioners and applicants the same, regardless of the request that may grant interim benefits. Some applicants would pay significantly more to adjust status and apply for one or more interim benefits. Table 9 compares the current fees for Form I–485 applicants that may bundle interim benefits to the proposed fees without bundling.

TABLE 9—CURRENT AND PROPOSED FEES FOR ADJUSTMENT OF STATUS WITH INTERIM BENEFITS

Immigration benefit request	Current fees	Proposed fees	Difference	Percentage difference
I–485, Application to Register Permanent Residence or Adjust Status	$1,140	$1,120	−$20	−2 percent
I–765, Application for Employment Authorization	410	490	80	20
I–131, Application for Travel Document	575	585	10	2
Biometric Services Fee	85	[111] N/A	−85	−100
Total Fees for Form I–485 and biometric services	1,225	1,120	−105	−9
Total Fees for Forms I–485 and I–765 and biometric services		1,610	385	31
Total Fees for Forms I–485 and I–131 and biometric services		1,705	480	39
Total Fees for Form I–485, all interim benefits, and biometric services		2,195	970	79

2. Form I–485 Fee for Child Under 14, Filing with Parent

Currently, Form I–485 has two fees. The fee for an adult is $1,140, and the fee for a child under the age of 14 concurrently filing with a parent is $750. *See* 8 CFR 103.7(b)(1)(i)(U). DHS proposes to require payment of the proposed $1,120 fee for all applicants, including children under the age of 14 years concurrently filing Form I–485 with a parent.[112] *See* 8 CFR 103.7(b)(1)(i)(U)(*2*); proposed 8 CFR 106.2(a)(16).

DHS no longer believes there is a cost basis for the two different Form I–485 fees. As explained in the FY 2016/2017 fee rule, USCIS does not track the adjudication time for Form I–485 based on the age of the applicant so there is no data showing a cost difference correlated to the difference in applicant age. *See* 81 FR 73301. The FY 2016/2017 fee rule calculated the $750 fee using the model output to comply more closely with the ABC methodology for full cost recovery. *See* 81 FR 26919. USCIS assumed that the $750 fee would not include the cost of an EAD. *Id.* As such, the completion rate for the $750 fee was lower than most adults. In addition, children under the age of 14 do not typically pay the $85 biometric services fee required for adults that apply to adjust status. In the proposed Form I–485 fee, USCIS assumes the same completion rate and biometric services for adults and children because DHS proposes to separate interim benefit request fees from the fee for Form I–485. DHS believes that a single fee for Form I–485 will reduce the burden of administering separate fees and better reflect the cost of adjudication. This proposal will affect a small percentage of Form I–485 applicants. In FY 2017 and 2018, approximately 6 percent of Form I–485 applicants paid the $750 fee. See Table 10 for Form I–485 fee-paying receipts and percentages for the two years.

and-procedures/visa-availability-priority-dates/visa-retrogression (last reviewed/updated March 8, 2018).

[109] USCIS may, in its discretion, determine the validity period assigned to any document issued evidencing an individual's authorization to work in the United States. *See* 8 CFR 274a.12(b).

[110] *See* footnote 79.

[111] As noted earlier in this preamble, DHS propose to eliminate the separate $85 fee in most cases. *See* V.E. Changes to Biometric Services Fee section for more information.

[112] The parent may be seeking classification as an immediate relative of a U.S. citizen, a family-sponsored preference immigrant, or a family member accompanying or following to join a spouse or parent under sections 201(b)(2)(A)(i), 203(a)(2)(A), or 203(d) of the INA; 8 U.S.C. 1151(b)(2)(A)(i), 1153(a)(2)(A), or 1153(d).

TABLE 10—FORM I–485 FEE-PAYING RECEIPTS

Form I–485 applicant type	Current fee	FY 2017 fee-paying receipts	Percent of FY 2017	FY 2018 fee-paying receipts	Percent of FY 2018
Applicant under the age of 14 years who submits the application concurrently with the Form I–485 of a parent ...	$750	32,870	6	33,290	6
All other fee-paying applicants for Form I–485	1,140	511,432	94	496,113	94
Total	N/A	544,302	100	529,403	100

In addition, DHS is proposing to clarify the fee for applicants for adjustment of status pursuant to INA section 245(i). Such applicants are required to properly file Form I–485 with fee along with Form I–485 Supplement A and the $1,000 statutory fee, unless exempted by the statute. USCIS proposes that the fee for the Application to Adjust Status under Section 245(i) of the Act, Form I–485, Supplement A, be revised to clarify that the Form I–485 Supplement A and the $1,000 fee must be submitted when the Form I–485 is filed or still pending. *See* proposed 8 CFR 106.2(a)(17). An applicant who has not paid the $1,000 statutory fee when applying for adjustment of status has not been lawfully adjusted and cannot satisfy the ''lawfully admitted'' requirement of INA section 318, 8 U.S.C. 1429, for naturalization. DHS is also proposing to delete the text from the Form I–485, Supplement A, that provides that there is no fee 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* 8 CFR 103.7(b)(1)(i)(V); proposed 8 CFR 106.2(a)(17). Those fee exemptions are explicitly provided by statute and will be included in the applicable form instructions. *See* INA section 245(i)(1)(C), 8 U.S.C. 1255(i)(1)(C). It is unnecessary to codify them in the Code of Federal Regulations.

G. Continuing To Hold Refugee Travel Document Fee to the Department of State Passport Fee

Consistent with U.S. obligations under Article 28 of the 1951 Convention relating to the Status of Refugees,[113] DHS proposes to continue to charge a fee for refugee travel documents linked to the fee for a U.S. passport book. *See* 75 FR 58972 (discussing Article 28 standards for assessing charges for a refugee travel document). In previous fee rules, DHS aligned the refugee travel document fees to the sum of the United States passport book application fee plus the additional execution fee that DOS charges for first time applicants. *See* 81 FR 73301 and 75 FR 58972. Since the FY 2016/2017 fee rule, DOS increased the execution fee from $25 to $35, a $10 or 40 percent increase. *See Department of State, Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates-Passport Services Fee Changes,* 83 FR 4425 (Jan. 31, 2018). Under this proposal, DHS would increase refugee travel document fees by a conforming amount. DHS refugee travel document fees would be $145 for adults and $115 for children under the age of 16 years, consistent with current U.S. passport fees. *See* proposed 8 CFR 106.2(a)(7)(i) and (ii).

H. Form I–131A, Carrier Documentation

DHS proposes to separate the fee for Form I–131A, Application for Carrier Documentation, from other travel document fees and to expand the population eligible to file Form I–131A. *See* 8 CFR 103.7(b)(1)(i)(M)(3); proposed 8 CFR 106.2(a)(8). The proposed fee for Form I–131A is $1,010, a $435 or 76 percent increase from the current $575 fee. *Id.* In 2016, USCIS began using Form I–131A, Application for Carrier Documentation. *See* 80 FR 59805. In the FY 2016/2017 fee rule, DHS implemented a fee that was calculated using the total Form I–131 and I–131A workload. *See* 81 FR 73294–5.

Currently, certain lawful permanent residents (LPRs) may use Form I–131A to apply for a travel document (carrier documentation) if their Permanent Resident Card (PRC), also known as a Green Card or Form I–551, or their reentry permit is lost, stolen, or destroyed while outside of the United States. Carrier documentation allows an airline or other transportation carrier to board the LPR without any penalty to the airline or transportation carrier for permitting an individual to board without a visa or travel document. *See* INA section 273, 8 U.S.C. 1323 (providing for a fine of $3,000 for each noncitizen without proper documentation). In order to be eligible for carrier documentation, an LPR who was traveling on a PRC must have been outside the United States for less than one year, and an LPR who was traveling on a reentry permit must have been outside the United States for less than two years. Form I–131A is not an application for a replacement PRC or reentry permit.

DHS proposes a Form I–131A fee separate from Form I–131 because Form I–131A differs from other applications for travel documents. The proposed separate Form I–131A fee would be more equitable because the form requires a different adjudicative process than Form I–131, including processing by personnel outside of the United States, which affects the projected cost for Form I–131A. Other travel documents may be adjudicated inside or outside of the United States, while the DOS Bureau of Consular Affairs, located outside of the United States, will process Form I–131A following the closure of some USCIS international offices.[114] It generally costs more to process Form I–131A outside of the United States, and therefore, providing carrier documentation is relatively more expensive for USCIS than providing other travel documents. The proposed fee includes direct costs to account for the fee DOS charges USCIS to adjudicate Form I–131A applications, which is

[113] The United States is party to the 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6224, 606 U.N.T.S. 267 (1968), which incorporates articles 2 through 34 of the 1951 Convention. The United States is not party to the 1951 Convention. *See Sale* v. *Haitian Ctrs. Council, Inc.,* 509 U.S. 155, 169 n.19 (1993) (''Although the United States is not a signatory to the Convention itself, in 1968 it acceded to the United Nations Protocol Relating to the Status of Refugees, which bound the parties to comply with Articles 2 through 34 of the Convention as to persons who had become refugees because of events taking place after January 1, 1951.'').

[114] *See USCIS Will Adjust International Footprint to Seven Locations* at *https://www.uscis.gov/news/news-releases/uscis-will-adjust-international-footprint-seven-locations* (last reviewed/updated Aug. 9, 2019). The volume and cost projections used in this rule were generated before planning to adjust the international footprint of USCIS and do not incorporate cost changes associated with the adjustment. DHS will incorporate resulting cost changes in future fee rules.

approximately $385 each.[115] In the FY 2018 interagency agreement and in this proposed rule, USCIS projects that DOS will receive approximately 6,199 Forms I–131A each year. Separately, USCIS forecasts that USCIS or DOS will receive 3,600 Forms I–131A each year based on historic USCIS receipts. The total Form I–131A receipt forecast for USCIS or DOS is 9,799 per year.

DHS also proposes to expand the population that is eligible to use Form I–131A. DHS proposes to allow individuals whose advance parole documents or combination employment authorization and advance parole cards (combo cards) that are lost, stolen, or destroyed to use Form I–131A to apply for a carrier document while abroad. Currently, there is no clear process for individuals who lose advance parole documents while they are abroad to replace those documents. Since USCIS does not issue advance parole documents to individuals who are abroad, it is not possible to replace a lost or stolen advance parole document until the individual returns to the United States. Some have applied for humanitarian parole to return to the United States, which requires the applicant to demonstrate an urgent humanitarian reason or significant public benefit as there is currently no other appropriately established process for such individuals to obtain a travel document to return to the United States. *See generally* INA sec. 212(d)(5), 8 U.S.C. 1182(d)(5); 8 CFR part 223.[116] DHS proposes to permit those individuals to file Form I–131A to request carrier documentation, which would allow them to board a return flight to the United States despite their advance parole document having been lost, stolen, or destroyed. DOS personnel would verify that such an individual previously obtained the advance parole authorization before issuing the carrier documentation. At this time, USCIS cannot estimate the number of additional Form I–131A requests that may be filed as a result of this proposed change. However, USCIS expects the increase in the number of filings to be small. While USCIS does not track Form I–131 humanitarian parole requests made specifically for carrier documentation, there were approximately 200 Form I–131 submissions in FY 2017 without a designation of the underlying basis of the request. Individuals who used humanitarian parole requests to obtain carrier documentation would be a subset of those approximately 200 receipts.

I. Separating Form I–129, Petition for a Nonimmigrant Worker, Into Different Forms

Currently, employers and other qualified filers, such as agents, sponsoring organizations and investors (collectively referred to as a ''benefit requestor'' or separately referred to as a ''petitioner'' or ''applicant,'' as applicable) may use Form I–129, Petition for a Nonimmigrant Worker, to make a benefit request on behalf of a current or future nonimmigrant worker to temporarily perform services or labor, or to receive training in the United States.[117] Using this single form, petitioners or applicants can file petitions or applications for many different types of nonimmigrant workers.[118] Some classifications also allow nonimmigrants to ''self-petition'' or file a petition or application on behalf of themselves. Some nonimmigrant classifications require use of Form I–129 supplemental forms, such as the H Classification Supplement, or additional separate forms, such as Form I–129S, Nonimmigrant Petition Based on Blanket L Petition. Certain petitioners or applicants must pay statutory fees in addition to a base filing fee in some cases. For example, several statutory fees exist for H and L nonimmigrant workers.[119] In some cases, petitioners or applicants pay a single fee for multiple nonimmigrant beneficiaries. USCIS provides several optional checklists to help navigate the specific requirements of some nonimmigrant classifications.

DHS proposes to separate Form I–129 into several forms. These new forms will incorporate information from the various supplemental forms for specific types of workers or nonimmigrant classifications. DHS proposes different fees for these new forms. The proposed fees are calculated to better reflect the costs associated with processing the benefit requests for the various categories of nonimmigrant worker. The current base filing fee for Form I–129 is $460. *See* 8 CFR 103.7(b)(1)(i)(I). This base filing fee is paid regardless of how many nonimmigrant workers will benefit from the petition or application, the type of worker (for example, landscaper, chef, scientist, computer programmer, physician, athlete, musician, etc.), whether an employee is identified, and without differentiating the amount of time it takes to adjudicate the different nonimmigrant classifications. Therefore, in order to reflect these differences, DHS is proposing a range of fees for petitions and applications for nonimmigrant workers, listed in Table 11 and explained in the subsequent sections. By splitting the form and proposing several different fees, USCIS believes it will simplify or consolidate the information requirements for petitioners and applicants as well as better reflect the cost to adjudicate each specific nonimmigrant classification. In addition, DHS is proposing that, where any new Form I–129 is filed for a named worker who is present in the United States, the petitioner must provide USCIS with a valid domestic address for the named worker(s) when submitting the form. DHS welcomes comments on the new forms.

In 2017, the DHS Office of Inspector General (OIG) released a report on H–1B visa participants. It discussed how USCIS verifies H–1B visa participants through the Administrative Site Visit and Verification Program (ASVVP). ASVVP includes site visits on all religious worker petitioners, including R nonimmigrants, as well as randomly selected site visits for certain H–1B and L workers to assess whether petitioners and beneficiaries comply with applicable immigration laws and regulations. As a result of the OIG audit, USCIS began to collect better information on the costs associated with ASVVP. For example, ASVVP now uses unique project and task codes in the USCIS financial system to track spending. Additionally, USCIS tracks ASVVP hours by form type in the Fraud Detection and National Security Data System, which USCIS uses to identify fraud and track potential patterns. In the

[115] The FY 2018 interagency agreement between Department of State and USCIS uses an Economy Act rate of $385.88 for the adjudication. USCIS used FY 2018 rates when calculating the proposed fees. The FY 2019 interagency agreement between Department of State and USCIS uses an Economy Act rate of $352.15 for the adjudication.

[116] For relevant guidance, see *USCIS to Issue Employment Authorization and Advance Parole Card for Adjustment of Status Applicants: Questions and Answers, https://www.uscis.gov/news/questions-and-answers/uscis-issue-employment-authorization-and-advance-parole-card-adjustment-status-applicants-questions-and-answers* (last reviewed/updated March 9, 2018).

[117] See Temporary (Nonimmigrant) Workers at *https://www.uscis.gov/working-united-states/temporary-nonimmigrant-workers* (last reviewed/updated Sept. 7, 2011).

[118] For example, nonimmigrants workers in the following classifications: E–1, E–2, E–2C, H–1B, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–1S, P–2, P–2S, P–3, P–3S, Q–1, R–1, TN1, and TN2. See Form I–129, Petition for a Nonimmigrant Worker at *https://www.uscis.gov/i-129* (last reviewed/updated Sept 11, 2018).

[119] 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, https://www.uscis.gov/forms/h-and-l-filing-fees-form-i-129-petition-nonimmigrant-worker* (last updated/reviewed Feb. 2, 2018).

FY 2019/2020 fee review, USCIS used some of this new information to identify distinct costs for these site visits. USCIS used the ASVVP hours by immigration benefit request to assign the appropriate direct costs of site visits to Forms I–129. The proposed fees would result in the cost of ASVVP being covered by the fees paid by the petitioners in proportion to the extent to which ASVVP is being used for that benefit request.

Additionally, USCIS now captures adjudication hours for nonimmigrant worker petitions based on the classification for which the petition is filed (see discussion of Completion Rates in section IV.B.2). Therefore, the proposed fees include the costs associated with the estimated adjudication hours for each of the new petitions being proposed in this rule.

TABLE 11—PROPOSED FORM NUMBERS AND FORM TITLES FOR SEPARATING FORM I–129

Proposed form No.	Proposed form title	Proposed fee(s)
I–129CW	Petition for a CNMI-Only Nonimmigrant Transitional Worker	$705.
I–129E&TN	Application for Nonimmigrant Worker: E or TN Classification	$705.
I–129H1	Petition for Nonimmigrant Worker: H–1 Classification	$560.
I–129H2A	Petition for Nonimmigrant Worker: H–2A Classification	$860 (named); $425 (unnamed).
I–129H2B	Petition for Nonimmigrant Worker: H–2B Classification	$725 (named); $395 (unnamed).
I–129L	Petition for Nonimmigrant Worker: L Classification	$815.
I–129MISC	Petition for Nonimmigrant Worker: H–3, P, Q, or R Classification	$705.
I–129O	Petition for Nonimmigrant Worker: O Classification	$715.

1. Form I–129H1, Petition for Nonimmigrant Worker: H–1 Classifications

DHS proposes to create Form I–129H1, Petition for H–1B Nonimmigrant Worker or H–1B1 Free Trade Nonimmigrant Worker. *See* proposed 8 CFR 106.2(a)(3)(i). The H–1B nonimmigrant program is for individuals who will perform services in a specialty occupation, services of exceptional merit and ability relating to a Department of Defense (DOD) cooperative research and development project, or services as a fashion model of distinguished merit or ability; while the H–1B1 nonimmigrant program is for nationals of Singapore or Chile engaging in specialty occupations. *See* INA sec. 101(a)(15)(H)(i)(b), (H)(i)(b1); 8 U.S.C. 1101(a)(15)(H)(i)(b), (H)(i)(b1).[120] DHS proposes a fee of $560 for the Form I–129H1. The proposed fee for a petitioner to file Form I–129H1 more accurately incorporates the direct cost of USCIS fraud prevention efforts for H–1B workers and other planned changes. DHS does not propose any changes to statutory fee amounts for certain H–1B petitioners because it does not have the authority to change the amount of these fees.[121]

2. Forms I–129H2A and I–129H2B, Petitions for H–2A and H–2B Workers

DHS proposes to create Form I–129H2A, Petition for Nonimmigrant Worker: H–2A Classification, and Form I–129H2B, Petition for Nonimmigrant Worker: H–2B Classification. The H–2A program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs.[122] The H–2B program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary nonagricultural jobs.[123] On March 6, 2017, OIG issued an audit report after reviewing whether the fee structure associated with H–2 petitions is equitable and effective.[124] OIG identified a number of issues and provided recommendations to address the issues. The creation of the two new forms, Forms I–129H2A and I–129H2B, is USCIS' response to OIG's recommendations. Further, USCIS proposes the following changes:

- Separate fees for petitions with named workers and petitions with unnamed workers;
- Limit the number of named workers that may be on a single petition to 25.

DHS proposes separate H–2A and H–2B fees for petitions with named workers and unnamed workers. Currently, petitions for H–2A or H–2B workers may include named or unnamed workers. Petitioners must name workers when (1) the petition is filed for a worker who is a national of a country not designated by the Secretary of Homeland Security as eligible to participate in the H–2A or H–2B program; or (2) the beneficiary is in the United States. *See* 8 CFR 214.2(h)(2)(iii). In addition, USCIS may require the petitioner to name H–2B workers where the name is needed to establish eligibility for H–2B nonimmigrant status. USCIS estimates that it requires less time and resources to adjudicate a petition with unnamed workers than one with named workers. USCIS runs background checks on named workers, but cannot do so for unnamed workers. After the petition is approved, the petitioner finds workers and the worker applies for a nonimmigrant visa with DOS, who will then vet the worker. Therefore, USCIS believes that it takes less time for a

[120] *See* H–1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models, *https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion-models* (last reviewed/updated April 3, 2017).

[121] Certain H–1B petitions may have to pay up to $6,000 in statutory fees. DHS does not have the authority to adjust the amount of these statutory fees. USCIS does not keep most of the revenue. CBP receives 50 percent of the $4,000 9–11 Response and Biometric Entry-Exit fee and the remaining 50 percent is deposited into the General Fund of the Treasury. USCIS retains 5 percent of the $1,500 or $750 American Competitiveness and Workforce Improvement Act (ACWIA) fee. The remainder goes to the Department of Labor and the National Science Foundation. USCIS keeps one third of the $500 Fraud Detection and Prevention fee, while the remainder is split between the Department of State and the Department of Labor. These statutory fees are in addition to the current Form I–129 fee of $460 and optional premium processing fee of $1,410. *See* USCIS, *H and L Filing Fees for Form I–129, Petition for a Nonimmigrant Worker, https://www.uscis.gov/forms/h-and-l-filing-fees-form-i-129-petition-nonimmigrant-worker* (last updated/reviewed Feb. 2, 2018).

[122] *See* H–2A Temporary Agricultural Workers, *https://www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers* (last reviewed/updated March 8, 2018).

[123] *See* H–2B Temporary Non-Agricultural Workers, *https://www.uscis.gov/working-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers* (last reviewed/updated June 11, 2018). H–2B petitioners who file with USCIS are required to pay a $150 Fraud Detection and Prevention fee per petition regardless of the number of beneficiaries to which the petition pertains. DHS does not propose any change to this statutory fee because it lacks the authority to do so by rulemaking. *See* INA secs. 214(c)(12)–(13), 286(v); 8 U.S.C. 1184(c)(12)–(13) 1356(v). This statutory fee is in addition to the current Form I–129 fee of $460 and optional premium processing fee of $1,410.

[124] 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.*

USCIS immigration services officer to adjudicate a petition with unnamed workers. The proposed fees reflect the average adjudication time estimated by USCIS.

USCIS proposes to implement a limit of 25 named beneficiaries per petition. Proposed 8 CFR 214.2(h)(2)(ii), (h)(5)(i)(B). Currently, there is no limit on the number of named or unnamed workers that may be on a single petition. USCIS currently charges a flat fee regardless of whether a petition includes one or hundreds of named temporary nonimmigrant workers. However, 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. In one case, a petitioner included more than 600 named workers in one petition.[125] OIG observed that the flat fee structure (meaning the same fee regardless of the number of nonimmigrants included in the petition) disproportionally costs more per nonimmigrant for petitions with few beneficiaries compared to those with large numbers of beneficiaries. In other words, petitioners filing petitions with low named beneficiary counts subsidize the cost of petitioners filing petitions with high named beneficiary counts.

OIG's interviews of USCIS immigration services officers indicated that usually a maximum of 10 petitions could be processed within a normal workday.[126] USCIS immigration services officers could generally adjudicate a petition with 1–25 named workers in 2 hours. DHS estimates the proposed change will increase H–2A and H–2B petition filing volume by approximately 2,000 based on the number of H–2A and H–2B petitions that were received in FY 2017 with 26 or more named beneficiaries. DHS assumed that the total number of named beneficiaries requested by an employer would remain the same, so that an employer petitioning for more than 25 named beneficiaries would file multiple petitions.

The proposed fees would address the inequities in the current fee structure identified by the OIG audit. The proposed limit of 25 named beneficiaries per petition may make it easier for USCIS immigration services officers to promptly adjudicate a petition. For example, the proposed $425 fee for an H–2A petition without named workers is approximately 51 percent less than the proposed $860 fee for an H–2A petition with named workers because the adjudication requires less time. Due to the decreased complexity of the adjudication, the proposed $425 fee for a petition without named workers is $35 or 8 percent less than the current $460 fee for the Form I–129. The proposed $860 fee for a petition with named workers is $400 or 87 percent more than the current $460 fee for the Form I–129.

3. Form I–129L, Petition for Nonimmigrant Worker: L Classification

DHS proposes to create Form I–129L, Petition for Nonimmigrant Worker: L Classification, with a proposed fee of $815. *See* proposed 8 CFR 106.2(a)(3)(iv). Under current requirements, petitioners sponsoring L nonimmigrant workers, who are intracompany transferees,[127] may be required to submit additional statutory fees or other additional forms to USCIS. For example, two statutory fees may apply for L nonimmigrant workers.[128] Some petitions require the additional Form I–129S, Nonimmigrant Petition Based on Blanket L Petition.

The proposed Form I–129L would collect the information required for these petitions. Although the current L Classification Supplement to Form I–129 only separates out L–1A manager or executive from L–1B specialized knowledge, the proposed form would further separate out L–1A managers from L–1A executives on the form. However, DHS is not proposing different fees for managers and executives, because the agency has no records on the difference in completion rates or costs for processing petitions for managers and executives. USCIS currently captures completion rates for H–1B, L, and other types of petitions, but not for subgroups, such as managers and executives, within classifications. The proposed fee is based on the completion rate for the average of L–1 petitions. As mentioned in section V.I. Separating Form I–129, Petition for a Nonimmigrant Worker, into Different Forms, the proposed fees also assign the direct costs of ASVVP site visits, currently used for certain H–1B, L, and all religious workers, to the specific form for the classification.

4. Form I–129O, Petition for Nonimmigrant Worker: O Classification

DHS proposes to create Form I–129O, Petition for Nonimmigrant Worker: O Classification, with a proposed fee of $715. *See* proposed 8 CFR 106.2(a)(3)(vi). The separate form would allow USCIS to tailor instructions and data collection requirements for these petitions for persons with extraordinary ability in the sciences, arts, education, business, or athletics, persons with extraordinary achievement in the motion picture or television industry, and qualifying essential support personnel. *See* INA secs. 101(a)(15)(O), 214(c); 8 U.S.C. 1101(a)(15)(O), 1184(c); 8 CFR 214.2(o). Similar to some other proposed changes to Form I–129, DHS proposes to limit each Form I–129O petition to 25 named beneficiaries.[129] Proposed 8 CFR 214.2(o)(2)(iv)(F). As previously discussed in the H–2A and H–2B section above, limiting the number of named beneficiaries 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 low beneficiary counts who effectively subsidize the cost of petitioners filing petitions with high beneficiary counts. USCIS currently captures adjudication hours for these types of petitions. As stated in section

[125] *Id.* at 13.

[126] *Id.* at 17.

[127] The L–1 intracompany transferee nonimmigrant classification permits a multinational organization to transfer certain employees from one of its affiliated foreign entities to one of its entities in the United States. The L–1A classification is for employees coming to the United States temporarily to perform services in a managerial or executive capacity. The L–1B classification is for employees coming to the United States temporarily to perform services that require specialized knowledge. *See* INA sec. 101(a)(15)(L), 8 U.S.C. 1101(a)(15)(L).

[128] Certain L petitioners may have to pay up to $5,000 in statutory fees. DHS does not have the authority to adjust the amount of these statutory fees. USCIS does not keep most of the revenue derived from these fees. CBP receives 50 percent of the $4,500 9–11 Response and Biometric Entry-Exit fee revenue and the remaining 50 percent is deposited into the General Fund of the Treasury. USCIS retains one third of the $500 Fraud Detection and Prevention fee revenue, while the remainder is split between the Department of State and the Department of Labor. These statutory fees are in addition to the current Form I–129 fee of $460 and optional premium processing fee of $1,410. *See* USCIS, *H and L Filing Fees for Form I–129, Petition for a Nonimmigrant Worker, https://www.uscis.gov/forms/h-and-l-filing-fees-form-i-129-petition-nonimmigrant-worker* (last updated/reviewed Feb. 2, 2018).

[129] While O–1 petitions are limited to a single named beneficiary, a petition for O–2 nonimmigrant workers may include multiple named beneficiaries in certain instances. *See* 8 CFR 214.2(o)(2)(iii)(F).

IV.B.2. Completion Rates, the proposed fee is partly based on this data.

5. Form I–129E&TN, Application for Nonimmigrant Worker: E and TN Classification

DHS proposes to create a separate Form I–129 supplement for E and TN applicants entitled Form I–129E&TN, Application for Nonimmigrant Worker: E and TN Classification. The Treaty Trader (E–1) and Treaty Investor (E–2) classifications are for citizens of countries with which the United States maintains treaties of commerce and navigation. The applicant must be coming to the United States to engage in substantial trade principally between the United States and the treaty country (E–1), to develop and direct the operations of an enterprise in which the applicant has invested or is in the process of investing a substantial amount of capital (E–2), or to work in the enterprise as an executive, supervisor, or essentially skilled employee. *See* INA sec. 101(a)(15)(E), 8 U.S.C. 1101(a)(15)(E); 8 CFR 214.2(e). An E–2 CNMI or E–2C investor is a noncitizen who seeks to enter or remain in the Commonwealth of the Northern Mariana Islands (CNMI) in order to maintain an investment in the CNMI that was approved by the CNMI government before November 28, 2009. This classification allows an eligible noncitizen to be lawfully present in the CNMI in order to maintain the investment during the transition period from CNMI to federal immigration law, which was extended by Public Law 115–218, sec. 3(a) on July 24, 2018 and will expire on December 31, 2029. *See* 48 U.S.C. 1806; *proposed* 8 CFR 214.2(e)(23). The E–3 classification applies to nationals of Australia who are coming to the United States solely to perform services in a specialty occupation requiring theoretical and practical application of a body of highly specialized knowledge and at least the attainment of a bachelor's degree, or its equivalent, as a minimum for entry into the occupation in the United States. *See* INA secs. 101(a)(15)(E) and 214(i)(1); 8 U.S.C. 1101(a)(15)(E) and 1184(i)(1). The TN Classification was created to implement part of a trilateral North American Free Trade Agreement (NAFTA) between Canada, Mexico, and the United States. In accordance with the NAFTA, a citizen of Canada or Mexico who seeks temporary entry as a business person to engage in business activities at a professional level may be admitted to the United States. *See* INA sec. 214(e), 8 U.S.C. 1184(e); 8 CFR 214.6; proposed 8 CFR 106.2(a)(3)(viii).

6. Form I–129MISC, Petition for Nonimmigrant Worker: H–3, P, Q, or R Classification

DHS proposes to create a new form for the remaining non-immigrant worker classifications, called Form I–129MISC, Petition for Nonimmigrant Worker: H–3, P, Q, or R Classification. The costs used to determine the proposed fee for this form aggregate all identifiable costs associated with the adjudication of these different visa classifications, including the costs of administering site visits for R visa workers under the Administrative Site Visit and Verification Program. As previously discussed in sections 2 and 4, DHS proposes for classifications that allow one petition to be filed for multiple beneficiaries, to limit such petitions to 25 named beneficiaries. Proposed 8 CFR 214.2(p)(2)(iv)(F). As stated previously, this change, as with all new I–129 form types, is expected to simplify and optimize the adjudication of these petitions, which is expected to lead to reduced processing times and reduced completion rates. Because USCIS completes a background check for each named beneficiary, petitions with more 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 low beneficiary counts who effectively subsidize the cost of petitioners filing petitions with high beneficiary counts. USCIS does not have separate completion rates for the proposed Forms I–129E&TN and I–129MISC. Currently, USCIS adjudicators report hours on these classifications in a catch-all Form I–129 category. Creation of new separate forms may allow USCIS to track each separately and calculate specific fees for each petition or application in the future, which could serve as a basis for further refinement of the fee for the various nonimmigrant classifications in future fee rules. The proposed fee for both Forms I–129E&TN and I–129MISC is $705. *See* proposed 8 CFR 106.2(a)(3)(viii).

7. Commonwealth of the Northern Mariana Islands (CNMI) Fees

Two recent public laws affected statutory fees for the Commonwealth of the Northern Mariana Islands (CNMI). The Northern Mariana Islands Economic Expansion Act, Public Law 115–53, sec. 2, 131 Stat. 1091, 1091 (2017) (2017 CNMI Act) increased the CNMI education funding fee from $150 to $200. *See* 48 U.S.C. 1806(a)(6)(A)(i). USCIS began accepting this increased fee on August 23, 2017.[130] DHS proposes to make conforming edits to the fee for the Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW, because of this statutory change. *See* 8 CFR 103.7(b)(1)(i)(J); proposed 8 CFR 106.2(c)(7). Employers must pay the fee for every beneficiary that they seek to employ as a CNMI-only transitional worker. The fee must be paid at the time of filing the petition. By statute, since it is for each worker approved, USCIS refunds the CNMI education funding fee if the petition is not approved. The fee is a recurring fee that petitioners must pay every year. A prospective employer requesting issuance of a permit with a validity period longer than one year must pay the fee for each year of requested validity. 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. The Northern Mariana Islands U.S. Workforce Act of 2018, Public Law 115–218, sec. 3, 132 Stat. 1547 (2018) (2018 CNMI Act), granted DHS the authority to adjust the fee for inflation. *See* 48 U.S.C. 1806(a)(6)(A)(ii). Beginning in FY 2020, DHS may adjust the $200 CNMI education funding fee once per year by notice in the **Federal Register**.[131] The adjustment must be based on the annual change in the Consumer Price Index for All Urban Consumers (CPI–U) published by the Bureau of Labor Statistics. *See* proposed 8 CFR 106.2(c)(7)(iii).

In addition to authorizing inflation adjustments for the CNMI education funding fee, the 2018 CNMI Act created a new $50 CNMI fraud prevention and detection fee. 2018 CNMI Act, sec. 3 (amending 48 U.S.C. 1806(a)(6)(A)(iv)). The new $50 fraud prevention and detection fee is in addition to other fees that employers must pay for petitions to employ CNMI-only transitional workers. *See* proposed 8 CFR 106.2(c)(6). USCIS began accepting the fee on July 25,

[130] USCIS, *New Legislation Increases Availability of Visas for CNMI Workers for Fiscal Year 2017, https://www.uscis.gov/news/news-releases/new-legislation-increases-availability-visas-cnmi-workers-fiscal-year-2017* (last reviewed/updated on Aug. 28, 2017).

[131] Beginning in fiscal year 2020, the Secretary of Homeland Security, through notice in the **Federal Register**, may annually adjust the supplemental fee imposed under clause (i) by a percentage equal to the annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics. 48 U.S.C. 1806(a)(6)(A)(ii).

2018.[132] The new fee is only due at the time of filing. It is a single $50 fee per petition, not a fee charged per beneficiary like the CNMI education funding fee. USCIS must use the revenue for preventing immigration benefit fraud in the CNMI, in accordance with INA section 286(v)(2)(B), 8 U.S.C. 1356(v)(2)(B). *See also* 48 U.S.C. 1806(a)(6)(A)(iv), as amended by 2018 CNMI Act, sec. 3.

DHS also proposes conforming edits to CNMI regulations regarding fee waivers and biometric services. Currently, some CNMI applicants and beneficiaries may qualify for a fee waiver based on inability to pay or other reasons. *See* 8 CFR 214.2(e)(23)(xv), (w)(5), and (w)(14)(iii). Generally, fee waivers are not available for employment-based applications and petitions. However, when DHS established the CW–1 petition fees, it decided to treat the CNMI with more flexibility in this regard. *See* 76 FR 55513–4. As discussed in section V.C., Fee Waivers, DHS proposes to limit fee waivers to immigration benefit requests for which USCIS is required by law to consider a fee waiver. DHS proposes in this rule to treat CW–1 petitions like other employment-based petitions. *See* proposed 8 CFR 106.3. The proposed change would eliminate fee waiver eligibility for CNMI applicants and beneficiaries. *See* proposed 8 CFR 214.2(e)(23)(xv), (w)(5) and (w)(14)(iii). Currently, in addition to the petition fee paid by their employer, CNMI beneficiaries may pay an additional biometric services fee when seeking a grant or extension of CW–1 status in the CNMI. *See* 76 FR 55513–4; 8 CFR 214.2(e)(23)(viii) and (w)(15). As explained in section V. E., Changes to Biometric Services Fee, DHS proposes to incorporate the cost of biometric services into the underlying immigration benefit request fees. This proposed change would place the entire financial burden for CNMI petition fees on the employer, eliminating any fees paid by the employee. *See* proposed 8 CFR 106.2, 214.2(v)(23)(viii) and (w)(15). However, employees and their families filing Form I–539 to request a grant or extension of derivative CW–2 nonimmigrant status for a spouse or child of a CW–1 nonimmigrant would still be responsible for that filing fee. A fee waiver would no longer be available.

DHS does not propose to limit the number of named beneficiaries included in a single I–129CW filing.

J. Premium Processing

1. Change Premium Processing Fee by Guidance

The INA permits certain employment-based immigration benefit applicants and petitioners to request, for an additional fee, premium processing. *See* Public Law 106–553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A–68 (Dec. 21, 2000); INA sec. 286(u), 8 U.S.C. 1356(u). Congress set the premium processing fee and authorized USCIS to adjust the fee for inflation, as determined by the Consumer Price Index (CPI). *Id.* DHS recently increased the premium processing fee for inflation. *See* 83 FR 44449; 8 CFR 103.7(b)(1)(i)(SS); proposed 8 CFR 106.4. The current fee is $1,410.[133] USCIS currently offers premium processing to employment-based petitions including Form I–129, Petition for Nonimmigrant Worker, and Form I–140, Immigrant Petition for Alien Worker, in certain visa classifications. Currently, petitioners and applicants use Form I–907, Request for Premium Processing Service, and pay the $1,410 fee to request 15-day processing. DHS is not proposing a change to premium processing fees at this time.

DHS proposes to amend its regulations so that it can notify the public of future premium processing fee inflationary increases through changes to Form I–907 instructions (following the requirements of 5 CFR part 1320) and the USCIS website, *http://www.uscis.gov*. *See* proposed 8 CFR 106.2(a)(43), 106.4(c) and 106.4(e)(ii). By law, DHS may adjust the premium processing fee for inflation according to CPI; therefore, the amount of the fee increase is straightforward and need not be codified. USCIS requires the flexibility to change the fee amount without undue delay when it needs additional premium processing fee revenue to provide premium processing services and to make infrastructure improvements in the adjudications and applicant- or petitioner-service processes as authorized by INA sec. 286(u), 8 U.S.C. 1356(u).

2. Change Calendar Days to Business Days

DHS proposes to change the limitation for 15-day processing currently codified at 8 CFR 103.7(e) from calendar days to business days. Proposed 8 CFR 106.4(d). For purposes of calculating the 15-day premium processing clock, business days are those days on which the Federal Government is open for business and does not include weekends, federally observed holidays, or the 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. The former INS established the 15-day period in June 2001. *See Establishing Premium Processing Service for Employment-Based Petitions and Applications,* 66 FR 29682 (June 1, 2001). The June 1, 2001 rule cited the District of Columbia Appropriations Act of 2001, Public Law 106–553, as specifying that the INS was required to process applications under the Premium Processing Service in 15 calendar days. 66 FR 29682. DHS has determined that the June 1, 2001 interim rule was incorrect, and that the District of Columbia Appropriations Act, 2001 did not include a requirement that the Service process applications under the Premium Processing Service in 15 calendar days. Therefore, DHS is free to interpret its authority under INA section 286(u), 8 U.S.C. 1356(u), to establish a new processing timeframe as 15 business days rather than 15 calendar days. In recent years, USCIS suspended premium processing for certain categories of employment-based petitions to permit officers to process long-pending non-premium filed petitions and to prevent a lapse in employment authorization for beneficiaries of Form I–129 extension of stay petitions. In certain instances, USCIS has been unable to accomplish the required 15-day response due to the high volume of incoming petitions and a significant surge in premium processing requests.[134] The proposed change from 15 calendar days to 15 business days will provide USCIS

[132] USCIS, *New Law Extends CNMI CW–1 Program, Mandates New Fraud Fee, and Will Require E-Verify Participation, https://www.uscis.gov/news/alerts/new-law-extends-cnmi-cw-1-program-mandates-new-fraud-fee-and-will-require-e-verify-participation* (last reviewed/updated on July 25, 2018).

[133] Premium processing fees are paid in addition to the regular form fee. *See* INA sec. 286(u), 8 U.S.C. 1356(u); 8 CFR 103.7(b)(1)(i)(SS)(1); proposed 8 CFR 103.4. For example, individuals would pay the proposed $545 fee for a Form I–140 under this rule, plus $1,410 for premium processing. Premium processing prioritizes the applicable application or petition for adjudication. The additional fee permits USCIS to devote specific resources to the processing of that immigration benefit request and to make infrastructure improvements in the adjudications and customer-service processes.

[134] *See* ''USCIS Will Temporarily Suspend Premium Processing for All H–1B Petitions, *https://www.uscis.gov/archive/uscis-will-temporarily-suspend-premium-processing-all-h-1b-petitions* (last reviewed/updated March 3, 2017); USCIS Will Temporarily Suspend Premium Processing for Fiscal Year 2019 H–1B Cap Petitions, *https://www.uscis.gov/news/alerts/uscis-will-temporarily-suspend-premium-processing-fiscal-year-2019-h-1b-cap-petitions* (last reviewed/updated March 20, 2018).

additional time to complete the necessary processing on a premium processing petition and issue a decision. The additional time may also reduce the need for USCIS to suspend premium processing when request filing volumes are high.

3. Actions That End or Restart The 15-Day Period

DHS also proposes that USCIS would refund the premium processing service fee but continue to process the case if it cannot take an adjudicative action on the request, as evidenced by notification of (but not necessarily receipt of) an approval or denial notice by the end of the 15th business day, beginning on the date the properly filed premium processing request was initially accepted by USCIS or the premium processing clock reset upon receipt of a response to a request for evidence (RFE) or notice of intent to deny (NOID). Proposed 8 CFR 106.4(d). That proposal represents no change, other than how the 15 days is calculated, from the current regulations governing USCIS requests for premium processing. 8 CFR 103.7(e). However, DHS also proposes to clarify its current premium processing regulations as they relate to what actions would terminate the 15-day period or otherwise start a new 15-day period. The current regulation is potentially confusing because it includes interim actions in the list of adjudicative actions evidencing of a ''final decision'' for the purpose of stopping the 15-day period. 8 CFR 103.7(e)(2)(i) (''If USCIS cannot reach a final decision on a request for which premium processing was requested, as evidenced by an approval notice, denial notice, a notice of intent to deny, or a request for evidence, USCIS will refund the premium processing service fee, but continue to process the case.''). In this rule, DHS proposes to clarify the two circumstances in which it would refund the premium processing fee:

1. Where USCIS does not take any adjudicative action within 15 business days from the date on which it accepts a properly filed request for premium processing, together with all required fees, or

2. Where USCIS does not take subsequent adjudicative action within 15 business days from the date on which USCIS receives a response to an RFE or a NOID.

DHS proposes that the 15-day period will stop when USCIS takes certain adjudicative actions, specifically the notification of an approval, denial, RFE or NOID. Proposed 8 CFR 106.4(d)(1). DHS also proposes to clarify that when USCIS issues an RFE or NOID on a benefit request for which premium processing service has been properly requested, including the payment of all required fees, a new 15 business day period will begin upon the receipt by USCIS of the benefit requestor's RFE or NOID response at the address that was required by the notice or online. Proposed 8 CFR 106.4(d)(2).

4. Expedited Processing for Other Requests

Commenters regularly request that DHS extend premium processing to other immigration benefit requests. *See, e.g.,* 75 FR 58978 and 81 FR 73309. The FY 2019/2020 fee review did not analyze the potential effect of premium processing for other forms. Congress established the premium processing service for ''employment-based petitions and applications.'' INA sec. 286(u), 8 U.S.C. 1356(u). Congress established the premium processing fee at an amount it determined to be appropriate, and it permitted USCIS to increase the fee based on inflation. *See* 81 FR 73309. These fees cover the estimated costs of providing premium processing for the associated benefits. Nevertheless, it would be difficult to estimate the staff, resources, and costs necessary to ensure the processing of additional benefit types within a certain time frame, especially when those cases may require other types of background checks, interviews, and additional steps that USCIS does not generally control. Expanding the premium processing program would require USCIS to estimate the costs of a service that does not currently exist with sufficient confidence that it can deliver the service promised and not impair service in other product lines. DHS would require the devotion of considerable resources to study a potential new premium processing program. Thus, DHS proposes no extension of premium processing beyond its current usage. However, comments are welcome on the subject.

K. Regional Centers

DHS proposes no fee change for Form I–924, Application for Regional Center Designation under the Immigrant Investor Program because the current fee is adequate. *See* 8 CFR 103.7(b)(1)(i)(WW); proposed 106.2(a)(47).

L. Secure Mail Initiative

In 2016, an OIG audit recommended that USCIS evaluate the costs and benefits of using the U.S. Postal Service's hold for pickup as an alternative secure method for delivering secure documents to applicants.[135] USCIS has decided to implement Signature Confirmation Restricted Delivery (SCRD) as the sole method of delivery of secure documents for USCIS.[136] Proposed 8 CFR 103.2(b)(19)(iii). USCIS began phasing in use of the Signature Confirmation Restricted Delivery service to re-mail Permanent Resident Cards, Employment Authorization Cards, and Travel Booklets returned by USPS as non-deliverable beginning on April 30, 2018.[137] USCIS analyzed the additional costs associated with expanding this service to all USCIS secured documents and determined that the cost in FY 2019 would be $26.9 million, based on anticipated mailing volumes and the per unit mailing cost of the service. USCIS planned for similar costs in FY 2020. As detailed in the supporting documentation, the ABC model assigned this additional cost to the Issue Document activity for immigration benefit requests that may result in a Permanent Resident Card, Employment Authorization Card, or Travel Booklet. Issue Document means producing and distributing secure cards that identify the holder as a foreign national and also identifies his or her immigration status and/or employment authorization.[138] As proposed, DHS, at its discretion, may require the use of Signature Confirmation Restricted Delivery for additional documents beyond Permanent Resident Cards, Employment Authorization Cards, and Travel Booklets (for example, certificates of naturalization and citizenship, which are currently being mailed to recipients) in the future by updating the relevant form instructions. Proposed 8 CFR 103.2(b)(19)(iii).

M. Intercountry Adoptions

1. Adjustment to Proposed Fees for Certain Intercountry Adoption-Specific Forms

DHS proposes to limit the increase of adoption-related fees in this rule

[135] DHS OIG, *Better Safeguards are Needed in USCIS Green Card Issuance* (Nov. 16, 2016), *available at https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-11-Nov16.pdf.*

[136] DHS OIG, *Verification Review: Better Safeguards are Needed in USCIS Green Card Issuance* (Apr. 10, 2018), *available at https://www.oig.dhs.gov/sites/default/files/assets/2018-04/OIG-18-61-Apr18.pdf.*

[137] USCIS, *USCIS to Begin Using More Secure Mail Delivery Service, https://www.uscis.gov/news/news-releases/uscis-begin-using-more-secure-mail-delivery-service* (last reviewed/updated April 27, 2018).

[138] See the FY 2019/2020 Immigration Examinations Fee Account Fee Review Supporting Documentation included in the docket of this NPRM for more information on fee review activities.

consistent with previous fee rules. *See, e.g.,* 81 FR 73298. DHS will continue its policy of reducing fee burdens on adoptive families by covering some of the costs attributable to the adjudication of certain adoption-related petitions and applications (Forms I–600/600A/800/800A) through the fees collected from other immigration benefit requests. If DHS used the estimated fee-paying unit cost from the ABC model for Form I–600, then this benefit request would have a fee of at least $1,423.[139] DHS believes that it would be contrary to public and humanitarian interests to impose a fee of this amount on prospective adoptive parents seeking to adopt a child from another country. Therefore, DHS proposes to apply the 5 percent weighted average increase to the current fee of $775, representing a $35 increase to $810 for Forms I–600/600A/800/800A. Proposed 8 CFR 106.2(b)(21), (22), (23), (33), (34), (35).

2. Clarification of Fee Exception for Birth Siblings

DHS proposes amendments to 8 CFR 106.2, 204.3, and 204.313 to clarify the regulations and align them 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. Currently, prospective adoptive parents with a valid Form I–600A or Form I–800A approval to adopt more than one child are not required to pay a fee for the first Form I–600 or Form I–800 petition. They are required to pay the Form I–600 or Form I–800 filing fee for additional Form I–600 or Form I–800 petitions, unless the beneficiaries are birth siblings. If the beneficiaries are not birth siblings, the Form I–600 or Form I–800 fee is required for each petition after the first. To align with current and historical practice, DHS proposes to clarify in the regulations that this exception is limited to ''birth'' siblings. This approach is consistent with the special treatment afforded in the INA to ''natural siblings,'' which allows a Form I–600 or Form I–800 petition to be filed for a child up to age 18, rather than 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. INA 101(b)(1)(F)(ii) and (G)(iii); 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 siblings'' synonymously, which includes half-siblings but does not include adoptive siblings.

3. Suitability and Eligibility Approval Validity Period

DHS proposes amendments to 8 CFR 204.3 relating to orphan cases under INA section 101(b)(1)(F), 8 U.S.C. 1101(b)(1)(F) (non-Convention cases). The proposed revisions to the orphan regulations are necessary to eliminate disparity between the 18-month approval period for the Form I–600A, Application for Advance Processing of an Orphan Petition, the 15-month validity period of FBI fingerprint clearances, and the 15-month approval period for a Form I–800A, Application for Determination of Suitability to Adopt a Child from a Convention Country and any approved extension.

Under current regulation, the approval of a Form I–600A in an orphan case is valid for 18 months. *See* 8 CFR 204.3(h)(3)(i). However, standard USCIS policy has been that the FBI's clearance of a person's fingerprints is valid for 15 months, thereby creating inconsistency and a gap period with the 18-month approval validity period for the Form I–600A. This inconsistency was partially resolved with the ratification of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention) and subsequent codification of 8 CFR 204.312(e)(1), whereby the initial approval period for a Form I–800A in a Convention case is 15 months from the date USCIS received the initial FBI response for the fingerprints of the prospective adoptive parent(s) and any adult members of the household. This 15-month period also applies to the extension of the Form I–800A approval period for an additional 15 months from the date USCIS receives the new FBI response on the fingerprints. Creating parity in the approval periods for suitability and eligibility determinations provides additional protections for adopted children and provides consistency and alignment of the orphan and Hague regulations. Having a standardized 15-month validity period will also alleviate the burden on prospective adoptive parents and adoption service providers to manage and monitor multiple expiration dates. Therefore, DHS proposes to alter the validity period for a Form I–600A approval in an orphan case to 15 months. Proposed 8 CFR 204.3(b), (d), (h)(3)(i),[140] (h)(7), & (h)(13).

4. Form I–600A/I–600, Supplement 3, Request for Action on Approved Form I–600A/I–600

DHS proposes to create a new form to further align the processes for adoptions from countries that are party to the Hague Adoption Convention, with the process for adoptions from countries that are not party to that Convention. The proposed form name is Form I–600A/I–600, Supplement 3, Request for Action on Approved Form I–600A/I–600. The proposed fee is $405. Proposed 8 CFR 106.2(b)(23). As discussed in the Paperwork Reduction Act section of this preamble, the draft Supplement 3 is posted in the docket of this rulemaking for the public to review and provide comments.

Currently, U.S. citizen applicants and petitioners (prospective adoptive parents) face somewhat different processes depending on whether the child or children that they wish to adopt is from a Hague Adoption Convention country or a non-Hague Adoption Convention country. USCIS uses Forms I–800, I–800A, and I–800A Supplement 3 for Hague Adoption Convention countries. USCIS uses Forms I–600 and I–600A for non-Hague Adoption Convention countries. A fee for Form I–600A/I–600 Supplement 3 would further align the Form I–600A/I–600 post-approval request process with the existing Form I–800A process in four key areas:

1. Suitability & Eligibility Extensions;
2. New Approval Notices;
3. Change of Country; and
4. Duplicate Approval Notices.

USCIS adjudicators must re-assess whether prospective adoptive parents are still suitable and eligible to adopt if the prospective adoptive parents' circumstances have changed after the initial USCIS suitability determination. The proposed fee would help recover some of the cost for this work.

Table 12 and the following sections summarize the current process and the proposed changes.

[139] Model output from supporting documentation in the docket, page 22.

[140] In addition to changing the 18-month period to 15 months, DHS is removing the internal procedure from 8 CFR 204.3(h)(3)(i) that provides where documents will be forwarded and notification of overseas offices of the approval, and is correcting a reference to the number of children the prospective adoptive parents are approved for in the home study to refer to the number of children the prospective adoptive parents are approved for in the Form I–600A approval. DHS is also adding a reference to proposed 8 CFR 106.2(a)(23) in section 204.3(h)(3)(i), relating to Form I–600A extension requests. Additionally, DHS is replacing the reference to an outbreak of Severe Acute Respiratory Syndrome in section 204.3(h)(3)(ii) with a more general reference to public health or other emergencies. This revision will provide the agency with the flexibility to extend Form I–600A validity periods when it determines that an emergency situation, other than a SARS outbreak, prevents petitioners from timely filing a Form I–600 petition before expiration of their Form I–600A approval.

TABLE 12—SUMMARY OF CURRENT AND PROPOSED ADOPTION PROCESSES RELATED TO PROPOSED FORM I–600A/I–600 SUPPLEMENT 3

Type of change	Current process	Proposed process
Suitability & Eligibility Extensions.	The Form I–600A approval notice reflects a validity period for the prospective adoptive parents' suitability and eligibility determination. Currently, U.S. citizen applicants (prospective adoptive parents) may request one initial extension of their Form I–600A approval without fee by submitting a request in writing. Prospective adoptive parents are not able to request a second or subsequent extension of their Form I–600A approval.	DHS proposes to require prospective adoptive parents to submit Form I–600A/I–600, Supplement 3 to request the initial no-fee extension. Form I–600A/I–600 Supplement 3 would allow prospective adoptive parents to request second or subsequent extensions with the proposed fee.
Home Study Updates	Currently, prospective adoptive parents can request a new approval notice based on a significant change and updated home study with no fee. New approvals require adjudicators to re-assess whether prospective adoptive parents remain suitable and eligible to adopt after the significant change in circumstances. (For example, significant decreases in finances, change of residence, other changes in the household, etc.) Prospective adoptive parents must pay the fee for Form I–600A or I–600 if it is a second or subsequent request unless they are also requesting their first (no fee) extension or first (no fee) change of country.	DHS proposes to require prospective adoptive parents to submit Form I–600A/I–600, Supplement 3 to request a new approval notice. The prospective adoptive parent must pay the fee unless they are also filing a first time request for either an extension or change of country. Second or subsequent requests would require the proposed fee.
Change of Country	Currently, prospective adoptive parents may change their proposed country of adoption once without fee. For example, if they are matched with an eligible orphan in a country other than the country initially identified on their Form I–600A. For subsequent country changes, prospective adoptive parents file Form I–824, Application for Action on an Approved Application or Petition, with fee.	DHS proposes to require prospective adoptive parents to submit Form I–600A/I–600, Supplement 3 to request the initial no-fee change of proposed country of adoption.* [141] Form I–600A/I–600 Supplement 3 would allow prospective adoptive parents to request a second or subsequent change in the proposed country of adoption with the proposed fee.

* See d. below for limitations in Hague Adoption Convention transition cases and countries.

a. Suitability & Eligibility Extensions

Currently, U.S. citizen prospective adoptive parents for non-Hague Adoption Convention countries may request no-fee initial extension of their Form I–600A approval.[142] Requests are submitted in writing and second or subsequent requests to extend their approval are not allowed. *See* 8 CFR 103.7(b)(1)(i)(Z)(*3*). DHS proposes that prospective adoptive parents be allowed to request more than one extension of their Form I–600A approval, if necessary, by filing the proposed Form I–600A/I–600 Supplement 3. The first request would be free under this proposal. Second or subsequent requests would require the proposed fee of $405. *See* proposed 8 CFR 106.2(a)(23).

b. New Approval Notices

Currently, prospective adoptive parents using the non-Hague Adoption Convention process may request a new approval notice based on a significant change in circumstances and an updated home study at no cost. *See* 8 CFR 103.7(b)(1)(i)(Z). DHS proposes that prospective adoptive parents must file the proposed Form I–600A/I–600 Supplement 3 to notify USCIS of a significant change and request a new approval notice. *See* proposed 8 CFR 106.2(a)(23). The prospective adoptive parent must pay the proposed fee of $405 unless they are also filing either a first time request for an extension or change of country on the same Supplement 3.

c. Change of Country

Currently, prospective adoptive parents may change the proposed country of adoption once without fee and may make subsequent country changes by filing Form I–824, Application for Action on an Approved Application or Petition, with fee. *See* 8 CFR 103.7(b)(1)(i)(OO). DHS proposes that prospective adoptive parents be allowed to change the proposed country of adoption by filing the proposed Form I–600A/I–600 Supplement 3. The first request to change countries would remain without fee under this proposal. Second or subsequent requests would require the proposed fee of $405. *Id.*

d. Hague Adoption Convention Transition Cases

DHS proposes to clarify the processes for requesting an extension of the Form I–600A approval and other actions on an approved Form I–600A or I–600 as they pertain to adoptions from countries that newly become a party to the Hague Adoption Convention. When the Hague Adoption Convention enters into force for a country, cases that meet certain criteria are generally permitted by the new Convention country to proceed as ''transition cases'' under the non-Hague Adoption Convention process (Form I–600A and Form I–600 process). Provided that the new Convention country agrees with the transition criteria, USCIS will generally consider a case to be a transition case if, before the date the Convention entered into force for the country, the prospective adoptive parent(s): (1) Filed a Form I–600A that designated the transition country as the intended country of adoption or did not designate a specific country; (2) filed a Form I–600 on behalf of a beneficiary from the transition country; or (3) completed the adoption of a child from the transition country. If the case does not qualify as a transition case, the prospective adoptive parents will generally need to follow the Hague

[141] See section V.M.4.d. for limitations in Hague Adoption Convention transition cases and countries.

[142] The Form I–600A approval notice reflects the validity period of the prospective adoptive parents' suitability and eligibility determination.

Adoption Convention process with the filing of Form I–800A and Form I–800. With the addition of the new Form I–600A/I–600 Supplement 3, DHS proposes to codify certain limitations on when the Supplement 3 can be used in the context of transition cases.

i. Suitability and Eligibility Extensions

If a case qualifies as a transition case based on the filing of Form I–600A before the entry into force date, in order to continue as a transition case the prospective adoptive parents must file the Form I–600 petition while the Form I–600A approval remains valid. Currently, prospective adoptive parents are permitted to request a one-time, no-fee extension of their Form I–600A approval in order to remain a transition case. As discussed in section a.) above, DHS proposes that prospective adoptive parents may request more than one extension of their Form I–600A approval outside of the transition context. DHS proposes that prospective adoptive parents may only be permitted to request a one-time extension of their Form I–600A approval as a qualified transition case. *See* proposed 8 CFR 106.2(a)(23). Generally, transition countries have requested that DHS limit the ability of transition cases to continue indefinitely in order to limit the confusion that having two simultaneously running processes causes to its administrative bodies and judicial systems. This will provide prospective 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, but reasonably limits the ability to indefinitely extend the validity period of the Form I–600A approval and the processing of transition cases under the non-Hague process.

ii. Change of Country

The transition criteria were generally designed to permit prospective adoptive parents who had taken certain steps to begin the intercountry adoption process with a country before the Convention entered into force to be able to continue under the non-Hague process, rather than requiring them to begin under the Hague process, which has different processing requirements. If the prospective adoptive parents designated a country of intended adoption on their Form I–600A or prior change of country request other than the transition country, they generally would not fall into the category of families the transition criteria were intended to reach because the designation is an indication they have begun the intercountry adoption process with the designated country and not with the transition country. Therefore, in the transition context, prospective adoptive parents who designated a country on their Form I–600A or prior change of country request that is not the transition country generally have not been permitted to change their Form I–600A approval to a transition country for purposes of being considered a transition case. DHS proposes to codify this limitation in this rule. *See* proposed 8 CFR 106.2(a)(23).

iii. Requests To Increase the Number of Children Approved To Adopt

Outside of the transition context, prospective adoptive parents are generally permitted to request an updated Form I–600A approval notice to increase the number of children they are approved to adopt. In the transition context, however, prospective adoptive parents with transition cases generally have not been permitted to request an increase in the number of children they are approved to adopt from a transition country.[143] However, unless prohibited by the new Convention country, DHS will permit prospective adoptive parent(s) to request an updated Form I–600A approval notice to increase the number of children they are approved to adopt as a transition case only in order to pursue the adoption of a birth sibling, provided the birth sibling(s) is (are) identified and the Form I–600 petition is filed before the Form I–600A approval expires. *See* proposed 8 CFR 106.2(a)(23). This approach is consistent with the special treatment afforded in the INA to ''natural siblings,'' which allows a Form I–600 or Form I–800 petition to be filed for a child up to age 18, rather than 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. INA 101(b)(1)(F)(ii) and (G)(iii); 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 siblings'' synonymously, which includes half-siblings but does not include adoptive siblings.

5. Form I–800A, Supplement 3, Request for Action on Approved Form I–800A

DHS also proposes to provide a fee of $405 at 8 CFR 106.2 and clarify 8 CFR 204.312 to align with the current process for adjudicating Form I–800A Supplement 3. Currently, prospective adoptive parents may request a first extension of the Form I–800A approval and a first time change in the proposed country of adoption, by filing Form I–800A Supplement 3 without a fee. Second or subsequent requests for an extension or change of country can currently be made by filing Form I–800A Supplement 3 with a fee. Additionally, prospective adoptive parents can currently request a new approval notice based on a significant change and updated home study by filing Form I–800A Supplement 3. A request for a new approval notice must be submitted with a fee, unless the prospective adoptive parents are also filing a first time request for either an extension or change of country on the same Supplement 3. When DHS implemented the Hague Adoption Convention, as a matter of operational efficiency USCIS decided to accept Form I–800A Supplement 3 extension requests regardless of whether the Form I–800 petition was already filed, rather than requiring prospective adoptive parents to file a new Form I–800A to begin the process anew. That procedure generally shortens the subsequent suitability and eligibility adjudication process for prospective adoptive parents seeking an extension of their Form I–800A approval, as Supplement 3 adjudications are generally prioritized over new Form I–800A filings, allowing for a new decision on the prospective adoptive parents' suitability and eligibility to occur more quickly. Therefore, DHS proposes to amend 8 CFR 204.312(e)(1)(i) to permit the filing of Form I–800A Supplement 3 regardless of whether Form I–800 has been filed.

N. Changes to Genealogy Search and Records Requests

DHS proposes changes to the genealogy search and request fees in the FY 2019/2020 IEFA fee review. These proposals will allow USCIS to send pre-existing digital records as part of a response to requestors who have filed Form G–1041, Genealogy Index Search Request, and may otherwise help USCIS improve genealogy processes.

The USCIS genealogy program processes requests for historical records of deceased individuals. *See* Establishment of a Genealogy Program, 73 FR 28026 (May 15, 2008) (final rule). Before creating a genealogy program, USCIS processed the requests as Freedom of Information Act (FOIA) request workload, which resulted in delays. *See* Establishment of a Genealogy Program, 71 FR 20357–8 (Apr. 20, 2006) (proposed rule).

[143] *See https://www.uscis.gov/adoption/country-information/adoption-information-haiti.*

Requestors use the USCIS website [144] or Form G–1041, Genealogy Index Search Request, to request an index search of USCIS historical records. *See* 8 CFR 103.7(b)(1)(i)(E). USCIS informs the requestor whether any records are available by mailing a response letter. Requestors use the Form G–1041A, Genealogy Records Request, to obtain copies of USCIS historical records, if they exist. *See* 8 CFR 103.7(b)(1)(i)(F).

In the FY 2016/2017 fee rule, USCIS adopted the first change to the genealogy search and records requests fees since they had been established at $65 fee for both search requests and records requests. *See* 81 FR 73304. At the time, genealogy fees were insufficient to cover the full costs of the genealogy program. USCIS increased the fee to meet the estimated cost of the program and permit USCIS to respond to requests for such historical records and materials.

After nearly ten years of operating the genealogy program, DHS proposes to make several changes to the process. Ultimately, these changes are intended to allow USCIS to provide genealogy search results and historic records more quickly when pre-existing digital records exist.

First, DHS proposes to expand the use of online genealogy requests. DHS proposes to revise genealogy regulations to encourage requestors to submit the electronic versions of Form G–1041, Genealogy Index Search Request, and Form G–1041A, Genealogy Records Request, through the online portal at *https://www.uscis.gov/genealogy*. *See* proposed 8 CFR 103.40(b). Electronic versions of the requests reduce the administrative burden on USCIS by eliminating the need to manually enter requestor data into its systems. Requestors that cannot submit the forms electronically may still submit paper copies of both forms with the required filing fees.

Second, DHS proposes to change the search request process so that USCIS may provide requestors with pre-existing digital records, if they exist, in response to a Form G–1041, Genealogy Index Search Request. 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 as a result of the search request. DHS proposes to provide the requestor with those pre-existing digital records, if they exist, in response to the initial search request. *See* proposed 8 CFR 103.40(f). DHS proposes in this rule to streamline the process for Form G–1041, Records Index Search and provide the pre-existing digital records to either an electronic reading room that can be accessed with a unique pin number, by mail with a CD, or paper copy and not require Form G–1041A. If no records exist, or if only paper copies of the records exist, then the requestor must follow the current process.

As a result of the proposed changes for pre-existing digital records, USCIS proposes to limit Form G–1041A, Genealogy Records Request, to only paper file requests. *See* proposed 8 CFR 103.40(g). Consistent with current practices, requestors must still pay the genealogy records request fee for a paper record requested. USCIS believes the change will increase efficiency and decrease future wait times for requestors.

Lastly, DHS proposes to change the genealogy fees as a result of these operational changes. *See* 8 CFR 103.7(b)(1)(i)(E) and (F); proposed 8 CFR 106.2(c)(1) and (2). The proposed fees are based on results from the same ABC model used to calculate other immigration benefit request fees proposed in this rule. The proposed fees for Forms G–1041 and G–1041A are $240 and $385 respectively. They are based on the projected costs and volumes of the genealogy program. The projected costs include a portion of Lockbox costs and an estimated staffing requirement for genealogy workload. USCIS estimated the workload volume based on these proposed changes. Additionally, USCIS used historic information to calculate completion rates for genealogy search and records requests. The completion rates allow for separate search and record request fees based on the average time to complete a request. As such, the proposed fees each represent the average staff time required to complete the request, similar to most other fees proposed in this rule.

O. Naturalization and Citizenship Related Forms

1. No Longer Limit the Form N–400 Fee

DHS proposes to increase the fee for Form N–400, Application for Naturalization, from $640 to $1,170, a $530 or 83 percent increase. *See* 8 CFR 103.7(b)(1)(BBB); proposed 8 CFR 106.2(b)(3). Prior fee rules shifted a portion of the Form N–400 cost to other fee-paying immigration benefit requestors, such as applicants for Certificates of Citizenship. In the FY 2010/2011 and the FY 2016/2017 fee rules, the Form N–400 fee was set below the ABC model output. The FY 2010/2011 fee rule held the fee to $595, the amount set in the FY 2008/2009 fee rule. *See* 75 FR 58975. The FY 2016/2017 fee rule limited the fee to only $640, a $45 or 8 percent increase. *See* 81 FR 73307.

The FY 2010/2011 proposed rule explained that holding Form N–400 to the FY 2008/2009 fee raised all other proposed fees by approximately $8 each. *See* 75 FR 33462. For DHS to recover full cost of Form N–400, the FY 2010/2011 proposed fee would have been $655, a $60 or roughly a 10 percent increase. *See* 75 FR 33462–3. In the FY 2016/2017 fee rule supporting documentation, USCIS estimated that each Form N–400 may cost $871 to complete, plus the cost for biometric services of $75, for a total of $946.[145]

In crafting prior fee rules, DHS reasoned that setting the Form N–400 fee at an amount less than its estimated costs and shifting those costs to other fee payers was appropriate in order to promote naturalization and immigrant integration.[146] DHS now believes that shifting costs to other applicants in this manner is not equitable given the significant increase in Form N–400 filings in recent years.[147] Therefore, DHS proposes to no longer limit the Form N–400 fee, thereby mitigating the fee increase of other immigration benefit requests and implementing the beneficiary-pays principle. DHS proposes a $1,170 fee for Form N–400 to recover the full cost of adjudicating the Form N–400, as well as a proportion of costs not recovered by other forms for which fees are limited or must be offered a waiver by statute.[148]

[144] USCIS, *Genealogy, https://www.uscis.gov/genealogy.*

[145] See the Model Output column of Appendix Table 4: Final Fees by Immigration Benefit Request in the docket of the FY 2016/2017 fee rule. The model output is the projected total cost from the ABC model divided by projected fee-paying volume. It is only a forecast unit cost (using a budget) and not the actual unit cost (using spending from prior years). USCIS does not track actual costs by immigration benefit request.

[146] *See, e.g.,* 75 FR 33461; 81 FR 26916.

[147] Based on filing volume trends in recent years, USCIS forecasts an increase of 82,827 Form N–400 applications, nearly a 10% percent increase from the FY 2016/2017 fee rule forecast. *See* Table 4: Workload Volume Comparison.

[148] See the supporting documentation of this proposed rule, Appendix V: Proposed Fee Adjustments to IEFA Immigration Benefits, for more information.

2. Remove Form N–400 Reduced Fee

In addition to eliminating Form N–400 fee waiver requests, as explained above at section V.C., DHS proposes to remove the reduced fee option for those naturalization applicants with family incomes greater than 150 percent and not more than 200 percent of the FPG currently codified at 8 CFR 103.7(b)(1)(i)(BBB)(*1*). Currently, qualifying applicants pay a fee of $320 plus an additional $85 for biometric services, for a total of $405. To qualify for a reduced fee, the eligible applicant must submit a Form I–942, Request for Reduced Fee, along with his or her Form N–400. Form I–942 requires the names of everyone in the household and documentation of the household income to determine if the applicant's household income is greater than 150 and not more than 200 percent of the FPG. DHS implemented this reduced fee option in the FY 2016/2017 fee rule to limit any potential economic disincentives that some eligible naturalization applicants may face when deciding whether to seek U.S. citizenship. *See* 81 FR 73307. DHS now proposes to eliminate the reduced fee option and return to a policy of all naturalization applicants paying the same fee. For the same reasons explained above with regard to no longer limiting the Form N–400 fee, DHS proposes to eliminate the reduced fee in order to recover full cost for naturalization services.[149] The proposed fees would also recover a portion of the cost of adjudicating forms for which USCIS is required by law to offer a fee waiver request and where the fees are limited by law, regulation, or policy, referred to as cost reallocation in the supporting documentation.[150] DHS also proposes to eliminate Form I–942 because there will no longer be a purpose for it.

3. Military Naturalization and Certificates of Citizenship

DHS does not propose any changes to fee exemptions for military members and veterans who file a Form N–400 under the military naturalization provisions. Military naturalization applications will continue to be fee exempt. *See* 8 CFR 103.7(b)(1)(BBB)(*2*); proposed 8 CFR 106.2(b)(3). USCIS does not charge a fee to military naturalization applicants because such fees are prohibited by statute. *See* INA secs. 328(b)(4), 329(b)(4). Applicants who request a hearing on a naturalization decision under INA sections 328 or 329 with respect to military service will continue to be fee exempt. *See* 8 CFR 103.7(b)(1)(AAA); proposed 8 CFR 106.2(b)(2). Members and veterans of any branch of the U.S. Armed Forces will continue to be exempt from paying the fee for an Application for Certificate of Citizenship, Form N–600. *See* 8 CFR 103.7(b)(1)(EEE); proposed 8 CFR 106.2(b)(6). While the statute prohibits fees for military naturalization applicants themselves, the Department of Defense (DOD) currently reimburses USCIS for costs related to such applications.[151] Accordingly, USCIS does not propose to increase fees to subsidize the costs of military naturalization applications.

4. Proposed Changes to Other Naturalization-Related Application and Certificate of Citizenship Application Fees

DHS proposes to adjust fees for other citizenship and naturalization forms. Some of the proposed fees are significant increases from the current fees, but others are decreases to reflect the estimated cost of adjudicating each form.

In previous fee rules, DHS limited the fee increase for several naturalization-related forms, in addition to Form N–400. *See* 75 FR 33461 and 81 FR 26915. These naturalization-related forms are as follows:

- Form N–300, Application to File Declaration of Intention
- Form N–336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA)
- Form N–470, Application to Preserve Residence for Naturalization Purposes.

In the FY 2016/2017 fee rule, USCIS estimated that the cost of processing each of these forms was significantly greater than the fee.[152] Consistent with previous fee rules, DHS used its fee setting discretion to limit the increase of these fees, as shown in Table 14 of the supporting documentation of the FY 2016/2017 fee rule. At the time, DHS recognized that charging less than the full cost of adjudicating these and other immigration benefit requests required USCIS to increase fees for other immigration benefit requests to ensure full cost recovery. *See* 81 FR 26915.

The proposed fees in this rule would recover full cost for these immigration benefit requests and a portion of cost reallocation, using the standard methodology described in the supporting documentation included in this docket. *See* proposed 8 CFR 106.2(b)(1), (2), (3), and (4).

TABLE 13—NATURALIZATION FEE-PAYING UNIT COSTS (MODEL OUTPUT) AND FEES COMPARED

Immigration benefit request	FY 2016/2017 Fee-paying unit cost	Current fee	Current fee—FY 2016/2017 Cost	FY 2018/2019 Fee-paying unit cost	Proposed fee	Proposed fee—FY 2019/2020 cost
N–300 Application to File Declaration of Intention	$840	$270	−$570	$1,111	$1,320	$209
N–336 Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA)	1,294	700	−594	1,474	1,755	281
N–400 Application for Naturalization	871	640	−231	985	1,170	185
N–470 Application to Preserve Residence for Naturalization Purposes	792	355	−437	1,347	1,600	253
N–565 Application for Replacement Naturalization/Citizenship Document	399	555	156	458	545	87
N–600 Application for Certificate of Citizenship	841	1,170	329	853	1,015	162

[149] Recently, Congress encouraged USCIS ''to consider whether the current naturalization fee is a barrier to naturalization for those earning between 150 percent and 200 percent of the federal poverty guidelines, who are not currently eligible for a fee waiver.'' H. Rep. 115–948 at 61. Although USCIS considered this report in formulating this proposed rule, USCIS has determined that it is neither equitable, nor in accordance with the principle of self-sufficiency that Congress has frequently emphasized, to continue to force certain other applicants to subsidize fee-waived and reduced-fee applications for naturalization applicants who are unable to pay the full cost fee.

[150] See footnote 40.

[151] The proposed fee would increase the reimbursable agreement between USCIS and DOD by approximately $4 million. The current fees for Form N–400 ($640) and biometric services ($85) total $725 per military naturalization. In FY 2019/2020, USCIS forecasts 9,300 military naturalizations per year. Under the current fees, this would cost DOD $6,742,500 each year. With the proposed $1,170 Form N–400 fee (which includes the cost of biometrics), the same volume would cost $10,881,000, a $4,138,500 or approximately 61 percent increase.

[152] See the Model Output column of Appendix Table 4: Final Fees by Immigration Benefit Request in the docket of the FY 2016/2017 fee rule.

TABLE 13—NATURALIZATION FEE-PAYING UNIT COSTS (MODEL OUTPUT) AND FEES COMPARED—Continued

Immigration benefit request	FY 2016/2017 Fee-paying unit cost	Current fee	Current fee—FY 2016/2017 Cost	FY 2018/2019 Fee-paying unit cost	Proposed fee	Proposed fee—FY 2019/2020 cost
N–600K Application for Citizenship and Issuance of Certificate Under Section 322	841	1,170	329	806	960	154

The proposed fees for Form N–600, Application for Certificate of Citizenship, and Form N–600K, Application for Citizenship and Issuance of Certificate Under Section 322, are lower than the current fees. The current fee for both forms is $1,170. *See* 8 CFR 103.7(b)(1)(i)(EEE) and (FFF). In the previous fee rule, USCIS proposed and finalized a combined rate for both forms. DHS proposes separate fees for each, based on the estimated cost and operational metrics for each workload. *See* proposed 8 CFR 106.2(b)(6) and (7). USCIS used separate completion rates and fee-paying volumes for each proposed fee.

The proposed fee decrease for Forms N–600 and N–600K is mainly due to the effect of the proposed limitation of fee waivers, which will enable greater cost recovery for several form types and limit the need for cost reallocation to fee-paying applicants. As noted in the FY 2016/2017 fee rule, the current fees for Forms N–600 assumed that approximately one third of applicants would receive a fee waiver. *See* 81 FR 73928. To recover full cost, DHS set the N–600 and the N–600K fee at a level high enough for fee-paying applicants to cover the cost of fee-waived work. *Id.* Because fee waivers would be limited under this proposed rule, fee-paying Forms N–600 and N–600K would no longer need to cover the cost of adjudicating fee-waived Forms N–600 and N–600K.[153] The proposed fees provide for the full recovery of costs associated with adjudicating the forms. Therefore, DHS is proposing lower fees for Forms N–600 and N–600K. The proposed fee for Form N–600 is $1,015, a $155 or 13 percent decrease from the current $1,170 fee. *See* 8 CFR 103.7(b)(1)(i)(EEE); proposed 8 CFR 106.2(b)(6). The proposed fee for Form N–600K is $960, a $210 or 18 percent decrease from the current $1,170 fee. *See* 8 CFR 103.7(b)(1)(i)(FFF); proposed 8 CFR 106.2(b)(7). DHS welcomes comments on the proposed changes to naturalization and Certificate of Citizenship applications.

[153] See V.C.3., Proposed Fee Waiver Changes section of this preamble for more information.

P. Asylum Fees

1. Fee for Form I–589, Application for Asylum and for Withholding of Removal

DHS proposes to establish a $50 fee for Form I–589, Application for Asylum and for Withholding of Removal, when that form is filed with USCIS (''affirmative asylum applications'').[154] *See* proposed 8 CFR 106.2(a)(20). The U.S. Government has never charged a fee for Form I–589, but rather has relied on other fee-paying benefit requestors to subsidize asylum seeking applicants. Application fees from other form types have always been used to fund the operations involved in processing asylum claims. *See, e.g.,* 81 FR 73295 and 73307. However, DHS has experienced a continuous, sizeable increase in affirmative asylum filings, and processing backlogs continue to grow. DHS is exploring ways to alleviate the pressure that the asylum workload places on the administration of other immigration benefits. A minimal fee would mitigate the fee increase of other immigration benefit requests.

Although the INA authorizes DHS to set fees ''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,'' INA sec. 286(m), 8 U.S.C. 1356(m), DHS proposes a $50 fee for Form I–589. The statutory authorization for fees allows, but does not require, imposition of a fee equal to the full cost of the services provided. Thus, DHS retains authority to impose asylum fees that are less than the estimated cost of adjudicating the applications. *See* INA sec. 208(d)(3), 8 U.S.C. 1158(d)(3).[155] In the FY 2019/2020 fee review, USCIS estimates that the cost of adjudicating Form I–589 is approximately $366. It represents the Asylum Division's salaries and Make Determination activity costs from the ABC model, which does not represent the full cost. It does not include estimated costs from any other Asylum Division activities or any other office within USCIS.[156] Therefore, the proposed $50 fee is in accord with INA section 208(d)(3), 1158(d)(3).[157]

To be clear, DHS is proposing a fee for a Form I–589 filed with DHS only. Whether the fee also will apply to a Form I–589 filed with EOIR is a matter within the jurisdiction of the Department of Justice rather than DHS, subject to the laws and regulations governing the fees charged in EOIR immigration proceedings. DHS also believes that the asylum fee may arguably be constrained in amount, but not prohibited, by the 1951 U.N. Convention Relating to the Status of Refugees (''1951 Convention'') and the 1967 U.N. Protocol Relating to the Status of Refugees (''1967 Protocol'').[158] The international treaty obligations of the United States under the 1951 Convention and the 1967 Protocol address the imposition of fees on individuals seeking protection, and

[154] Affirmative asylum applications are distinguished from defensive asylum applications, which are filed in proceedings before an immigration judge. *See, e.g.,* 8 CFR 1240.11(c).

[155] This section states, ''The Attorney General may impose fees for the consideration of an application for asylum, for employment authorization under this section, and for adjustment of status under section 209(b). Such fees shall not exceed the Attorney General's costs in adjudicating the applications. The Attorney General may provide for the assessment and payment of such fees over a period of time or by installments. Nothing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 286(m).''

[156] The FY 2019/2020 fee review assigned Asylum Division projected costs into the following other activities: Conduct TECS Check; Fraud Detection and Prevention; Inform the Public; Intake; Management and Oversight; Records Management. See the fee review supporting documentation included in this docket for the definitions of these activities and other information.

[157] The Immigration and Naturalization Service (INS), the predecessor to USCIS, proposed implementing a waivable $130 fee for asylum in 1994. *See* 59 FR 62284 (Dec. 5, 1994). INS did not include a fee in the final rule. The proposed $130 fee would be approximately $222 if adjusted for inflation from December 1994 to June 2019.

[158] 1951 Convention relating to the Status of Refugees, *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137; 1967 Protocol relating to the Status of Refugees, *open for signature* Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267. Although the United States is not a signatory to the 1951 Convention, it adheres to Articles 2 through 34 of the 1951 Convention by operation of the 1967 Protocol, to which the United States acceded on Nov. 1, 1968.

limit ''fiscal charges'' to not higher than those charged to their nationals in similar situations. Accordingly, any fee charged would need to be reasonably aligned with the fees charged for other immigration benefit requests.[159] The proposed $50 fee is in accord with this provision.

This proposal is also consistent with a Presidential Memorandum directing the Attorney General and the Secretary of Homeland Security, as applicable, to take all appropriate actions to propose regulations setting a fee for an asylum application not to exceed the costs of adjudicating the application, as authorized by section 208(d)(3) of the INA (8 U.S.C. 1158(d)(3)) and other applicable statutes, and setting a fee for an initial application for employment authorization for the period an asylum claim is pending.[160]

Additionally, DHS considered the asylum fees charged by other nations. To determine the fiscal charges charged by other countries, USCIS requested a report from the Law Library of Congress on fees charged to asylum applicants by countries that are party to the 1951 Convention and/or its 1967 Protocol.[161] The Law Library of Congress surveyed the 147 signatory countries to the 1951 Convention and/or the 1967 Protocol, and of 147 countries, identified three countries that charge a fee for initial applications for asylum or refugee protection.[162] Those countries and amounts, provided in Table 14, indicate that the proposed $50 fee is in line with the fiscal charges charged by other countries.[163]

TABLE 14—ASYLUM FEES IN OTHER COUNTRIES

Country	Fee amount	Fee in USD	Notes
Australia	AUD 35	$25	No fee for a detained applicant.
Fiji	FJD 465	221	Allows for fee waivers.
Iran	IRR 12,321,000	293	For a family of 5 with some fee exemptions.

The projected FY 2019/2020 workload for Form I–589 is 163,000 annual receipts, or approximately 2 percent of the total USCIS workload forecast. The proposed $50 fee would generate an estimated $8.15 million in annual revenue. Therefore, in addition to alleviating pressure on the immigration benefit system, the proposed $50 fee for Form I–589 mitigates the proposed fee increase of other immigration benefit requests by approximately $5 or $10.

DHS is proposing no fee for an unaccompanied alien child (UAC) in removal proceedings who files Form I–589. The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2000 provides for a range of protections for UACs as amended by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. Public Law 110–457, 122 Stat. 5044 (2008). A UAC is defined by statute as a child who is less than 18 years old, has no legal status in the U.S., and has no parent or legal guardian in the U.S. who is available to provide care and physical custody. 6 U.S.C. 279(g)(2). Among other provisions, the TVPRA gives USCIS initial jurisdiction over asylum claims filed by UACs, even by those who are in removal proceedings before EOIR such that their asylum applications would otherwise be within the jurisdiction of an immigration judge. Section 235(d)(7)(B) of the TVPRA, as codified at 8 U.S.C. 1158(b)(3)(C), provides that ''[a]n asylum officer . . . [in the U.S. Citizenship and Immigration Services' (''USCIS'') Asylum Division] . . . shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child.'' In accordance with the statute governing asylum applications filed by UACs, they may file their Form I–589 with USCIS, even if they are in removal proceedings and their asylum claims are thus asserted as a defense to removal. Consistent with the protections provided to UACs by the TVPRA, and to avoid undue delay for this vulnerable population by impeding UACs in removal proceedings from filing a Form I–589, DHS proposes to exclude them from the proposed fees. A UAC who is not in removal proceedings will be charged the same proposed $50 Form I–589 fee as other affirmative filers.

As discussed in section V.C. of this preamble on fee waivers, DHS proposes that the $50 Form I–589, Application for Asylum and Withholding of Removal, fee will not be waivable. The proposed $50 fee would generate an estimated $8.15 million in annual revenue. If DHS permits fee waiver requests, it assumes that the costs of administering the fee waiver request review process may exceed the revenue, thereby offsetting any cost recovery achieved from the fee. Therefore, DHS proposes that the $50 Form I–589 fee is mandatory. DHS acknowledges that an alien who is not placed in removal proceedings will have no means of applying for recognition as a person in need of refugee protection and its attendant benefits such as asylum or withholding-based employment authorization, travel documents, or documentation of immigration status, if they do not pay the proposed $50 fee.[164] That is why although INA section 208(d)(3), 8 U.S.C.

[159] To the extent that the asylum application fee may arguably be considered to be a ''fiscal charge'' for purposes of Article 29(1) of the 1951 Convention Relating to the Status of Refugees—as incorporated by reference in the 1967 Protocol Relating to the Status of Refugees—the proposed $50 fee would be in accord with that provision, which limits ''fiscal charges'' charged to refugees to an amount not higher than those charged by the United States to U.S. nationals in similar situations. The proposed $50 fee would be reasonably aligned with the fees charged to U.S. nationals for other immigration benefit requests. And Congress, as evidenced by the express authority conferred in INA section 208(d)(3), clearly does not believe that charging a fee for asylum applications would run contrary to U.S. obligations under the 1967 Protocol. *See also INS* v. *Stevic,* 467 U.S. 407, 428 n.22 (1984) (describing provisions of the Convention and Protocol as ''precatory and not self-executing'').

[160] *See* Presidential Memorandum on Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System (Apr. 29, 2019), available at *https://www.whitehouse.gov/presidential-actions/presidential-memorandum-additional-measures-enhance-border-security-restore-integrity-immigration-system/* (last visited Aug. 6, 2019).

[161] *See* Library of Congress, *Fees Charged for Asylum Applications by States Parties to the 1951 Refugee Convention* (Dec. 29, 2017), *https://www.loc.gov/law/help/asylum-application-fees/index.php.*

[162] Additionally, while it does not charge a fee for making a claim for refugee or protection status, New Zealand typically grants individuals a ''Refugee Claimant Visitor Visa'' while claims are processed and charges for that visa (although that fee may be waived). Canada does not charge for making a claim of protection, but does charge for obtaining proof of permanent protection.

[163] Exchange rates as of June 30, 2019. *See* Department of the Treasury, Bureau of Fiscal Service, *Treasury Reporting Rates of Exchange: Current Rates* (Aug. 14, 2019), *https://www.fiscal.treasury.gov/reports-statements/treasury-reporting-rates-exchange/current.html.*

[164] *See, e.g.,* 1951 Refugee Convention Art. 27 (''The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.''), Art. 28(1) (''The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require . . . .'').

1158(d)(3) expressly authorizes charging a fee up to the full cost of providing the service, DHS is proposing a fee of $50 instead of at the level permitted under the INA to recover costs. In addition, DHS does not want the inability to pay the fee to be an extraordinary circumstance excusing an applicant from meeting the one-year filing deadline in INA 208(a)(2)(B), (D). *See also* 8 CFR 208.4(a)(5)(v) (''extraordinary circumstances'' includes situations in which the alien filed the Form I–589 prior to 1-yr deadline but application was returned as not properly filed, and then alien refiled within reasonable period thereafter). DHS considered the authority provided in INA section 208(d)(3), including that the fee be paid in installments or over time, various fee amounts and decided to propose $50 because it could be paid in one payment, would not require an alien an unreasonable amount of time to save, would generate some revenue to offset costs, discourage frivolous filings, and not be so high as to be unaffordable to even an indigent alien. DHS welcomes comments on the imposition of this fee, including the amount and whether it should be waivable.

2. Fee for the Initial Application for Employment Authorization While an Asylum Claim Is Pending

DHS proposes to require applicants who have applied for asylum or withholding of removal before EOIR (defensive asylum) or filed Form I–589 with USCIS (affirmative asylum), to pay the fee for initial filings of Form I–765. Currently, USCIS exempts applicants with pending asylum applications who are filing their first EAD application under the 8 CFR 274a.12(c)(8) eligibility category from the Form I–765 fee if the applicant submits evidence of an asylum application and follows other instructions.[165] Applicants with pending claims of asylum pay the fee for EAD renewal and replacement, per Form I–765 instructions and pursuant to 8 CFR 274a.12(c)(8).[166] USCIS projects that this change will require approximately 300,000 asylum applicants to pay the Form I–765 fee each year. USCIS will continue to require the fee for renewal EADs.

Initial applicants with pending claims of asylum are approximately 13 percent of the total Form I–765 workload volume forecast. Continuing to exempt this population from paying the Form I–765 fee would further increase the proposed fee. If DHS exempts initial applicants with pending claims of asylum, then the proposed fee would be $500 instead of $490, meaning fee-paying EAD applicants would pay $10 to fund the cost of EADs for asylum applicants. Therefore, DHS proposes that initial applicants with pending asylum claims pay a $490 Form I–765 fee in order to keep the fee lower for all fee-paying EAD applicants. All other noncitizens applying for employment authorization are required to pay fees. *See* 8 CFR 274a.13. DHS notes that INA section 208(d)(3), 8 U.S.C. 1158(d)(3), seems to limit the amount that can be charged for employment authorization for an asylum applicant where it states, ''Such fees shall not exceed the Attorney General's costs in adjudicating the applications.'' However, section 208(d)(3) also states, ''Nothing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 1356(m) of this title.'' That sentence permits DHS to charge asylum applicants the same fee for employment authorization that it charges all others for employment authorization because we calculate the proposed fee for the Form I–765, Application for Employment Authorization Document, using the fee-setting methodology outlined in this rule in accordance with INA sec. 286(m), 8 U.S.C. 1356(m). The proposed EAD fee ensures asylum applicants will pay no more for an EAD than any other EAD applicant except those for whom the fee has been waived. Therefore, the fee for Form I–765 proposed to be charged to asylum applicants complies with section 208(d)(3).

Q. DACA Renewal Fees

DHS proposes to add a fee for Deferred Action on Childhood Arrivals (DACA) renewal requests. *See* proposed 8 CFR 106.2(a)(38). Currently, DACA requestors use Form I–821D, Consideration of Deferred Action for Childhood Arrivals, for DACA renewal requests. Form I–821D currently has no fee. However, DACA requestors must pay the current fees of $410 and $85 for Form I–765 and biometrics services, respectively, which total $495 and may not be waived, although currently there are very limited circumstances where a fee exemption may be granted under DACA policy criteria. The proposed Form I–821D filing fee for renewal DACA requests is $275.[167] [168] This proposed filing fee for Form I–821D includes the cost of biometric services. Under the proposal, DACA requestors would still need to pay the filing fee for Form I–765 unless they qualify for an exemption, as provided through policy.[169] The proposed Form I–821D fee to request DACA renewal, plus the EAD fee, is $765. DHS proposes that DACA fees may not be waived, consistent with its current policy. One of the focuses of DACA when it was launched in 2012 is that the processing of DACA requests, including associated applications for employment authorization, does not result in an economic drain on DHS resources. Therefore, DHS set a standard for the exemption from the Form I–765 fee for DACA requests in a manner that balances the needs of the most vulnerable population likely to request DACA against USCIS' fiscal requirements for implementing the DACA initiative. A DACA requestor who requested Form I–765 fee exemptions faced significant delays in adjudicating the deferred action and the EAD request. Requests for DACA renewal will come from individuals who have had authorization to work lawfully in the U.S. for up to two years

[165] This fee exemption is provided in the Instructions to Form I–765, *Application for Employment Authorization,* by the USCIS Director or Deputy Director under the authority in 8 CFR 103.7(d); *see also* 8 CFR 274a.13(a)(applicants for EADs may be required to apply on a designated form and pay fees in accordance with form instructions).

[166] Class members subject to the settlement agreement under *American Baptist Churches* v. *Thornburgh,* 760 F. Supp. 796 (N.D. Cal. 1991), will be charged the fee generally applicable to employment authorization applications as proposed in this rule. The revised form instructions for Form I–765, Application for Employment Authorization, provide that class members may request that their fee be waived, as required by that agreement using the authority in proposed 8 CFR 106.3(d).

[167] Currently, DHS may also accept a limited number of requests from individuals who previously received DACA but whose most recent DACA grant expired before September 5, 2017 or was terminated at any time. Although these requests are filed as initial DACA requests because the individual is no longer eligible to file a renewal request under longstanding DACA policy, these requests would be subject to the proposed fee for renewal requests because two nationwide preliminary injunctions currently require USCIS to allow anyone who previously received DACA to request additional periods of deferred action and employment authorization.

[168] DHS does not propose to introduce a fee for Form I–821D initial DACA requests because USCIS does not currently accept such requests, except as described in footnote 167 above, or plan to accept them in the future. Should USCIS be required to accept initial DACA requests in the future, DHS would charge requestors the proposed $30 biometrics fee, because biometrics costs associated with these requests would not be recovered via the application fee of $0.

[169] *See* USCIS, Frequently Asked Questions, *https://www.uscis.gov/archive/frequently-asked-questions* (last reviewed/edited March 8, 2018).

and DHS assumes that these individuals will have found work and are currently working. Therefore, DHS proposes a consistent policy and will require the Form I–765 fee for DACA renewal.

TABLE 15—CURRENT AND PROPOSED DACA RENEWAL FEES COMPARED

DACA renewal request fees	Current fees	Proposed fees	Difference	Percentage difference
I–765 Application for Employment Authorization	$410	$490	$80	20%
I–821D Consideration of Deferred Action for Childhood Arrivals (Renewal)	0	275	275	N/A
Biometric Services	85	N/A	N/A	N/A
Total DACA Fees (Renewal)	495	765	270	55

The proposed Form I–821D fee does not include cost reallocation.[170] In other words, it does not recover any of the cost for workload without fees or with reduced fees. As such, the DACA workload in the proposed Form I–765 does not recover the projected costs of workload without fees or with fees below projected full cost. DHS proposes to not assign cost reallocation to the Form I–821D fee to mitigate the fiscal risk of relying on revenue from DACA in the event the DACA policy is ended in the future. However, the non-DACA related workload for Form I–765 does include cost reallocation. The Form I–765 proposed fee would be higher if both DACA and non-DACA workload included cost reallocation of workload without fees or with fees below projected full cost.

In September 2017, DHS rescinded the 2012 DACA memo and initiated a plan to wind down the policy, while opting not to terminate DACA and EADs for individuals who had a previously approved DACA request, based solely on the rescission. At present, however, DHS is operating under two nationwide preliminary injunctions issued by federal district courts in California (*Regents of University of California* v. *DHS,* No. 17–cv–05211 (N.D. Cal.)) and New York (*State of New York* v. *Trump,* No. 17–cv–05228 (E.D.N.Y.)). These injunctions require DHS to ''maintain the DACA program on a nationwide basis on the same terms and conditions as were in effect before the rescission on September 5, 2017.'' Under these injunctions, DHS is not required to accept DACA requests from individuals who have not previously been granted DACA and is not required to accept DACA-based advance parole applications. The District Court for the District of Columbia also vacated DHS's rescission of DACA and ordered the government to accept initial DACA requests and resume accepting DACA-based advance parole applications. However, the court then ordered a limited stay of its order to preserve the status quo pending appeal. *Trustees of Princeton University* v. *United States,* No. 1:17–cv–2325 (D.D.C.), consolidated with *NAACP* v. *Trump,* No. 17–cv–01907 (D.D.C.). Additionally, the U.S. Court of Appeals for the Fourth Circuit issued a decision that vacated the DACA rescission as arbitrary and capricious and remanded the case for further proceedings, reversing a ruling by the District Court for the District of Maryland. However, the Fourth Circuit subsequently stayed issuance of the mandate pending resolution of the Government's petition for writ of certiorari. *See Casa de Maryland* v. *DHS,* Nos. 18–1521–L; 18–1522 (4th Cir. 2019). Therefore, USCIS is currently required to continue accepting and adjudicating DACA requests from individuals who have previously been granted DACA, but is not required to accept requests from other individuals, or applications for DACA-based advance parole. DHS plans to file a request with the subject courts to allow DHS to implement all of the changes proposed in this rule to the extent that they may affect past, current, or future DACA recipients.

Currently, individuals who request deferred action under DACA do so without paying a fee that recovers the full cost to adjudicate such requests. Therefore, other applicants, petitioners, and requestors ultimately bear the burden to cover the full cost of DACA adjudications. While the DHS request for the courts to approve the effects of this proposed rule on DACA are pending, DHS publishes this NPRM for public comment on the proposed DACA fees. If any of the courts deny DHS's request to impose new DACA fees, then Form I–821D fees will be removed before the final rule is adopted and the costs of administering DACA will be reallocated to fee-paying immigration benefit requests. As such, the fee for Form I–765 may increase. Refer to section *VII. Other Possible Fee Scenarios* for additional information regarding potential fees with and without a fee for Form I–821D.

R. Fees Shared by CBP and USCIS

DHS combined the estimated cost and volume information for USCIS and CBP in the proposed fees for several immigration benefit requests that both components adjudicate. This affects the proposed fees for the following immigration benefit requests:

- Form I–192, Application for Advance Permission to Enter as a Nonimmigrant.
- Form I–193, Application for Waiver of Passport and/or Visa.
- Form I–212, Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal.
- Form I–824, Application for Action on an Approved Application or Petition.

USCIS calculated proposed fees using the same methodology as other proposed fees and then added information from CBP into the ABC model. CBP provided revenue collections from FY 2014 to FY 2017 for these immigration benefit requests. We divided the revenue collections by the fee for each immigration benefit request to derive the fee-paying volume for each immigration benefit request. CBP estimates the total cost for Forms I–192 and I–193 as part of its statement of net cost, leveraging the same software that USCIS uses for the ABC model.[171] CBP does not estimate the total cost of Forms I–212 or I–824. Dividing CBP's total costs by fee-paying volume can determine a fee-paying unit cost, and ultimately, fees for Forms I–192 and I–

[170] *See* section IV.B.3. Assessing Proposed Fees for more information.

[171] USCIS uses commercially available activity-based costing software, SAP Business Objects Profitability and Cost Management, to create financial models to implement activity-based costing (ABC), as described in the Methodology section of this preamble and the supporting documentation in the docket for this proposed rule.

193. Table 16 summarizes the CBP cost estimates, derived fee-paying volumes, and estimated unit costs.

TABLE 16—CBP FY 2017 ESTIMATED COSTS AND VOLUMES

Form	Estimated cost	Derived fee-paying volume	Estimated fee-paying unit cost
I–192	$2,154,502	6,557	$329
I–193	17,951,942	7,613	2,358
I–212	N/A	232	N/A
I–824	N/A	103	N/A

USCIS incorporated the total costs and derived fee-paying volume for the respective CBP workloads into the ABC model. The proposed fees represent single DHS fees for each of these workloads by combining the estimated costs and fee-paying volumes of USCIS and CBP. DHS believes that a single fee for each of these shared workloads will reduce confusion for individuals interacting with CBP and USCIS.

S. 9–11 Response and Biometric Entry-Exit Fee for H–1B and L–1 Visas

In 2010 Congress enacted new fees for certain H–1B or L petitioners. *See* Public Law 111–230, sec. 402.[172] USCIS concluded at that time that the statutory language in section 402 of Public Law 111–230 was ambiguous and required it to interpret the statute and determine the full extent to which the fee would apply. In particular, the statute referred to the filing fee and fraud prevention and detection fee required to be submitted with an application for admission, but it was otherwise silent regarding petitions for H–1B or L classification or for requests for a change of status or extension of stay for beneficiaries who were already admitted into the United States. USCIS interpreted the statute's ambiguity to apply the fees to petitions for H–1B or L–1 classification when the fraud fee was otherwise required because the statutory language referred to these fees as being collected in addition to the already extant filing and fraud prevention and detection fees. USCIS, therefore, implemented these fees as applying only when the fraud fee was otherwise collected, in accordance with section 214(c)(12) of the INA, 8 U.S.C. 1184(c)(12); that is, with respect to petitions for an initial grant of status or requesting a change of employer, but not to extension petitions filed by the same employer on behalf of the same employee. The Public Law 111–230 fee sunset on September 30, 2015.

In section 402(g) of Div. O of the Consolidated Appropriations Act, 2016 (Public Law 114–113) [173] enacted December 18, 2015, Congress reenacted and doubled these fees, effective immediately through September 30, 2025.[174] Although otherwise identical to the earlier Public Law 111–230 statutory language except for the relevant dates and dollar amounts,[175] Congress added new phrasing at two places, in pertinent part: ''. . . the *combined* filing fee and fraud prevention and detection fee required to be submitted with an application for admission [as an H–1B or L], *including an application for an extension of such status,* shall be increased . . .'' (emphasis added). There is no known legislative history about the Public Law 114–113 fees before enactment.

USCIS again concluded that the language in Public Law 114–113, as in the previous statute, was ambiguous and therefore USCIS had to determine whether the fee applied to all extension petitions by covered employers, or just those for which the fraud fee was also charged (extension of stay with change of employer).[176] The first reading would be a significant new substantive expansion of the fees compared to the 2010–2015 interpretation; the latter would be consistent with the scope of the fees charged during that earlier period (although in the higher amounts provided by the new provision). In the absence of specific legislative history elucidating the intent of the statutory changes, and given the continued ambiguity of the statute (specifically the reference to the ''combined filing fee ($4,000 for H–1B and $4,500 for L–1 respectively) and fraud prevention and detection fee ($500) required to be submitted''), USCIS interpreted the Public Law 114–113 fee to similarly apply only when the fraud fee described in section 214(c)(12) of the INA, 8 U.S.C. 1184(c)(12), is also required and issued guidance accordingly.[177]

The construction of the statutory ambiguity USCIS adopted in 2015 was not, however, the only reasonable one.

[172] Public Law 111–230 required the submission of an additional fee of $2,000 for certain H–1B petitions and $2,250 for certain L–1A and L–1B petitions. These additional fees, similar to the subsequently enacted fees under Public Law 114–113, applied to petitioners who employ 50 or more employees in the United States with more than 50 percent of its employees in the United States in H–1B or L–1 nonimmigrant status.

[173] 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.

[174] This sunset date was extended another two years, until September 30, 2027, by section 30203 of Public Law 115–123 (Feb. 9, 2018).

[175] The new provision's ''notwithstanding section 281 of the Immigration and Nationality Act (8 U.S.C. 1351) or any other provision of law'' clause, unlike the 2010 enactment, expressly referred to sec. 281 of the INA, but this difference made no legal difference in the scope of the clause, as that clause is not meaningfully different from ''Notwithstanding any other provision of this Act or any other provision of law'' clause in Public Law 111–230 sec. 402.

[176] In enacting the new statute, Congress used the same wording of the previous statute, with the addition of the words ''combined'' and ''including an application for an extension of such status.'' Because Congress can be assumed to have been aware of the agency's interpretation of the previous statute, USCIS concluded, as an initial matter, that Congress added the phrase ''including an application for an extension of such status'' to clarify that the new fees not only apply to initial petitions for H–1B or L classification, but also in extension of stay cases. However, it was not clear whether Congress meant the new fees to apply to *all* extension of stay requests (a substantive change) or just a certain subset of cases, meaning, those involving an initial petition by a new employer on behalf of an individual already in H–1B or L–1 status who is seeking an extension of stay (a clarification). Further, the fact that Congress not only also included the specific reference to the fraud fee, but in fact reinforced the significance of that reference by inserting the word ''combined,'' made ambiguous whether Congress intended the fee to apply to all extension cases or just those that required the fraud fee.

[177] *See* ''Fee Increase for Certain H–1B and L–1 Petitions (Pub. L. 114–113)'' at *https://www.uscis.gov/working-united-states/temporary-workers/fee-increase-certain-h-1b-and-l-1-petitions-public-law-114-113* (last reviewed/updated Feb. 20, 2018).

Another reasonable interpretation is that the Public Law 114–113 fee applies to all extension of stay petitions even when the fraud fee is not applicable. Under this alternative interpretation, the language ''including an application for an extension of such status'' is a substantive amendment, and the insertion of the word ''combined'' is a clarifying one. It is plausible that Congress added the reference to extension of status so that the fee would be collected for all extension of stay petitions, not just those where a change of employer is also requested. In that case, the insertion of the word ''combined'' can be viewed as a clarifying edit that the increase to the fee is applied only once per petition and not once for the filing fee and once for the fraud fee such that it might apply two times for some petitions. Furthermore, when the fraud fee does not apply, the ''combined'' fee is simply the filing fee plus $0. This interpretation would give meaning to all the alterations to the earlier statute.

DHS has reexamined this matter and believes that this second, alternative interpretation of Public Law 114–113 would be most consistent with the goal of the statute to ensure employers that overly rely on H–1B or L nonimmigrant workers' pay an additional fee by making the fee applicable to all petitions by employers that meet the statute's 50 employee/50 percent test, regardless of whether or not the fraud fee also applies.[178] In other words, the fee should apply to all H–1B or L–1 petitions, whether for new employment or an extension of stay. DHS thus proposes to amend and clarify the regulations at new 8 CFR 106.2(c)(8) and (9)—currently 8 CFR 103.7(b)(1)(i)(III) and (JJJ)—to specify that this fee will apply to all H–1B and L–1 extension petitions in addition to all previously covered H–1B and L–1 petitions. The regulation would clarify that this includes individual L–1 petitions (Form I–129S) filed on the basis of a previously approved ''blanket L'' petition, but it does not apply to amended petitions filed by employers with respect to its employee that do not request an extension of stay. The amended regulation would also update the sunset date for the provision from September 30, 2025 to September 30, 2027, as provided in Public Law 115–123. It would further provide for alternative fee amounts or sunset dates in case Congress changes them by a subsequently enacted law.

Beyond the above, various policy reasons support this change in DHS's implementation of the Public Law 114–113 fee provision. Fee collections under the provision are applied towards the important purposes of (1) funding the 9–11 Response and Biometric Fee Exit Account to be used for a biometric entry-exit screening system; and (2) deficit reduction and other public purposes funded by general Treasury revenues. Collections have fallen well short of projections. In its report on the fee provision in Public Law 114–113, the Congressional Budget Office (CBO) estimated annual revenues of $420 million per year (except for $380 million in the first year of FY 2016) from these fees through their lifespan.[179] However, collections for FY 2016 ($158 million), 2017 ($125 million), and 2018 ($119 million) totaled only about $402 million. DHS believes that collections have fallen short of the CBO projections mainly because of the USCIS construction of the statutory provision to exclude extension petitions except when filed to facilitate a change of employer. DHS proposes to reduce this shortfall and better achieve the funding aims of the statute through increased collections of these fees in the future.

T. Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100 (NACARA))

DHS proposes to adjust the fee for Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100 (NACARA)). The IEFA fees for this application have not changed since 2005. The proposed fees more accurately reflect USCIS' estimated costs associated with adjudicating the application. Additionally, DHS proposes to combine the current multiple fees into a single Form I–881 fee in effort to reduce administrative burden.

INS implemented two fees for this benefit request in 1999. *See* 63 FR 64895 (Nov. 24, 1998) (proposed rule) and 64 FR 27856 (May 21, 1999) (interim final rule). The two IEFA fees were $215 for an individual and $430 as a maximum per family. *See* 64 FR 27867–8. EOIR collected a separate $100 fee. *Id.* INS used ABC to determine the proposed IEFA fees. *See* 63 FR 64900. The IEFA NACARA fees have only changed by inflation since creation of the NACARA program. *See* 69 FR 20528 (Apr. 15, 2004) and 70 FR 56182 (Sept. 26, 2005). The current fees are as follows:

1. $285 for individuals,
2. $570 maximum for families, and
3. $165 at EOIR, whether an individual or family.

In FY 2018, the fees generated approximately $142,000 in IEFA revenue, when approximately 98 percent of applicants paid the $285 fee. EOIR provided receipt information for FY 2016 to FY 2018. EOIR received 339 applications in FY 2016, 326 in FY 2017, and 277 in FY 2018. DHS proposes no changes to the EOIR fee.

In prior fee rules, DHS has not changed the Form I–881 fees. *See* 72 FR 29854, 75 FR 58964, and 75 FR 73312. It excluded this immigration benefit request from previous fee rules, essentially treating it like other temporary programs or policies such as TPS and DACA. *See* 81 FR 73312. DHS expects the population will be exhausted eventually due to relevant eligibility requirements. *Id.*

DHS proposes a single $1,800 fee for any Form I–881 filed with USCIS. *See* proposed 8 CFR 106.2(a)(41). USCIS does not have systems in place that can track the different adjudicative level of effort required between Form I–881 applications by an individual compared to a family. Regardless, DHS does not have any policy reasons that would justify charging a separate fee for a small population that will soon be exhausted. Additionally, removing the distinction will simplify USCIS' revenue collections and reporting, thus reducing the administrative burden of the program.

USCIS forecasts an average of 340 annual Form I–881 receipts in the FY 2019/2020 biennial period. Current USCIS fees would generate approximately $100,000 in IEFA revenue. The proposed single fee of $1,800 would generate approximately $612,000 in revenue and slightly mitigate the proposed fee increase of other immigration benefit requests.

U. Miscellaneous Technical and Procedural Changes

DHS proposes several technical or procedural changes. This rule moves the fee regulations for USCIS to a separate part of Chapter I of Title 8 of the Code

[178] USCIS counts all full-time and part-time employees when determining whether an employer must pay this fee. H–1B and all L–1 employees are combined in the counting to determine if the 50% threshold is met to trigger the fee. See *https://www.uscis.gov/working-united-states/temporary-workers/fee-increase-certain-h-1b-and-l-1-petitions-public-law-114-113.* DHS is adding the words ''in the aggregate'' to proposed 8 CFR 106.2(c)(8) and (9) to clarify its interpretation and how employees would be counted, consistent with current practice, to determine if this additional fee is required.

[179] *See* CBO Cost Estimate, H.R. 2029 Amendment #1 (2016 Omnibus), table 3 at sec. 402, *https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr2029amendment1divisionsa.pdf* (Dec. 16, 2015).

of Federal Regulations. It moves them from 8 CFR part 103 to 8 CFR part 106 in an effort to reduce the length and density of part 103 as well as to make it easier to locate specific fee provisions. In addition to the renumbering and redesignating of paragraphs, this rule has reorganized and reworded some sections to improve readability.

DHS proposes to remove some redundant text and consolidate USCIS fee requirements. For example, some regulations erroneously specified that USCIS will not accept personal checks.[180] *See, e.g.,* 8 CFR 245a.2(e)(3), 245a.3(d)(3), and 245a.4(b)(5)(iii). DHS proposes to remove the erroneous or redundant text and instead refer to consolidated fee requirements in 8 CFR 106.1. *See* proposed 8 CFR 106.1, 245a.2(e)(3), 245a.3(d)(3), and 245a.4(b)(5)(iii).

DHS proposes to revise 8 CFR 214.2(p)(2)(iv)(F) to incorporate statutory changes that have occurred after 8 CFR 214.2(p)(2)(iv)(F) was codified and to conform this regulatory language to longstanding practice that allow petitions for multiple P nonimmigrants. Specifically, DHS proposes to add a reference to ''team'' in 8 CFR 214.2(p)(2)(iv)(F) to account for INA section 214(c)(4)(G), 8 U.S.C. 1184(c)(4)(G) (''The Secretary of Homeland Security shall permit a petition under this subsection to seek classification of more than 1 alien as a nonimmigrant under section 1101(a)(15)(P)(i)(a) of this title''), which was added in 2006 and mandates DHS to allow a petitioner to include multiple P–1A athletes in one petition.[181] DHS also proposes to delete ''seeking classification based on the reputation of the group as an entity'' from 8 CFR 214.2(p)(2)(iv)(F) because certain athletic teams applying for P–1 nonimmigrant classification and groups applying for P–2 or P–3 nonimmigrant classification are not necessarily required to establish reputation of the team or group as an entity. *Id.*

DHS proposes to update regulations regarding adjustment of status under INA section 245(i), 8 U.S.C. 1255(i), commonly referred to as the Legal Immigration Family Equity (LIFE) Act. The current regulations are inconsistent with Form I–485 instructions. DHS proposes to refer to the current form instructions and supporting evidence requirements. *See* proposed 245a.12(d). DHS also proposes to remove outdated requirements for passport photos, biographic and biometric information. *See* proposed 8 CFR 245a.12(d), (d)(2), and (d)(4). In the past, USCIS required applicants and beneficiaries to submit a fingerprint form or biographic information with benefit requests. Currently, USCIS collects biometric data at Application Support Centers.

DHS proposes to change outdated references to the Missouri Service Center, now named the National Benefits Center.[182] *See* proposed 8 CFR 245a.12(b) and (c); 245a.13(e) and (e)(1); 245a.18(c)(1); 245a.19(a); and 245a.33(a) and (b). The National Benefits Center (NBC) performs centralized front-end processing of applications and petitions that require field office interviews (primarily, Forms I–485 and N–400). In addition, the NBC adjudicates some form types to completion, including but not limited to intercountry adoption cases and immigration benefits associated with the LIFE Act. The old name is why some receipt notices for the NBC begin with the letters ''MSC'' instead of ''NBC.''

DHS also proposes to amend the title of 8 CFR part 103 to make it more descriptive of its contents. *See* proposed 8 CFR part 103. The current title of part 103 is IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS. Part 103 contains several significant requires for filing requests, forms and documents with USCIS, especially in 8 CFR 103.2, which should be made more clear to the users of that part. Therefore, DHS proposes to revise the title of the part to include a reference to filing requirements. The proposed title is, ''PART 103—IMMIGRATION BENEFIT REQUESTS; USCIS FILING REQUIREMENTS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS.''

In addition, DHS is proposing a severability provision in new 8 CFR part 106. DHS believes that the provisions of each new part function sensibly independent of other provisions. However, 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 can continue to function without a stricken provision. Proposed 8 CFR 106.6.

VI. Proposed Fee Adjustments to IEFA Immigration Benefits

Projected USCIS costs for FY 2019 and 2020 exceed projected revenue by an average of $1,262.3 million each year. Therefore, DHS proposes to adjust the fee schedule to recover the full cost of processing immigration benefit requests and to continue to maintain or improve current service delivery standards.

After resource costs are identified, the ABC model distributes them to USCIS' primary processing activities. Table 17 outlines total IEFA costs by activity.

TABLE 17—PROJECTED IEFA COSTS BY ACTIVITY

[Dollars in millions]

Activity	FY 2019	FY 2020	FY 2019/2020 average
Conduct TECS Check	$139.7	$148.6	$144.2
Direct Costs	59.6	60.7	60.1
Fraud Detection and Prevention	335.8	378.7	357.3
Inform the Public	402.0	422.8	412.4
Intake	135.5	138.6	137.1
Issue Document	71.1	72.6	71.9
Make Determination	1,644.3	1,753.5	1,698.9
Management and Oversight	1,148.7	1,169.8	1,159.2
Perform Biometrics Services subtotal	222.8	228.3	225.6
Manage Biometric Services	67.8	70.4	69.1
Collect Biometric Data	81.6	83.1	82.4
Check Fingerprints	34.6	35.3	34.9

[180] For additional information on how to pay USCIS filing fees, see USCIS, *Paying USCIS Fees* available at, *https://www.uscis.gov/forms/paying-uscis-fees* (last reviewed/updated Feb. 14, 2018).

[181] *See* Public Law 109–463, 120 Stat. 3477 (2006).

[182] USCIS, *National Benefits Center: What It Is and What It Does* available from, *https://www.uscis.gov/archive/blog/2012/06/national-benefits-center-what-it-is-and* (released June 5, 2012).

TABLE 17—PROJECTED IEFA COSTS BY ACTIVITY—Continued

[Dollars in millions]

Activity	FY 2019	FY 2020	FY 2019/2020 average
Check Name	38.8	39.6	39.2
Records Management	349.6	358.8	354.2
Research Genealogy	2.0	2.0	2.0
Systematic Alien Verification for Entitlements	47.0	48.3	47.7
Total IEFA Costs	4,558.1	4,782.9	4,670.5

Next, the ABC model distributes activity costs to immigration benefit requests. Table 18 summarizes total revenue by immigration benefit request based on the proposed fee schedule.

TABLE 18—PROJECTED FY 2019/2020 AVERAGE ANNUAL REVENUE PER IMMIGRATION BENEFIT WITH PROPOSED FEES

[Dollars in millions]

Immigration benefit request	Revenue forecast
I–90 Application to Replace Permanent Resident Card	$283.33
I–102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	3.51
I–129 Petition for a Nonimmigrant Worker Subtotal	330.30
I–129H1B—Named Beneficiaries	237.05
I–129H2A—Named Beneficiaries	3.41
I–129H2B—Named Beneficiaries	1.64
I–129L—Named Beneficiaries	33.82
I–129O	18.20
I–129CW, I–129E&TN, and I–129MISC	30.66
I–129H2A—Unnamed Beneficiaries	3.82
I–129H2B—Unnamed Beneficiaries	1.70
I–129F Petition for Alien Fiancé(e)	24.92
I–130 Petition for Alien Relative	541.90
I–131 Application for Travel Document	170.27
I–131 Refugee Travel Document for an individual age 16 or older	3.00
I–131 Refugee Travel Document for a child under the age of 16	0.14
I–131A Application for Carrier Documentation	9.90
I–140 Immigrant Petition for Alien Worker	87.75
I–191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	0.21
I–192 Application for Advance Permission to Enter as Nonimmigrant	32.23
I–193 Application for Waiver of Passport and/or Visa	21.40
I–212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	6.33
I–290B Notice of Appeal or Motion	14.60
I–360 Petition for Amerasian, Widow(er) or Special Immigrant	1.92
I–485 Application to Register Permanent Residence or Adjust Status	572.24
I–526 Immigrant Petition by Alien Entrepreneur	56.21
I–539 Application to Extend/Change Nonimmigrant Status	89.56
I–589 Application for Asylum and for Withholding of Removal	8.15
I–600/600A; I–800/800A Intercountry Adoption-Related Petitions and Applications	4.98
I–600A/I–600 Supplement 3 Request for Action on Approved Form I–600A/I–600	0.31
I–601 Application for Waiver of Ground of Excludability	20.40
I–601A Provisional Unlawful Presence Waiver	64.32
I–612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	0.31
I–687 Application for Status as a Temporary Resident	0.00
I–690 Application for Waiver of Grounds of Inadmissibility	0.02
I–694 Notice of Appeal of Decision	0.01
I–698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	0.16
I–751 Petition to Remove Conditions on Residence	113.18
I–765 Application for Employment Authorization	941.82
I–800A Supplement 3 Request for Action on Approved Form I–800A	0.31
I–817 Application for Family Unity Benefits	0.81
I–821D Consideration of Deferred Action for Childhood Arrivals (Renewal)	108.90
I–824 Application for Action on an Approved Application or Petition	5.57
I–829 Petition by Entrepreneur to Remove Conditions on Permanent Resident Status	13.65
I–881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	0.61
I–910 Application for Civil Surgeon Designation	0.34
I–924 Application For Regional Center Designation Under the Immigrant Investor Program	9.25
I–924A Annual Certification of Regional Center	4.25
I–929 Petition for Qualifying Family Member of a U–1 Nonimmigrant	1.53
N–300 Application to File Declaration of Intention	0.01
N–336 Request for a Hearing on a Decision in Naturalization Proceedings	6.80

TABLE 18—PROJECTED FY 2019/2020 AVERAGE ANNUAL REVENUE PER IMMIGRATION BENEFIT WITH PROPOSED FEES—Continued

[Dollars in millions]

Immigration benefit request	Revenue forecast
N–400 Application for Naturalization	949.72
N–470 Application to Preserve Residence for Naturalization Purposes	0.17
N–565 Application for Replacement Naturalization/Citizenship Document	12.78
N–600/600K Naturalization Certificate Application Subtotal	50.41
N–600 Application for Certificate of Citizenship	47.56
N–600K Application for Citizenship and Issuance of Certificate Under Section 322	2.85
USCIS Immigrant Fee	114.49
Biometric Services	8.55
G–1041 Genealogy Index Search Request	1.12
G–1041A Genealogy Records Request	0.98
Total	4,693.62

Table 19 depicts the current and proposed USCIS fees for immigration benefit requests and biometric services. For a more detailed description of the basis for the changes described in this table, see Appendix Table 3 in the FY 2019/2020 Fee Review Supporting Documentation accompanying this proposed rule.

TABLE 19—PROPOSED FEES BY IMMIGRATION BENEFIT

Immigration benefit request	Current fee	Proposed fee	Delta ($)	Percent change
I–90 Application to Replace Permanent Resident Card	$455	$415	−$40	−9%
I–102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	445	490	45	10
I–129 Petition for a Nonimmigrant worker	460	N/A	N/A	N/A
I–129H1 I–129 H–1B—Named Beneficiaries	460	560	100	22
I–129H2A I–129 H–2A—Named Beneficiaries	460	860	400	87
I–129H2B I–129 H–2B—Named Beneficiaries	460	725	265	58
I–129L Petition for L Nonimmigrant Worker	460	815	355	77
I–129O Petition for O Nonimmigrant Worker	460	715	255	55
I–129CW, I–129E&TN, and I–129MISCV Petition for a CNMI-Only Nonimmigrant Transitional Worker; Application for Nonimmigrant Worker: E and TN Classification; and Petition for Nonimmigrant Worker: H–3, P, Q, or R Classification.	460	705	245	53
I–129H2A I–129 H–2A—Unnamed Beneficiaries	460	425	−35	−8
I–129H2B I–129 H–2B—Unnamed Beneficiaries	460	395	−65	−14
I–129F Petition for Alien Fiancé(e)	535	520	−15	−3
I–130 Petition for Alien Relative	535	555	20	4
I–131 Application for Travel Document	575	585	10	2
I–131 Travel Document for an individual age 16 or older	135	145	10	7
I–131 I–131 Refugee Travel Document for a child under the age of 16	105	115	10	10
I–131A Application for Carrier Documentation	575	1,010	435	76
I–140 Immigrant Petition for Alien Worker	700	545	−155	−22
I–191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	930	800	−130	−14
I–192 Application for Advance Permission to Enter as Nonimmigrant	[183] 585/930	1,415	830/485	142/52
I–193 Application for Waiver of Passport and/or Visa	585	2,790	2,205	377
I–212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	930	1,040	110	12
I–290B Notice of Appeal or Motion	675	705	30	4
I–360 Petition for Amerasian Widow(er) or Special Immigrant	435	455	20	5
I–485 Application to Register Permanent Residence or Adjust Status	[184] 1,140/750	1,120	−20/370	−2/49
I–526 Immigrant Petition by Alien Entrepreneur	3,675	4,015	340	9
I–539 Application to Extend/Change Nonimmigrant Status	370	400	30	8
I–589 Application for Asylum and for Withholding of Removal	0	50	50	N/A
I–600/600A Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of an Orphan Petition	775	810	35	5
I–600A/I–600 Supp. 3 Request for Action on Approved Form I–600A/I–600	N/A	405	N/A	N/A
I–601 Application for Waiver of Ground of Excludability	930	985	55	6
I–601A Application for Provisional Unlawful Presence Waiver	630	960	330	52
I–612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	930	525	−405	−44
I–687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act	1,130	1,130	0	0
I–690 Application for Waiver of Grounds of Inadmissibility	715	770	55	8
I–694 Notice of Appeal of Decision	890	725	−165	−19

TABLE 19—PROPOSED FEES BY IMMIGRATION BENEFIT—Continued

Immigration benefit request	Current fee	Proposed fee	Delta ($)	Percent change
I–698 Application to Adjust Status From Temporary to Permanent Resident (Under Section 245A of the INA)	1,670	1,615	−55	−3
I–751 Petition to Remove Conditions on Residence	595	760	165	28
I–765 Application for Employment Authorization	410	490	80	20
I–800/800A Petition to Classify Convention Adoptee as an Immediate Relative/Application for Determination of Suitability to Adopt a Child from a Convention Country	775	810	35	5
I–800A Supp. 3 Request for Action on Approved Form I–800A	385	405	20	5
I–817 Application for Family Unity Benefits	600	590	−10	−2
I–821D Consideration of Deferred Action for Childhood Arrivals (Renewal)	0	275	275	N/A
I–824 Application for Action on an Approved Application or Petition	465	500	35	8
I–829 Petition by Entrepreneur to Remove Conditions on Permanent Resident Status	3,750	3,900	150	4
I–881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	[185] 285/570	1,800	1,515/1,230	532/216
I–910 Application for Civil Surgeon Designation	785	650	−135	−17
I–924 Application for Regional Center Designation Under the Immigrant Investor Program	17,795	17,795	0	0
I–924A Annual Certification of Regional Center	3,035	4,470	1,435	47
I–929 Petition for Qualifying Family Member of a U–1 Nonimmigrant	230	1,515	1,285	559
I–941 Application for Entrepreneur Parole	1,200	1,200	0	0
N–300 Application to File Declaration of Intention	270	1,320	1,050	389
N–336 Request for a Hearing on a Decision in Naturalization Proceedings	700	1,755	1,055	151
N–400 Application for Naturalization	640/320	1,170	530	83
N–470 Application to Preserve Residence for Naturalization Purposes	355	1,600	1,245	266
N–565 Application for Replacement Naturalization/Citizenship Document	555	545	−10	−2
N–600 Application for Certificate of Citizenship	1,170	1,015	−155	−13
N–600K Application for Citizenship and Issuance of Certificate Under Section 322	1,170	960	−210	−18
USCIS Immigrant Fee	220	200	−20	−9
G–1041 Genealogy Index Search Request	65	240	175	269
G–1041A Genealogy Records Request	65	385	320	492
Biometric Services	85	30	−55	−65

VII. Other Possible Fee Scenarios

Subject to certain limitations, the fees that DHS proposes in this rule may change in the subsequent final rule based on policy decisions, in response to public comments, intervening legislation, and other changes. DHS will explain any changes between the proposed and final fees. Nevertheless, DHS notes that the content of a final rule, beyond public comments and policy modifications, appreciably depends on two factors that are to some extent beyond its control. As previously described, this rule includes a proposed DACA renewal fee associated with Form I–821D. See section V.Q. DACA Fees of this preamble. However, DHS is currently operating under two nationwide preliminary injunctions to maintain the DACA policy. DHS is not currently accepting initial DACA requests, except in limited circumstances.[186] USCIS evaluated separate DACA initial and renewal fees in case that changes. Additionally, the proposed fees include USCIS funding $207.6 million of ICE expenses associated with adjudication and naturalization services in both FY 2019 and FY 2020. See section IV.A.1.a. Use IEFA Fee Collections to Fund ICE Activities of this preamble. Any combination of those proposals may not materialize because DHS must obtain relief from the DACA preliminary injunctions. This rule also proposes the transfer of IEFA funds to ICE consistent with the Administration's budget requests for fiscal years 2019 and 2020. If Congress rejects the Administration's request, or if DHS does not ultimately shift these costs from annual appropriations to the IEFA, USCIS will not include this use of these funds in its fee model for the final rule. Uncertainties associated with each aspect of the rule could result in changes to the final fees.[187]

To reduce the uncertainty that such conditions present to the affected public, USCIS proposes and evaluates six fee scenarios based on these three factors. Each scenario lays out what the fees would be if certain conditions materialize and present a range of fees. Thus, the final fees may be one of the scenarios presented, or an amount in between the highest and lowest fees proposed. Scenario A refers to the proposed fees described in detail throughout this proposed rule. Scenario B includes DACA renewal fees, but it excludes the ICE transfer. Scenario C excludes DACA fees, but it includes the ICE transfer. Scenario D excludes both DACA fees and the ICE transfer.

[183] The current fee for Form I–192 is 585 when filed with and processed by CBP. When filed with USCIS, the fee is 930. *See* 8 CFR 103.7(b)(1)(i)(P).

[184] The 750 fee applies to ''an applicant under the age of 14 years when [the application] is (i) submitted concurrently with the Form I–485 of a parent, (ii) the applicant is seeking to adjust status as a derivative of his or her parent, and (iii) the child's application is based on a relationship to the same individual who is the basis for the child's parent's adjustment of status, or under the same legal authority as the parent.'' *See* 8 CFR 103.7(b)(1)(i)(U)(2).

[185] Currently there are two USCISs fees for Form I–881: $285 for individuals and $570 for families. *See* 8 CFR 103.7(b)(1)(i)(QQ)(1). EOIR has a separate $165 fee. DHS proposes no changes to the EOIR fee.

[186] See footnotes 167 and 168.

[187] In addition, litigation regarding various fees may result in DHS not implementing certain fees or fee increases. DHS is considering whether to include a severability provision in the final fee rule, or ''fallback'' provisions that provide for alternative fee schedules in the event that certain aspects of the rule are not implemented. DHS requests comment on this option.

Scenarios E and F list separate initial and renewal fees for DACA, with or without the ICE transfer. Table 20 lists the assumptions and effects of these three factors on each fee scenario. The following sections briefly describe the differences and list the possible fees in each scenario.

TABLE 20—PROPOSED FEE SCHEDULE SCENARIOS

Fee scenario	DACA renewal fees included	DACA initial fee included	ICE Transfer included	Average budget ($ millions)	Percent weighted average fee increase [188]
A	Yes	No	Yes	$4,670.5	21%
B	Yes	No	No	4,462.9	15
C	No	No	Yes	4,651.7	25
D	No	No	No	4,444.2	20
E	Yes	Yes	Yes	4,672.4	20
F	Yes	Yes	No	4,464.8	15

A. Fee Schedule With DACA Renewal Fees

Scenarios A and B produced fee levels in between the highest and lowest scenarios. Table 21 lists the individual fees for each. These fees are lower than in some scenarios because DACA fees recover part of USCIS costs. Scenario B produces lower fees than Scenario A because it has a lower budget by excluding the ICE transfer.

TABLE 21—PROPOSED FEE SCHEDULE WITH DACA RENEWAL FEE WITH AND WITHOUT THE ICE TRANSFER

Immigration benefit request	Scenario A	Scenario B
I–90 Application to Replace Permanent Resident Card	$415	$385
I–102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	490	465
I–129 Petition for a Nonimmigrant worker	N/A	N/A
I–129H1B—Named Beneficiaries	560	535
I–129H2A—Named Beneficiaries	860	840
I–129H2B—Named Beneficiaries	725	700
I–129L—Named Beneficiaries	815	795
I–129O	715	690
I–129CW, I–129E&TN, and I–129MISC	705	685
I–129H2A—Unnamed Beneficiaries	425	400
I–129H2B—Unnamed Beneficiaries	395	370
I–129F Petition for Alien Fiancé(e)	520	495
I–130 Petition for Alien Relative	555	535
I–131 Application for Travel Document	585	550
I–131 Refugee Travel Document for an individual age 16 or older	145	145
I–131 Refugee Travel Document for a child under the age of 16	115	115
I–131A Application for Carrier Documentation	1,010	1,010
I–140 Immigrant Petition for Alien Worker	545	520
I–191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	800	780
I–192 Application for Advance Permission to Enter as Nonimmigrant	1,415	1,355
I–193 Application for Waiver of Passport and/or Visa	2,790	2,805
I–212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	1,040	1,025
I–290B Notice of Appeal or Motion	705	675
I–360 Petition for Amerasian Widow(er) or Special Immigrant	455	435
I–485 Application to Register Permanent Residence or Adjust Status	1,120	1,095
I–526 Immigrant Petition by Alien Entrepreneur	4,015	4,010
I–539 Application to Extend/Change Nonimmigrant Status	400	375
I–589 Application for Asylum and for Withholding of Removal	50	50
I–600/600A Orphan Adoption-Related Petitions and Applications	810	770
I–600A Supplement 3 Request for Action on Approved Form I–600A	405	385
I–601 Application for Waiver of Ground of Excludability	985	965
I–601A Provisional Unlawful Presence Waiver	960	940
I–612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	525	495
I–687 Application for Status as a Temporary Resident	1,130	1,130
I–690 Application for Waiver of Grounds of Inadmissibility	770	745
I–694 Notice of Appeal of Decision	725	705
I–698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	1,615	1,600
I–751 Petition to Remove Conditions on Residence	760	735
I–765 Application for Employment Authorization	490	455
I–800/800A Hague Adoption Convention Adoption-Related Petitions and Applications	805	770
I–800A Supplement 3 Request for Action on Approved Form I–800A	405	385
I–817 Application for Family Unity Benefits	590	565
I–821D Consideration of Deferred Action for Childhood Arrivals (Initial)	0	0
I–821D Consideration of Deferred Action for Childhood Arrivals (Renewal)	275	250
I–824 Application for Action on an Approved Application or Petition	500	475
I–829 Petition by Entrepreneur to Remove Conditions on Permanent Resident Status	3,900	3,895

[188] See footnote 6 for more information on the weighted averages in the fee schedule.

TABLE 21—PROPOSED FEE SCHEDULE WITH DACA RENEWAL FEE WITH AND WITHOUT THE ICE TRANSFER—Continued

Immigration benefit request	Scenario A	Scenario B
I–881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	1,800	1,785
I–910 Application for Civil Surgeon Designation	650	625
I–924 Application For Regional Center Designation Under the Immigrant Investor Program	17,795	17,795
I–924A Annual Certification of Regional Center	4,470	4,470
I–929 Petition for Qualifying Family Member of a U–1 Nonimmigrant	1,515	1,465
N–300 Application to File Declaration of Intention	1,320	1,305
N–336 Request for a Hearing on a Decision in Naturalization Proceedings	1,755	1,730
N–400 Application for Naturalization	1,170	1,150
N–470 Application to Preserve Residence for Naturalization Purposes	1,600	1,585
N–565 Application for Replacement Naturalization/Citizenship Document	545	515
N–600 Application for Certificate of Citizenship	1,015	985
N–600K Application for Citizenship and Issuance of Certificate Under Section 322	960	940
USCIS Immigrant Fee	200	175
Biometric Services	30	30
G–1041 Genealogy Index Search Request	240	240
G–1041A Genealogy Records Request	385	385

B. Fee Schedule Without DACA Fees

Scenarios C and D exclude DACA workload from the fee schedules. Table 22 lists the fees for these scenarios. These scenarios produced some of the highest fees because they do not include DACA fee-paying volume to recover a portion of the projected budget. The fee review budget in these scenarios is lower than scenarios A, B, E, and F because USCIS removed certain estimated costs related to DACA, so as to mitigate the financial risk to USCIS of dependence upon revenue associated with a temporary program that may be eliminated in the future.[189] However, the decrease to the budget from DACA does not offset the fee increase. Scenario C yields the highest fees in some cases because it includes the ICE transfer in the budget. Scenario D fees may be higher or lower than the proposed fees in scenario A because it has the lowest total budget, but it excludes DACA fee-paying volume to recover a portion of the projected budget.

TABLE 22—FEE SCHEDULE WITHOUT DACA FEES AND WITH OR WITHOUT THE ICE TRANSFER

Immigration benefit request	Scenario C	Scenario D
I–90 Application to Replace Permanent Resident Card	$440	$410
I–102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	510	480
I–129 Petition for a Nonimmigrant worker	0	0
I–129H1B—Named Beneficiaries	585	555
I–129H2A—Named Beneficiaries	870	850
I–129H2B—Named Beneficiaries	735	710
I–129L—Named Beneficiaries	830	805
I–129O	725	705
I–129CW, I–129E&TN, and I–129MISC	720	695
I–129H2A—Unnamed Beneficiaries	440	410
I–129H2B—Unnamed Beneficiaries	410	385
I–129F Petition for Alien Fiancé(e)	535	510
I–130 Petition for Alien Relative	575	550
I–131 Application for Travel Document	625	585
I–131 Refugee Travel Document for an individual age 16 or older	145	145
I–131 Refugee Travel Document for a child under the age of 16	115	115
I–131A Application for Carrier Documentation	1,015	1,010
I–140 Immigrant Petition for Alien Worker	580	555
I–191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	815	790
I–192 Application for Advance Permission to Enter as Nonimmigrant	1,465	1,395
I–193 Application for Waiver of Passport and/or Visa	2,775	2,790
I–212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	1,070	1,050
I–290B Notice of Appeal or Motion	735	700
I–360 Petition for Amerasian Widow(er) or Special Immigrant	475	450
I–485 Application to Register Permanent Residence or Adjust Status	1,155	1,125
I–526 Immigrant Petition by Alien Entrepreneur	4,015	4,005
I–539 Application to Extend/Change Nonimmigrant Status	420	395
I–589 Application for Asylum and for Withholding of Removal	50	50
I–600/600A Orphan Adoption-Related Petitions and Applications	845	770
I–600A Supplement 3 Request for Action on Approved Form I–600A	420	400
I–601 Application for Waiver of Ground of Excludability	1,035	1,010
I–601A Provisional Unlawful Presence Waiver	980	960

[189] In the FY 2019/2020 fee review scenarios without DACA fees, USCIS removed contractual costs related to DACA from the ABC model. These excluded costs were for form intake, biometric collection, and EAD card production for DACA volumes. While DHS did not discuss the methodology in the FY 2016/2017 fee rule docket, DHS took a similar approach to exclude temporary or uncertain costs related to temporary programs. *See* 81 FR 26914.

TABLE 22—FEE SCHEDULE WITHOUT DACA FEES AND WITH OR WITHOUT THE ICE TRANSFER—Continued

Immigration benefit request	Scenario C	Scenario D
I–612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	545	515
I–687 Application for Status as a Temporary Resident	1,130	1,130
I–690 Application for Waiver of Grounds of Inadmissibility	790	760
I–694 Notice of Appeal of Decision	740	715
I–698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	1,635	1,615
I–751 Petition to Remove Conditions on Residence	780	755
I–765 Application for Employment Authorization	590	550
I–800/800A Hague Adoption Convention Adoption-Related Petitions and Applications	845	805
I–800A Supplement 3 Request for Action on Approved Form I–800A	420	400
I–817 Application for Family Unity Benefits	615	590
I–821D Consideration of Deferred Action for Childhood Arrivals (Initial)	N/A	N/A
I–821D Consideration of Deferred Action for Childhood Arrivals (Renewal)	N/A	N/A
I–824 Application for Action on an Approved Application or Petition	520	495
I–829 Petition by Entrepreneur to Remove Conditions on Permanent Resident Status	3,905	3,895
I–881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	1,825	1,805
I–910 Application for Civil Surgeon Designation	660	635
I–924 Application For Regional Center Designation Under the Immigrant Investor Program	17,795	17,795
I–924A Annual Certification of Regional Center	4,465	4,460
I–929 Petition for Qualifying Family Member of a U–1 Nonimmigrant	1,535	1,480
N–300 Application to File Declaration of Intention	1,340	1,315
N–336 Request for a Hearing on a Decision in Naturalization Proceedings	1,770	1,745
N–400 Application for Naturalization	1,195	1,170
N–470 Application to Preserve Residence for Naturalization Purposes	1,615	1,595
N–565 Application for Replacement Naturalization/Citizenship Document	580	550
N–600 Application for Certificate of Citizenship	1,035	1,005
N–600K Application for Citizenship and Issuance of Certificate	975	950
USCIS Immigrant Fee	215	185
Biometric Services	30	30
G–1041 Genealogy Index Search Request	240	240
G–1041A Genealogy Records Request	385	385

C. Fee Schedule With Both DACA Initial and Renewal Fees

In scenarios E and F, USCIS adds its forecast of 43,000 initial requests for DACA. While the fee review budget is slightly higher than scenarios A and B, the increased fee-paying volume produces some of the lowest fees. Table 23 lists the fees in these scenarios.

TABLE 23—FEE SCHEDULE WITH DACA INITIAL AND RENEWAL FEES

Immigration benefit request	Scenario E	Scenario F
I–90 Application to Replace Permanent Resident Card	$415	$385
I–102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	485	460
I–129 Petition for a Nonimmigrant worker	0	0
I–129H1—Named Beneficiaries	550	520
I–129H2A—Named Beneficiaries	810	790
I–129H2B—Named Beneficiaries	705	685
I–129L—Named Beneficiaries	790	770
I–129O	695	670
I–129CW, I–129E&TN, and I–129MISC	680	660
I–129H2A—Unnamed Beneficiaries	405	385
I–129H2B—Unnamed Beneficiaries	390	365
I–129F Petition for Alien Fiancé(e)	500	475
I–130 Petition for Alien Relative	550	530
I–131 Application for Travel Document	585	550
I–131 Refugee Travel Document for an individual age 16 or older	145	145
I–131 Refugee Travel Document for a child under the age of 16	115	115
I–131A Application for Carrier Documentation	1,010	1,010
I–140 Immigrant Petition for Alien Worker	545	520
I–191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	800	780
I–192 Application for Advance Permission to Enter as Nonimmigrant	1,415	1,350
I–193 Application for Waiver of Passport and/or Visa	2,790	2,805
I–212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	1,040	1,020
I–290B Notice of Appeal or Motion	700	670
I–360 Petition for Amerasian Widow(er) or Special Immigrant	455	430
I–485 Application to Register Permanent Residence or Adjust Status	1,120	1,095
I–526 Immigrant Petition by Alien Entrepreneur	4,015	4,010
I–539 Application to Extend/Change Nonimmigrant Status	390	370
I–589 Application for Asylum and for Withholding of Removal	50	50

TABLE 23—FEE SCHEDULE WITH DACA INITIAL AND RENEWAL FEES—Continued

Immigration benefit request	Scenario E	Scenario F
I–600/600A Orphan Adoption-Related Petitions and Applications	805	770
I–600A Supplement 3 Request for Action on Approved Form I–600A	400	380
I–601 Application for Waiver of Ground of Excludability	985	965
I–601A Provisional Unlawful Presence Waiver	960	940
I–612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	515	485
I–687 Application for Status as a Temporary Resident	1,130	1,130
I–690 Application for Waiver of Grounds of Inadmissibility	770	745
I–694 Notice of Appeal of Decision	715	695
I–698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	1,615	1,600
I–751 Petition to Remove Conditions on Residence	745	720
I–765 Application for Employment Authorization	480	445
I–800/800A Hague Adoption Convention Adoption-Related Petitions and Applications	805	770
I–800A Supplement 3 Request for Action on Approved Form I–800A	400	380
I–817 Application for Family Unity Benefits	590	565
I–821D Consideration of Deferred Action for Childhood Arrivals (Initial)	500	480
I–821D Consideration of Deferred Action for Childhood Arrivals (Renewal)	270	250
I–824 Application for Action on an Approved Application or Petition	495	475
I–829 Petition by Entrepreneur to Remove Conditions on Permanent Resident Status	3,900	3,895
I–881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	1,800	1,785
I–910 Application for Civil Surgeon Designation	650	625
I–924 Application For Regional Center Designation Under the Immigrant Investor Program	17,795	17,795
I–924A Annual Certification of Regional Center	4,465	4,465
I–929 Petition for Qualifying Family Member of a U–1 Nonimmigrant	1,510	1,465
N–300 Application to File Declaration of Intention	1,320	1,305
N–336 Request for a Hearing on a Decision in Naturalization Proceedings	1,755	1,730
N–400 Application for Naturalization	1,170	1,150
N–470 Application to Preserve Residence for Naturalization Purposes	1,600	1,585
N–565 Application for Replacement Naturalization/Citizenship Document	545	515
N–600 Application for Certificate of Citizenship	1,015	985
N–600K Application for Citizenship and Issuance of Certificate	960	940
USCIS Immigrant Fee	200	175
Biometric Services	30	30
G–1041 Genealogy Index Search Request	240	240
G–1041A Genealogy Records Request	385	385

VIII. Statutory and Regulatory Requirements

A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the costs and benefits of available 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated an ''economically significant regulatory action'' under section 3(f)(1) of E.O. 12866. Accordingly, the rule has been reviewed by OMB.

USCIS' current fee schedule is expected to yield $3.41 billion of average annual revenue during the FY 2019/2020 biennial period. This represents a $0.93 billion, or 38 percent, increase from the FY 2016/2017 fee rule projection of $2.48 billion. *See* 81 FR 26911. The projected revenue increase is due to higher fees as a result of the FY 2016/2017 fee rule and more anticipated fee-paying receipts. The FY 2016/2017 fee rule forecasted 5,870,989 total workload receipts and 5,140,415 fee-paying receipts. *See* 81 FR 26923–4. However, the FY 2019/2020 fee review forecasts 9,336,015 total workload receipts and 7,789,861 fee-paying receipts. This represents a 59 percent increase to workload and 52 percent increase to fee-paying receipt volume assumptions.

USCIS would use the increase in revenue under INA section 286(m), (n), 8 U.S.C. 1356(m), (n), to ensure that USCIS would recover its full operating costs and maintain an adequate level of service. USCIS would set fees at levels sufficient to cover the full cost of the corresponding services associated with fairly and efficiently adjudicating immigration benefit requests and at a level sufficient to fund overall requirements and general operations, including the full costs of processing immigration benefit requests and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants at no charge; and the full cost of providing similar benefits to others at no charge.

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. DHS must fund the costs of providing services without charge by using a portion of the filing fees that are collected for other immigration benefits. While most immigration benefit request filing fees apply to individuals, as described above, some also apply to small entities. USCIS seeks to minimize the impact on all parties, but in particular small entities. An alternative to the increased economic burden of the proposed rule is to maintain fees at their current level for small entities. The strength of this alternative is that it assures no additional fee burden is placed on small entities; however, this alternative also would cause negative impacts to small entities.

Without the fee adjustments proposed in this rule, significant operational changes would be necessary. Given

current filing volume and other economic considerations, additional revenue is necessary to prevent immediate and significant cuts in planned spending. The proposed revenue increase is based on currently available USCIS costs and volume projections.

In addition to simple fee adjustments, the proposed rule includes numerous other changes in forms and policies related to fee payment. Some of these changes would result in cost savings, and others would result in costs or transfers. For the 10-year implementation period of the proposed rule, DHS estimates the total cost of the rule to applicants/petitioners is $4,730,732,250 undiscounted, $4,035,410,566 discounted at 3-percent, and $3,322,668,371 discounted at 7-percent. DHS estimates the total cost savings (benefits) to the applicants/petitioners is $220,187,510 undiscounted, $187,824,412 discounted at 3-percent, and $154,650,493 discounted at 7-percent. Much of this total is expected to be transfers between applicants and the federal government or between groups of applicants, rather than new, real resource costs to the U.S. economy. These costs, transfers, and and cost savings (benefits) are briefly described below in Table 24, and in more detail in Tables 47 and 48 of the Regulatory Impact Analysis (RIA).

TABLE 24—SUMMARY OF PROPOSED PROVISIONS AND IMPACTS

Proposed provision	Description of proposed change to provision	Estimated costs or transfers of proposed provision	Estimated benefits of proposed provision
(a) Secure Mail Initiative	USCIS has decided to implement Signature Confirmation Restricted Delivery as the sole method of delivery of secure documents for USCIS.	*Quantitative:* Applicants— • None. *Qualitative:* Applicants— • None. DHS/USCIS — • Mailing costs from USPS for Signature Confirmation Restricted Delivery confirmation.	*Quantitative:* Applicants— • Applicants with unstable addresses or who move often will be much more certain to receive their documents. *Qualitative:* Applicants— • None. DHS/USCIS— • Signature Confirmation Restricted Delivery will verify that the address information DHS has for a particular immigration benefit request is accurate. • Reduces the likelihood of misdelivered documents that could be misused.
(b) Clarify Dishonored Fee Check Representment Requirement and Fee Payment Method.	DHS is proposing that if a check or other financial instrument used to pay a fee is returned as unpayable *because of insufficient funds,* USCIS will resubmit the payment to the remitter institution one time. In addition, DHS proposes that it may reject a request that is accompanied by a check that is dated more than 365 days before the receipt date. DHS is also clarifying that fees are non-refundable regardless of the result of the immigration benefit request or how much time the request requires to be adjudicated. DHS is clarifying that fees will not be refunded no matter the result of the benefit request or how much time the adjudication requires.	*Quantitative:* Applicants- • None. *Qualitative:* Applicants— • None. DHS/USCIS— • The expansion by USCIS to accept credit cards for the payment of USCIS fees has resulted in a rise in the number of disputes filed with credit card companies challenging the retention of the fee by USCIS. As credit card use increases, this result has the potential to have a significant negative fiscal effect on USCIS fee receipts.	*Quantitative:* Applicants— • None. *Qualitative:* Applicants— • None. DHS/USCIS— • USCIS can devote more time to adjudicate cases and to reduce administrative burdens and processing errors associated with fee payments, by clarifying the dishonored fee check re-presentment. • In the event that the bank that issues the credit card rescinds the payment of the fee to USCIS, USCIS reserves the authority to invoice the responsible party (applicant, petitioner, and requestor) for the unpaid fee.
(c) Eliminate $30 Returned Check Fee	DHS proposes to remove the $30 charge for dishonored payments.	*Quantitative:* Applicants— • None. *Qualitative:* Applicants— • Costs to applicants if they had to reapply after rejection for a certain immigrant benefit. DHS/USCIS— • Could be an increase in insufficient payments by applicants because the $30 fee may serve as a deterrent for submitting a deficient payment.	*Quantitative:* Applicants— • $0.33 million annual cost savings. *Qualitative:* Applicants— • The current $30 charge and the potential of having a benefit request rejected encourage applicants to provide the correct filing fees when submitting an application or petition. • Applicants who submit bad checks would no longer have to pay a fee. DHS/USCIS— • None.

TABLE 24—SUMMARY OF PROPOSED PROVISIONS AND IMPACTS—Continued

Proposed provision	Description of proposed change to provision	Estimated costs or transfers of proposed provision	Estimated benefits of proposed provision
(d) Fee waivers	DHS proposes to limit fee waivers to statutorily mandated fee waivers and to those applicants who have an annual household income of less than 125% of the FPG. Additionally, fee waiver applicants cannot be admitted into the United States subject to an affidavit of support under INA section 213A, 8 U.S.C 1183a and not be subject to the public charge inadmissibility ground under INA section 212(a)(4), 8 U.S.C. 1182(a)(4). *Qualitative:* Applicants— • Limiting fee waivers may adversely affect some applicants' ability to apply for immigration benefits. DHS/USCIS— • None.	*Quantitative:* Applicants— • $360.1 million annually from applicable USCIS form transfer fees. DHS/USCIS— • None. *Qualitative:* Applicants— None. DHS/USCIS— • Reduce or eliminate administrative costs required to maintain training or guidance necessary to adjudicate unique fee waiver requests.	*Quantitative:* Applicants— • Cost savings of $5.6 million annually from eliminated opportunity cost of time spent completing the fee waiver request. DHS/USCIS— • None.
(e) Fee Exemptions	DHS proposes to remove the fee exemptions for an initial request for an employment authorization document (EAD) for the following classifications: • Citizen of Micronesia, Marshall Islands, or Palau; • Granted Withholding of Deportation; • Temporary Protected Status (TPS) if filing an initial TPS application for individuals under 14 years of age or over 65 years of age. • Applicant for Asylum and Withholding of Deportation or Removal.	*Quantitative:* Applicants— • Costs of $15.9 million annually in filing fees to filers of Form I–765 from the categories listed in the proposed provision no longer exempted.	*Quantitative:* Applicants— • None.
(a)		*Qualitative:* Applicants— • This could result in lost wages for the workers and lost productivity for the sponsoring employers. The lost wages and productivity can be considered as costs of the forgone benefits. This may be a very small population, and USCIS believes they will find some way to pay for their EAD filing fee. DHS/USCIS— • None.	*Qualitative:* Applicants— • The removal of fee exemptions for these populations may reduce further increases of other fees to pay for these exemptions. DHS/USCIS— • DHS notes that the continuing to provide these fee exemptions would result in the costs of those fee services being transferred to the fees for other forms. Removing the exemptions allows DHS to recover the costs of adjudication of Form I–765 for these categories from those who benefit from the service instead of other fee payers.
(f) Changes to Biometric Services Fee	DHS proposes to incorporate the biometric services cost into the underlying immigration benefit request fee instead of charging a flat $85 biometric services fee.	*Quantitative:* Applicants— • None.	*Quantitative:* Applicants— • EOIR and TPS applicants would save $16.0 million in cost savings resulting from a $55 reduction in biometrics service fees per applicant.

TABLE 24—SUMMARY OF PROPOSED PROVISIONS AND IMPACTS—Continued

Proposed provision	Description of proposed change to provision	Estimated costs or transfers of proposed provision	Estimated benefits of proposed provision
	DHS proposes to require a $30 biometric services fee for TPS initial applications and re-registrations and EOIR applicants. *Qualitative:* Applicants— • None. DHS/USCIS— • None.	*Qualitative:* Applicants— • Simplifies the process to submit payments. • Could result in fewer incorrect payments and therefore, fewer rejected applications. • Biometric costs incorporated into the fee would actually correspond to the services used. DHS/USCIS— • Eliminating the separate payment of the biometric services fee would decrease the administrative burden required to process both a filing fee and biometric services fee for a single benefit request. • Agency can assign a biometric cost to the form fee that is based on the appropriate contract instead of a standard cost.	
(g) Discontinue providing free interim benefits when Forms I–75 and I–131 are filed concurrently with pending Form I–485 or when a Form I–485 is pending.	DHS proposes to require separate fees for Forms I–765 and/or I–131 when filed concurrently with Form I–485 or with a pending I–485.	*Quantitative:* Applicants— • $329.7 million for Forms I–765 and/or I–131 concurrently filed with Form I–485 or while it is pending. *Qualitative:* Applicants— • None.	*Quantitative:* Applicants— • Not estimated. *Qualitative:* Applicants— • None. DHS/USCIS— • The proposed provision would be to isolate stand-alone interim benefit applicants from those concurrently filing Form I–485 allowing USCIS to more accurately assessed fee-paying percentages, fee-paying volumes, and fees for all three benefit types. • Easier to administer separate fees than to determine if the I–131 or I–765 is supposed to be free or require a fee
(h) Form I–485 Fee for Children Under 14, Filing with Parent.	DHS proposes to require payment of the full $1,120 proposed fee for a child under the age of 14 years when concurrently filing Form I–485 with a parent.	*Quantitative:* Applicants— • Not estimated. *Qualitative:* Applicants— • $23.3 million from increased USCIS form fees. DHS/USCIS— • None.	*Quantitative:* Applicants— • Not estimated. *Qualitative:* Applicants— • None. DHS/USCIS— • Easier to administer one single fee for Form I–485 would reduce the burden of adjudication and better reflect the cost of adjudication.
(i) Allow Individuals with Advance Parole to use Form I–131A, Application for Travel Document (Carrier Documentation) and Expand the Population Eligible to File Form I–131A.	DHS proposes to expand the population eligible to use Form I–131A to include requests for replacement advance parole documents	*Quantitative:* Applicants— • $4.1 million for new costs to file Form I–131A. *Qualitative:* Applicants— • None. DHS/USCIS— • None.	*Quantitative:* • None. *Qualitative:* Applicants— • The creation of a process for individuals to replace advance parole cards while abroad. DHS/USCIS— • None.

TABLE 24—SUMMARY OF PROPOSED PROVISIONS AND IMPACTS—Continued

Proposed provision	Description of proposed change to provision	Estimated costs or transfers of proposed provision	Estimated benefits of proposed provision
(j) Separating Form I–129, Petition for a Nonimmigrant Worker, into Different Forms, and Limit Petitions Where Multiple Beneficiaries are Permitted to 25 Named Beneficiaries per Petition.	DHS proposes to separate the Petition for a Nonimmigrant Worker, Form I–129 into several forms with different corresponding fees. DHS also proposes to impose a limit of 25 named beneficiaries per petition where multiple beneficiaries are permitted.	*Quantitative:* Applicants— • Annual transfer form fees, opportunity costs of time, and multiple forms limited to 25 named beneficiaries to file Form I–129 would range depending on who files the form. • With the new requirements some petitioners will now be required to file multiple petitions because the forms are limited to only 25 named beneficiaries. This will require additional cost for the petitioners to use a HR, In-house, or Outsourced lawyer to complete the different I–129 classifications forms, with different fees. HR Specialist—$69.6 million; and In-house Lawyer—$65.4 million; or Outsourced Lawyer—$59.8 million. DHS/USCIS— • Not estimated. *Qualitative:* Applicants— • None. DHS/USCIS— • None.	*Quantitative:* Applicants— • None. DHS/USCIS— • None. *Qualitative:* Applicants— • Separating forms would allow applicants to focus on each form's use and would reduce the need to navigate lengthy instructions that do not apply to their petition. • Separating fees might prevent future increases in fees to one petitioner population that may be caused by some other petitioner population also using that form. DHS/USCIS— • By splitting the form and proposing several different fees, USCIS believes it will simplify or consolidate the information requirements for petitioners and applicants as well as better reflect the cost to adjudicate each specific nonimmigrant classification. • Proposed fees would be imposed on the separate form for each specific petitioner population that causes the adjudication costs; other petitioners filing for other nonimmigrant classifications would not be burdened with costs not associated with their filings. • Splitting the form and fees will allow USCIS to focus the information requirements for petitioners, better reflect the cost to adjudicate each specific nonimmigrant classification, and recover the revenue more directly from those petitioners who are receiving the benefit. • Breaking out Form I–129 will affect backlogs only insofar as updating the fees enables USCIS to achieve full cost recovery and assign more resources to a particular adjudication as needs and priorities dictate.
(k) Extend premium processing timeframe from 15 calendar days to 15 business days.	DHS proposes to change the premium processing timeframe from 15 calendar days to 15 business days.	*Quantitative:* Applicants— • Not estimated.	*Quantitative:* Applicants— • Not estimated. Employers could lose some productivity but USCIS has no way to estimate what that loss may be.

TABLE 24—SUMMARY OF PROPOSED PROVISIONS AND IMPACTS—Continued

Proposed provision	Description of proposed change to provision	Estimated costs or transfers of proposed provision	Estimated benefits of proposed provision
		Qualitative: Petitioners— • Increased time burden and potential costs to employers who must plan for additional business days while waiting for premium processing. • Applicants may have to wait longer for decisions on their cases, from 15 calendar days to 15 business days. DHS/USCIS— • None.	*Qualitative:* Petitioners— • Removes petitioner expectation of 15 calendar day processing to allow for better business planning. DHS/USCIS— • Reduces risk of failing to complete premium processing in the allotted timeframe, which results in refunds to petitioners and possibly suspension of the premium processing service. • Allows USCIS additional time to process a petition. USCIS will avoid having to issue a refund and possibly avoid suspending premium processing service.
(l) Creation of Form I–600A/600 Supplement 3, Request for Action on Approved For I–600A/I–600 and new fee.	DHS proposes to: Create a new form, I–600 Supplement 3, Request for Action on an Approved Form I–600A/I–600, and fee; clarify the regulations and align them 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; alter the validity period for a Form I–600A approval in an orphan case from 18 to 15 months to remove inconsistencies between Form I–600A approval periods and validity of the FBI fingerprint authorization.	*Quantitative:* Applicants— • $0.57 million for new form fees. *Qualitative:* Applicants— • None. DHS/USCIS— • None.	*Quantitative:* Applicants— • None. *Qualitative:* Applicants— • Improve and align the adjudication and approval processes for adoptions from countries that are party to the Hague Adoption Convention and countries that are not. • Clarify the process for applicants who would like to request an extension of Form I–600A/I–600 and/or another type of approved change to their application/petition. 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. • Changing the validity period to 15 months will make the Form I–600A approval periods consistent with the validity of FBI biometric related background checks. The uniform 15-month validity period will also alleviate the burden on prospective adoptive parents and adoption service providers to monitor multiple expiration dates.

TABLE 24—SUMMARY OF PROPOSED PROVISIONS AND IMPACTS—Continued

Proposed provision	Description of proposed change to provision	Estimated costs or transfers of proposed provision	Estimated benefits of proposed provision
(m) Changes to Genealogy Search and Records Requests.	DHS proposes several changes to the USCIS genealogy program and how the agency processes genealogy requests. DHS proposes to expand the use of electronic genealogy requests; change the search request process so that USCIS may provide requesters with digital records, if they exist; and change the genealogy fees.	*Quantitative:* Applicants— • None. *Qualitative:* Applicants— • None. DHS/USCIS— • USCIS may still need to mail some records in cases where requestors who cannot submit the forms electronically need to submit paper copies of both forms with required filing fees.	*Quantitative:* Applicants— • None. *Qualitative:* Applicants— • Genealogy search and records request process changes would increase efficiency and decrease wait times for requestors. DHS/USCIS— • Reduce costs for mailing, records processing, and storage costs because electronic versions of records requests would reduce the administrative burden on USCIS. • USCIS would save $16 to $45 per index search service and $26 to $55 for each textual file retrieved. • Providing digital records in response to a Form G–1041 request may reduce the number of Form G–1041A requests that would be filed because there would already be a copy of the record if it was previously digitized.
(n) Remove Reduced Fee for Naturalization Applicants Using Form I–942, Request for Reduced Fee, When Filing Form N–400, Application for Naturalization.	DHS proposes to eliminate the reduced fee option for Form N–400 that applies to applicants whose documented household income is greater than 150 percent and not more than 200 percent of the Federal poverty level.	*Quantitative:* Applicants— • $2.9 million annually in transfer fees to file Form N–400 for individuals who would have previously requested a reduced Form N–400 fee using Form I–942. *Qualitative:* Applicants— • None. DHS/USCIS— • None.	*Quantitative:* Applicants— • None. *Qualitative:* Applicants— • None. DHS/USCIS— • Not transfer form N–400 costs to other form fees.
(o) Charge for an initial Form I–765 while an asylum claim is pending.	DHS proposes to require the fee for an initial Application for Employment Authorization, Form I–765, when asylum applicants apply for asylum or file an Application for Asylum and for Withholding of Removal, Form I–589. Currently, USCIS exempts these initial applicants with pending asylum applications.	*Quantitative:* Applicants— • $93.1 million for applicants who have applied for asylum or withholding of removal before EOIR (defensive asylum) or filed Form I–589 Application for Asylum and for Withholding of Removal with USCIS (affirmative asylum), to pay the fee for initial filings of Form I–765. DHS/USCIS— • None.	*Quantitative:* Applicants— • None. *Qualitative:* Applicants— • None. DHS/USCIS— • Using LIFO in fiscal year 2018 completed pending cases at an 80 percent rate in the first 30 days, and 98 percent of pending asylum cases were completed within 60 days of receipt.
(p) Charge a fee for Form I–589, Application for Asylum and for Withholding of Removal.	DHS proposes a $50 fee for Form I–589, Application for Asylum and for Withholding of Removal.	*Quantitative:* Applicants— • Asylum applicants would pay $5.6 million in filing fee costs for Form I–589. Qualitative: Applicants— • Some applicants may not be able to afford this fee and would no longer be able to apply for asylum.	*Quantitative:* Applicants— • None. *Qualitative:* Applicants— • None. DHS/USCIS— • None.
(q) Charge a fee for Deferred Action for Childhood Arrivals (DACA) renewal requestors, Form I–821D.	DHS proposes a fee for renewal Deferred Action on Childhood Arrivals (DACA). Form I–821D currently has no fee. DHS does not propose to introduce a fee for Form I–821D initial DACA requests because USCIS does not currently accept such requests, except as described in preamble above, or plan to accept them in the future.	*Quantitative:* • $75.3 million for renewal application Form I–821D transfer fees. Qualitative: Applicants— • None. DHS/USCIS— • None.	*Quantitative:* Applicants— • None. *Qualitative:* Applicants— • None. DHS/USCIS— • Costs for processing DACA renewal will be recovered from those who receive the benefit rather than from other fee payers.

TABLE 24—SUMMARY OF PROPOSED PROVISIONS AND IMPACTS—Continued

Proposed provision	Description of proposed change to provision	Estimated costs or transfers of proposed provision	Estimated benefits of proposed provision
(r) Fee Combining 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]).	DHS proposes to combine the current multiple fees charged for an individual or family into a single fee for each filing of Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100, the Nicaraguan Adjustment and Central American Relief Act [NACARA]).	*Quantitative:* Applicants— • $0.90 million annual costs to apply for suspension of deportation or special rule cancellation of removal under NACARA using Form I–881.	*Quantitative:* Applicants— • $0.11 million in cost savings from the reduced passport-style photos requirement.
(a)	*Qualitative:* Applicants— • None. DHS/USCIS— • None.	*Qualitative:* Applicants— • None. DHS/USCIS— • Combining the two IEFA fees into a single fee will streamline the revenue collections and reporting. • USCIS proposing a single Form I–881 fee may help reduce the administrative burden on USCIS on the small workload.	
(s) Clarify who must pay a 9–11 Response and Biometric Entry-Exit Fee for H–1B and L–1..	DHS proposes to apply the 9–11 Response and Biometric Entry-Exit Fee to all covered petitions (meaning those meeting the 50 employee/50 percent H–1B or L test), whether for new employment or extension.	*Quantitative:* Applicants— • $186.2 million in transfer fees. *Qualitative:* Applicants— • None. DHS/USCIS— • None.	*Quantitative:* Applicants— • None. *Qualitative:* Applicants— • Fee would consistently be applied to all H–1B or L–1 petitions, whether for new employment or extension. DHS/USCIS— • The collected fees would help increase the 9–11 Response and Biometric Entry-Exit fee account for biometric entry-exit screening, deficit reduction, and other public purposes funded by general Treasury revenues.

DHS has prepared a full analysis according to Executive Orders 12866 and 13563 which can be found in the docket for this rulemaking or by searching for RIN 1615–AC18 on *www.regulations.gov*.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Mar. 29, 1996), requires Federal agencies to consider the potential impact of regulations on small entities during the development of their rules. The term ''small entities'' refers to small businesses, not-for-profit organizations that are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. An ''individual'' is not defined by the RFA as a small entity and costs to an individual from a rule are not considered for RFA purposes. In addition, the courts have held that the RFA requires an agency to perform an initial regulatory flexibility analysis (IRFA) of small entity impacts only when a rule directly regulates small entities. Consequently, any indirect impacts from a rule to a small entity are not considered as costs for RFA purposes. Below is a summary of the small entity analysis. A more detailed analysis is available in the rulemaking docket at *http://www.regulations.gov*.

Individuals, rather than small entities, submit the majority of immigration and naturalization benefit applications and petitions. This rule would affect entities that file and pay fees for certain immigration benefit requests. Consequently, there are six categories of USCIS benefits that are subject to a RFA analysis for this proposed 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–924.

DHS does not believe that the increase in fees proposed in this rule would have a significant economic impact on a substantial number of small entities that file Forms I–129, I–140, I–910, or I–360. However, 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–924. 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. DHS is publishing this initial regulatory flexibility analysis to aid the public in commenting on the small entity impact of its proposed adjustment to the USCIS fee schedule. In particular, DHS requests information and data that would help to further assess the impact on small entities in the regional centers or on genealogy forms.

Initial Regulatory Flexibility Analysis (IRFA)

1. *A description of the reasons why the action by the agency is being considered.*

DHS proposes to adjust fees USCIS charges for certain immigration and naturalization benefits. DHS has determined that current fees would not recover the full costs of services provided. Adjustment to the fee schedule is necessary to recover costs and maintain adequate service.

2. *A succinct statement of the objectives of, and legal basis for, the proposed rule.*

DHS's objectives and legal authority for this proposed rule are discussed in the preamble of this rule.

3. *A description and, where feasible, an estimate of the number of small entities to which the proposed rule would apply.*

Entities affected by this rule are those that file and pay fees for certain immigration benefit applications and petitions on behalf of a foreign national. These 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; and Form I–924, Application for Regional Center Designation Under the Immigrant Investor Program. Annual numeric estimates of the small entities impacted by this fee increase total (in parentheses): Form I–129 (77,571 entities), Form I–140 (22,165 entities), Form I–910 (428 entities), and Form I–360 (698 entities).[190] DHS was not able to determine the numbers of regional centers or genealogy requestors that would be considered small entities, therefore does not provide numeric estimates for Form I–924 or Forms G–1041 and G–1041A.[191]

This rule applies to small entities, including businesses, non-profit organizations, and governmental jurisdictions filing for the above benefits. Forms I–129 and I–140, would see a number of industry clusters impacted by this rule (see Appendix A of the Small Entity Analysis 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. The fee for Amerasian, widow(er), or special immigrants would apply to any entity petitioning on behalf of a religious worker. Finally, the Form I–924 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–924 is also Form I–924A, which regional centers must file annually to establish continued eligibility for regional center designation for each fiscal year.

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. If professional genealogists and researchers submitted 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 that 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. Therefore, DHS does not currently have sufficient data to definitively assess the estimate of small entities for these requests.

a. Petition for a Nonimmigrant Worker, Form I–129

DHS proposes to adjust the fee for Petition for a Nonimmigrant Worker, Form I–129, from $460 to various fees. Currently, employers may use Form I–129, to petition for H–1B, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–1S, P–2, P–2S, P–3, P–3S, Q–1, or R–1 nonimmigrant workers. As applicable, employers also may use Form I–129 to apply for E–1, E–2, E–3, or TN nonimmigrant status for eligible workers. DHS proposes to separate the Petition for a Nonimmigrant Worker, Form I–129, into several forms. These forms would include information from the various supplemental forms for specific types of workers. DHS proposes different fees for these new forms. The proposed fees are calculated at a more detailed level than the current fees.

The current fee for Form I–129 is $460. DHS proposes the following fees for new Forms I–129 (separated into new forms by worker type):

- Form I–129H1, Petition for Nonimmigrant Worker: H–1 Classifications—$560
- Form I–129H2A, Petition for Nonimmigrant Worker: H–2A Classification (Named Beneficiaries)—$860
- Form I–129H2B, Petition for Nonimmigrant Worker: H–2B Classification (Named Beneficiaries)—$725
- Form I–129L, Petition for Nonimmigrant Worker: L Classifications (Named Beneficiaries)—$815
- Form I–129O, Petition for Nonimmigrant Worker: O Classifications—$715
- Forms Form I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker; I–129E&TN, Application for Nonimmigrant Worker: E and TN Classifications; and I–129MISC, Petition for Nonimmigrant Worker: H–3, P, Q, or R Classification—$705
- Form I–129H2A, Petition for Nonimmigrant Work Classification: H–2A Classification (Unnamed Beneficiaries)—$425
- Form I–129H2B, Petition for Nonimmigrant Worker: H–2B Classification (Unnamed Beneficiaries)—$395.

For petitioners filing Form I–129 for H–2A and H–2B workers with only unnamed beneficiaries, DHS proposes a lower fee than the current filing fee. DHS proposes to increase the fee when filed for all other worker types. The fee adjustments and percentage increases or decreases are summarized in Table 25.

TABLE 25—USCIS PROPOSED FEES FOR SEPARATED FORMS I–129 FOR FISCAL YEAR 2019/2020

Immigration benefit request	Current fee	Proposed fee	Difference fee increase/ decrease	Percent change
Form I–129H1—Named Beneficiaries	$460	$560	$100	22
Form I–129H2A—Named Beneficiaries	460	860	400	87
Form I–129H2A—Unnamed Beneficiaries	460	425	−35	−8
Form I–129H2B—Named Beneficiaries	460	725	265	58

[190] Calculation: 90,726 Form I–129 * 85.5 percent = 77,571 small entities; 30,321 Form I–140 * 73.1 percent = 22,165 small entities; 476 Form I–910 * 90.0 percent = 428 small entities; 760 Form I–360 * 91.9 percent = 698 small entities.

[191] 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.

TABLE 25—USCIS PROPOSED FEES FOR SEPARATED FORMS I–129 FOR FISCAL YEAR 2019/2020—Continued

Immigration benefit request	Current fee	Proposed fee	Difference fee increase/ decrease	Percent change
Form I–129H2B—Unnamed Beneficiaries	460	395	−65	−14
Form I–129O	460	715	255	55
Form I–129 L1A/L1B/LZ Blanket	460	815	355	77
Forms I–129CW, I–129E&TN, and I–129MISC	460	705	245	53

Source: USCIS FY 2019/2020 Proposed Fee Schedule (see preamble).

Using a 12-month period of data on the number of Form I–129 petitions filed from October 1, 2016 to September 31, 2017, DHS collected internal data for each filing organization including the name, Employer Identification Number (EIN), city, state, zip code, and number/type of filings. Each entity may make multiple filings. For instance, there were receipts for 530,442 Form I–129 petitions, but only 90,726 unique entities that filed those petitions. Since the filing statistics do not contain information such as the revenue of the business, DHS used third party sources of data to collect this information. DHS used a subscription-based, online database—Hoover's—as well as three open-access databases—Manta, Cortera, and Guidestar—to help determine an organization's small entity status and then applied Small Business Administration size standards to the entities under examination.[192]

The method DHS used to conduct the small entity analysis was based on a representative sample of the impacted population with respect to each form. To identify a representative sample, DHS used a standard statistical formula to determine a minimum sample size of 384 entities, which included using a 95 percent confidence level and a 5 percent confidence interval for a population of 90,726 unique entities filing Form I–129 petitions. Based on previous experience conducting small entity analyses, DHS expects to find 40 to 50 percent of the filing organizations in the online subscription and public databases. Accordingly, DHS selected a sample size that was approximately 69 percent larger than the necessary minimum to allow for non-matches (filing entities that could not be found in any of the four databases). Therefore, DHS conducted searches on 650 randomly selected entities from a population of 90,726 unique entities that filed Form I–129 petitions.

Of the 650 searches for small entities that filed Form I–129 petitions, 473 searches returned a successful match of a filing entity's name in one of the databases and 177 searches did not match a filing entity. Based on previous experience conducting regulatory flexibility analyses, DHS assumes filing entities not found in the online database are likely to be small entities. As a result, in order to prevent underestimating the number of small entities this rule would affect, DHS conservatively considers all of the non-matched entities as small entities for the purpose of this analysis. Among the 473 matches for Form I–129, DHS determined 346 to be small entities based on revenue or employee count and according to their assigned North American Industry Classification System (NAICS) code. Therefore, DHS was able to classify 556 of 650 entities as small entities that filed Form I–129 petitions, including combined non-matches (177), matches missing data (33), and small entity matches (346). Using the subscription-based, online databases mentioned above (Hoover's, Manta, Cortera, and Guidestar), the 33 matches missing data found in the databases lacked applicable revenue or employee count data.

DHS determined that 556 of 650 (85.5 percent) of the entities filing Form I–129 petitions were small entities. Furthermore, DHS determined that 346 of the 650 entities searched were small entities based on sales revenue data, which were needed to estimate the economic impact of the proposed rule. Since these 346 small entities were a subset of the random sample of 650 entity searches, they were statistically significant in the context of this research. In order to calculate the economic impact of this rule, DHS estimated the total costs associated with the proposed fee increase for each entity and divided that amount by the sales revenue of that entity.[193] Based on the proposed fee increases for Form I–129, DHS calculated the average economic impact on the 346 small entities with revenue data as summarized in Table 26.

TABLE 26—ECONOMIC IMPACTS ON SMALL ENTITIES WITH REVENUE DATA

Immigration benefit request	Fee increase/ decrease	Average impact percentage
Form I–129H1	$100	0.16
Form I–129H2A—Named Beneficiaries	400	0.65
Form I–129H2A—Unnamed Beneficiaries	−35	−0.06
Form I–129H2B—Named Beneficiaries	265	0.43
Form I–129H2B—Unnamed Beneficiaries	−65	−0.10
Form I–129L	355	0.57
Form I–129O	255	0.41
Forms I–129CW, I–129E&TN, and I–129MISC	245	0.40

Source: USCIS calculation.

[192] U.S. Small Business Administration, Office of Advocacy, Size Standards Table. Available at *https://www.sba.gov/document/support--table-size-standards.*

[193] Total Economic Impact to Entity = (Number of Petitions Submitted per Entity * $X difference in current fee from proposed fee)/Entity Sales Revenue.

Among the 346 small entities with reported revenue data, each one would experience an economic impact of less than 2 percent with the exception of 11 entities for any immigration benefit request using separate Forms I–129. Depending on the type of immigration benefit request, the average impact on all 346 small entities with revenue data ranges from −0.10 to 0.65 percent, as shown in the supporting comprehensive small entity analysis. Therefore, the average economic impact on the described 346 small entities is less than 1 percent, regardless of which newly separate Form I–129 petition is applicable. As a result, the additional fees this rulemaking proposes do not represent a significant economic impact on these small entities.

b. Immigrant Petition for an Alien Worker, Form I–140

USCIS proposes to decrease the fee to file Immigrant Petition for an Alien Worker, Form I–140, from $700 to $545, a decrease of $155 (22 percent). Using a 12-month period of data on the number of Form I–140 petitions filed from October 1, 2016 to September 31, 2017, DHS collected internal data similar to that of Form I–129. The total number of Form I–140 petitions was 139,439, with 30,321 unique entities that filed petitions. DHS used the same databases previously mentioned to search for information on revenue and employee count.

DHS used the same method as with Form I–129 to conduct the small entity analysis based on a representative sample of the impacted population. To identify a representative sample, DHS used a standard statistical formula to determine a minimum sample size of 383 entities, which included using a 95 percent confidence level and a 5 percent confidence interval on a population of 30,321 unique entities for Form I–140 petitions. Based on previous experience conducting small entity analyses, DHS expected to find 40 to 50 percent of the filing organizations in the online subscription and public databases. Accordingly, DHS selected a sample size that was approximately 44 percent larger than the necessary minimum to allow for non-matches (filing entities that could not be found in any of the four databases). Therefore, DHS conducted searches on 550 randomly selected entities from a population of 30,321 unique entities that filed Form I–140 petitions.

Of the 550 searches for small entities that filed Form I–140 petitions, 480 searches successfully matched the name of the filing entity to names in the databases and 70 searches did not match the name of a filing entity. Based on previous experience conducting regulatory flexibility analyses, DHS assumes filing entities not found in the online databases are likely to be small entities. As a result, in order to prevent underestimating the number of small entities this rule would affect, DHS conservatively considers all of the non-matched entities as small entities for the purpose of this analysis. Among the 480 matches for Form I–140, DHS determined 324 to be small entities based on revenue or employee count and according to their NAICS code. Therefore, DHS was able to classify 402 of 550 entities as small entities that filed Form I–140 petitions, including combined non-matches (70), matches missing data (8), and small entity matches (324). Using the subscription-based, online databases mentioned above (Hoover's, Manta, Cortera, and Guidestar), the 8 matches missing data that were found in the databases lacked applicable revenue or employee count statistics.

DHS determined that 402 out of 550 (73.1 percent) entities filing Form I–140 petitions were small entities. Furthermore, DHS determined that 324 of the 550 searched were small entities based on sales revenue data, which were needed to estimate the economic impact of the proposed rule. Since these 324 were a small entity subset of the random sample of 550 entity searches, they were considered statistically significant in the context of this research. Similar to Form I–129, DHS calculated the economic impact of this rule on entities that filed Form I–140 by estimating the total cost savings associated with the proposed fee decrease for each entity and divided that amount by sales revenue of that entity.

Among the 324 small entities with reported revenue data, each would experience an economic impact of less than −2 percent. Using the above methodology, the greatest economic impact proposed by this fee change totaled −1.86 percent and the smallest totaled −0.0000001 percent. The average impact on all 324 small entities with revenue data was −0.07 percent. Because of the fee decrease, these small entities would see a cost savings per application in filing fees based on petitions. The negative number represents cost savings to the petitioner. Therefore, the larger it is, the greater the cost savings for the petitioners. The average impact on all 324 small entities with revenue data was −0.07 percent. The evidence suggests that the decreased fee proposed by this rule does not represent a significant economic impact on these entities.

In addition to the individual Form I–129 and Form I–140 analyses, USCIS analyzed any cumulative impacts of these form types to determine if there were any impacts to small entities when analyzed together. USCIS isolated those entities that overlapped in both samples of Forms I–129 and I–140 by EIN. Only 1 entity had an EIN that overlapped in both samples; this was a small entity that submitted 3 Form I–129 petitions and 1 Form I–140 petition. Due to little overlap in entities in the samples and the relatively minor impacts on revenue of fee increases of Forms I–129 and I–140, USCIS does not expect the combined impact of these two forms to be an economically significant burden on a substantial number of small entities.

c. Civil Surgeon Designation, Form I–910

DHS proposes to decrease the fee for Civil Surgeon Designations, Form I–910, from $785 to $650, a decrease of $135 (17 percent). Using a 12-month period of data from October 1, 2016 to September 31, 2017, DHS collected internal data on filings of Form I–910. The total number of Form I–910 petitions was 757, with 476 unique entities that filed applications. The third party databases mentioned previously were used again to search for revenue and employee count information.

Using the same methodology as the Forms I–129 and I–140, USCIS conducted the small entity analysis based on a representative sample of the impacted population. To identify a representative sample, DHS used a standard statistical formula to determine a minimum sample size of 213 entities, which included using a 95 percent confidence level and a 5 percent confidence interval on a population of 476 unique entities for Form I–910. USCIS conducted searches on 300 randomly selected entities from a population of 476 unique entities for Form I–910 petitions, a sample size approximately 40 percent larger than the minimum necessary.

Of the 300 searches for small entities that filed Form I–910 petitions, 266 searches successfully matched the name of the filing entity to names in the databases and 34 searches did not match the name of a filing entity. DHS assumes filing entities not found in the online databases are likely to be small entities. DHS also assumes all of the non-matched entities as small entities for the purpose of this analysis. Among the 266 matches for Form I–910, DHS determined 189 to be small entities based on their revenue or employee count and according to their NAICS

code. Therefore, DHS was able to classify 270 of 300 entities as small entities that filed Form I–910 petitions, including combined non-matches (34), matches missing data (47), and small entity matches (189). DHS also used the subscription-based, online databases mentioned above (Hoover's, Manta, Cortera, and Guidestar), and the 8 matches missing data that were found in the databases lacked revenue or employee count statistics.

DHS determined that 270 out of 300 (90 percent) entities filing Form I–910 applications were small entities. Furthermore, DHS determined that 189 of the 300 entities searched were small entities based on sales revenue data, which were needed in order to estimate the economic impact of the proposed rule. Since these 189 were a small entity subset of the random sample of 300 entity searches, they were statistically significant in the context of this research.

Similar to the Forms I–129 and I–140, DHS calculated the economic impact of this rule on entities that filed Form I–910 by estimating estimated the total savings associated with the proposed fee decrease for each entity and divided that amount by sales revenue of that entity. Among the 189 small entities with reported revenue data, all experienced an economic impact considerably less than 1.0 percent. The greatest economic impact imposed by this proposed fee change totaled −1.350 percent and the smallest totaled −0.001 percent. The average impact on all 189 small entities with revenue data was −1.104 percent. The decreased fee will create cost savings for the individual applicant of $135. The negative number represents cost savings to the applicant. Therefore, the larger it is, the greater the cost savings for the applicants. The evidence suggests that the decreased fee proposed by this rule does not represent a significant economic impact on these entities.

d. Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360

DHS proposes to increase the fee for foreign religious workers who file using Form I–360 from $435 to $455, an increase of $20 (5 percent). Using a 12-month period of data on the number of Form I–360 petitions filed from October 1, 2016 to September 31, 2017, DHS collected internal data on filings of Form I–360 for religious workers. The total number of Form I–360 petitions was 2,446, with 760 unique entities that filed petitions. DHS used the same databases mentioned previously to search for information on revenue and employee count.

DHS used the same method as with Forms I–129 and I–140 to conduct the small entity analysis based on a representative sample of the impacted population. To identify a representative sample, DHS used a standard statistical formula to determine a minimum sample size of 332 entities, which included using with a 95 percent confidence level and a 5 percent confidence interval on a population of 760 unique entities for Form I–360 petitions. To account for missing organizations in the online subscription and public databases, DHS selected a sample size that was approximately 27 percent larger than the necessary minimum to allow for non-matches (filing entities that could not be found in any of the four databases). Therefore, DHS conducted searches on 420 randomly selected entities from a population of 760 unique entities that filed Form I–360 petitions.

Of the 420 searches for small entities that filed Form I–360 petitions, 417 searches successfully matched the name of the filing entity to names in the databases and 3 searches did not match the name of the filing entities in the databases. DHS assumes that filing entities not found in the online databases are likely to be small entities. As a result, in order to prevent underestimating the number of small entities this rule would affect, DHS conservatively assumes to consider all of the non-matched entities as small entities for the purpose of this analysis. Among the 417 matches for Form I–360, DHS determined 309 to be small entities based on revenue or employee count and according to their NAICS code. Therefore, DHS was able to classify 386 of 420 entities as small entities that filed Form I–360 petitions, including combined non-matches (3), matches missing data (74), and small entity matches (309). DHS also used the subscription-based, online databases mentioned above (Hoover's, Manta, Cortera, and Guidestar), the 74 matches missing data that were found in the databases lacked revenue or employee count data.

DHS determined that 386 out of 420 (91.9 percent) entities filing Form I–360 petitions were small entities. Furthermore, DHS determined that 309 of the 420 searched were small entities based on sales revenue data, which were needed to estimate the economic impact of the proposed rule. Since 309 small entities were a subset of the random sample of 420 entity searches, they were statistically significant in the context of this research.

Similar to other forms analyzed in this RFA, DHS calculated the economic impact of this rule on entities that filed Form I–360 by estimating the total costs associated with the proposed fee increase for each entity. Among the 309 small entities with reported revenue data, each would experience an economic impact of less than 1.0 percent. The greatest economic impact imposed by this proposed fee change totaled 0.46 percent and the smallest totaled 0.000002 percent. The average impact on all 309 small entities with revenue data was 0.02 percent.

DHS also analyzed the proposed costs by this rule on the petitioning entities relative to the costs of the typical employee's salary. Guidelines suggested by the SBA Office of Advocacy indicate that the impact of a rule could be significant if the cost of the regulation exceeds 5 percent of the labor costs of the entities in the sector.[194] According to the Bureau of Labor Statistics (BLS), the mean annual salary is $53,290 for clergy,[195] $46,980 for directors of religious activities and education,[196] and $35,860 for other religious workers.[197] Based on an average of 1.5 religious workers[198] petitioned-for per entity, the additional average annual cost would be $30 per entity.[199] The additional costs per entity proposed by this rule represent only 0.06 percent of the average annual salary for clergy, 0.06 percent of the average annual salary for directors of religious activities and education, and 0.08 percent of the average annual salary for all other religious workers.[200] Therefore, using

[194] Office of Advocacy, Small Business Administration, ''A Guide for Government Agencies, How to Comply with the Regulatory Flexibility Act'', page 19: *https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf*

[195] Bureau of Labor Statistics, U.S. Department of Labor, ''Occupational Employment Statistics, May 2018, ''Clergy'': *https://www.bls.gov/oes/2018/may/oes212011.htm* (viewed September 24, 2019).

[196] Bureau of Labor Statistics, U.S. Department of Labor, ''Occupational Employment Statistics, May 2018, ''Directors of Religious Activities and Education'': *https://www.bls.gov/oes/2018/may/oes212099.htm* (viewed September 24, 2019).

[197] Bureau of Labor Statistics, U.S. Department of Labor, ''Occupational Employment Statistics, May 2018, ''Religious Workers, All Other'': *https://www.bls.gov/oes/2018/may/oes212099.htm* (viewed September 24, 2019).

[198] USCIS calculated the average filing per entity of 1.5 petitions, from the Form I–360 Sample with Petition Totals in Appendix E, of the Small Entity Analysis for the U.S. Citizenship and Immigration Services Fee Schedule NPRM. Calculation: (total number of petitions from each sample id)/(total number of sample Form I–360 petitions) = 618/420 = 1.5 average petitions filed per entity.

[199] Calculation: 1.5 average petitions per entity * $20 increase in petition fees = $30 additional total cost per entity.

[200] Calculation: $30 per entity/$53,290 clergy salary × 100 = .06 percent;

$30 per entity/$46,980 directors of religious activities and education × 100 = .06 percent;

average annual labor cost guidelines, the additional regulatory compliance costs proposed by this rule are not significant.

e. Genealogy Requests—Genealogy Index Search Request Form G–1041 and Genealogy Record Request, Form G–1041A

DHS proposes fee increases to file both types of genealogy requests: Form G–1041, Genealogy Index Search Request and Form G–1041A, Genealogy Record Request. The fee to file Form G–1041 would increase from $65 to $240, an increase of $175 (269 percent increase). The fee for Form G–1041A would increase from $65 to $385, an increase of $320 (492 percent). Based on DHS records for calendar years 2013 to 2017, there was an annual average of 3,840 genealogy index search requests made using Form G–1041 and there was an annual average of 2,152 genealogy records requests made using Form G–1041A. DHS does not have sufficient data on the requestors for the genealogy forms to determine if entities or individuals submitted these requests.

DHS has previously determined that individuals usually make requests for historical records.[201] 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 that 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. Therefore, DHS currently does not have sufficient data to definitively assess the impact on small entities for these requests.

However, DHS must still recover the full costs of this program. As stated in the preamble to this proposed rule, reducing the filing fee for any one benefit request submitted to DHS simply transfers the additional cost to process this request to other immigration and naturalization filing fees.

For this proposed fee rule, DHS proposes to expand the use of electronic genealogy requests to encourage requesters to use the electronic versions of Form G–1041 and Form G–1041A. DHS also proposes to change the search request process so that USCIS may provide requesters with electronic records, if they exist, in response to the initial index request. These proposed changes may reduce the time it takes to request and receive genealogy records and, in some cases, it would eliminate the need to make multiple search requests and submit separate fees. Moreover, DHS notes that providing digital records in response to a Form G–1041 request may reduce the number of Form G–1041A requests that would be filed because there would already be a copy of the record if it was previously digitized. As a result, the volume of Form G–1041A requests USCIS receives may decrease, though DHS is unable to estimate by how much. DHS requests comments from the public on the impacts to small entities of the proposed fee increases to the genealogy forms.

f. Regional Center Under the Immigrant Investor Program, Form I–924 and I–924A

As part of the Immigration Act of 1990, Public Law 101–649, 104 Stat. 4978, Congress established the EB–5 immigrant visa classification to incentivize employment creation in the United States. Under the EB–5 program, lawful permanent resident (LPR) status is available to foreign nationals who invest the required amount in a new commercial enterprise that will create at least 10 full-time jobs in the United States. *See* INA sec. 203(b)(5), 8 U.S.C. 1153(b)(5). A foreign national may also invest a lower amount in a targeted employment area defined to include rural areas and areas of high unemployment. *Id.;* 8 CFR 204.6(f). The INA allots 9,940 immigrant visas each fiscal year for foreign nationals seeking to enter the United States under the EB–5 classification.[202] *See* INA sec. 201(d), 8 U.S.C. 1151(d); INA sec. 203(b)(5), 8 U.S.C. 1153(b)(5). Not less than 3,000 of these visas must be reserved for foreign nationals investing in targeted employment areas. *See* INA sec. 203(b)(5)(B), 8 U.S.C. 1153(b)(5)(B).

Enacted in 1992, section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Public Law 102–395, 106 Stat. 1828, established a pilot program that requires the allocation of a limited number of EB–5 immigrant visas to individuals who invest through DHS-designated regional centers.[203] Under the Regional Center Program, foreign nationals base their EB–5 petitions on investments in new commercial enterprises located within USCIS-designated ''regional centers.'' DHS regulations define a regional center as an economic unit, public or private, that promotes economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. *See* 8 CFR 204.6(e). While all EB–5 petitioners go through the same petition process, those petitioners participating in the Regional Center Program may meet statutory job creation requirements based on economic projections of either *direct* or *indirect* job creation, rather than only on jobs directly created by the new commercial enterprise. *See* 8 CFR 204.6(j)(4)(iii), (m)(3). As of August 12, 2019, there were 826 USCIS-approved regional centers.[204] Requests for regional center designation must be filed with USCIS on Form I–924, Application for Regional Center Designation Under the Immigrant Investor Program. *See* 8 CFR 204.6(m)(3)–(4). Once designated, regional centers must provide USCIS with updated information to demonstrate continued eligibility for the designation by submitting a Form I–924A, Annual Certification of Regional Center, on an annual basis or as otherwise requested. *See* 8 CFR 204.6(m)(6)(i)(B).

DHS proposes no adjustment to the fee for the Application for Regional Center Designation Under the Immigrant Investor Program, Form I–924. The current fee to file Form I–924 is $17,795. However, DHS is proposing to increase the fee for the Annual Certification of Regional Center, Form I–924A, from $3,035 to $4,470 per filing, an increase of $1,435 (47 percent). Using a 12-month period of data on the number of Forms I–924 and I–924A from October 1, 2016 to September 31, 2017, DHS collected internal data on these forms. DHS received a total of 280 Form I–924 applications and 847 Form I–924A applications.

Regional centers are difficult to assess because there is a lack of official 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

$30 per entity/$35,860 other religious workers × 100 = .08 percent.

[201] See ''Establishment of a Genealogy Program; Proposed Rule,''71 FR 20357 (April 20, 2006). Available at: *https://www.regulations.gov/document?D=USCIS-2006-0013-0001.*

[202] An immigrant investor, his or her spouse, and children (if any) will each use a separate visa number.

[203] Current law requires that DHS annually set aside 3,000 EB–5 immigrant visas for regional center investors. Public Law 105–119, sec. 116, 111 Stat. 2440 (Nov. 26, 1997). If this full annual allocation is not used, remaining visas may be allocated to foreign nationals who do not invest in regional centers.

[204] USCIS Immigrant Investor Regional Centers: *https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers* (last reviewed/updated Aug. 20, 2019).

and can involve multiple business and financial activities, some of which may play a direct or indirect role in linking investor funds to new commercial enterprises and job-creating projects or entities. The information provided by regional centers as part of the Forms I–924 and I–924A 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 in an attempt to analyze the small entity status of regional centers.[205] In the DHS final rule ''EB–5 Immigrant Investor Program Modernization,'' DHS analyzed estimated administrative fees and revenue amounts for regional centers. 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 fiscal years 2014 to 2017. 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 rule could 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.[206] DHS welcomes comments from the public on the impacts to small entities of the proposed fee increases to Form I–924A and requests information from the public on data sources on the average revenues collected by regional centers in the form of administrative fees and the extent to which regional centers may pass along the fee increases to the individual investors.

g. Other Possible Fee Scenarios

As discussed earlier in the preamble, the fees that DHS proposes may change in a final rule based on policy decisions, in response to public comments, intervening legislation, and other changes. Other than fee adjustments made in response to public comments and policy modifications, DHS notes that the fee adjustments in a final rule depend on two factors beyond its control. As previously described in the preamble, this rule includes proposed DACA fees associated with Form I–821D. However, DHS is currently operating under two nationwide preliminary injunctions to maintain the DACA policy. Additionally, the proposed fees are based on IEFA funding $207.6 million of ICE expenses. If DHS does not obtain relief from the DACA preliminary injunctions, Congress rejects the proposal to fund these ICE expenses with IEFA funding, or DHS does not ultimately shift the aforementioned ICE costs from annual appropriations to the IEFA, then fees for most of the forms analyzed in this IRFA would also change.

Table 27 shows the current and proposed fees for the forms analyzed in this IRFA according to each fee schedule scenario based on the two factors mentioned above. Scenario A refers to the proposed fees described in detail throughout this rule. Scenario B includes DACA fees, but excludes the ICE transfer. Scenario C excludes DACA fees, but includes the ICE transfer. Scenario D excludes both DACA fees and the ICE transfer. Scenario E and F includes separate initial and renewal fees for DACA fees; scenario E includes the ICE transfer, but F excludes the ICE transfer.

TABLE 28—PROPOSED FEE SCHEDULE BY SCENARIO WITH FORMS AFFECTING SMALL ENTITIES, INITIAL REGULATORY FLEXIBILITY ANALYSIS

Immigration benefit request	Current fee	Scenario A	Scenario B	Scenario C	Scenario D	Scenario E	Scenario F
I–129 Petition for a Nonimmigrant worker	$460	$N/A	$N/A	$N/A	$N/A	$N/A	$N/A
I–129H1	460	560	535	585	555	550	520
I–129H2A—Named Beneficiaries	460	860	840	870	850	810	790
I–129H2B—Named Beneficiaries	460	725	700	735	710	705	685
I–129L	460	815	795	830	805	790	770
I–129O	460	715	690	725	705	695	670
I–129CW, I–129E&TN, and I–129MISC	460	705	685	720	695	680	660
I–129H2A—Unnamed Beneficiaries	460	425	400	440	410	405	385
I–129H2B—Unnamed Beneficiaries	460	395	370	410	385	390	365
I–140 Immigrant Petition for Alien Worker	700	545	520	580	555	545	520
I–360 Petition for Amerasian Widow(er) or Special Immigrant	435	455	435	475	450	455	430
I–910 Application for Civil Surgeon Designation	785	650	625	660	635	650	625
I–924 Application for Regional Center Designation Under the Immigrant Investor Program	17,795	17,795	17,795	17,795	17,795	17,795	17,795
I–924A Annual Certification of Regional Center	3,035	4,470	4,470	4,465	4,460	4,465	4,465
G–1041 Genealogy Index Search Request	65	240	240	240	240	240	240
G–1041A Genealogy Records Request	65	385	385	385	385	385	385

Source: USCIS analysis.

[205] The methodology used to analyze the small entity status of regional centers is explained in further detail in Section D of the RFA section within DHS final rule ''EB–5 Immigrant Investor Program Modernization,'' available at 84 FR 35750.

[206] Calculation: 1 percent of $447,000 = $4,470 (the new fee for Form I–924A).

Further, tables 28 and 29 show the estimated economic impact on small entities based on the fee schedule proposed for each of the fee scenarios. DHS followed the same method as previously described in this IRFA to estimate the economic impact on small entities for each fee scenario, A—F.

TABLE 29—ESTIMATED ECONOMIC IMPACT ON SMALL ENTITIES FOR PROPOSED FEE SCHEDULE BY SCENARIO (A–D), RFA INITIAL REGULATORY FLEXIBILITY ANALYSIS

Immigration benefit request	Scenario A		Scenario B		Scenario C		Scenario D	
	Increase/ decrease from current fee	Average economic impact percent	Increase/ decrease from current fee	Average economic impact percent	Increase/ decrease from current fee	Average economic impact percent	Increase/ decrease from current fee	Average economic impact percent
I–129 Petition for a Nonimmigrant worker	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
I–129H1B	$100	0.22	$75	0.16	$125	0.27	$95	0.21
I–129H2A—Named Beneficiaries	400	0.87	380	0.83	410	0.89	390	0.85
I–129H2B—Named Beneficiaries	265	0.58	240	0.52	275	0.60	250	0.54
I–129L	355	0.77	335	0.73	370	0.80	345	0.75
I–129O	255	0.55	230	0.50	265	0.58	245	0.53
Form I–129CW, I–129E&TN, and I–129MISC	245	0.53	225	0.49	260	0.57	235	0.51
I–129H2A—Unnamed Beneficiaries	−35	−0.08	−60	−0.13	−20	−0.043	−50	−0.11
I–129H2B—Unnamed Beneficiaries	−65	−0.14	−90	−020	−50	−0.11	−75	−0.16
I–140 Immigrant Petition for Alien Worker	−155	−0.221	−180	−0.257	−120	−0.171	−145	−0.207
I–360 Petition for Amerasian Widow(er) or Special Immigrant	20	0.05	0	N/A	40	0.0919	15	0.034
I–910 Application for Civil Surgeon Designation	−135	−0.17	−160	−0.20	−125	−0.16	−150	−0.19
I–924 Application For Regional Center Designation Under the Immigrant Investor Program	0	N/A	0	N/A	0	N/A	0	N/A
I–924A Annual Certification of Regional Center	1,435	0.47	1,435	0.47	1,430	0.47	1,425	0.47
G–1041 Genealogy Index Search Request	175	2.69	175	2.69	175	2.69	175	2.69
G–1041A Genealogy Records Request	320	4.92	320	4.92	320	4.92	320	4.92

Source: USCIS analysis.
Calculation: Increase or Decrease Fee Amount per Scenario/Current Fee Amount = Average Economic Impact Percent

TABLE 30—ESTIMATED ECONOMIC IMPACT ON SMALL ENTITIES FOR PROPOSED FEE SCHEDULE BY SCENARIO (E–F), INITIAL REGULATORY FLEXIBILITY ANALYSIS

Immigration benefit request	Scenario E		Scenario F	
	Increase/ decrease from current fee	Average economic impact percent	Increase/ decrease from current fee	Average economic impact percent
I–129 Petition for a Nonimmigrant worker	N/A	N/A	N/A	N/A
I–129H1B	$90	0.19	$60	0.13
I–129H2A—Named Beneficiaries	350	0.76	330	0.72
I–129H2B—Named Beneficiaries	245	0.53	225	0.49
I–129L	330	0.72	310	0.67
I–129O	235	0.51	210	0.46
Form I–129CW, I–129E&TN, and I–129MISC	220	0.48	200	0.43
I–129H2A—Unnamed Beneficiaries	(55)	−0.12	(75)	−0.16
I–129H2B—Unnamed Beneficiaries	(70)	−0.15	(95)	−0.21
I–140 Immigrant Petition for Alien Worker	(155)	−0.221	(180)	−257
I–360 Petition for Amerasian Widow(er) or Special Immigrant	20	0.05	(5)	0.01
I–910 Application for Civil Surgeon Designation	(135)	−0.17	(160)	−0.20
I–924 Application for Regional Center Designation Under the Immigrant Investor Program	0	0	0	0
I–924A Annual Certification of Regional Center	1,430	0.47	1,430	0.47
G–1041 Genealogy Index Search Request	175	2.69	175	2.69
G–1041A Genealogy Records Request	320	4.92	320	4.92

Source: USCIS analysis.
Calculation: Increase or Decrease Fee Amount per Scenario/Current Fee Amount = Average Economic Impact Percent

To reduce the uncertainty that such conditions present to the affected public, USCIS proposes and evaluates six fee scenarios based on these three factors. Each scenario lays out what the fees would be if certain conditions materialize and present a range of fees. Thus, the final fees may be one of the scenarios presented, or an amount in between the highest and lowest fees proposed. Scenario A refers to the proposed fees described in detail throughout this proposed rule. Scenario B includes DACA renewal fees, but it excludes the ICE transfer. Scenario C excludes DACA fees, but it includes the ICE transfer. Scenario D excludes both DACA fees and the ICE transfer. Scenarios E and F list separate initial and renewal fees for DACA, with or without the ICE transfer. Table 20 lists the assumptions and effects of these three factors on each fee scenario. The preamble has more detail on each scenario, regarding proposed fee changes, budgets, and transfers.

Furthermore, tables 28 and 29 show the estimated economic impact on small entities based on the fee schedule proposed for each of the fee scenarios. DHS followed the same method as previously described in this IRFA to estimate the economic impact on small entities for each fee scenario. The tables illustrate each scenario with an increased/decreased form fee and average economic impact, for each immigration benefit request. The results show the decreased form fees in parenthesis produce a negative average economic impact, in scenarios A–F. This would indicate across all scenarios, the economic impact from the decreased fee would create cost savings and/or higher revenues for the individual applicant or petitioner. The negative number represents cost savings to the applicant/petitioner. Therefore, the larger it is the greater the cost savings for the applicants/petitioners. The evidence suggests that the increased/decreased fees proposed by this rule does not represent a significant economic impact on these entities.

4. *A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.*

The proposed rule does not directly impose any new or additional ''reporting'' or ''recordkeeping'' requirements on filers of Forms I–129, I–140, I–910, I–360, G–1041, G–1041A, I–924, or I–924A. The proposed rule does not require any new professional skills for reporting.

5. *An identification, to the extent practical, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.*

DHS is unaware of any duplicative, overlapping, or conflicting Federal rules, but invites any comment and information regarding any such rules.

6. *Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities, including alternatives considered such as:*

(1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) Use of performance rather than design standards; and

(4) Any exemption from coverage of the rule, or any part thereof, for such small entities.

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 immigrant applicants. In addition, DHS must fund the costs of providing services without charge by using a portion of the filing fees that are collected for other immigration benefits. Without an adjustment in fees, USCIS would not be able to sustain the current level of service for immigration and naturalization benefits. While most immigration benefit fees apply to individuals, as described above, some also apply to small entities. USCIS seeks to minimize the impact on all parties, but in particular small entities. An alternative to the increased economic burden of the proposed rule is to maintain fees at their current level for small entities. The strength of this alternative is that it assures no additional fee-burden is placed on small entities; however, this alternative also would cause negative impacts to small entities.

Without the fee adjustments proposed in this rule, significant operational changes would be necessary. Given current filing volume and other economic considerations, additional revenue is necessary 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 information technology and facilities, travel, and training. Depending on the actual level of workload received, these operational changes would result in longer application processing times, a degradation in service to applicants and petitioners, and reduced efficiency over time. These cuts would ultimately represent increased costs to small entities by causing delays in benefit processing and reduced support service. Tables 29 and 30 show the estimated economic impact on small entities based on each of the fee scenarios considered. The tables illustrate an increase/decrease in fee and average economic impact for each immigration benefit request in each scenario. The decreased form fees shown in parentheses produce negative average economic impacts in scenarios A–F. This indicates that the economic impacts from the decreased fees would create cost savings for individual applicants and petitioners. The evidence suggests that the decreased fees proposed by this rule do not represent a significant economic impact on these entities.

7. *Questions for Comment to Assist Regulatory Flexibility Analysis*

- Please provide comment on the numbers of small entities that may be impacted by this rulemaking.
- Please provide comment on any or all of the provisions in the proposed rule with regard to the economic impact of this rule, paying specific attention to the effect of the rule on small entities in light of the above analysis, as well as the full small entity analysis on *regulations.gov.*
- Please provide comment on any significant alternatives DHS should consider in lieu of the changes proposed by this rule.
- Please describe ways in which the rule could be modified to reduce burdens for small entities consistent with the Immigration and Nationality Act and the Chief Financial Officers Act requirements.
- Please identify all relevant Federal, State or local rules that may duplicate, overlap or conflict with the proposed rule.

C. Unfunded Mandates Reform Act

The 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 or final agency rule 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. The value equivalent of $100 million in 1995 adjusted for inflation to 2018 levels by the Consumer Price Index for All Urban Consumers (CPI–U) is $165 million. While this rule may result in the expenditure of more than $100 million by the private sector annually, the rulemaking is not a ''Federal mandate'' as defined for UMRA purposes.[207] The payment of immigration benefit fees by individuals or other private sector entities is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary Federal program, applying for immigration status in the United States.[208] Therefore, no actions were

[207] *See* 2 U.S.C. 658(6).

[208] *See* 2 U.S.C. 658(7)(A)(ii).

deemed necessary under the provisions of the UMRA.

D. Congressional Review Act

This proposed rule is a major rule as defined by 5 U.S.C. 804, also known as the Congressional Review Act, as enacted in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 847, 868 *et seq.* Accordingly, this rule, if enacted as a final rule, would be effective at least 60 days after the date on which Congress receives a report submitted by DHS under the Congressional Review Act, or 60 days after the final rule's publication, whichever is later.

E. Executive Order 13132 (Federalism)

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

F. Executive Order 12988 (Civil Justice Reform)

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

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 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. The Information Collection. table below shows the summary of forms that are part of this rulemaking.

TABLE 30—INFORMATION COLLECTION

OMB No.	Form No.	Form name	Type of information collection
1615–0105	G–28	Notice of Entry of Appearance as Attorney or Accredited Representative.	No material or non- substantive change to a currently approved collection.
1615–0096	G–1041	Genealogy Index Search Request	No material or non- substantive change to a currently approved collection.
	G–1041A	Genealogy Records Request (For each microfilm or hard copy file).	
1615–0079	I–102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.	No material or non- substantive change to a currently approved collection.
1615–0111	I–129CW	Petition for a CNMI-Only Nonimmigrant Transitional Worker.	No material or non- substantive change to a currently approved collection.
1615–XXXX	I–129E&TN	Application for Nonimmigrant Worker: E and TN Classifications.	New Collection.
1615–0001	I–129F	Petition for Alien Fiancé(e)	No material or non- substantive change to a currently approved collection.
1615–0009	I–129H1	Petition for Nonimmigrant Worker: H–1 Classifications.	Revision of a Currently Approved Collection.
1615–XXXX	I–129H2A	Petition for Nonimmigrant Worker: H–2A Classification.	New Collection.
1615–XXXX	I–129H2B	Petition for Nonimmigrant Worker: H–2B Classification.	New Collection.
1615–XXXX	I–129L	Petition for Nonimmigrant Worker: L Classifications	New Collection.
1615–XXXX	I–129MISC	Petition for Nonimmigrant Worker: H–3, P, Q, or R Classifications.	New Collection.
1615–XXXX	I–129O	Petition for Nonimmigrant Worker: O Classifications	New Collection.
1615–0012	I–130	Petition for Alien Relative	No material or non- substantive change to 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	No material or non- substantive change to a currently approved collection.
1615–0016	I–191	Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA).	No material or non- substantive change to a currently approved collection.
1615–0017	I–192	Application for Advance Permission to Enter as Nonimmigrant.	No material or non- substantive change to a currently approved collection.
1615–0018	I–212	Application for Permission to Reapply for Admission Into the United States After Deportation or Removal.	No material or non- substantive change to a currently approved collection.
1615–0095	I–290B	Notice of Appeal or Motion	No material or non- substantive change to a currently approved collection.
1615–0020	I–360	Petition for Amerasian, Widow(er), or Special Immigrant.	No material or non- substantive change to a currently approved collection.
1615–0023	I–485	Application to Register Permanent Residence or Adjust Status.	No material or non- substantive change to 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 Alien Entrepreneur	No material or non- substantive change to a currently approved collection.

TABLE 30—INFORMATION COLLECTION—Continued

OMB No.	Form No.	Form name	Type of information collection
1615–0003	I–539	Application to Extend/Change Nonimmigrant Status	No material or non- substantive change to a currently approved collection.
1615–0067	I–589	Application for Asylum and for Withholding of Removal.	Revision of a Currently Approved Collection.
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–600/A SUPP1	Form I–600A/I–600 Supplement 1, Listing of Adult Member of the Household.	
	I–600/A SUPP2	Form I–600A/I–600 Supplement 2, Consent to Disclose Information.	
	I–600/A SUPP3	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	No material or non- substantive change to a currently approved collection.
1615–0123	I–601A	Application for Provisional Unlawful Presence Waiver.	No material or non- substantive change to 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).	No material or non- substantive change to a currently approved collection.
1615–0032	I–690	Application for Waiver of Grounds of Inadmissibility	No material or non- substantive change to a currently approved collection.
1615–0034	I–694	Notice of Appeal of Decision Under Sections 245A or 210 of the Immigration and Nationality Act.	No material or non- substantive change to a currently approved collection.
1615–0035	I–698	Application to Adjust Status From Temporary to Permanent Resident (Under Section 245A of the INA).	No material or non- substantive change to a currently approved collection.
1615–0038	I–751	Petition to Remove Conditions on Residence	No material or non- substantive change to a currently approved collection.
1615–0040	I–765	Application for Employment Authorization	Revision of a Currently Approved Collection.
1615–0005	I–817	Application for Family Unity Benefits	No material or non- substantive change to a currently approved collection.
1615–0043	I–821	Application for Temporary Protected Status	No material or non- substantive change to 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.	No material or non- substantive change to a currently approved collection.
1615–0045	I–829	Petition by Entrepreneur to Remove Conditions on Permanent Resident Status.	No material or non- substantive change to a currently approved collection.
1615–0072	I–881	Application for Suspension of Deportation or Special Rule Cancellation of Removal.	No material or non- substantive change to a currently approved collection.
1615–0082	I–90	Application to Replace Permanent Resident Card	No material or non- substantive change to a currently approved collection.
1615–0048	I–907	Request for Premium Processing Service	No material or non- substantive change to a currently approved collection.
1615–0114	I–910	Application for Civil Surgeon Designation	No material or non- substantive change to 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	No material or non- substantive change to a currently approved collection.
1615–0104	I–918	Application for U nonimmigrant status	No material or non- substantive change to a currently approved collection.
1615–0061	I–924	Application for Regional Designation Center Under the Immigrant Investor Program.	No material or non- substantive change to a currently approved collection.
	I–924A	Annual Certification of Regional Center.	
1615–0106	I–929	Petition for Qualifying Family Member of a U–1 Nonimmigrant.	No material or non- substantive change to a currently approved collection.
1615–0136	I–941	Application for Entrepreneur Parole	No material or non- substantive change to a currently approved collection.
1615–0133	I–942	Application for Reduced Fee	Discontinuation.
1615–0122	Immigrant Fee	Fee paid for immigrant visa processing	No material or non- substantive change to a currently approved collection.
1615–0078	N–300	Application to File Declaration of Intention	No material or non- substantive change to a currently approved collection.
1615–0050	N–336	Request for a Hearing on a Decision in Naturalization Proceedings.	No material or non- substantive change to a currently approved collection.
1615–0052	N–400	Application for Naturalization	No material or non- substantive change to a currently approved collection.

TABLE 30—INFORMATION COLLECTION—Continued

OMB No.	Form No.	Form name	Type of information collection
1615–0056	N–470	Application to Preserve Residence for Naturalization Purposes.	No material or non- substantive change to a currently approved collection.
1615–0091	N–565	Application for Replacement of Naturalization/Citizenship Document.	No material or non- substantive change to a currently approved collection.
1615–0057	N–600	Application for Certification of Citizenship	No material or non- substantive change to a currently approved collection.
1615–0087	N–600K	Application for Citizenship and Issuance of Certificate under Section 322.	No material or non- substantive change to a currently approved collection.

Various USCIS Forms

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. This rule will require non-substantive edits to the forms listed above with the listed action ''No material/non-substantive change to a currently approved collection.'' These edits include: updates to the fees collected, including changes to the collection of biometric service fees; modification of various form instructions to conform with changes to USCIS Form I–912; modification to USCIS Form N–400 to conform with the discontinuation of USCIS Form I–942; modification to various form instructions to conform with changes to the conditions for fee exemptions; removal of the returned check fee; addition of language regarding delivery requirements of certain secured documents; general language modification of fee activities within various USCIS forms. Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83–C, and amended information collection instruments to OMB for review and approval in accordance with the PRA.[209]

USCIS Form I–129H–1

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0009 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of 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.

Overview of Information Collection

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

(2) *Title of the Form/Collection:* Petition for a Nonimmigrant Worker: H–1B Classifications.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129H1; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant classification and/or requests to extend or change nonimmigrant status. An employer (or agent, where applicable) uses this form to petition USCIS for classification of an alien as an H–1B nonimmigrant. An employer (or agent, where applicable) also uses this form to request an extension of stay of an H–1B or H–1B1 nonimmigrant worker or to change the status of an alien currently in the United States as a nonimmigrant to H–1B or H–1B1. The form serves the purpose of standardizing requests for H–1B and H–1B1 nonimmigrant workers, and ensuring that basic information required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under the H–1B or H–1B1 nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129H1 is 358,702 and the estimated hour burden per response is 4 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,434,808 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $184,731,530.00.

USCIS Form I–129H2A

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

[209] As stated earlier DHS proposes a biometric services fee of $30 that will be required for certain forms for which it performs intake and biometrics services on behalf of EOIR and to remove the $30 fee for dishonored fee payment instruments. EOIR will make the changes to their affected forms required by this rule by submitting a Paperwork Reduction Act Change Worksheet, Form OMB 83–C, and amended information collection instruments to OMB for review and approval if DHS publishes a final rule to make these proposed changes.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–NEW in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of 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.

Overview of Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Petition for a Nonimmigrant Worker: H–2A Classifications.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129H2A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested H–2A nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer or agent uses this form to petition USCIS for classification of an alien as an H–2A nonimmigrant. An employer or agent also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for H–2A nonimmigrant workers, and ensuring that basic information required for assessing eligibility is provided by the petitioner. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129H2A is 9,870 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection Named Worker Attachment for Form I–129H2A is 68,049 and the estimated hour burden per response is 30 minutes; the estimated total number of respondents for the information collection Joint Employer Supplement for Form I–129H2A is 5,000 and the estimated hour burden per response is 10 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 64,469.50 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $5,083,050.

USCIS Form I–129H2B

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–NEW in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of 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.

Overview of Information Collection

(1) *Type of Information Collection:* New Collection.

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

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129H2B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested H–2B nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer or agent uses this form to petition USCIS for classification of an alien as an H–2B nonimmigrant. An employer or agent also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for nonimmigrant workers, and ensuring that basic information required for assessing eligibility is provided by the petitioner. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129H2B is 5,922 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection Named Worker Attachment for Form I–129H2B is 59,325 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 47,428.50 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $3,049,830.00.

USCIS Form I–129L

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–NEW in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of 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.

Overview of Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker: I–129L Classification.

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

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on Form I–129L to determine a petitioner and beneficiary's eligibility for L–1A and L–1B classification. The form is also used to determine eligibility for an LZ Blanket petition. An employer uses this form to petition USCIS for classification of the beneficiary as an L–1 nonimmigrant. An employer also uses this form to request an extension of stay or change of status on behalf of the beneficiary. The form standardizes these types of petitioners and ensures that the information required for assessing eligibility is provided by the petitioner about themselves and the beneficiary. The form also enables USCIS to compile data required for an annual report to Congress assessing the effectiveness and utilization of certain nonimmigrant classifications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129L is 42,642 and the estimated hour burden per response is 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 127,926 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $21,960,630.00.

USCIS Form I–129O

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–NEW in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of 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.

Overview of Information Collection

(1) *Type of Information Collection:* New Collection.

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

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

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer or agent uses this form to petition USCIS for classification of an alien as an O nonimmigrant worker. An employer or agent also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for nonimmigrant workers, and ensuring that basic information required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under certain nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129O is 20,652 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection Attachment 1—Additional Beneficiary for Form I–129O is 1,012 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 62,462 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this

collection of information is $10,635,780.00.

USCIS Form I–129MISC

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–NEW in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of 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.

Overview of Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker: H–3, P, Q, or R Classification.

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

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant classification and/or requests to extend or change nonimmigrant status. An employer (or agent, where applicable) uses this form to petition USCIS for classification of an alien as an H–3, P, Q, or R nonimmigrant. An employer (or agent, where applicable) also uses this form to request an extension of stay of an H–3, P, Q, or R nonimmigrant worker or to change the status of an alien currently in the United States as a nonimmigrant to H–3, P, Q, or R. The form serves the purpose of standardizing requests for H–3, P, Q, or R nonimmigrant workers, and ensuring that basic information required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under the H–3, P, Q, or R nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129MISC is 22,378 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection H–3 Classification Supplement to Form I–129MISC, Petition for Nonimmigrant Worker: H–3, P, Q, or R Classification is 248 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the information collection P Classification Supplement to Form I–129MISC is 6,094 and the estimated hour burden per response is 0.5 hours; the estimated total number of respondents for the information collection Q–1 International Cultural Exchange Alien Supplement to Form I–129MISC is 78 and the estimated hour burden per response is 0.167 hours; the estimated total number of respondents for the information collection R–1 Classification Supplement to Form I–129MISC is 1 and the estimated hour burden per response is 1 hours; the estimated total number of respondents for the information collection Attachment 1—Additional Beneficiary for Form I–129MISC is 6,457 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 73,494.53 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $11,524,670.

USCIS Form I–129E&TN

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–NEW in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of 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.

Overview of Information Collection

(1) *Type of Information Collection:* New Collection.

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

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

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant classification and/or requests to extend or change nonimmigrant status. An employer agent, or applicant uses this form to apply to USCIS for classification of an alien as an E–1, E–2, E–3, or TN

nonimmigrant. An employer, agent, applicant, or CNMI investor also uses this form to request an extension of stay in one of these classifications for an alien or for themselves, or to change the status of an alien currently in the United States as a nonimmigrant or their own status if they are currently in the United States as a nonimmigrant to E–1, E–2, E–3, or TN. The form serves the purpose of standardizing requests for nonimmigrant workers in these classifications, and ensuring that basic information required for assessing eligibility is provided by the applicant. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129E&TN is 11,860 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection E–1/E–2 Classification Supplement to Form I–129E&TN is 3,714 and the estimated hour burden per response is 1.45 hours; the estimated total number of respondents for the information collection E–3 Classification Supplement to Form I–129E&TN is 1,857 and the estimated hour burden per response is 1 hours; the estimated total number of respondents for the information collection NAFTA Supplement to Form I–129E&TN is 6,289 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 45,966.80 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $6,107,900.

USCIS Form I–131

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0013 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of 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.

Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Travel Document, Form I–131; Extension, Without Change, of a Currently Approved Collection.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–131; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Certain aliens, principally permanent or conditional residents, refugees or asylees, applicants for adjustment of status, aliens in Temporary Protected Status (TPS), and aliens abroad seeking humanitarian parole who need to apply for a travel document to lawfully enter or reenter the United States. Eligible recipients of Deferred Action for Childhood Arrivals (DACA) may now request an advance parole documents based on humanitarian, educational and employment reasons. Lawful permanent residents may now file requests for travel permits (transportation letter or boarding foil).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–131 is 464,900 and the estimated hour burden per response is 1.9 hours; the estimated total number of respondents for biometrics processing is 86,000 and the estimated hour burden per response is 1.17 hours, the estimated total number of respondents for passport-style photos is 360,000 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,163,930 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $143,254,100.

USCIS Form I–131A

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0135 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of 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.

Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Carrier Documentation.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–131A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses the information provided on Form I–131A to verify the status of permanent or conditional residents, and determine whether the applicant is eligible for the requested travel document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–131A is 5,100 and the estimated hour burden per response is .92 hours; biometrics processing is 5,100 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 10,659 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $919,275.

USCIS Form I–589

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0067 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of 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.

Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Asylum and for Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–589; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form I–589 is necessary to determine whether an alien applying for asylum and/or withholding of removal in the United States is classified as refugee, and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of USCIS respondents for the information collection in Form I–589 is approximately 114,000, and the estimated annual respondents for Form I–589 filed with DOJ is approximately 150,000. The estimated hour burden per response is 13 hours per response; and the estimated number of respondents providing biometrics to USCIS is 110,000, and to DOJ (collected on their behalf by USCIS) is 150,000. The estimated hour burden per response for biometrics submissions is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection for USCIS is 1,610,700 hours, and for DOJ is 2,125,500.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information for USCIS is estimated to be $44,688,000 and for DOJ is 59 million.

USCIS Form I–600, I–600A, Supplement 1, Supplement 2, Supplement 3

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0028 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of 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.

Overview of Information Collection

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

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative; Application for Advance Processing of an Orphan Petition; Supplement 1, Listing of an Adult Member of the Household; Supplement 2, Consent to Disclose Information; Supplement 3, Request for Action on Approved Form I–600A/I–600.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–600, Form I–600A, Form I–600A/I–600 Supplement 1, Form I–600A/I–600 Supplement 2, Form I–600A/I–600 Supplement 3; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. A U.S. citizen adoptive parent may file a petition to classify an orphan as an immediate relative through Form I–600 under section 101(b)(1)(F) of the INA. A U.S. citizen prospective adoptive parent may file Form I–600A in advance of the Form I–600 filing and USCIS will make a determination regarding the prospective adoptive parent's eligibility to file Form I–600A and his or her suitability and eligibility to properly parent an orphan. A U.S. citizen prospective/adoptive parent may file a petition to classify an orphan as an immediate relative under section 201(b)(2)(A) of the INA through Form I–600. If there are other adult members of the U.S. citizen prospective/adoptive parent's household, as defined at 8 CFR 204.301, the prospective/adoptive parent must include Form I–600A/I–600 Supplement 1 when filing both Form I–600A and Form I–600. A Form I–600A/I–600 Supplement 2, Consent to Disclose Information, is an optional form that a U.S. citizen prospective/adoptive parent may file to authorize USCIS to disclose case-related information that would otherwise be protected under the Privacy Act, 5 U.S.C. 552a, to adoption service providers or other individuals. Form I–600A/I–600 authorized disclosures will assist USCIS in the adjudication of Forms I–600A and I–600. USCIS has created a new Form I–600A/I–600 Supplement 3, Request for Action on Approved Form I–600A/I–600, for this information collection. Form I–600A/I–600 Supplement 3 is a form that prospective/adoptive parents must use if they need to request action such as an extended or updated suitability determination based upon a significant change in their circumstances or change in the number or characteristics of the children they intend to adopt, a change in their intended country of adoption, or a request for a duplicate notice of their approved Form I–600A suitability determination.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–600 is 1,200 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A is 2,000 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600/I–600A Supplement 1 is 301 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600/I–600A Supplement 2 is 1,260 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the information collection Form I–600/I–600A Supplement 3 is 1,286 and the estimated hour burden per response is 1 hours; the estimated total number of respondents for the Home Study information collection is 2,500 and the estimated hour burden per response is 25 hours; the estimated total number of respondents for the Biometrics information collection is 2,520 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the Biometrics—DNA information collection is 2 and the estimated hour burden per response is 6 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 70,562.40 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $7,759,232.

USCIS Form I–765

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0040 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of 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.

Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–765; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses Form I–765 to collect information needed to determine if an alien is eligible for an initial EAD, a new replacement EAD, or a subsequent EAD upon the expiration of a previous EAD under the same eligibility category. Aliens in many immigration statuses are required to possess an EAD as evidence of work authorization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–765 is 2,096,000 and the estimated hour burden per response is 4.5 hours; the estimated total number of respondents for the information collection I–765WS is 41,912 and the estimated hour burden per response is 0.5 hours; the estimated total number of respondents for the information collection biometrics is 42,387 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection passport photos is 2,096,000 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 10,550,549 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $367,575,520.

USCIS Form I–821D

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0124 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of 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.

Overview of Information Collection

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

(2) *Title of the Form/Collection:* Consideration of Deferred Action for Childhood Arrivals.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–821D; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. As part of the administration of its programs, USCIS exercises its prosecutorial discretion on a case-by-case basis to defer action on instituting removal proceedings against individuals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–821D Initial Request is 40,819 and the estimated hour burden per response is 3.08 hours. The estimated total number of respondents for the information collection I–821D Renewal Request is 418,775 and the estimated hour burden per response is 3.08 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,415,550 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $50,555,340.

USCIS Form I–912

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0116 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of 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.

Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Fee Waiver.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–912; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses the data collected on this form to verify that the applicant is unable to pay for the immigration benefit being requested. USCIS will consider waiving a fee for an application or petition when the applicant or petitioner clearly demonstrates that he or she is unable to pay the fee. Form I–912 standardizes the collection and analysis of statements and supporting documentation provided by the applicant with the fee waiver request. Form I–912 also streamlines and expedites USCIS' review, approval, or denial of the fee waiver request by clearly laying out the most salient data and evidence necessary for the determination of inability to pay. Officers evaluate all factors, circumstances, and evidence supplied in support of a fee waiver request when making a final determination. Each case is unique and is considered on its own merits. If the fee waiver is granted, the application will be processed. If the fee waiver is not granted, USCIS will notify the applicant and instruct him or her to file a new application with the appropriate fee.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–912 is 116,323 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection DACA Exemptions is 108 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection 8 CFR 103.7(d) Director's exception request is 20 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 136,247.67 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $436,211.25.

USCIS Form I–942

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. Although this rule does not impose any new reporting or recordkeeping requirements under the PRA, this rule will require the discontinuation of USCIS Form I–942, Request for Reduced Fee. This discontinuation results from the Notice of Proposed Rulemaking eliminating the option to request a reduced fee, which makes the Form I–942 unnecessary. Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83–C, and amended information collection instruments to OMB for review and approval in accordance with the PRA.

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 proposed in this rule. For example, the fee calculation model estimates 163,000 annual Form I–589 filings while the PRA section estimates the average annual number of respondents will be 114,000. The model projects 2,851,000 Form I–765 filings while the estimated total number of respondents for the information collection I–765 is 2,096,000. As stated in section IV.B.1.a of this preamble, the VPC forecasts USCIS workload volume using based on short- and long-term volume trends and time series models, historical receipts data, patterns (such as level, trend, and seasonality) 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 three-year OMB approval of the control number, generally basing the estimate on the average filing volumes in the previous 3 of 5 year period, with less consideration of the volume effects on planned or past policy changes. Nevertheless, 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 three years. Thus, DHS expects that the PRA estimated annual respondents will be updated to reflect the actual effects of this proposed rule within a relatively short period after a final rule takes effect.

H. National Environmental Policy Act

DHS Directive (Dir) 023–01 Rev. 01 establishes the procedures that DHS and its components use to comply with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations for implementing NEPA. 40 CFR parts 1500–1508.[210] 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 an Environmental Assessment or Environmental Impact Statement. 40 CFR 1507.3(b)(2)(ii) and 1508.4. Dir. 023–01 Rev. 01 establishes categorical exclusions that DHS has found to have no such effect. Dir. 023–01 Rev. 01 Appendix A Table 1. For an action to be categorically excluded from further NEPA review, Dir. 023–01 Rev. 01 requires the action to 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. Dir. 023–01 Rev. 01 section V.B (1)–(3).

The Department analyzed this proposed action and concluded that NEPA does not apply because, as discussed above, the potential impacts of the rule are not amenable to further an analysis which is generally unquantifiable, largely because of the lack of any direct causal relationship between the rule and any specific impact that might be asserted from generalized population growth or otherwise. Attempts at more detailed analysis would be excessively speculative. Nevertheless, even if NEPA did apply to this action, the action clearly would come within categorical exclusion A3(d) in Dir. 023–01 Rev. 01, Appendix A, Table 1, for rules that interpret or amend an existing regulation without changing its environmental effect. This rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, if NEPA were determined to apply, this rule would be categorically excluded from further NEPA review.

[210] See also DHS, Implementing the National Environmental Policy Act, *https://www.dhs.gov/publication/directive-023-01-rev-01-and-instruction-manual-023-01-001-01-rev-01-and-catex* (last published Feb. 21, 2019).

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Authority delegations (government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, and Surety bonds.

8 CFR Part 106

Immigration, User fees.

8 CFR Part 204

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

8 CFR Part 211

Documentary requirements: immigrants; waivers.

Accordingly, DHS proposes to amend 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 continues 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.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112–54, 125 Stat 550 (8 U.S.C. 1185 note).

■ 2. The heading for part 103 is revised to read as set forth above.

■ 3. Section 103.2 amended:

■ a. By revising the last sentence of paragraph (a)(1);

■ b. By revising paragraph (a)(7)(ii)(D);

■ c. In paragraph (b)(9) introductory text by removing ''8 CFR 103.7(b)(1)(i)(C)'' and adding in its place ''8 CFR 106.2'' in the second sentence; and

■ d. By revising paragraph (b)(19)(iii).

The revisions read as follows:

§ 103.2 Submission and adjudication of benefit requests.

(a) * * *

(1) * * * Filing fees generally are non-refundable regardless of if the benefit request is approved or denied, or how much time the adjudication requires. Except as otherwise provided

in this chapter I, fees must be paid when the benefit request is filed.

* * * * *

(7) * * *

(ii) * * *

(D) *Submitted with the correct fee(s).* If a check or other financial instrument used to pay a fee is returned as unpayable because of insufficient funds, USCIS will resubmit the payment to the remitter institution one time. If the instrument used to pay a fee is returned as unpayable a second time, the filing may be rejected. Financial instruments returned as unpayable for a reason other than insufficient funds will not be redeposited. 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.

* * * * *

(b) * * *

(19) * * *

(iii) *Secure identity documents.* (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, their attorney or accredited representative or record, as specified on the form instructions.

(B) The designated agent, or attorney or accredited representative, will be required to provide identification and sign for receipt of the secure document.

* * * * *

§ 103.3 [Amended]

■ 4. Section 103.3 is amended by removing ''§ 103.7 of this part'' and adding in its place ''8 CFR 106.2'' in paragraph (a)(2)(i).

§ 103.5 [Amended]

■ 5. Section 103.5 is amended by removing ''§ 103.7'' and adding in its place ''8 CFR 106.2'' in paragraph (a)(1)(iii)(B).

■ 6. Section 103.7 is revised to read as follows:

§ 103.7 Fees.

(a) *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)(3) must include an additional $30 for DHS to collect, store, and use biometric information.

(3) *Waiver of Immigration Court fees.* An immigration judge or the Board may waive any fees prescribed under this chapter for cases under their jurisdiction to the extent provided in 8 CFR 1003.8 and 1003.24.

(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.

(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 prior to 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'' table*s:

(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 pursuant to 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.

■ 7. Section 103.17 is revised 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. If a request for immigration benefits must be submitted with a biometric services fee, 8 CFR part 106 will contain the requirement. When a biometric services fee is required, a benefit request submitted without the correct biometric services fee may be rejected.

■ 8. Section 103.40 is revised 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.* (1) USCIS provides on its website at *https://www.uscis.gov/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 each individual searched. All requests for records or index searches must include the individual's:

(i) Full name (including variant spellings of the name and/or aliases, if any).

(ii) Date of birth, at least as specific as a year.

(iii) Place of birth, at least as specific as a country and preferably the country name at the time of the individual's immigration or naturalization.

(d) *Optional information.* To better ensure a successful search, a Genealogical Research Request may include each individual's:

(i) Date of arrival in the United States.

(ii) Residence address at time of naturalization.

(iii) Names of parents, spouse, and children if applicable and available.

(d) *Additional information required to retrieve records.* For a Genealogy Records Request, requests for copies of historical records or files must:

(i) Identify the record by number or other specific data used by the Genealogy Program Office to retrieve the record as follows:

(A) C-Files must be identified by a naturalization certificate number.

(B) Forms AR–2 and A-Files numbered below 8 million must be identified by Alien Registration Number.

(C) Visa Files must be identified by the Visa File Number. Registry Files must be identified by the Registry File Number (for example, R–12345).

(e) *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).

(f) *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.

(g) *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.

§ 103.41 [Removed and Reserved]

■ 9. Section 103.41 is removed and reserved.

■ 10. Part 106 is added to read as follows:

PART 106—USCIS FEE SCHEDULE

Sec.

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

§ 106.1 Fee requirements.

(a) Fees must be submitted with any USCIS benefit request or other 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 below.

(b) 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, as provided in the form instructions or by individual notice.

(c) 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. If the approved benefit request requires multiple fees, this provision will apply if any fee submitted is not honored. Other fees that were paid for a benefit request that is revoked under this provision will be retained and not refunded. A revocation of an approval because the fee submitted is not honored may be appealed to the USCIS Administrative Appeals Office, in accordance with 8 CFR 103.3 and the applicable form instructions.

§ 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: $415.

(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: $490.

(i) For nonimmigrant member of in 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.

(3) *Petition or Application for a Nonimmigrant Worker.* For filing a petition or application for a nonimmigrant worker:

(i) Petition for H–1B Nonimmigrant Worker or H–1B1 Free Trade Nonimmigrant Worker, Form I–129H1: $560.

(ii) Petition for H–2A Nonimmigrant Worker, Form I–129H2A, with 1 to 25 named beneficiaries: $860.

(iii) Petition for H–2A Nonimmigrant Worker, Form I–129H2A, with only unnamed beneficiaries: $425.

(iv) Petition for H–2B Nonimmigrant Worker, Form I–129H2B, with 1 to 25 named beneficiaries: $725.

(v) Petition for H–2B Nonimmigrant Worker, Form I–129H2B, with only unnamed beneficiaries: $395.

(vi) Petition for L Nonimmigrant Worker, Form I–129L: $815.

(vii) Petition for O Nonimmigrant Worker, Form I–129O, with 1 to 25 named beneficiaries: $715.

(viii) Petition or Application for E, H–3, P, Q, R, or TN Nonimmigrant Worker, Forms I–129E or I–129MISC, with 1 to 25 named beneficiaries: $705.

(4) *Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW.* For an employer to petition on behalf of beneficiaries in the Commonwealth of the Northern Mariana Islands (CNMI): $705.

(i) Additional fees in 8 CFR 106.2(c) 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: $520.

(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: $555.

(7) *Application for Travel Document, Form I–131.* For filing an application for travel document:

(i) $145 for a Refugee Travel Document for someone 16 or older.

(ii) $115 for a Refugee Travel Document for a child under 16.

(iii) $585 for advance parole and any other travel document.

(iv) There is no fee for applicants who filed USCIS Form I–485 on or after July 30, 2007, and before [EFFECTIVE DATE OF THE FINAL RULE], and paid the Form I–485 fee, or for applicants for Special Immigrant Status based on an approved Form I–360 as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (''ISAF'').

(8) *Application for Carrier Documentation, Form I–131A.* For filing an application to allow a lawful permanent resident to apply for a travel document (carrier documentation) to board an airline or other transportation carrier to return to the United States: $1,010.

(9) *Immigrant Petition for Alien Worker, Form I–140.* For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act: $545.

(10) *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: $800.

(11) *Application for Advance Permission to Enter as a Nonimmigrant, Form I–192.* For filing an application for discretionary relief under section 212(d)(3), (d)(13), or (d)(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: $1,415.

(12) *Application for Waiver of Passport and/or Visa, Form I–193.* For filing an application for waiver of passport and/or visa: $2,790.

(13) *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: $1,040.

(14) *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: $705. The fee will be the same for appeal of a denial of a benefit request with one or multiple beneficiaries. There is no fee for an appeal or motion associated with a denial of a petition for a special immigrant visa filed by or on behalf of an individual seeking special immigrant status as an Iraqi or Afghan national who was employed by or on behalf of the U.S. Government in Iraq or Afghanistan.

(15) *Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360.* For filing a petition for an Amerasian, Widow(er), or Special Immigrant: $455. The following requests are exempt from this fee:

(i) A petition seeking classification as an Amerasian;

(ii) A self-petition for immigrant status as an abused spouse or child of a U.S. citizen or lawful permanent resident or an abused parent of a U.S. citizen son or daughter; or

(iii) A petition for special immigrant juvenile classification; or

(iv) A petition seeking special immigrant visa or status an Iraqi or Afghan national who was employed by or on behalf of the U.S. Government in Iraq or Afghanistan.

(16) *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 $1,120. There is no fee if an applicant is filing as a refugee under section 209(a) of the Act or for applicants for Special Immigrant Status based on an approved Form I–360 as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (''ISAF'').

(17) *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 must 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.

(18) *Immigrant Petition by Alien Entrepreneur, Form I–526.* For filing a petition for an alien entrepreneur: $4,015.

(19) *Application To Extend/Change Nonimmigrant Status, Form I–539.* For filing an application to extend or change nonimmigrant status: $400.

(i) For nonimmigrant A, G, and NATO: No fee.

(20) *Application for Asylum and for Withholding of Removal, Form I–589.* For filing an application for asylum status: $50. There is no fee for applications filed by unaccompanied

alien children who are in removal proceedings.

(21) *Petition to Classify Orphan as an Immediate Relative, Form I–600.* For filing a petition to classify an orphan as an immediate relative for issuance of an immigrant visa under section 204(a) of the Act.

(i) There is no fee for the first Form I–600 filed for a child on the basis of an approved Application for Advance Processing of an Orphan Petition, Form I–600A, during the Form I–600A approval or extended approval period.

(ii) Except as specified in (iii) below, if more than one Form I–600 is filed during the Form I–600A approval period, the fee is $810 for the second and each subsequent Form I–600 petition submitted.

(iii) If more than one Form I–600 is filed during the Form I–600A approval period on behalf of beneficiary birth siblings, no additional fee is required.

(22) *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: $810.

(23) *Request for Action on Approved Form I–600A/I–600, Form I–600A/I–600 Supplement 3.* This filing fee is not charged if Form I–600A/I–600 Supplement 3 is filed in order to obtain a first extension of the approval of the Form I–600A or to obtain a first time change of non-Hague Adoption Convention country during the Form I–600A approval period. If Form I–600A/I–600 Supplement 3 is filed in order to request a new approval notice based on a significant change and updated home study, the filing fee is charged unless a first extension of the Form I–600A approval or first time change of non-Hague Adoption Convention country is also being requested on the same Supplement 3. Second or subsequent extensions of the approval of the Form I–600A, second or subsequent changes of non-Hague Adoption Convention country, requests for a new approval notice based on a significant change and updated home study, and requests for a duplicate approval notice are permitted with Form I–600A/I–600 Supplement 3 with the filing fee: $405. Form I–600A/I–600 Supplement 3 cannot be used to 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. Form I–600A/I–600 Supplement 3 cannot be used to 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 prior change of country request. Form I–600A/I–600 Supplement 3 may only be used to request an increase 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 who 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.

(24) *Application for Waiver of Ground of Inadmissibility, Form I–601.* For filing an application for waiver of grounds of inadmissibility: $985.

(25) *Application for Provisional Unlawful Presence Waiver, Form I–601A.* For filing an application for provisional unlawful presence waiver: $960.

(26) *Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Immigration and Nationality Act, as Amended), Form I–612.* For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act: $525.

(27) *Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, Form I–687.* For filing an application for status as a temporary resident under section 245A(a) of the Act: $1,130.

(28) *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 sections 210 or 245A of the Act, or a petition under section 210A of the Act: $770.

(29) *Notice of Appeal of Decision under Sections 245A or 210 of the Immigration and Nationality Act (or a petition under section 210A of the Act), Form I–694.* For appealing the denial of an application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: $725.

(30) *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): $1,615. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.

(31) *Petition to Remove Conditions on Residence, Form I–751.* For filing a petition to remove the conditions on residence based on marriage: $760.

(32) *Application for Employment Authorization, Form I–765:* $490. *Application for Employment Authorization for Abused Nonimmigrant Spouse, Form I–765V:* No fee. There is no initial fee for:

(i) An applicant who filed USCIS Form I–485 on or after July 30, 2007, and before [EFFECTIVE DATE OF THE FINAL RULE], and paid the Form I–485 fee;

(ii) Refugees and aliens paroled as refugee;

(iii) Victims of Severe Forms of Trafficking (T–1);

(iv) Nonimmigrant Victim of Criminal Activity (U–1);

(v) Dependents of certain government and internal organizations or NATO personnel;

(vi) N–8 (Parent of alien classed as SK3) and N–9 (Child of N–8) nonimmigrants;

(vi) VAWA Self-Petitioners;

(vii) Applicants for Special Immigrant Status based on an approved Form I–360 as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (''ISAF''); and

(viii) Aliens granted asylee status (AS1, AS6).

(33) *Petition to Classify Convention Adoptee as an Immediate Relative, Form I–800.* (i) There is no fee for the first Form I–800 filed for a child on the basis of 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) Except as specified in paragraph (a)(33)(iii) of this section, if more than one Form I–800 is filed during the Form I–800A approval period, the fee is $810 for the second and each subsequent Form I–800 petition submitted.

(iii) If more than one Form I–800 is filed during the Form I–800A approval period on behalf of beneficiary birth siblings, no additional fee is required.

(34) *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: $810.

(35) *Request for Action on Approved Application for Determination of Suitability to Adopt a Child from a Convention Country,* Form I–800A, Supplement 3. This filing fee is not charged if Form I–800A Supplement 3 is filed in order to obtain a first extension of the approval of the Form I–

800A or to obtain a first time change of Hague Adoption Convention country during the Form I–800A approval period. If Form I–800A Supplement 3 is filed in order to request a new approval notice based on a significant change and updated home study, the filing fee is charged unless a first extension of the Form I–800A approval or first time change of Hague Adoption Convention country is also being requested on the same Supplement 3. Second or subsequent extensions of the Form I–800A approval, second or subsequent changes of Hague Adoption Convention country, requests for a new approval notice based on a significant change and updated home study, and requests for a duplicate approval notice are permitted with the filing of a Form I–800A, Supplement 3 and the required filing fee: $405.

(36) *Application for Family Unity Benefits, Form I–817.* For filing an application for voluntary departure under the Family Unity Program: $590.

(37) *Application for Temporary Protected Status, Form I–821.* (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 unless exempted in the applicable form instructions.

(38) *Consideration of Deferred Action for Childhood Arrivals, Form I–821D.* (i) For first time requestors: $0.

(ii) The fee for renewal is $275.

(39) *Application for Action on an Approved Application or Petition, Form I–824.* $500.

(40) *Petition by Entrepreneur to Remove Conditions on Permanent Resident Status, Form I–829.* For filing a petition by entrepreneur to remove conditions: $3,900.

(41) *Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100), Form I–881.* (i) $1,800 for adjudication by DHS.

(ii) $165 for adjudication by EOIR. If the Form I–881 is referred to the immigration court by DHS the $1,800 fee is required.

(42) *Application for Authorization to Issue Certification for Health Care Workers, Form I–905.* $230.

(43) *Request for Premium Processing Service, Form I–907.* The Request for Premium Processing Service fee will be as provided in 8 CFR 106.4.

(44) *Application for Civil Surgeon Designation, Form I–910.* $650.

(45) *Application for T Nonimmigrant Status, Form I–914.* No fee.

(46) *Petition for U Nonimmigrant Status, Form I–918.* No fee.

(47) *Application for Regional Center Designation under the Immigrant Investor Program, Form I–924.* $17,795.

(48) *Annual Certification of Regional Center, Form I–924A.* To provide updated information and certify that a Regional Center under the Immigrant Investor Program has maintained its eligibility: $4,470.

(49) *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: $1,515.

(50) *Application for Entrepreneur Parole, Form I–941.* For filing an application for parole for an entrepreneur: $1,200.

(51) *Public charge Bond, Form I–945.* $25.

(52) *Request for Cancellation of Public Charge Bond, Form I–356.* $25.

(b) *N Forms*—(1) *Application to File Declaration of Intention, Form N–300.* For filing an application for declaration of intention to become a U.S. citizen: $1,320.

(2) *Request for a Hearing on a Decision in Naturalization Proceedings (under section 336 of the Act), Form N–336.* For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act: $1,755. There is no fee for an applicant who has filed an Application for Naturalization under sections 328 or 329 of the Act with respect to military service and whose application has been denied.

(3) *Application for Naturalization, Form N–400.* For filing an application for naturalization: $1,170. No fee is charged an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service.

(4) *Application to Preserve Residence for Naturalization Purposes, Form N–470.* For filing an application for benefits under section 316(b) or 317 of the Act: $1,600.

(5) *Application for Replacement Naturalization/Citizenship Document, Form N–565.* For filing an application for a certificate of naturalization or declaration of intention in place of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act: $545. There is no fee when this application is submitted under 8 CFR 338.5(a) or 343a.1 to request correction of a certificate that contains an error.

(6) *Application for Certificate of Citizenship, Form N–600.* For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act: $1,015. There is no fee for any application filed by a member or veteran of any branch of the U.S. Armed Forces.

(7) *Application for Citizenship and Issuance of Certificate Under Section 322, Form N–600K.* For filing an application for citizenship and issuance of certificate under section 322 of the Act: $960.

(c) *G Forms, Statutory Fees, and Non-Form Fees*—(1) *Genealogy Index Search Request, Form G–1041:* $240. The fee is due regardless of the search results.

(2) *Genealogy Records Request, Form G–1041A:* $385. USCIS will refund the records request fee when it is unable to locate any file previously identified in response to the index search request.

(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: $200.

(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 certain H–2B petitions as described in 8 U.S.C. 1184(c) and USCIS form instructions: $150.

(6) *Fraud detection and prevention fee for CNMI.* For employer petitions in CNMI as described in Public Law 115–218 and USCIS form instructions: $50.

(7) *CNMI education funding fee.* The fee amount will be as prescribed in the form instructions and:

(i) The fee amount must be paid in addition to, and in a separate remittance from, other filing fees;

(ii) Every employer who is issued a permit must pay the education funding fee every year;

(iii) An employer who is issued a permit with a validity period of longer than 1 year must pay the fee for each year of requested validity at the time the permit is requested;

(iv) Beginning in FY 2020, the 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) since the fee was set by law at $200 on July 24, 2018.

(8) *9–11 Response and Biometric Entry-Exit Fee for H–1B Visa.* For all petitioners filing an H–1B petition who employ 50 or more employees in the United States if more than 50 percent of the petitioner's employees in the aggregate are in H–1B, L–1A or L–1B nonimmigrant status, except for petitioners filing an amended petition without an extension of stay request: $4,000. This fee will apply to petitions filed on or before September 30, 2027.

(9) *9–11 Response and Biometric Entry-Exit Fee for L–1 Visa.* For all petitioners filing an L–1 petition who employ 50 or more employees in the United States, if more than 50 percent of the petitioner's employees in the aggregate are in H–1B, L–1A or L–1B nonimmigrant status, except for petitioners filing an amended petition without an extension of stay request: $4,500. This fee will apply to petitions filed on or before September 30, 2027.

(10) *Claimant under section 289 of the Act.* No fee.

§ 106.3 Fee waivers and exemptions.

(a) *Fee waiver.* No fee relating to any benefit request submitted to USCIS may be waived except as provided by section 245(l)(7) of the Act, 8 U.S.C. 1255(l)(7), any other law, or by regulation. Specifically, the following categories of requestors may apply for a waiver of any fees for an immigration benefit and any associated filing up to and including an application for adjustment of status:

(1) Violence Against Women Act (VAWA) self-petitioners as defined under INA 101(a)(51);

(2) T nonimmigrants;

(3) U nonimmigrants;

(4) Battered spouses of A, G, E–3, or H nonimmigrants;

(5) Battered spouses or children of a lawful permanent resident or U.S. citizen as provided under INA 240A(b)(2); and

(6) Applicants for Temporary Protected Status.

(b) *Director's exemption for individual requests.* (1) The Director of USCIS may authorize a waiver on an individual, case-by-case basis of a form fee required by 8 CFR 106.2 that is not otherwise waivable under this section if the Director determines that such action would be in the public interest, the action is consistent with other applicable law, and the waiver is related to one of the following:

(i) Asylees;

(ii) Refugees;

(iii) National security;

(iv) Emergencies or major disasters declared in accordance with 44 CFR part 206, subpart B;

(v) An agreement between the U.S. government and another nation or nations; or

(vi) USCIS error.

(2) The Director may not approve an exception to the requirements under paragraph (d) of this section. An applicant, petitioner, or requestor may not directly submit a request that the Director exercise this authority. This discretionary authority may be delegated only to the USCIS Deputy Director.

(c) *Director's exception.* The Director of USCIS may authorize the waiver, in whole or in part, of a form fee required by 8 CFR 106.2 that is not otherwise waivable under this section, if the Director determines that such action is an emergent circumstance, or if a major natural disaster has been declared in accordance with 44 CFR part 206, subpart B. This discretionary authority may be delegated only to the USCIS Deputy Director. The Director may not waive the requirements of paragraph (d) of this section.

(d) *Eligibility for fee waiver.* A waiver of fees is limited to an alien with an annual household income at or below 125 percent of the Federal Poverty Guidelines as 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). In addition, a waiver of fees as provided in paragraphs (b) and (c) of this section may not be provided to a requestor who is seeking an immigration benefit for which he or she:

(1) Is subject the affidavit of support requirements under section 213A of the Act, U.S.C. 1183a or is already a sponsored immigrant as defined in 8 CFR 213a.1; or

(2) Is subject to the public charge inadmissibility ground under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4).

(e) *Form required.* A person must submit a request for a fee waiver on the form prescribed by USCIS in accordance with the instructions on the forms.

(f) *Exemptions.* The Director of USCIS may provide an exemption for any fee required by 8 CFR 106.2. This discretionary authority may only be delegated to the USCIS Deputy Director. The Director must determine that such action would be in the public interest, the action is consistent with the applicable law, and the exemption is related to one of the following:

(1) Asylees;

(2) Refugees;

(3) National security;

(4) Emergencies or major disasters declared in accordance with 44 CFR part 206, subpart B;

(5) An agreement between the U.S. government and another nation or nations; or

(6) USCIS error.

(g) *Documentation of gross household income.* A person submitting a request for a fee waiver must submit the following documents as evidence of annual gross household income:

(1) A transcript(s) from the United States Internal Revenue Service (IRS) of the person's IRS Form 1040, U.S. Individual Income Tax Return;

(2) If the person was not required to file a Federal income tax return, he or she must submit their most recent IRS Form W–2, Wage and Tax Statement, Form 1099G, Certain Government Payments, or Social Security Benefit Form SSA–1099, if applicable;

(3) If the person filed a Federal income tax return, and has recently changed employment or had a change in salary, the person must also submit copies of consecutive pay statements (stubs) for the most recent month or longer;

(4) If the person does not have income and has not filed income tax returns, he or she must submit documentation from the IRS that indicates that no Federal income tax transcripts and no IRS Form W–2s were found.

§ 106.4 Premium processing service.

(a) *General.* A person submitting a request to USCIS may request 15 business-day processing of certain employment-based immigration benefit requests.

(b) *Submitting a request.* A request must be submitted on the form prescribed by USCIS and prepared and submitted in accordance with the form instructions. If the request for premium processing is submitted together with the underlying benefit request, all required fees in the correct amount must be paid.

(c) *Fee amount.* The fee amount will be prescribed in the form instructions and:

(1) Must be paid in addition to, and in a separate remittance from, other filing fees.

(2) May be adjusted once per year by notice in the **Federal Register** based on the amount of inflation according to the Consumer Price Index (CPI) since the fee was set by law at $1,000 on June 1, 2001.

(d) *15-day limitation.* USCIS will refund the premium processing service fee, but continue to process the case if:

(1) USCIS does not issue a notice of any adjudicative action by the end of the 15th business day from the date USCIS accepted a properly filed request for premium processing for an eligible

employment-based immigration benefit request, including all required fees. The adjudicative action is evidenced by the notification of, but not necessarily receipt of, an approval, denial, request for evidence (RFE) or notice of intent to deny (NOID); or

(2) USCIS does not issue a notice of a subsequent adjudicative action by the end of the 15th business-day from the date USCIS received the response to an RFE or NOID. In premium processing cases where USCIS issues an RFE or NOID within 15 business days from the initial date of acceptance, a new 15-day period begins on the date that USCIS receives the response to the RFE or NOID.

(3) USCIS may retain the premium processing fee and not reach a conclusion on the request within 15 business days, and not notify the person who filed the request, if USCIS opens an investigation for fraud or misrepresentation relating to the benefit request.

(e) *Requests eligible for premium processing.* (1) USCIS will designate the categories of employment-based benefit requests that are eligible for premium processing.

(2) USCIS will announce by its official internet website, currently *http://www.uscis.gov*, those requests for which premium processing may be requested, the dates upon which such availability commences and ends, and any conditions that may apply.

§ 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, the remaining provisions will continue in effect.

PART 204—IMMIGRANT PETITIONS

■ 11. 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, 1641; 8 CFR part 2.

■ 12. Section 204.3 is amended:

■ a. In paragraph (b), in the definition of ''Orphan petition'', by revising the second sentence;

■ b. By revising the fourth fifth sentences of paragraph (d) introductory text; and

■ c. By revising paragraphs (h)(3)(i) and (ii) and (h)(7) and (13).

The revisions read as follows:

§ 204.3 Orphan cases under section 101(b)(1)(F) of the Act (non-Hague Adoption Convention cases).

* * * * *

(b) * * *

Orphan petition means * * * 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. * * *

* * * * *

(d) * * * 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 pursuant to 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 pursuant to paragraph (h)(13) of this section. * * *

* * * * *

(h) * * *

(3) * * *

(i) If the advanced processing application is approved, the prospective adoptive parents will be advised in writing. A notice of approval expires 15 months after the date on which USCIS received the FBI response on the applicant's, and any additional adult member of the household's, biometrics, unless approval is revoked. If USCIS received the responses on different days, the 15-month period begins on the earliest response date. The notice of approval will specify the expiration date. USCIS may extend the validity period for the approval of a Form I–600A as provided in paragraph (h)(3)(ii) of this section or if requested in accordance with 8 CFR 106.2(a)(23). During this time, the prospective adoptive parents may file an orphan petition for one orphan without fee. 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. If the orphans are birth siblings, no additional fee is required. If the orphans are not birth siblings, an additional fee is required for each orphan beyond the first orphan. Approval of an advanced processing application does not guarantee that the orphan petition will be approved.

(ii) If the USCIS Director, or an officer designated by the USCIS Director, determines that the ability of a prospective adoptive parent to timely file a petition has been adversely affected by the outbreak of a public health or other emergency in a foreign country, such Director or designated officer may extend the validity period of the approval of the advance processing application, either in an individual case or for a class of cases. An extension of the validity of the approval of the advance processing application may be subject to such conditions as the USCIS Director, or officer designated by the USCIS Director may establish.

* * * * *

(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 15 months of the approval date of the advanced processing application, the application will be deemed abandoned. 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 fingerprint checks. The director will dispose of documentation relating to biometrics checks in accordance with current policy. 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. This action will be without prejudice to a new filing at any time with fee.

* * * * *

■ 13. Section 204.5 is amended:

■ a. In the definition of ''Petition'' in paragraph (m)(5) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''; and

■ b. By revising paragraph (p)(4).

The revision reads as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(p) * * *

(4) *Application for employment authorization.* To request employment authorization, an eligible applicant described in paragraph (p)(1), (2), or (3) of this section must file an application for employment authorization (Form I–765), with USCIS, in accordance with 8 CFR 274a.13(a) and the form

instructions. Such applicant is subject to the collection of his or her biometric information as provided in the form instructions. Employment authorization under this paragraph may be granted solely in 1-year increments, but not to exceed the period of the alien's authorized admission.

* * * * *

§ 204.6 [Amended]

■ 14. Section 204.6 is amended by removing ''8 CFR 103.7(b)(1)(i)(XX)'' and adding in its place ''8 CFR 106.2'' in paragraph (m)(6)(i)(C).

§ 204.310 [Amended]

■ 15. Section 204.310 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' and by removing and reserving paragraph (a)(3)(ii).

§ 204.311 [Amended]

■ 16. Section 204.311 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (u)(4).

■ 17. Section 204.312 is amended by revising paragraph (e)(3)(i) introductory text to read as follows:

§ 204.312 Adjudication of the Form I–800A.

* * * * *

(e) * * *

(3)(i) If the 15-month validity period for a Form I–800A approval is about to expire, the applicant may file Form I–800A Supplement 3, with the filing fee under 8 CFR 106.2, if required. The applicant 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. The applicant is not required to pay the Form I–800A Supplement 3 filing fee for the first request to extend the approval of a Form I–800A, or to obtain a first time change of Hague Convention country during the Form I–800A approval period. If the applicant files a second or subsequent Form I–800A Supplement 3 to obtain a second or subsequent extension or a second or subsequent change of Hague Convention country, then, the applicant must pay the Form I–800A Supplement 3 filing fee, as specified in 8 CFR 106.2, for the second, or any subsequent, Form I–800A Supplement 3 that is filed. Any Form I–800A Supplement 3 that is filed to obtain an extension of the approval of a Form I–800A or a change of Hague Convention country must be accompanied by:

* * * * *

§ 204.313 [Amended]

■ 18. Section 204.313 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in the next to last sentence of paragraph (a) and by adding the word ''birth'' before ''siblings'' in the last sentence of paragraph (a).

* * * * *

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

■ 19. The authority citation for part 211 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

§ 211.1 [Amended]

■ 20. Section 211.1 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (b)(3).

§ 211.2 [Amended]

■ 21. Section 211.2 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (b).

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

■ 22. The authority citation for part 212 continues 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 (section 7209 of Pub. L. 108–458), 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 CFR part 2.

§ 212.2 [Amended]

■ 23. Section 212.2 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraphs (b)(1), (c)(1)(ii), (d), and (g)(1).

§ 212.3 [Amended]

■ 24. Section 212.3 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (a).

§ 212.4 [Amended]

■ 25. Section 212.4 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (b).

§ 212.7 [Amended]

■ 26. Section 212.7 is amended:

■ a. By removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (a)(1); and

■ b. By removing ''8 CFR 103.7(b)'' and adding in its place ''8 CFR 106.2'' in paragraphs (e)(1) and (e)(5)(i).

§ 212.15 [Amended]

■ 27. Section 212.15 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (j)(2)(ii).

§ 212.18 [Amended]

■ 28. Section 212.18 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraphs (a)(2).

■ 29. Section 212.19 is amended by revising 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 Form I–941, Application for Entrepreneur Parole, with 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 before [EFFECTIVE DATE OF FINAL RULE] will be required to submit biometric information. An alien seeking an initial grant of parole or re-parole may 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 he or she 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

■ 30. 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, 1356, and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Public Law 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.

■ 31. Section 214.1 is amended:

■ a. By removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (c)(1);

■ b. By removing ''§ 103.7 of this chapter'' and adding in its place ''8 CFR 106.2'' in paragraph (c)(2);

■ c. By revising paragraph (c)(5); and

■ d. By removing:

■ i. ''a Form I–129'' and adding in its place ''an application or petition'' in the first sentence of paragraph (j) introductory text; and

■ ii. ''Form I–129'' and adding in its place ''application or petition'' in the second and third sentences of paragraph (j) introductory text.

The revision reads 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.

* * * * *

■ 32. Amend § 214.2:

■ a. By revising paragraph (e)(8)(iii), the first sentence of paragraph (e)(8)(iv) introductory text, paragraphs (e)(8)(iv)(B), and (e)(8)(v);

■ b. By removing ''Form I–129 and E Supplement'' and adding in its place ''the form prescribed by USCIS'' in paragraphs (e)(20) introductory text and in two places in paragraph (e)(21)(i);

■ c. By revising paragraph (e)(23)(viii);

■ d. By removing and reserving paragraph (e)(23)(xv);

■ e. By removing either ''8 CFR 103.7'', ''8 CFR 103.7(b)'' or ''8 CFR 103.7(b)(1)'' and adding in their places ''8 CFR 106.2'' in paragraphs (f)(9)(ii)(F)(*1*), (h)(19)(ii), (m)(14)(ii), and (r)(3), (5), and (13);

■ f. By removing ''Form I–129'' and adding in its place ''application or petition'' wherever it appears in paragraphs (h)(1)(i)(B), (h)(6)(vii), (l)(14)(ii) introductory text, and (o)(2)(iv)(G);

■ g. By revising paragraphs (h)(2)(i)(A), (h)(2)(ii), and (h)(5)(i)(B);

■ h. By removing ''I–129'' and adding in its place ''the form prescribed by USCIS'' in paragraph (h)(6)(iii)(E);

■ i. By removing ''Petition for Nonimmigrant Worker (Form I–129)'' and adding in its place ''the form prescribed by USCIS'' in paragraph (h)(19)(vi)(A);

■ j. By revising paragraphs (h)(19)(i), (m)(14)(ii) introductory text, and (o)(2)(iv)(F);

■ k. By removing ''Form I–129'' and adding in its place ''an application or petition'' in the first sentence of paragraph (o)(12)(i);

■ l. By revising paragraph (p)(2)(iv)(F);

■ m. By removing ''Form I–129'' and adding in its place ''application or petition'' wherever it appears in paragraph (p)(2)(iv)(C)(*2*), the second sentence of paragraph (q)(3)(i), and paragraphs (q)(4)(i) and (q)(6);

■ n. By removing ''Form I–129'' and adding in its place ''the form prescribed by USCIS'' in paragraphs (h)(2)(i)(D), (h)(5)(i)(A), (h)(11)(i)(A), (h)(14), (h)(15)(i), (l)(2)(ii), (l)(3) introductory text, (l)(4)(iv) introductory text, (l)(5)(ii)(F), (l)(15)(i), (l)(17)(i), (o)(2)(iv)(D), (p)(13), (p)(14)(i), (q)(4)(iii), and in the second sentence of paragraph (q)(5)(i);

■ o. By removing ''Form I–129, Petition for Nonimmigrant Worker'' and adding in its place ''the form prescribed by USCIS'' in its place in paragraphs (l)(2)(i), (l)(5)(ii)(F), (o)(2)(i), (o)(11), (p)(2)(i), (q)(3)(i), and the first sentence of paragraph (q)(5)(i);

■ p. By removing ''Form I–129 petition'' and adding in its place ''application or petition'' in paragraph (p)(2)(iv)(H); and

■ q. By revising paragraph (r)(3) introductory text and the definition of ''Petitions'' in paragraph (r)(3) and revising paragraphs (r)(5), (w)(5), (w)(14)(iii), and (w)(15).

The revisions 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 which would affect the alien's eligibility for E classification. * * *

(B) Request a new approval notice reflecting the non-substantive change by filing an application with a description of the change, or;

* * * * *

(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) *Petitions*—(i) *Filing of petitions*—(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 less 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.* A 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.

* * * * *

(r) * * *

(3) *Definitions.* As used in this section, the term:

* * * * *

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 of time spent in R–1 status does not exceed a maximum of five 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.

* * * * *

(14) * * *

(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.

(15) *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.

* * * * *

§ 214.3 [Amended]

■ 33. Section 214.3 is amended:

■ a. By removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (h)(1)(i); and

■ b. By removing ''8 CFR 103.7(b)(1)(ii)(B)'' and adding in its place ''8 CFR 103.7(d)(2)'' in paragraph (h)(2) introductory text.

§ 214.6 [Amended]

■ 34. Section 214.6 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraphs (g)(1), (h)(1)(i), (h)(2), and (i)(2).

§ 214.11 [Amended]

■ 35. Section 214.11 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraphs (d)(2)(iii) and (k)(1).

■ 36. Section 214.14 is amended by revising paragraphs (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, Form I–918, Petition for U Nonimmigrant Status, and initial evidence to USCIS in accordance with this paragraph and the instructions to Form I–918. A petitioner who received interim relief is not required to submit initial evidence with Form I–918 if he or she wishes to rely on the law enforcement certification and other

evidence that was submitted with the request for interim relief.

* * * * *

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

■ 37. The authority citation for part 216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

§ 216.4 [Amended]

■ 38. Section 216.4 is amended by removing ''§ 103.7(b) of this chapter'' and adding in its place ''8 CFR 106.2'' in paragraph (a)(1).

§ 216.5 [Amended]

■ 39. Section 216.5 is amended by removing ''§ 103.7(b) of this Chapter '' and adding in its place ''8 CFR 106.2'' in paragraph (b).

§ 216.6 [Amended]

■ 40. Section 216.6 is amended by removing ''8 CFR 103.7(b)(1) of this chapter '' and adding in its place ''8 CFR 106.2'' in paragraph (a)(1).

PART 217—VISA WAIVER PROGRAM

■ 41. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

§ 217.2 [Amended]

■ 42. Section 217.2 is amended by removing ''§ 103.7(b)(1)'' and adding in its place ''8 CFR 103.7(d)(4)'' in its place in paragraph (c)(2).

PART 223—REENTRY PERMITS, REFUGEE TRAVEL DOCUMENTS, AND ADVANCE PAROLE DOCUMENTS

■ 43. The authority citation for part 223 continues to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1186a, 1203, 1225, 1226, 1227, 1251; Protocol Relating to the Status of Refugees, November 1, 1968, 19 U.S.T. 6223 (TIAS) 6577; 8 CFR part 2.

§ 223.2 [Amended]

■ 44. Section 223.2 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (a).

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 45. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2004 Comp., p.278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731–32; Title VII of Public Law 110–229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); Pub. L. 112–54.

§ 235.1 [Amended]

■ 46. Section 235.1 is amended by removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 103.7(d)(3)'' in paragraphs (g)(1)(iii) and (g)(2).

§ 235.7 [Amended]

■ 47. Section 235.7 is amended by removing ''§ 103.7(b)(1) of this chapter'' and ''§ 103.7(b)(1)'' and adding in their place ''8 CFR 103.7(d)(7)'' in paragraph (a)(4)(v).

§ 235.12 [Amended]

■ 48. Section 235.12 is amended by removing ''8 CFR 103.7(b)(1)(ii)(M)'' and adding in its place ''8 CFR 103.7(d)(13)'' in paragraph (d)(2).

§ 235.13 [Amended]

■ 49. Section 235.13 is amended by removing ''8 CFR 103.7(b)(1)(ii)(N)'' and adding in its place ''8 CFR 103.7(d)(14)'' in paragraph (c)(5).

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

■ 50. The authority citation for part 236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

§ 236.14 [Amended]

■ 51. Section 236.14 is amended by removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 106.2'' in paragraph (a).

§ 236.15 [Amended]

■ 52. Section 236.15 is amended by removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 106.2'' in paragraph (e).

PART 240—VOLUNTARY DEPARTURE, SUSPENSION OF DEPORTATION AND SPECIAL RULE CANCELLATION OF REMOVAL

■ 53. 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.

■ 54. Section 240.63 is amended by revising 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 Form EOIR–40, Application for Suspension of Deportation, before the effective date of the form prescribed by USCIS may apply with the Service by submitting the completed Form EOIR–40 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

■ 55. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

§ 244.6 [Amended]

■ 56. Section 244.6 is amended by revising paragraph (a) to read as follows:

§ 244.6 Application.

(a) An application for Temporary Protected Status 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.

* * * * *

■ 57. Section 244.17 is amended by revising 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

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

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

§ 245.7 [Amended]

■ 59. Section 245.7 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (a).

§ 245.10 [Amended]

■ 60. Section 245.10 is amended by removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 106.2'' in paragraph (c) introductory text.

§ 245.15 [Amended]

■ 61. Section 245.15 is amended:
■ a. By removing ''§ 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (c)(2)(iv)(A);
■ b. By removing and reserving paragraph (c)(2)(iv)(B);
■ c. By removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (g)(1);
■ d. By removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 106.2'' in paragraph (h)(1);
■ e. By removing and reserving paragraph (h)(2); and
■ f. By removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraphs (n)(1), (t)(1), and (t)(2)(i).

§ 245.18 [Amended]

■ 62. Section 245.18 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraphs (d)(1) and (k).

§ 245.21 [Amended]

■ 63. Section 245.21 is amended:
■ a. By removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in the first sentence of paragraph (b) and removing the second sentence in paragraph (b); and
■ b. By removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraphs (f), (h), and (i).

§ 245.23 [Amended]

■ 64. Section 245.23 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (e)(1)(i) and by removing and reserving paragraph (e)(1)(iii).

§ 245.24 [Amended]

■ 65. Section 245.24 is amended:
■ a. By removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraphs (d)(2) and by removing and reserving paragraph (d)(3); and
■ b. By removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraphs (h)(1)(ii) and (i)(1)(iii) and by removing and reserving paragraph (i)(1)(iv).

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

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

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

■ 67. Section 245a.2 is amended by revising 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.

* * * * *

■ 68. Section 245a.3 is amended by revising 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.

* * * * *

■ 69. Section 245a.4 is amended by revising 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.

* * * * *

■ 70. Section 245a.12 is amended:
■ a. By removing ''Missouri Service Center'' and adding in its place ''National Benefit Center'' in paragraphs (b) introductory text and (c);
■ b. By revising paragraph (d) introductory text;
■ c. By removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (d)(1); and
■ d. By removing and reserving paragraphs (d)(2), (4), and (6).

The revision reads 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.

* * * * *

§ 245a.13 [Amended]

■ 71. Section 245a.13 is amended:
■ a. By removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 106.2'' in paragraph (d)(1); and (e)(1).
■ b. By removing ''Missouri Service Center'' and adding in its place ''National Benefit Center'' in paragraphs (e) introductory text and (e)(1); and
■ c. By removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 106.2'' in paragraph (e)(1).

§ 245a.18 [Amended]

■ 72. Section 245a.18 is amended by removing ''Missouri Service Center'' and adding in its place ''National Benefit Center'' in paragraph (c)(1).

§ 245a.19 [Amended]

■ 73. Section 245a.19 is amended by removing ''Missouri Service Center'' and adding in its place ''National Benefit Center'' in paragraph (a).

§ 245a.20 [Amended]

■ 74. Section 245a.20 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (a)(2).

§ 245a.33 [Amended]

■ 75. Section 245a.33 is amended by removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 106.2'' in paragraph (a) and by removing ''Missouri Service Center'' and adding in its place ''National Benefit Center'' in paragraphs (a) and (b).

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

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

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

§ 248.3 [Amended]

■ 77. Section 248.3 is amended by removing ''8 CFR 103.7(b)'' and adding in its place ''8 CFR 106.2'' in its place

in the introductory text and by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (h) introductory text.

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

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

Authority: 8 U.S.C. 1103, 1201, 1303–1305; 8 CFR part 2.

§ 264.2 [Amended]

■ 79. Section 264.2 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraphs (c)(1)(i) and (c)(2)(i).

§ 264.5 [Amended]

■ 80. Section 264.5 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (a).

§ 264.6 [Amended]

■ 81. Section 264.6 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (b).

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 82. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 83. Section 274a.12 is amended by revising 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), pursuant to 8 CFR 214.2(h), or a nonimmigrant specialty occupation worker pursuant to 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), pursuant to 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), pursuant to 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;

* * * * *

PART 286—IMMIGRATION USER FEE

■ 84. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1356; Title VII of Public Law 110–229; 8 CFR part 2.

§ 286.9 [Amended]

■ 85. Section 286.9 is amended by removing ''§ 103.7(b)(1)'' and adding in its place ''8 CFR 103.7(d)'' in paragraph (a).

PART 301—NATIONALS AND CITIZENS OF THE UNITED STATES AT BIRTH

■ 86. The authority citation for part 301 continues to read as follows:

Authority: 8 U.S.C. 1103, 1401; 8 CFR part 2.

§ 301.1 [Amended]

■ 87. Section 301.1 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (a)(1).

PART 319—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SPOUSES OF UNITED STATES CITIZENS

■ 88. The authority citation for part 319 continues to read as follows:

Authority: 8 U.S.C. 1103, 1430, 1443.

§ 319.11 [Amended]

■ 89. Section 319.11 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (a) introductory text.

PART 320—CHILD BORN OUTSIDE THE UNITED STATES AND RESIDING PERMANENTLY IN THE UNITED STATES; REQUIREMENTS FOR AUTOMATIC ACQUISITION OF CITIZENSHIP

■ 90. The authority citation for part 320 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 320.5 [Amended]

■ 91. Section 320.5 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraphs (b) and (c).

PART 322—CHILD BORN OUTSIDE THE UNITED STATES; REQUIREMENTS FOR APPLICATION FOR CERTIFICATE OF CITIZENSHIP

■ 92. The authority citation for part 322 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 322.3 [Amended]

■ 93. Section 322.3 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (a) and by removing ''§ 103.7(b)(1) of this chapter'' and

adding in its place ''8 CFR 106.2'' (b)(1) introductory text.

§ 322.5 [Amended]

■ 94. Section 322.5 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraphs (b) and (c).

PART 324—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: WOMEN WHO HAVE LOST UNITED STATES CITIZENSHIP BY MARRIAGE AND FORMER CITIZENS WHOSE NATURALIZATION IS AUTHORIZED BY PRIVATE LAW

■ 95. The authority citation for part 324 continues to read as follows:

Authority: 8 U.S.C. 1103, 1435, 1443, 1448, 1101 note.

§ 324.2 [Amended]

■ 96. Section 324.2 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (b).

PART 334—APPLICATION FOR NATURALIZATION

■ 97. The authority citation for part 334 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 334.2 [Amended]

■ 98. Section 334.2 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (a).

PART 341—CERTIFICATES OF CITIZENSHIP

■ 99. The authority citation for part 341 continues to read as follows:

Authority: Pub. L. 82–414, 66 Stat. 173, 238, 254, 264, as amended; 8 U.S.C. 1103, 1409(c), 1443, 1444, 1448, 1452, 1455; 8 CFR part 2.

§ 341.1 [Amended]

■ 100. Section 341.1 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

§ 341.5 [Amended]

■ 101. Section 341.5 is amended by removing ''8 CFR 103.7'' and adding in its place ''8 CFR 106.2'' in paragraph (e).

PART 343a—NATURALIZATION AND CITIZENSHIP PAPERS LOST, MUTILATED, OR DESTROYED; NEW CERTIFICATE IN CHANGED NAME; CERTIFIED COPY OF REPATRIATION PROCEEDINGS

■ 102. The authority citation for part 343a continues to read as follows:

Authority: 8 U.S.C. 1101 note, 1103, 1435, 1443, 1454, and 1455.

§ 343a.1 [Amended]

■ 103. Section 343a.1 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR part 106'' in paragraph (a).

PART 343b—SPECIAL CERTIFICATE OF NATURALIZATION FOR RECOGNITION BY A FOREIGN STATE

■ 104. The authority citation for part 343b continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1454, 1455.

§ 343b.1 [Amended]

■ 105. Section 343b.1 is amended by removing the term ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in the first sentence.

PART 392—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WHO DIE WHILE SERVING ON ACTIVE DUTY WITH THE UNITED STATES ARMED FORCES DURING CERTAIN PERIODS OF HOSTILITIES

■ 106. The authority citation for part 392 continues to read as follows:

Authority: 8 U.S.C. 1103, 1440 and note, and 1440–1; 8 CFR part 2.

§ 392.4 [Amended]

■ 107. Section 392.4 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (e).

Kevin K. McAleenan,

Acting Secretary .

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