



Federal Register

**Friday,
September 24, 2010**

Part IV

Department of Homeland Security

**8 CFR Parts 103, 204, 244 et al.
U.S. Citizenship and Immigration Services
Fee Schedule; Final Rule**

DEPARTMENT OF HOMELAND SECURITY**8 CFR Parts 103, 204, 244, and 274A**

[CIS No. 2490–09, DHS Docket No. USCIS–2009–0033]

RIN 1615–AB80

U.S. Citizenship and Immigration Services Fee Schedule**AGENCY:** U.S. Citizenship and Immigration Services, DHS.**ACTION:** Final rule.

SUMMARY: The Department of Homeland Security (DHS) is adjusting the fee schedule for U.S. Citizenship and Immigration Services (USCIS). USCIS conducted a comprehensive fee study, refined its cost accounting process, and determined that current fees do not recover the full costs of services provided. DHS has found that adjustment to the fee schedule is necessary to fully recover costs and maintain adequate service. In response to comments, several adjustments were made to the proposed rule published on June 11, 2010.

In this final rule, DHS: increases the fees by a weighted average of 10 percent; establishes three new fees covering USCIS costs related to processing the Regional Center Designation under the Immigrant Investor Pilot Program, Civil Surgeon Designation, and DHS Processing of Immigrant Visa requests; and adjusts the premium processing service fee by the percentage increase in inflation according to the Consumer Price Index—Urban Consumers (CPI–U) published as of July 2010. This rule also finalizes the interim rule that established the premium processing service and fees.

DATES: This rule is effective November 23, 2010. Applications or petitions mailed, postmarked, or otherwise filed on or after November 23, 2010 must include the new fee.

FOR FURTHER INFORMATION CONTACT: Timothy Rosado, Acting Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2130, telephone (202) 272–1930.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Background.
- II. Final Rule.
 - A. Changes in the Final Rule.
 - B. Corrections.
 - C. Summary of Final Fees.
- III. Public Comments on the Proposed Rule.

- A. Authority to Promulgate Fees.
 - 1. Immigration and Nationality Act Section 286(m).
 - 2. Biometrics for Temporary Protected Status.
 - 3. Bundling.
 - 4. Fraud Detection and National Security and other Program Costs.
 - 5. Guidance under Office of Management and Budget Circulars.
 - 6. Accounting Standards.
- B. Relative Amount of Fees.
 - 1. Recovery of Additional Costs.
 - 2. Proposed Fees are Unreasonably High.
 - a. Barrier to Family Reunification.
 - b. Fee Increases Reduce the Number of Filers.
 - c. Income–Based Fee Structure.
- d. Supplementary Costs to Applicants and Petitioners.
- 3. Comments on Specific Fees and Adjustments.
 - a. Student Employment Authorization.
 - b. Entertainers, Athletes, and other Individuals with Extraordinary Talent.
 - c. Adoption.
 - d. Entrepreneurs.
 - e. Refugee Travel Documents.
- 4. Fee Decreases.
 - C. Fee Waivers and Exemptions.
 - 1. Asylee Benefits and Status Adjustment.
 - 2. Expansion of Fee Waivers and Exemptions.
 - a. Travel and Employment Authorization Documents and Immigrant Visas.
 - b. Waiver Eligibility for Notices of Appeal or Motions.
 - c. Military Naturalizations.
 - d. Arrival–Departure Records.
 - 3. Standardization of the Fee Waiver Process.
 - 4. Commonwealth of the Northern Mariana Islands Transitional Worker.
- D. Naturalization.
 - E. Improve Service and Reduce Inefficiencies.
 - 1. Service Improvement and Fees.
 - 2. Multiple Biometric Data Requests.
 - 3. Transformation.
 - 4. Increases Relative to Time.
 - 5. Fee Refunds.
 - 6. Customer Service and the Office of Public Engagement.
 - F. Premium Processing.
 - 1. Expansion of Premium Processing Service.
 - 2. Adjustment to the Premium Processing Fee.
- G. New Fees and Forms.
 - 1. Immigrant Visa DHS Domestic Processing Fee.
 - 2. Civil Surgeon Designation Fee and Form.
 - 3. EB–5 Regional Center Designation Fee and Form.
- H. Methods Used To Determine Fee Amounts.
 - 1. Reductions to USCIS Costs.
 - 2. Appropriations.
- I. Other Comments.
 - 1. Visa Allocation and Unused Visa Numbers.
 - 2. Increased Periods of Validity for Travel and Employment Documents.
 - 3. Suggested I–94 Fee.
- J. Discussion of Comments Received in Response to the June 1, 2001, Interim

- Final Rule.
- IV. Statutory and Regulatory Reviews.
 - A. Regulatory Flexibility Act– Final Regulatory Flexibility Analysis.
 - 1. Objectives of, and Legal Basis for, the Final Rule.
 - 2. Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis.
 - 3. Description and Estimate of the Number of Small Entities to which the Rule will Apply.
 - 4. Reporting, Recordkeeping, and Other Compliance Requirements.
 - 5. Steps Taken to Minimize Significant Adverse Economic Impacts on Small Entities.
 - B. Unfunded Mandates Reform Act.
 - C. Small Business Regulatory Enforcement Fairness Act.
 - D. Executive Order 12866.
 - E. Executive Order 13132.
 - F. Executive Order 12988.
 - G. Paperwork Reduction Act.

List of Acronyms and Abbreviations

- ABC—Activity–Based Costing.
- CBP—U.S. Customs and Border Protection.
- CFO—Chief Financial Officer.
- CNMI—Commonwealth of the Northern Mariana Islands.
- CNRA—Consolidated Natural Resources Act.
- CPI–U—Consumer Price Index—Urban Consumers.
- DHS—Department of Homeland Security.
- DOS—Department of State.
- EAD—Employment Authorization Document.
- FASAB—Federal Accounting Standards Advisory Board.
- FBI—Federal Bureau of Investigation.
- FDNS—Fraud Detection and National Security.
- FRFA—Final Regulatory Flexibility Analysis.
- FY—Fiscal Year.
- HSA—Homeland Security Act.
- IEFA—Immigration Examinations Fee Account.
- INA—Immigration and Nationality Act.
- IOAA—Independent Offices Appropriation Act.
- IRFA—Initial Regulatory Flexibility Analysis.
- NNCP—National Name Check Program.
- OMB—Office of Management and Budget.
- OPE—Office of Public Engagement.
- OPT—Optional Practical Training.
- PRA—Paperwork Reduction Act.
- POE—Port of Entry.
- RFA—Regulatory Flexibility Act.
- RFE—Request for Evidence.
- SAVE—Systematic Alien Verification for Entitlements.
- SMI—Secure Mail Initiative.
- SQA—System Qualified Adjudication.
- TPS—Temporary Protected Status.
- UMRA—Unfunded Mandates Reform Act.
- USCIS—U.S. Citizenship and Immigration Services.
- USPS—United States Postal Service.
- VAWA—Violence Against Women Act.

I. Background

DHS proposed to adjust the USCIS benefits fee schedule on June 11, 2010. See 75 FR 33445. The current USCIS fee schedule does not recoup the full cost of processing immigration benefits. This

final rule builds on the 2008/2009 USCIS fee rule that sought to align fees with the costs of specific application types and make adjustments to some fees based on policy considerations.

This final rule also reflects FY 2010 appropriations to remove asylum, refugee, and military naturalization costs from the fee structure. See 75 FR 33445, 33447. Previously, surcharges were added to immigration fees to recover the cost of adjudicating asylum, refugee, and military naturalization requests. Costs for the Systematic Alien Verification for Entitlements (SAVE) program and the Office of Citizenship were also supported by fee revenue. The Administration's fee reform policy, as reflected in the Administration's budget request, moves all of these costs out of the USCIS fee structure to appropriated funds and improves the transparency of USCIS fees.

USCIS entered supporting documentation for this rulemaking and its methodology, including budget methodology and regulatory flexibility analyses, into the public docket. See <http://www.regulations.gov>, docket number USCIS-2009-0033.

II. Final Rule

A. Changes in the Final Rule

DHS is adopting the proposed rule with changes, both in response to comments and as a result of new information. The explanations of the changes are discussed in the sections dealing with comments and the subject matter of the change. No modification to the final fees is made as a result of these changes. The changes that DHS is making to the final rule are summarized as follows:

Clarify fee exemptions for requests for Civil Surgeon Designation. DHS will charge no fee for an application from a medical officer in the U.S. Armed Forces or civilian physician employed by the U.S. government who examines members of the U.S. Armed Forces, veterans of the Armed Forces, and their dependents at a U.S. military, Department of Veterans Affairs, or U.S. government facility in the United States. New 8 CFR 103.7(b)(1)(i)(SS).

Reduce the fee for an Application for Travel Document, Form I-131, when it is filed to request a Refugee Travel Document. DHS has reduced the fee for an Application for Travel Document in the final rule to \$135 for a Refugee Travel Document for an adult age 16 or older, and \$105 for a child under the age of 16. DHS has decided also to permit the fee for an Application for Travel Document to be waived based on inability to pay when it is based on a

request for Humanitarian Parole. New 8 CFR 103.7(b)(1)(i)(M).

Provide that the fee for the Notice of Appeal or Motion, Form I-290B, may be waived *in certain cases*. DHS will allow the fee for the Notice of Appeal or Motion to be waived upon a showing of inability to pay in those cases when the appeal or motion is from the denial of an immigration benefit request where the applicant or petitioner was not required to pay a fee or that fee was waived. New 8 CFR 103.7(c)(3)(vi).

Provide for no fee for a Notice of Appeal or Motion for an appeal of a denial of a petition for a special immigrant visa from an Iraqi or Afghan national who worked for or on behalf of the U.S. Government in Iraq or Afghanistan. DHS believes it is keeping with the policy to assist this group of petitioners by allowing them to file a Notice of Appeal or Motion without a fee. New 8 CFR 103.7(b)(1)(i)(W).

Provide for a free Request for Hearing on a Decision in Naturalization Proceedings, Form N-336, and an Application for Certification of Citizenship, Form N-600, to exempt from fees requests from a member or veteran of the U.S. Armed Forces. New 8 CFR 103.7(b)(1)(i)(W), (AAA). USCIS is precluded by law from collecting a fee from members of the military for an Application for Naturalization under sections 328 and 329 of the Immigration and Nationality Act (INA). INA sections 328(b) & 329(b), 8 U.S.C. 1439(b) & 1440(b). DHS has decided to provide that military members are also exempt from the fee for these requests.

B. Corrections

DHS makes a number of technical corrections in this final rule. DHS does not make any changes to the final fees as a result of these corrections. In the preamble of the proposed rule, DHS included a table of those benefits requests that also required submission of biometrics and the related biometrics services fee. 75 FR 33445, 33461. USCIS failed to include the Application to Extend/Change Nonimmigrant Status, Form I-539, in the table of fees for immigration benefits that require biometric services in the proposed rule. *Id.* Applicants filing an Application to Extend/Change Nonimmigrant Status to request "V" nonimmigrant status are required to submit biometric information and pay the biometric fee. 8 CFR 214.15(f)(1)(ii). A "V" visa is available for certain spouses and children of lawful permanent residents who have had a petition for an immigrant visa or application for naturalization pending for 3 years or more. INA section 101(a)(15)(V), 8 U.S.C.

1101(a)(15)(V). This is the only class of Application to Extend/Change Nonimmigrant Status (Form I-539) applicants that currently require biometric services. The fee for this application in this final rule is \$290. New 8 CFR 103.7(b)(1)(i)(X). The biometric fee is \$85. New 8 CFR 103.7(b)(1)(i)(C). As a result, the inclusive fee for filing an Application to Extend/Change Nonimmigrant Status (Form I-539) for V nonimmigrants is \$375. USCIS also inadvertently did not include the Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-110), Form I-881, in the table of fees in the preamble to the proposed rule. This benefit request and its \$285 fee are included in the table in this preamble for illustrative purposes. Finally, USCIS is removing the separate fee for filing an application for issuance or extension of a refugee travel document (Form I-570) because the refugee document process was consolidated into the application for travel documents (Form I-131), and the reference is obsolete.

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 requires DHS to permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for relief by a Violence Against Women Act (VAWA) self-petitioner or under INA sections 101(a)(15)(T) (T visas), 101(a)(15)(U) (U visas), 106 (battered spouses of A, G, E-3, or H nonimmigrants), 240A(b)(2) (battered spouse or child of a lawful permanent resident or U.S. citizen), and 244(a)(3) (Temporary Protected Status) (as in effect on March 31, 1997). INA section 245(l)(7), 8 U.S.C. 1255(l)(7). Public Law 110-457, section 122 Stat. 5044 (Dec. 23, 2008); 22 U.S.C. 7101 *et seq.* This rule corrects the oversight from the proposed rule and provides that these groups or individuals may request a waiver of any USCIS fee to which they may be otherwise subjected. New 8 CFR 103.7(c)(3)(xvii).

USCIS inadvertently did not include the Petition to Remove the Conditions of Residence, Form I-751, and the Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105-110), Form I-881, in the list of forms currently eligible for fee waivers. Proposed 8 CFR 103.7(c)(3); 75 FR 33445, 33487. These exclusions are corrected in this final rule. USCIS has determined that it will continue its policy of accepting fee waiver requests for Forms I-751 and I-

881. New 8 CFR 103.7(c)(3)(vii) and (xi); 8 CFR 240.63(a).
 In the proposed rule, USCIS unintentionally replaced the word “or” in the fee for an Application to Register Permanent Residence or Adjust Status, Form I-485, with “and” in an attempt to simplify the language in current 8 CFR 103.7(b)(1). Proposed 8 CFR 103.7(b)(1)(U)(2). A discounted fee has previously been provided for “an applicant under the age of fourteen years when submitted concurrently for adjudication with the Form I-485 of a parent and the applicant is seeking to adjust status as a derivative of the parent, based on a relationship to the

same individual who provides the basis for the parent’s adjustment of status, or under the same legal authority as the parent.” 8 CFR 103.7(b)(1). This proposed change would have eliminated the discount made available to certain children in the 2008/2009 fee rule. USCIS will continue to allow a child filing concurrently with a parent to pay the reduced fee when the child “is seeking to adjust status as a derivative of the parent, based on a relationship to the same individual who provides the basis for the parent’s adjustment of status, or under the same legal authority as the parent” and has restored that

language to the regulatory text in this final rule. New 8 CFR 103.7(b)(1)(U)(2)

C. Summary of Final Fees

The current USCIS Immigration Benefit Request Fee Schedule and the fees adopted in this final rule are summarized in Table 1. DHS bases its final fees on the FY 2011 President’s Budget Request as outlined in the proposed rule, incorporating appropriated funding for refugee, asylum, and military naturalization processing, as well as the Office of Citizenship and the SAVE program. 75 FR 33456.

TABLE 1—IMMIGRATION BENEFIT REQUEST FEES

Form No.	Title	Current fees	Final fees
I-90	Application to Replace Permanent Resident Card	\$290	\$365
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	320	330
I-129/129CW	Petition for a Nonimmigrant Worker	320	325
I-129F	Petition for Alien Fiancé(e)	455	340
I-130	Petition for Alien Relative	355	420
I-131	Application for Travel Document	305	360
I-140	Immigrant Petition for Alien Worker	475	580
I-191	Application for Advance Permission to Return to Unrelinquished Domicile	545	585
I-192	Application for Advance Permission to Enter as Nonimmigrant	545	585
I-193	Application for Waiver of Passport and/or Visa	545	585
I-212	Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal	545	585
I-290B	Notice of Appeal or Motion	585	630
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	375	405
I-485	Application to Register Permanent Residence or Adjust Status	930	985
I-526	Immigrant Petition by Alien Entrepreneur	1,435	1,500
I-539	Application to Extend/Change Nonimmigrant Status	300	290
I-600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of Orphan Petition.	670	720
I-601	Application for Waiver of Ground of Excludability	545	585
I-612	Application for Waiver of the Foreign Residence Requirement	545	585
I-687	Application for Status as a Temporary Resident under Sections 245A or 210 of the Immigration and Nationality Act.	710	1,130
I-690	Application for Waiver of Grounds of Inadmissibility	185	200
I-694	Notice of Appeal of Decision under Sections 245A or 210 of the Immigration and Nationality Act	545	755
I-698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Pub. L. 99-603).	1,370	1,020
I-751	Petition to Remove the Conditions of Residence	465	505
I-765	Application for Employment Authorization	340	380
I-817	Application for Family Unity Benefits	440	435
I-824	Application for Action on an Approved Application or Petition	340	405
I-829	Petition by Entrepreneur to Remove Conditions	2,850	3,750
I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105-110).	285	285
I-907	Request for Premium Processing Service	1,000	1,225
	Civil Surgeon Designation	0	615
I-924	Application for Regional Center under the Immigrant Investor Pilot Program	0	6,230
N-300	Application to File Declaration of Intention	235	250
N-336	Request for Hearing on a Decision in Naturalization Proceedings	605	650
N-400	Application for Naturalization	595	595
N-470	Application to Preserve Residence for Naturalization Purposes	305	330
N-565	Application for Replacement Naturalization/Citizenship Document	380	345
N-600/600K	Application for Certification of Citizenship/Application for Citizenship and Issuance of Certificate under Section 322.	460	600
	Immigrant Visa DHS Domestic Processing	0	165
Biometrics	Capturing, Processing, and Storing Biometric Information	80	85

III. Public Comments on the Proposed Rule

DHS provided a 45-day comment period following the publication of the proposed rule and received 225 comments. DHS also invited the public to access the commercial software utilized in executing the budget methodology and developing the cost model underlying the proposed rule to facilitate public understanding of the fee modeling process explained in the supporting documentation. See 75 FR 33445, 33447. USCIS received no requests for access to the modeling program.

On June 9, 2010, USCIS Director Alejandro Mayorkas hosted a stakeholder engagement that focused exclusively on the proposed rule. During this engagement, Director Mayorkas provided information about the rule and directed the public to the **Federal Register** and <http://www.regulations.gov> to submit comments on the proposed rule. Throughout the public comment period, USCIS Senior Leadership met with stakeholders during regularly-scheduled engagements and used these opportunities to provide information and encourage individuals and groups to submit written comments.

DHS received comments from a broad spectrum of individuals and organizations, including refugee and immigrant service and advocacy organizations, public policy and advocacy groups, members of Congress, and private citizens. Many comments addressed multiple issues or provided variations of opinion on the same substantive issues. Comments ranged from strongly supportive of the fee changes to strongly critical. Some comments provided critiques of the methodology and the proposed fee schedule, while others suggested alternative methods and funding sources to finance USCIS operations.

DHS has considered the comments received and all other materials contained in the docket in preparing this final rule. The final rule does not address comments seeking changes in United States statutes; changes in regulations or applications and petitions unrelated to, or not addressed by, the proposed rule; changes in procedures of other components within DHS or other agencies; or the resolution of any other issues not within the scope of the rulemaking or the authority of DHS. All comments may be reviewed at the Federal Docket Management System (FDMS) at www.regulations.gov, docket number USCIS-2009-0033. The public may also review the docket upon

request by contacting USCIS through the contact information listed in this rule.

A. Authority to Promulgate Fees

Several commenters questioned DHS's authority to promulgate the rule. Specific comments challenged DHS's authority to charge specific amounts for specific fees, to cross-subsidize fees, and to make policy decisions that affect the amount of specific fees. These comments asserted both generally, and in regard to specific fees, that DHS's proposed fee schedule was not in conformity with different provisions of law, policy, and guidance. Some commenters suggested that administrative and overhead costs were not related to the provision of services and should be excluded. Other commenters suggested that enforcement costs should be excluded from the fees, while others recommended that all of the enforcement costs of immigration and law enforcement agencies should be recovered by fees. Several commenters asserted that expenses not related to the provision of "adjudication and naturalization services" are matters of public benefit and should instead be funded by appropriation. Commenters also suggested that DHS was not authorized to "bundle" fees or to cross-subsidize costs of one service with funding from another fee.

Underlying these comments is the issue of compliance with the authorizing statute and conformance with internal Executive Branch guidance. Although some commenters recognized that DHS is permitted to fund all USCIS operations from fees, they asserted there is no statutory mandate requiring it to do so. These comments raise the issue of the general structure of the Immigration Examinations Fee Account (IEFA), and whether fees can legally recover certain costs.

DHS disagrees. DHS outlined its authority to promulgate the USCIS fee schedule in the proposed rule. 75 FR 33445, 33447-8. DHS carefully reviews its authority to act and provides a more detailed explanation of its legislative authority and management guidance in response to these comments.

1. Immigration and Nationality Act Section 286(m)

The Immigration and Nationality Act, as amended, 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.

INA section 286(m), 8 U.S.C. 1356(m).¹ The INA provides that the fees may recover administrative costs as well. The fee revenue collected under section 286(m) of the INA remains available to DHS to provide immigration and naturalization benefits and ensures the collection, safeguarding, and accounting of fees by USCIS. INA section 286(n), 8 U.S.C. 1356(n).

Congress also has imposed specific fixed fees, such as the \$7 individual immigration inspection fee at ports of entry. INA section 286(d), 8 U.S.C. 1356(d). Additionally, Congress has established certain fixed fees and provided a specific method for adjustment of those fees, such as the premium processing fee. INA section 286(u), 8 U.S.C. 1356(u). DHS considers the structure of all of these provisions and the relationship between fee requirements and appropriated funds in reaching decisions about the USCIS fee schedule.

INA section 286(m), 8 U.S.C. 1356(m), contains both silence and ambiguity under *Chevron USA, Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). Congress has not spoken directly, for example, to a number of issues present in this section, including the scope of application of the section or subsidizing operations from other fees.² Congress has provided that USCIS recover costs "including the costs of similar services" provided to "asylum applicants and other immigrants." Congress has not detailed the determination of what costs are to be included. Moreover, "other immigrants" has a broad meaning under the INA because the term "immigrant" is defined by exclusion to mean "every alien

¹ INA section 286(m), 8 U.S.C. 1356(m), provides, in pertinent part that notwithstanding any other provisions of law, all adjudication fees as are designated by the [Secretary of Homeland Security] in regulations shall be deposited as offsetting receipts into a separate account entitled "Immigration Examinations Fee Account" in the Treasury of the United States, whether collected directly by the [Secretary] or through clerks of courts: *Provided, however, * * * : Provided further*, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

Paragraph (n) provides that deposited funds remain available until expended "for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the 'Immigration Examinations Fee Account'."

² Congress's intent in using individual terms, such as "full cost," is clear, although the totality of the section is ambiguous.

except an alien who is within one of the following classes of nonimmigrant aliens." INA section 101(a)(15), 8 U.S.C. 1101(a)(15). The extensive listing of exclusions from "immigrant" by the non-immigrant visa classes is replete with ambiguity evidenced by the detailed and complex regulations and judicial interpretations of those provisions.

Congress additionally provides annual appropriations for specific USCIS programs. Appropriated funding for FY 2010 included asylum and refugee operations (4th Quarter contingency funding), and military naturalization surcharge costs (\$55 million); E-Verify (\$137 million); immigrant integration (\$11 million); REAL ID Act implementation (\$10 million); and data center consolidation (\$11 million). Department of Homeland Security Appropriations Act, 2010, Public Law 111-83, title IV, 123 Stat. 2142, 2164-5 (Oct. 28, 2009) (DHS Appropriation Act 2010). Providing these limited funds against the backdrop of the broad immigration examinations fee statute—together forming the totality of funding available for USCIS operations—requires that all other costs relating to USCIS and adjudication operations are funded from fees. In appropriating specific funds, Congress approves of the fee amounts promulgated by DHS for the operation of USCIS by approving the total expenditure level. When no appropriations are received, or fees are statutorily set at a level that does not recover costs, or DHS determines that a type of application should be exempt from payment of fees, USCIS must use funds derived from other fee applications to fund overall requirements and general operations.

Before the IEFA was created in 1988, all activities related to case processing were funded by appropriations. See Public Law 100-459, section 209, 102 Stat. 2186 (Oct. 1, 1988). While fees were charged prior to 1988, those fees were treated as miscellaneous receipts of the United States Treasury and deposited in the General Fund. Those fees were not available to the Immigration and Naturalization Service for expenditure. The IEFA was created to provide an alternative to appropriations. As many of the commenters stated, the law does not preclude the use of appropriations to subsidize fee receipts to fund operations. In the absence of appropriations, however, USCIS's only funding source is fee revenue. Of the \$386,000,000 requested in the FY 2011 Budget, \$259,000,000 will cover the estimated cost of asylum and refugee

surcharges (\$207 million), the SAVE program (\$34 million), and the Office of Citizenship (\$18 million) for FY 2011. The fees in this rule assume that the costs of these activities will not be financed by fee revenue and, instead, paid with appropriated funds.

Commenters suggested that only the activities directly relating to specific adjudications should be charged to those who apply for the benefits. These comments rely on statutory authority separate from the authority for these fees. The general authority for the United States to impose and collect "user" fees stems from the Independent Offices Appropriation Act, 1952 (IOAA), 31 U.S.C. 9701(b). Under the IOAA, a "value" to the recipient is a key threshold factor and the costs of "public interest" have been effectively included within the fees. *National Cable Television Ass'n v. United States*, 415 U.S. 336 (1974); *FPC v. New England Power Co.*, 415 U.S. 345 (1974); *Seafarers Internat'l Union v. Coast Guard*, 81 F.3d 179, 183 (DC Cir. 1996). In *New England Power Co.*, the Supreme Court held that the IOAA authorizes "a reasonable charge" to be made to "each identifiable recipient for a measurable unit or amount of Government service or property from which [the recipient] derives a special benefit." See 415 U.S. at 349 (quoting Bureau of the Budget Circular No. A-25 (Sept. 23, 1959)). The Court held that such fees may be assessed to an individual even when the benefits from the service provided are not only special to the recipient but widespread to the general public as a whole. *Id.* See also *National Cable Television Ass'n*, 415 U.S. at 343-44. So long as the service provides a special benefit above and beyond that which accrues to the public at large to a readily-identifiable individual, the fee is permissible. *New England Power*, 415 U.S. at 349-51 & n. 3.

Prior to the enactment of INA section 286(m) 8 U.S.C. 1356(m), fees charged for immigration services were governed by the IOAA and were judicially reviewed under the IOAA. A more elementary cost analysis than that currently used was upheld by the courts. *Ayuda, Inc. v. Attorney General*, 661 F. Supp. 33 (D.D.C. 1987), *aff'd*, 848 F.2d 1297 (DC Cir. 1988). As the Court of Appeals in *Ayuda* stressed, the procedures were "triggered only at the instance of the individual who seeks, obviously, to benefit from them." 848 F.2d at 1301.

Congress changed this formulation for immigration fees in the enactment of INA section 286(m) and the creation of the IEFA. DHS's authority under INA section 286(m) is an exception to the

limitations of the IOAA. 31 U.S.C. 9701(c). The relevant, second *proviso* was added to the INA after the Court of Appeals decided *Ayuda* under the IOAA. See Public Law 101-515, section 210(d)(1), (2), 104 Stat. 2120, 2121 (Nov. 5, 1990). The statutory provisions in section 286(m) are broader than the IOAA, authorizing DHS to recover the full cost of providing benefits and ensuring sufficient revenues to invest in improved service and technology. Even though the requirements of the IOAA do not apply in developing these fees, DHS and USCIS are mindful of the need to explain the process to the general public and have done so. *Cf. Engine Manufacturers Assoc. v. EPA*, 20 F.3d 1177 (DC Cir. 1994).

Accordingly, DHS disagrees with the commenters' suggestions that it has exceeded its authority to promulgate fees to recover the full cost of operating USCIS. Congress and the Executive Branch have been in agreement that the full cost of operating USCIS should come from the sum of the general IEFA fee account, several other specific fee-driven provisions of statute, and annual appropriated funds. The balance of the funding between these accounts is struck by Congress in determining the annual appropriation, and DHS and USCIS negotiate that result with Congress and adjust as practical the total amount charged as fees, which is ultimately approved by Congress as the amount that may be expended.

2. Biometrics for Temporary Protected Status

A commenter expressed specific concern that the proposed charges to the biometric services fee in the proposed fee rule are unlawful in their application to the temporary protected status (TPS) program. TPS is a temporary benefit that eligible aliens in the United States may request if their home countries have been designated for TPS by the Secretary based on temporary and extraordinary conditions that prevent such aliens from being able to return to their countries safely, or in certain circumstances, where their countries are unable to handle their return adequately. See generally INA section 244, 8 U.S.C. 1254a.

The commenter suggested that if at least certain TPS registrants are not exempt from the biometric services fees, then the proposed changes may run afoul of the statutory constraints on fees charged to TPS registrants because the biometric services fee would: (1) Charge for services that are not provided; (2) charge for services that do not constitute "biometric services;" and (3) charge for services that are not necessary. Based on

the potential problems with requiring all TPS re-registrants to pay the biometric services fee, the commenter respectfully urged USCIS to interpret its fee rule to exempt TPS re-registrants from paying the biometric services fee, or impose a reduced fee for TPS re-registrants whose biometric information does not need to be collected. The commenter additionally suggested that initial TPS registrants should not be charged the costs of background checks that are already subsumed in the \$50 TPS registration fee. INA section 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B) (authorizing "payment of a reasonable fee as a condition of registering [for TPS] . . . * * * The amount of any such fee shall not exceed \$50." (emphasis added)); Department of Homeland Security Appropriations Act, 2010, Public Law 111-83, section 549, 123 Stat. 2177 (Oct. 28, 2009); 8 U.S.C. 1254b(a) (authorizing "fees for fingerprinting services, biometric services, and other necessary services [to] be collected when administering the program described in section 1254a"); 75 FR 33445, 33446-01, 33447. The commenter asserts that because of these limits, a \$50 TPS application fee is imposed only once, upon initial registration.

The commenter noted that it represents a nationwide class of Central American TPS applicants, in the currently pending class action challenging USCIS biometric fee requirements.³ The majority of the comment reiterated the arguments that the plaintiffs made in the litigation. DHS agrees with the reasoning of the District Court in dismissing that case.⁴

DHS had proposed in that section that no biometric services fee would be charged when "[t]here is no fee for the associated benefit request that was, or

is, being submitted." See proposed 8 CFR 103.7(b)(1)(i)(C)(2); 75 FR 33445, 33484. DHS proposed this change both as a humanitarian measure and for administrative efficiency for certain immigration benefit requests for which DHS had previously provided an exemption from the initial immigration benefit request fee for the underlying benefit request in the FY 2008/2009 fee rule. The 2008/2009 fee rule promulgated several general exemptions to immigration benefit request fees. For example, the rule provided that there was no fee for a Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360, filed by an individual seeking classification as an Amerasian; a self-petitioning battered or abused spouse, parent, or child of a United States citizen or lawful permanent resident; or a Special Immigrant Juvenile. See 72 FR 29851 (May 30, 2007), 29865, 29873. Fee exemptions were also provided for four small volume programs: victims of human trafficking (T visas), victims of violent crime (U visas), VAWA self-petitioners, and Special Immigrant Juveniles. The reasons for providing these specific application and petition fee exemptions were fully discussed in the 2008/2009 proposed fee rule. See 72 FR 4888, 4903 (Feb. 1, 2007). In that rule, DHS also provided for additional fee waivers, such as the biometric fee, where individuals demonstrate an inability to pay. See 72 FR 29851, 29874; 8 CFR 103.7(c)(5).

Although DHS exempted individuals requesting the specific humanitarian benefits noted above from having to pay the immigration benefit request fees in the FY 2008/2009 fee rule, DHS did not specifically exempt them, on a blanket basis, from also paying the associated biometrics fee. At that time, DHS only provided eligibility for an individualized biometrics fee waiver where the applicant or petitioner could show an inability to pay the biometrics fee under 8 CFR 103.7(c). There has been continuing confusion since the FY 2008/2009 fee rule about whether the biometric services fee is required if the immigration benefit request fee is not required. USCIS has accommodated some of the concerns by administratively treating a request for a fee waiver of the underlying benefit fee as also a request for a waiver of the biometrics fee, and not requiring a duplicate, simultaneous or subsequent request to waive that fee. In the proposed rule, DHS proposed an amendment in 8 CFR 103.7(b)(1)(i)(C)(2) to simplify the process so that a biometrics fee would also not be required for those particular fee-exempt

immigration benefit requests that DHS considered when deciding to provide fee exemptions. DHS also intended that no biometrics fee would be required in cases where any immigration benefit request fee for the associated benefit was waived, on a case-by-case basis, under 8 CFR 103.7(c).

The proposed revision and the final rule implement Congressional enactment of the Department of Homeland Security Appropriations Act, 2010, specifying that: "In addition to collection of registration fees described in section 244(c)(1)(B) of the [INA] (8 U.S.C. 1254a(c)(1)(B)), fees for fingerprinting services, biometric services, and other necessary services may be collected when administering the [TPS] program described in section 244 of such Act." Public Law 111-83, 123 Stat. 2142 (Oct. 28, 2009).

Through the language that was initially proposed for 8 CFR 103.7(b)(1)(i)(C)(2) and consistent with current TPS fee waiver practice, DHS intended that the biometrics fee would not be required from an initial TPS applicant who was granted a waiver of the initial TPS application fee based on inability to pay. However, DHS did not intend that the proposed regulatory language should be construed to exempt from payment of the biometric services fee *all* TPS beneficiaries, aged 14 and older, who apply to re-register for TPS, regardless of inability to pay. Although applicants for TPS re-registration do not currently submit the \$50 for the Application for Temporary Protected Status, Form I-821, after their initial TPS applications, TPS beneficiaries have often held TPS status for several years, and they have been eligible for employment authorization at least since obtaining TPS, and earlier if they were found eligible for TPS temporary treatment benefits. See 8 CFR 244.5 and 244.12. Most TPS beneficiaries, in fact, have employment authorization documents.

Unlike many of the initial applicants for the fee-exempt humanitarian benefits, such as T and U visas, special immigrant juveniles, and certain self-petitioning battered aliens, TPS beneficiaries seeking re-registration have work authorization and thus, generally have less need for a blanket exemption from the biometric services fee. If all such re-registering TPS beneficiaries were exempt from the biometrics fee, the cost of providing them with biometric services would need to be borne by other applicants and petitioners for immigration benefits. DHS does not perceive a need to shift the biometrics costs for re-registering TPS beneficiaries onto other individuals

³ *Bautista-Perez v. Holder*, No. 3:07-cv-04192-TEH (N.D. Cal.). See 2009 WL 2031759 (N.D. Cal. July 9, 2009) (order denying plaintiff's motion for partial summary judgment and granting in part and denying in part defendants' cross-motion for summary judgment).

⁴ *Bautista-Perez v. Holder*, No. 3:07-cv-04192-TEH (N.D. Cal. Sept. 15, 2010), Dk. No. 153 (order granting defendant's motion to dismiss with leave to amend complaint). "The strict accounting that Plaintiffs demand for the biometric services fee is unwarranted by the statute. [Pub. L. 111-83, section 549, 123 Stat. 2142 (Oct. 28, 2009)] does not purport to dictate how USCIS calculates the fee for this service; it merely authorizes the charging of fees for "necessary services * * * when administering" the TPS program. USCIS does not defy that authority by charging a standard fee even though some applicants require more services than others. * * * Plaintiffs argue, in essence, that section 549 requires every component of the fee to be directly tied to the fee-payer's TPS application. The Court does not see how section 549 gives it the authority to scrutinize the calculation of USCIS's biometric services fee in such painstaking detail." Dk. No. 154, slip. op. at 15.

through a blanket biometrics fee exemption. However, DHS will continue to provide, on an individual basis, a fee waiver of the biometrics fee when a re-registering TPS beneficiary does demonstrate an inability to pay the \$85 biometric fee. DHS has revised the language of this provision to ensure clarity and to alleviate potential confusion. New 8 CFR 103.7(b)(1)(i)(C).

3. Bundling

One commenter specifically argued that defects in the current regulation persist in the proposed fee rule in that both the current regulations and the proposed rule exceed the authority granted under INA section 286(m), 8 U.S.C. 1356(m), by "bundling" certain benefits and associated fees. Specifically, the commenter argued that DHS erred in the 2008/2009 fee rule by: (1) Impermissibly "bundling" the fee for applications to adjust status with the fees for interim benefits, requiring applicants to pay for services that they do not want or need, cannot use, and/or do not actually receive and (2) improperly including in application and petition fees the costs of agency activities that are distantly related, if at all, to the provision of immigration services to fee-paying applicants.⁵

DHS disagrees with the commenter's belief that the law requires that IEFA fees be tied to the actual services provided. As explained above, the cost-to-services linkage under the IOAA is not applicable to fees under the IEFA, which is an exception to the IOAA. The IEFA is administered using the cost modeling similar to that used in IOAA fees, but necessarily includes administrative decisions to assign overhead costs that cannot be readily associated with specific activities. Similarly, administrative discretion must be applied when a substantial cost would be generated in attempting to drive costs to highly individualized objects, such as individual applicants. In effect, the Administration bundles certain costs to fees because it may be more efficient to do so and can create a total lower cost of operation. DHS determined to bundle the fees as a resolution to simplify interim benefits and reduce interim benefit applications. The costs of administering individualized fee determinations exceed the benefits to the totality of applicants and petitioners, and the government. 72 FR 29851, 29861 (providing multiple fee options based on who typically requests interim

benefits, when records indicate that the vast majority of applicants do request interim benefits, would be too complicated and costly for USCIS to administer). USCIS may reconsider this evaluation during a fee review cycle after the implementation of electronic records. DHS and USCIS may be able to provide this type of customized fee structure in the future, but cannot effectively do so at this time.

The commenter's concern reflects a limited view of the decision-making process. Policy decisions inherently made by regulations directly affect the fee structure. For example, the policy decision to exempt aliens who are victims of a severe form of trafficking in persons and who assist law enforcement in the investigation or prosecution of the acts of trafficking (T Visa), and aliens who are victims of certain crimes and are being helpful to the investigation or prosecution of those crimes (U Visa), from visa fees, the cost of processing those fee-exempt visas must be recovered by fees charged against other applications. INA sections 101(a)(15)(T), (U), 214(o), (p), 8 U.S.C. 1101(a)(15)(T), (U), and 1184(o), (p); 8 CFR 214.11, 214.14, 103.7(c)(5)(iii); *Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status*, 73 FR 75540 (Dec. 12, 2008). Each such decision affects the totality of the fee-paying applicants and petitioners and removes some source of revenue. Inherently, and consistent with INA section 286(m), 8 U.S.C. 1356(m), that revenue is recovered from other fee-paying applicants and petitioners.

The commenter's suggestion that DHS lacks authority to make policy decisions adjusting the amount of fees also overlooks the reality of the two contiguous and complete sources of funding for USCIS. The totality of funding for USCIS from two sources effectively means that if one source is insufficient, the other source must make up the difference, or workload will not be performed at the prescribed level, itself a policy choice.

Policy decisions made regarding the implementation of the Immigration and Nationality Act and other immigration laws inherently and directly affect USCIS budget requirements. Both INA section 286(m) and Congress, in annual appropriations and expenditure level approvals, recognize this point. The Administration has taken steps within the enacted FY 2010 appropriations for USCIS to move away from fee-generated revenue to support asylum, refugee, and military naturalization costs. The Administration seeks to improve the linkage between fees paid by USCIS

applicants and petitioners and the cost of programs and activities to provide immigration benefits as a matter of policy, not a matter of law.

4. Fraud Detection and National Security (FDNS) and Other Program Costs

Several commenters suggested that the proposed rule should have excluded any law enforcement or national security functions, such as the Fraud Detection and National Security (FDNS) operations. DHS disagrees with these suggested restrictions and continues to believe that it may fund, as a matter of discretion, all of USCIS operations, or more, from fees.

Other commenters suggested that additional costs should be recovered through the IEFA account. Implicitly, these comments suggest an understanding that the authority of DHS under the INA is broader than DHS is, in fact, currently exercising.

The realignment of functions within USCIS to create the FDNS was a consolidation of specific previous functions from benefit programs to streamline operations. In a sense, FDNS was created to consolidate the anti-fraud efforts within USCIS that have traditionally been funded from fees. These anti-fraud efforts are not impermissible under INA section 286(m), 8 U.S.C. 1356(m). DHS does not opine on whether the anti-fraud efforts of FDNS would be permissible under the IOAA, but only that INA section 286(m) is an exception to the IOAA and the Administration is permitted to decide, as a matter of policy, to include these charges within the IEFA. 31 U.S.C. 9701(c).

As for anti-fraud, law enforcement, and national security efforts, DHS believes that the commenters misunderstand the nature of these efforts. These efforts are integral to determining an applicant's eligibility for a benefit, and to maintain the integrity of the immigration system. Background check information helps benefit public safety and security by identifying persons who may be ineligible for a benefit due to a criminal background. Further, recent fraud detection efforts have resulted in changes to several USCIS programs, such as the final rule, Special Immigrant and Nonimmigrant Religious Workers, published specifically to address concerns about the integrity of the religious worker program that were uncovered by USCIS fraud detection experts. See 73 FR 72276 (Nov. 26, 2008). The filing of an immigration benefit request is why security checks, fraud reviews, and investigations of possible violations are

⁵ The commenter makes the same arguments that it made in *Barahona v. Napolitano*, No. 1:10-cv-1574-SAS (S.D.N.Y.).

needed. Thus it is appropriate for the full costs of these efforts to be funded by fees paid by those who file such requests.

Accordingly, DHS disagrees that the inclusion of FDNS in the fee calculation is inappropriate and will continue to fund that function through fees. This final rule establishes a level of fees sufficient to recover the full cost of operating USCIS, including the anti-fraud functions of FDNS. The rule has not been amended to include other costs that could legally be charged or to exclude any costs of operating USCIS.

5. Office of Management and Budget Circulars

Several commenters also suggested that DHS's authority to promulgate fees is limited by Office of Management and Budget (OMB) Circular No. A-25, which "establishes Federal policy regarding fees assessed for Government services" and defines the term "full cost." OMB Circular A-25, *User Charges*, 58 FR 38142 (July 15, 1993), available at http://www.whitehouse.gov/omb/circulars_a025. See *FPC v. New England Power Co.*, 415 U.S. at 349-51. DHS agrees that OMB Circular A-25 sets federal policy and provides guidance for user fees under the IOAA, 31 U.S.C. 9701, discussed above, but disagrees that Circular A-25 applies under INA section 286(m), 8 U.S.C. 1356(m). The guidance of OMB Circular A-25 is internal Executive Branch policy guidance, direction from the Office of Management and Budget to the agencies on the subject of user fees under the IOAA.

As the Circular explains, OMB issued it pursuant to "Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701)" (IOAA). See Circular A-25, section 3 ("Authority"). The Circular goes on to explain the relationship between the Circular's provisions and the IOAA, and between the Circular's provisions and other fee statutes: "The provisions of the Circular shall be applied by agencies in their assessment of user charges under the IOAA. In addition, this Circular provides guidance to agencies regarding their assessment of user charges under other statutes." See *id.*, section 4b.

Thus, as the Circular explains, its provisions are "guidance to agencies regarding their assessment of user charges under other statutes." One of these "other statutes" is INA section 286(m), 8 U.S.C. 1356(m). Accordingly, with respect to the implementation of INA section 286(m), Circular A-25 has the status of internal Executive Branch policy guidance. See *HHS v. FLRA*, 844 F.2d 1087, 1095-96 (4th Cir. 1988) (en

banc) (OMB Circular A-76 is internal Executive Branch guidance). As Circular A-25 is internal Executive Branch guidance with respect to the establishment of fees under INA section 286(m), the Circular does not impose legally-binding (i.e., judicially enforceable) limits on DHS' authority to promulgate fees under section 286(m). See *HHS v. FLRA*, *id.* (as internal Executive Branch guidance, Circular A-76 is not judicially enforceable).

One commenter stated that OMB Circular A-25 requires USCIS to identify the costs for each service and directly match those costs to the fee charged. The commenter suggested that the expenses for operating USCIS included in the calculation of costs that must be covered from the collection of fees exceeded what was appropriate. The commenter suggested that USCIS expenses recovered and fees paid must relate to the specific service, and that DHS is not authorized to include costs that are unrelated or only tangentially related to the cost of providing the services. For example, the commenter suggested that DHS is not authorized to recover with fees the costs of the SAVE and E-Verify programs, or expenses related to anti-fraud, law enforcement, and national security efforts.

As clearly stated in the proposed rule, DHS begins its fee process, consistent with OMB Circular A-25, by engaging in activity-based costing (ABC). See 75 FR 33445, 33448. USCIS adds to the ABC model result the necessary amount for overhead and other costs not driven by the cost of services. See *id.* This is consistent with full cost recovery. The term "full cost" used in INA section 286(m), 8 U.S.C. 1356(m), means the costs of operating USCIS, less any appropriated funding. DHS makes adjustments based on Administration policy within its discretion under the INA. See 75 FR 33445, 33448. Thus, the fees established in this rule are necessary, rational, and reasonable, and comply with the INA and applicable guidance. The decision to structure USCIS fees as proposed and in this final rule is the culmination of an administrative process that conforms with Administration policy. As stated in the proposed rule, USCIS has historically been funded almost exclusively by fees. See 75 FR 33445, 33447. Also, the INA provides authority to charge fees that are broader than the IOAA and Circular A-25.

DHS understands the desire of the commenters. DHS's interpretation of INA section 286(m) should not be construed to mean that the Administration believes there is no merit in relating fees to specific services

rendered. The President has proposed to remove \$259 million from the USCIS fee base through appropriations for FY2011. Congressional support for the first stage of this process is evidenced by the FY2010 appropriation. The process by which increased linkage can be made depends upon the Congress. While DHS agrees with the commenter that certain costs "should" be borne by appropriation, until Congress provides that appropriation, these costs must be borne by the fee structure under INA section 286(m), 8 U.S.C. 1356(m). DHS has already begun preparing for its next biennial immigration fee review. The next fee review will consider further refinements to how immigration fees are determined, including the level by which fees match assignable, associated, and indirect costs.

6. Accounting Standards

Commenters implicitly questioned whether DHS and USCIS complied with appropriate accounting standards in the proposed fee rule. The proposed fee rule and this final fee rule reflect DHS conformity with the requirements of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901-03, that each agency's Chief Financial Officer (CFO) "review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value." *Id.* at 902(a)(8).

Like OMB Circular A-25, the cost accounting concepts and standards developed by the Federal Accounting Standards Advisory Board (FASAB) define "full cost" to include: "(1) The costs of resources consumed by the segment that directly or indirectly contribute to the output, and (2) the costs of identifiable supporting services provided by other responsibility segments within the reporting entity, and by other reporting entities." Federal Accounting Standards Advisory Board, *Statements of Financial Accounting Concepts and Standards: Pronouncements as Amended 437* (June 2009). To determine the full cost of a service or services, FASAB identifies various classifications of costs to be included and recommends various methods of cost assignment. As generally accepted accounting principles, FASAB's standards are conventions of federal financial accounting, not statutory or regulatory requirements. As the Supreme Court pointed out in *Shalala v. Guernsey Memorial Hospital*, "Financial accounting is not a science. It addresses

many questions as to which the answers are uncertain and is a 'process [that] involves continuous judgments and estimates.'" 514 U.S. 87, 100 (1995) (citing, R. Kay & D. Searfoss, *Handbook of Accounting and Auditing*, ch. 5, p. 7–8 (2d ed. 1989)).

As explained above, DHS applies the discretion provided in INA section 286(m), 8 U.S.C. 1356(m), in a manner consistent with its responsibilities for operation of government and the goals of providing immigration services and transparent accounting. DHS applies that judgment to: (1) Develop activity-based costing to establish basic fee setting parameters, (2) apply administrative judgment to allocate overhead and other indirect costs, and (3) apply policy judgments to effectuate the overall Administration policy. The "full" cost to the Government of operating USCIS, less any appropriated funding, has been the historical total basis for establishing the cost basis for the fees, and Congress has consistently recognized this concept in its annual appropriations. This final rule, therefore, reflects the authority granted to DHS by INA section 286(m) and other statutes.

In sum, DHS disagrees with the commenters' assertions that DHS has exceeded its authority. DHS has implemented the requirements of INA section 286(m) appropriately and has made no changes in the final rule in light of these comments.

B. Relative Amount of Fees

A number of commenters argued that the proposed fees were too low, while others thought the fees were too high. Some expressed general concerns about immigration levels and stated that a fee increase would reduce the number of people seeking immigration benefits. Others argued that the fees were too high, especially when filing for families, and were a barrier to family unification. Many commenters cited the general state of the economy as a reason to delay fee increases.

1. Recovery of Additional Costs

Some of the commenters who agreed with fee increases asserted that fees should be high enough to cover all USCIS costs related to the processing of immigration benefits so that taxpayers are not asked to pay for someone entering, residing, or seeking immigration services in the United States. Some commenters favored increasing fees for immigration benefit requests filed by businesses. Other commenters supported a fee increase specifically for the purpose of improving customer service. Several

commenters suggested that fees should not be based on USCIS costs, but on the value of the benefit received by the applicant (e.g., United States citizenship). These commenters expressed the view that immigration benefits are highly valuable and worthy of special consideration. Other commenters suggested that increasing specific fees, such as for an Application to Extend/Change Nonimmigrant Status, Form I-539, instead of implementing their proposed fee reduction, would mitigate other fee increases.

Filing fees established under this rule are higher than the current fees but are based only on the estimated relative costs associated with processing immigration benefit requests and other costs of operating USCIS. Although a number of commenters suggested that USCIS increase fees further, USCIS fees are based on the relative identifiable costs associated with providing each particular benefit or service in adherence with government-wide fee setting guidelines in OMB Circular A-25, the CFO Act, and FASAB guidance. Filing fees do not function as tariffs, generate general revenue to support broader policy decisions, or like fines to deter unwanted behavior. DHS has maintained the Application for Naturalization, N-400, fee at its current level to avoid any possibility of providing a disincentive for people to apply for naturalization. In addition, DHS has provided fee exemptions of certain fee based on humanitarian grounds and the ability to request a waiver of certain fees based on financial considerations, so that certain populations do not choose to not request benefits to which they may be entitled because of the fee. Besides those policies, filing fees are not used to favor businesses, families, geographical areas, influence larger public policy in favor of or in opposition to immigration, limit immigration, support broader infrastructure, or impact costs beyond USCIS.

DHS designed this rule to establish fees sufficient to reimburse the costs of processing immigration benefit requests and the related operating costs of USCIS. While USCIS has authority to collect fees for broader government-wide costs of administering the United States immigration system, DHS has chosen to structure the fees to recover only the projected full operational cost. USCIS believes that this decision is consistent with broader Administration policy on user fees and the intent of Congress in the enactment of, and amendments to, INA section 286(m), 8 U.S.C. 1356(m). Accordingly, DHS has

not changed its proposed fees based on these comments.

2. Proposed Fees Are Unreasonably High

A number of comments opposed the proposed fee increases in general terms or highlighted particular immigration benefit requests and argued that the proposed fee increases would effectively exclude aliens generally, or groups of aliens, from immigration benefits and services. Some suggested that fee increases send the wrong message to people who are attempting to comply with the immigration benefit process and United States immigration laws, and that higher fees may discourage legal immigration while encouraging aliens to attempt to enter the United States and work illegally. Other commenters questioned how DHS could raise fees again in light of the 2007 fee increase.

a. Barrier to Family Reunification.

Some commenters asserted that the fees caused an undue burden on families seeking to be reunited or maintain legal status. Commenters mentioned the burden caused when multiple applications or petitions must be filed for family members.

USCIS understands the concerns of these commenters and their desire for families to remain intact while benefiting from the advantages of U.S. lawful residence and citizenship. United States immigration laws and policy generally favor immigration of families by giving preference to certain immigrants who are related to an immigrant or United States citizen. USCIS understands that family-based applications and petitions could involve multiple requests and thus multiple fees, depending on the relationships and family size. USCIS filing fees are usually a relatively small portion of the overall cost of travel, legal expenses, relocation, and other expenses incurred in immigrating to the United States. In addition, since fees provide the capacity necessary for USCIS to do the work associated with the filing, when fees do not fully recover costs USCIS is unable to maintain sufficient capacity to process the work. This diminished capacity could significantly delay immigration, an impact which can be far more of a burden on a family than the proposed change in filing fee. In any event, USCIS does not believe that the increases made in this rule will significantly influence a decision of a family member to petition for a family member to join him or her in the United States. As a result, no changes are made

in the final rule as a result of these comments.

b. Fee Increases Reduce the Number of Filers.

Many commenters stated that fee increases would reduce the number of filers and curb immigration to the United States. There are many complex variables that influence the demand for immigration benefits including: the economy, Congressional policy debates, state legislative actions, business cycles, and benefit fees. Obviously, benefit fees only represents one of these determinants. The commenters did not provide reference data or specifically articulate how benefit fees might impact filing volume. Further, DHS did not study the ramifications of raising this fee, as the purpose of this rulemaking is to set fees to recover costs.

Commenters also touched on the larger issues of immigration policy that aliens should be encouraged to immigrate to the United States. As noted above in relation to the opposite position, the purpose of the fee schedule is not to establish broad immigration policy or induce individuals to immigrate to the United States, but to recover the costs necessary to operate USCIS. Accordingly, DHS did not adjust the fee schedule in response to these comments in this final rule.

c. Income-Based Fee Structure.

A number of commenters suggested that USCIS should base fee levels on the applicant's or petitioner's ability to pay or status as an employer. Under a system of full cost recovery through fees, this approach would mean lower fees for some based on income but higher fees for other applicants irrespective of how much it actually costs USCIS to adjudicate their application.

Adjusting fee levels based on income would be administratively complex and would require higher costs to administer. A tiered fee system would require staff dedicated to income verification and necessitate significant information system changes to accommodate multiple fee scenarios. The costs and administrative burden associated with implementing such a system would be unreasonable and would cause additional fee increases. USCIS therefore does not support such a system at this time. DHS has not changed the rule in response to these comments.

d. Supplementary Costs to Applicants and Petitioners.

Many commenters suggested that increasing fees would adversely impact

the applicants' and petitioners' ability to pay for additional services, such as legal fees or notaries, and, therefore, DHS should reduce fees. These comments included specific comments that an increase in fees would reduce the ability of applicants and petitioners to pay fees charged by non-profit organizations representing the applicants and petitioners before USCIS and other immigration components of DHS, and before immigration judges and the Board of Immigration Appeals within the Department of Justice.

DHS understands the comments, but has made no change to the rule as a result of them. Other regulations address the nominal costs that non-profit accredited organizations may charge. See 8 CFR 292.2(a)(1). If those or other costs adversely impact the private organizations, it is not a function of DHS to ensure that the organizations have sufficient funds.

3. Comments on Specific Fees and Adjustments

While many commenters opposed the fee increase in general, some commenters took issue with increases to specific fees and fees for certain categories of applicants and petitioners. Commenters also suggested that some fees be increased in order to reduce increases to other fees or to reduce other fees.

a. Student Employment Authorization.

Some commenters requested that fees for certain classes of non-immigrants, such as students, be reduced. Specifically, commenters noted that the filing fee for an Application for Employment Authorization, Form I-765, or employment authorization document (EAD) is particularly burdensome to students who may only have seasonal employment. These commenters expressed significant concerns about the fee's effect on the limited financial capability of most international students in F-1 visa status and their ability to apply for work authorization when they choose to participate in the Optional Practical Training (OPT) program.

For international students, F-1 status allows a student to remain in the United States as long as he or she is a properly registered full-time student. See INA section 101(a)(15)(F)(i), 8 U.S.C. 1101(a)(15)(F)(i); 8 CFR 214.2(f)(5). Under F-1 status and subject to certain conditions and restrictions, a student may work part-time in an on-campus job and in a "practical training" job directly related to the student's field of study for 12 months during or after the completion of studies. *Id.* The OPT

program provides F-1 students with an opportunity to apply knowledge gained in the classroom to a practical work experience off campus. The maximum period of OPT is 29 months for an F-1 student who has completed all course requirements for a degree in a science, technology, engineering, or mathematics field and has accepted employment with an employer enrolled in the DHS E-Verify employment verification program and 12 months for all other F-1 students who have completed all course requirements for a degree. See 8 CFR 214.2(f)(10)(ii).

The United States places a very high value on attracting international students and scholars to this country. The contributions to the academic experience for all students provided by the existence of a diverse international student body are invaluable. The resources devoted to delivering immigration benefits to deserving students show the importance of this goal to USCIS. Nonetheless, substantial resources are expended by USCIS for adjudication of the student's eligibility for employment documents and the fee for an EAD was established based on those needs. While USCIS acknowledges that the income provided by OPT is helpful to the students, the emphasis of OPT is on training students in their fields of study, not as a source of income. Moreover, EAD applicants may request an individual fee waiver based on inability to pay. Fee waivers should be rare for students because the cost of applying for such a work authorization is a small fraction of the total costs of a student living in the United States, including tuition, room, and board, and international travel to and from his or her country of origin.

USCIS will continue to charge the full fee based on the effort and resources expended to process this benefit for EAD applications not granted a fee waiver. No changes to the regulation have been made as a result of these comments.

b. Entertainers, Athletes, and Other Individuals With Extraordinary Talent.

Numerous commenters objected to the fee increase for nonimmigrant petitions for admission of entertainers, athletes, and other individuals with extraordinary talent to work in the United States on a temporary basis (O and P visas). Some commenters cited issues with booking performances utilizing these performers and noted the inability of USCIS to process the visa requests within the 14 days allotted by statute for petitions not needing additional supporting documentation. See INA section 214(c)(6)(D), 8 U.S.C.

1184(c)(6)(D). Commenters opined that they faced the burden of utilizing premium processing to ensure artist availability. Many commenters strongly opposed the increase of the fee and the premium processing fee if improvements in the quality of the visa process were not made, to include meeting the 14-day processing time requirement. Some commenters requested that USCIS treat non-profit performing arts organizations differently than for-profits, suggesting lower fees for non-profits in consideration of their resource means relative to those of for-profit entities. USCIS understands the concerns of commenters and has made reaching the 14-day adjudication process time a goal for O and P visa petitions. USCIS is currently meeting that goal at both service centers that process O and P petitions.

Many commenters noted difficulty managing and responding to USCIS requests for evidence (RFEs). A commenter suggested that USCIS develop a pre-certification process for employers filing multiple petitions to prevent them from having to address the same RFE on multiple occasions. USCIS appreciates these recommendations. USCIS is exploring a registration process for employment-based visa petitioners and is developing policies and training to address these concerns, but these matters are outside of the context of this fee rule.

DHS will not, at this time, implement changes to the USCIS fee system that attempt to account for different levels of income or, in this case, organizational resources. Such a change would require additional administrative complexity, higher costs and, consequently, higher fees for some benefits.

c. Adoption.

One commenter requested that USCIS reduce fees related to overseas adoption. USCIS acknowledges the sensitive nature of these petitions. USCIS proposed using its fee setting discretion to adjust certain “low volume” application and petition fees based on such equitable considerations and capped the fee for a Petition to Classify Orphan as an Immediate Relative, Form I-600; the Application for Advance Processing of Orphan Petition, Form I-600A; the Petition to Classify Convention Adoptee as an Immediate Relative, Form I-800; and the Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I-800A. 75 FR 33445, 33461. Under the fee rule methodology, the calculated fee for these forms would have been as much as \$1,455—an increase of more than

\$785 or 100%. This fee level is due to the complexity of orphan petition adjudications, which often require several background checks and home visits, knowledge of adoption laws in multiple jurisdictions and foreign countries, and a thorough review of supporting documentation and evidence. However, USCIS believes that it would be contrary to public interest to impose a \$785 fee increase on potential adoptive parents. To reduce this burden on adoptive parents, DHS lowered the fee increase to \$50, or a little more than 7%. Any further reductions would shift an inordinate amount of these costs to other immigration benefit request applicants and petitioners. No changes to the rule have been made as a result of this comment.

d. Entrepreneurs.

A few commenters claimed that the fee for the Immigrant Petition by Alien Entrepreneur, Form I-526, is excessively high. A commenter stated that USCIS has not shown why the percentage increase for the Immigrant Petition by Alien Entrepreneur (for EB-5 status) filing fees should be higher than others, especially when compared to the Petition by Entrepreneur to Remove Conditions, Form I-829. Another commenter added that petitions to remove conditions generally should take less time to adjudicate than the original entrepreneur petition, which has a lower proposed fee.

One commenter incorrectly calculated the fee increase for the Form I-526 as 14%. The actual percent increase for the Form I-526, from \$1,435 to \$1,500, is only 4.5%, well below the weighted average increase of 10%. Contrary to the commenter’s statement, the percent increase for the I-526 is not higher than other benefit fee increases. The Immigrant Petition by Alien Entrepreneur and Petition by Entrepreneur to Remove Conditions are two of the more labor intensive petitions that USCIS processes, as evidenced by the high completion rates (i.e., rate of work time) in the proposed rule. 75 FR 33445, 33471. As stated in the proposed rule, the more complex an immigration or naturalization benefit application or petition is to adjudicate, the higher the unit costs assigned to that task by the activity-based cost model. 75 FR 33445, 33459, 33470. Although the completion rates for the entrepreneur petition and the petition to remove conditions are approximately the same, the fees are substantially different because the costs are being spread across a smaller number of petitions, resulting in a higher unit cost for the petition to

remove conditions. 75 FR 33445, 33467. USCIS explained this reasoning in the proposed rule and has not modified the rule in response to the comments.

e. Refugee Travel Documents.

One commenter asserted that both the current fee and the proposed fee increase for the refugee travel document conflicts with United States obligations under Article 28 of the 1951 U.N. Convention Relating to the Status of Refugees. The United States is a signatory to the 1967 U.N. Protocol Relating to the Status of Refugees (“the Refugee Protocol”), which, by reference, adopts articles 2 through 34 of the 1951 Convention. *See* United Nations Protocol Relating to the Status of Refugees, Jan. 13, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267. Article 28 of the 1951 Convention provides that state parties are obligated to issue documents for international travel to refugees lawfully staying in their territory and that “the provisions of the Schedule to this Convention shall apply with respect to such documents.” The referenced Schedule provides at paragraph 3 that “[t]he fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.” *Id.*

After carefully considering this comment, DHS has determined that the fee for the Refugee Travel Document should be lowered to match the fee charged for the issuance of passports. The Department of State passport fee for an adult over the age of 16 is \$110 plus a \$25 execution fee. For an applicant under the age of 16, the fee is \$80 plus a \$25 execution fee. Accordingly, this final rule reduces the fee for the filing of a Form I-131 for a Refugee Travel Document to \$135 for an adult age 16 or older, and \$105 for a child under the age of 16. USCIS will continue to charge the \$85 biometrics fee since that fee is intended to cover the costs of a service that is separate from the issuance of the refugee travel document. The fee for other applications for advance parole and travel documents will be \$360 as calculated in the model. *See* 8 CFR 103.7(b)(1)(i)(M).

4. Fee Decreases

A number of commenters questioned the rationale of implementing fee decreases. Some commenters suggested that fees that are set to decrease should instead be increased in order to mitigate the impact of other fee increases. A few commenters opined that only immigration benefit requests filed by employers should increase, while those filed by individuals should not, reasoning that employers can better

afford fee increases. On the other hand, many commenters argued against increasing fees for petitions filed by employers, stating that increasing the fees for those petitions may increase reluctance by employers to hire non-U.S. citizens. Also, a number of commenters expressed appreciation for the fee decreases.

USCIS believes that it is important that fees be based as much as possible on the relative identifiable costs associated with providing each particular benefit or service to follow the spirit of government-wide fee setting guidelines in OMB Circular A-25, the CFO Act, and FASAB guidance. USCIS uses an activity-based cost model to determine the appropriate fee for each immigration benefit request. This model considers a variety of factors such as budgetary costs, the number of anticipated requests, the time necessary to adjudicate the request, the locations that receipt and complete the request and their associated resources, and the number of fee waivers or exemptions that may be granted for each form type. Over time, these factors may change resulting in a lower calculated fee for certain requests. Additionally, to improve transparency and account for the impact of investments in technology, USCIS will consider incorporating a productivity measure into the next fee rule that will capture the outcomes of these investments on USCIS operations. Greater efficiency in processing, resulting in reduced adjudication times or fewer resource requirements, may also lead to fee reductions.

USCIS must ultimately implement a fee change that is based primarily on cost. In instances where costs are shifted, USCIS must ensure that the logic supporting these shifts is applied in a fair and consistent manner. It would not be fair for USCIS to prevent an immigration benefit request from realizing a legitimate fee decrease in order to reduce costs to other applicants and petitioners. Shifting an inordinate amount of costs to petitions filed by employers would also be unfair. USCIS will continue to realize fee decreases as they occur.

C. Fee Waivers and Exemptions

Statutes and policy exempt certain classes of applicants and petitioners from paying fees, and waive some fees for individuals who demonstrate an inability to pay. USCIS received many comments concerning the fee exemption and waiver process. Most commenters thought that expansion of the immigration benefit requests available for fee waivers would promote legal

immigration. Some commenters noted that the fee waiver process lacked standardization and that individuals faced challenges when applying for fee waivers. Other commenters suggested that USCIS offer fee waivers for immigration benefit requests that are not currently waivable, or exempt additional classes of applicants and petitioners from certain fees. Others suggested that fees be raised to shift costs to particular kinds of applicants to reduce increases or reduce current fees for certain other applicants.

Under the new fee structure, USCIS anticipated waiving fees for a certain percentage of applicants. USCIS also provides for a number of exemptions, where fees are not charged because a large percentage of applicants would clearly be unable to pay. These exemptions include a range of humanitarian and protective services, such as refugee and asylum processing, and other related services. USCIS also anticipates that it may allow a type of case to request a per case waiver of the fees based on economic necessity, such as in the case of an earthquake, hurricane, or other natural disaster affecting a localized population of people who may file requests, although all others who file the same kind of application must pay the fee.

To the extent not supported by appropriations, the cost of providing free or reduced services must be transferred to all other fee-paying applicants. That is one reason why USCIS is relatively conservative with respect to intentionally transferring costs from one applicant to others through fee waivers. However, various comments to the proposed fee rule suggested expanding the range of applications and petitions for which we would consider a fee waiver.

1. Asylee Benefits and Status Adjustment

USCIS received some comments requesting exemption from adjustment of status fees based on having previously been granted asylum, citing the general inability to pay of this population. USCIS currently allows asylees to apply for a fee waiver when applying for adjustment of status. 8 CFR 103.7(c)(5)(ii). *See also* new 8 CFR 103.7(c)(4)(iii). Asylees are not required to pay filing fees for employment authorization documents, providing them with a means to become gainfully employed and earn wages to cover the cost of adjustment. 8 CFR 103.7(c). Granting an exemption to adjustment of status fees for this class of immigrant will increase the fees paid by other applicants. USCIS will continue to offer

fee waivers to eligible asylee adjustment of status applicants. USCIS will undertake a comprehensive review of policies related to refugees and asylees; however, DHS is providing no fee exemption in the final rule.

2. Expansion of Fee Waivers and Exemptions

A number of commenters requested that more immigration benefit requests be available for fee waivers or be exempt from filing a fee. Commenters suggested that a fee waiver be generally available for travel documents, employment authorization documents, and the immigrant visa, among other suggested forms.

a. Travel and Employment Authorization Documents and Immigrant Visas

The Immigration and Nationality Act, as amended, prohibits DHS, the Department of State (DOS), and immigration judges from admitting or granting adjustment of status to permanent resident to any alien who is likely to become a public charge at any time. *See* INA section 212(a)(4), 8 U.S.C. 1182(a)(4). In addition, applicants and petitioners are required to complete affidavits of support declaring that the recipients of certain benefits will be self-supported (or supported by the petitioner) and will not require public funding for support. This need to prove a certain level of financial wherewithal in order to qualify for a certain benefit would be incongruous with the ability to extend fee waiver authority to those benefit requests. A fee waiver could conflict with the requirement that an applicant or beneficiary be eligible for the service requested.

DHS has expanded fee waivers and exemptions to additional immigration benefit requests and classes of applicant over the last few years. *See, for example*, Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 FR 75540 (Dec. 12, 2008) (allowing a fee waiver for Form I-485 and requests for waivers of inadmissibility). In this final rule, DHS has authorized the USCIS Director to approve and revoke 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). New 8 CFR 103.7(d). USCIS believes that these adjustments will ensure that fee waivers are applied in a fair and consistent manner, that aliens who are admitted into the United States will not become public charges, and that USCIS will not shift an unreasonable amount of costs to other fee-paying

applicants to recover funding lost due to fee waivers.

DHS has decided not to authorize fee waivers where such a waiver is inconsistent with the benefit requested. For example, several commenters suggested that USCIS should consider allowing fee waivers for reentry permits, refugee travel documents, and advance parole when an alien wants to travel abroad. In essence, this argument suggests that although the applicant is prepared to incur the cost of traveling internationally, USCIS should consider waiving the application fee and instead transfer that cost to others. Expanding fee waivers into such areas moves away from clear economic necessity to merely choosing to provide one applicant with an advantage over another.

A number of commenters suggested, however, that USCIS allow fee waiver requests for Application for Travel Document, Form I-131, in cases of humanitarian parole. DHS's experience with the 2010 Haitian earthquake relief efforts has shown that many recipients of humanitarian parole are worthy of consideration of a fee waiver. DHS agrees that some applicants could be of limited means and the fee may be particularly burdensome to this population. Thus, as suggested by the commenters, DHS has decided to revise the final rule to add requests for humanitarian parole to the list of forms that are eligible for a fee waiver upon a showing of the inability to pay. *See* 8 CFR 103.7(c)(3)(iv). In addition, DHS encourages those who believe that they have a sufficiently sympathetic case or group of cases in any type of benefit request to submit a request to their USCIS local office for a waiver under 8 CFR 103.7(d).

b. Waiver Eligibility for Notices of Appeal or Motions

DHS is adding a provision to the fee for the Notice of Appeal or Motion, Form I-290B, to provide that the fee to file an appeal or motion to reopen following a denial of an immigration benefit request that is exempt from a fee or the fee was waived may be waived by USCIS upon a showing by the applicant or petitioner of inability to pay. *See* New 8 CFR 103.7(b)(1)(i)(M)(v)(c)(ii)(3)(vi). DHS has made several immigration benefit requests exempt from fees due to humanitarian or other considerations. As a result of comments expressing concern about the cost of appeals, DHS has decided that it is appropriate to allow the applicant or petitioner who received a fee exemption or was granted a fee waiver for the underlying application or petition to request that

the fee to appeal a denial of such form be waived. DHS decided that it was not appropriate to exempt all appeal and motion fees for denials of fee exempt requests because fee exemptions are provided based on a number of considerations, and a fee waiver is a decision based on financial status. DHS believes it is appropriate to provide that the fees may be waived in the case of financial hardship.

c. Military Naturalizations

Similarly, DHS is also adding a provision to exempt members or veterans of the U.S. Armed Forces from paying the fee for Request for Hearing on a Decision in Naturalization Proceedings, Form N-336. *See* New 8 CFR 103.7(b)(1)(WW). These individuals are currently exempt from paying the Application for Naturalization, Form N-400, fee. As a result, those members or veterans of the U.S. Armed Forces whose N-400s have been denied will often file another Application for Naturalization for free rather than file an appeal using the proper form (Form N-336) to avoid the fee associated with that appeal. DHS is making this change to correct this anomaly and to conform to the intent of the National Defense Authorization Act of 2004, which provides for free naturalization for military members. *See* INA section 328(b), 8 U.S.C. 1439(b)(4). DHS is also providing that members of the military are exempt from paying the fee for an Application for Certificate of Citizenship, Form N-600, to conform to the same intent. *See* New 8 CFR 103.7(b)(1)(i)(AAA).

d. Arrival-Departure Records

Several commenters suggested allowing a fee waiver for an Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, Form I-102, when filed by a refugee, asylee, a victim of trafficking, and others whose immigration status is based on humanitarian grounds. USCIS does provide initial documentation to such individuals without additional charge. Fees are currently charged only to replace a document or to change a document where the individual changes his or her name. 8 CFR 103.7(b)(1)(H). USCIS does not believe that expanding fee waivers to such replacements is an appropriate cost transference to other applicants. Hardship cases may submit a request to their local office for a fee waiver under 8 CFR 103.7(d). No changes have been made to the rule as a result of these comments.

3. Standardization of the Fee Waiver Process

Some commenters cited difficulty in navigating the fee waiver process. USCIS agrees that the fee waiver process would benefit from standardization. DHS has revised 8 CFR 103.7(c) to be easier to read, understand, and follow in order to bring clarity and consistency to the fee waiver process. In addition, USCIS has proposed a new form to facilitate the fee waiver process—Request for an Individual Fee Waiver, Form I-912. *See* Agency Information Collection Activities: Form I-912; New Information Collection; Comment Request, 75 FR 40846 (July 14, 2010). USCIS consulted with, and received valuable input from, stakeholders and community-based organizations in developing Form I-912. Form I-912 was available for public comment at www.regulations.gov until September 13, 2010. The new form will clearly outline the requirements and documentation necessary to support a request for a fee waiver. This form can be used to submit fee waiver requests for eligible applications, petitions, and biometric services. USCIS intends to make it easier to request a fee waiver by regulating this process and expects to finalize Form I-912 promptly.

4. Commonwealth of the Northern Mariana Islands (CNMI) Transitional Worker

One commenter requested a reduction in fees or a fee waiver for the adjustment of status of family members within the two-year transition period of the implementation of the Consolidated Natural Resources Act of 2008, Public Law 110-229, 122 Stat. 754 (2008).

Fee waivers are not generally available for employment-based immigration benefit requests. Due to the unique circumstances present in the CNMI, however, DHS published an interim rule that provided for a separate Form I-129 called the I-129CW, Petition for a Nonimmigrant Worker in the CNMI, and provided in that rule that USCIS adjudicators may waive the fee for Form I-129CW in certain circumstances if the petitioner is able to show inability to pay. *See* 8 CFR 103.7(c)(5)(i), Commonwealth of the Northern Mariana Islands Transitional Worker Classification, and 74 FR 55094 (Oct. 27, 2009). DHS has also included that waiver authority in this rule. *See* 8 CFR 103.7(b)(1)(i)(J); 8 CFR 103.7(c)(3)(iii). That authority will not take effect, however, until DHS has considered comments on the interim rule and published a final rule. Thus, the comment on fee treatment specific

to the CNMI has been entered into the docket of that rule, and will be considered in drafting that final rule as well as other rules that will implement the CNRA. Nevertheless, due to the inherent inconsistency between sponsoring an alien for employment and being unable to pay the requisite fee for that sponsorship, USCIS expects that the situations when an employer would adequately demonstrate an inability to pay will be extremely limited.

D. Naturalization

USCIS received some comments suggesting that the naturalization fee be raised to an arbitrarily higher amount to reflect the value of U.S. citizenship.

Some commenters praised USCIS for not increasing the fee for naturalization, while other commenters requested that the fee be lowered even more, citing the fee as a deterrent to naturalization. USCIS recognizes the importance of immigrant integration and seeks to promote citizenship. At the same time, USCIS must balance costs and ensure that applicants and petitioners are not burdened with excessive surcharges and subsidies. Additional reductions to the naturalization fee would result in increases to other immigration benefit fees; therefore USCIS will keep the fee at its current level of \$595. Accordingly, DHS has determined that the fee for Form N-400, Application for Naturalization, will remain at its current level of \$595, even though this fee should have increased under the fee rule methodology.

A few commenters questioned the increase to Forms N-600/600K, Applications for Certificates of Citizenship. The commenters contended that in the case of children, USCIS will have already performed the bulk of the adjudicative work for these applications when USCIS processes the parent's Application for Naturalization. Commenters stated that the N-600 requires very little adjudicative time to process. While some applications may be simple, the type of research required for each applicant may be complex and the level of research required will vary based on the individual circumstances. USCIS is required to establish whether the Application for Naturalization was appropriately granted and the time required to research and verify the validity of that application requires significant resources. In addition, this application is not limited to those eligible due to a parent's naturalization, and cases involving derivative acquisition of citizenship can sometimes be very complex. If USCIS were to freeze this fee just as it did the N-400 fee, this change would force

other fee-paying applicants and petitioners to subsidize the cost of processing Applications for a Certificate of Citizenship. We do not believe that such a result is justified here.

DHS has decided to make one change to the fee for Forms N-336 and N-600. DHS is modifying the fee for a Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA), and an Application for Certification of Citizenship, Form N-600, to provide that there is no fee for such requests from a member or veteran of the military. *See* New 8 CFR 103.7(b)(1)(i)(W) and (AAA). USCIS is precluded by law from collecting a fee from members of the military for an Application for Naturalization under sections 328 and 329 of the INA. DHS has determined that it is in keeping with the Congressional intent in passage of sections 328 and 329 to show a preference to members and veterans of the military in similar proceedings, thus it is appropriate that these requests for a certificate if citizenship also be permitted without fee.

E. Improve Service and Reduce Inefficiencies

1. Service Improvement and Fees

Many commenters noted lengthy waiting times to process immigration benefit requests and highlighted the need to improve overall customer service. These comments suggested that, regardless of whether the proposed fees were justified, applicants and petitioners should not be asked to pay the full fee increase until USCIS improves service. Others suggested that, even if fees were increased before service level improvements were made, there should be detailed commitments to service level improvements to ensure that increased revenues are used to improve service.

Some comments stated that USCIS has increased fees before with the promise of improved services, but never fully delivered on that promise. As outlined in the proposed rule and supporting documentation, USCIS delivered nearly all of the promised processing time performance and deployed most of the projects funded through resource enhancements in the 2008/2009 fee rule. 75 FR 33445, 33451-33453. USCIS is firmly committed to continue to improve operations and service, particularly as business transformation is deployed over the next five years.

Some commenters asserted that USCIS had not improved service since implementation of the previous fee rule,

which went into effect on July 30, 2007. DHS disagrees. USCIS continues to work on service improvements. USCIS made substantial progress towards achieving processing goals over the FY 2008/2009 biennial period. For example:

- USCIS processed nearly 1.2 million naturalization requests in FY 2008, 56 percent more than 2007. As of June 2010, there were approximately 299,000 naturalizations cases pending—one of the lowest levels in the recent history of USCIS. A surge response plan implemented in FY 2008 enabled USCIS to meet nearly all FY 2008/2009 fee rule processing time reduction goals by the end of FY 2009.

- USCIS and the Federal Bureau of Investigation (FBI) effectively eliminated the National Name Check Program (NNCP) backlog. NNCP now is now able to complete 98 percent of name check requests submitted by USCIS within 30 days, and the remaining 2 percent within 90 days.

- USCIS has implemented electronic adjudication of some cases to help staff focus attention on more complex cases where discrepancies have been found.

- USCIS is transitioning to a new U.S. Department of the Treasury lockbox provider and away from dispersed collection points to improve intake operations and the control and timing of fee deposits.

Process improvements implemented over the past several years, as well as projected productivity increases, are taken into account in the current fee review, keeping fees lower than they might otherwise have been. Future productivity enhancements are expected to produce lower costs per unit that will be reflected in fee adjustments.

Other commenters recommended that USCIS conduct studies to analyze processing times at different locations and shift work to locations that have demonstrated efficiency in completing the work. USCIS agrees that it is important to distribute work to account for workload and productivity levels. USCIS continually monitors performance at its locations and analyzes resources to ensure that its Field Offices and Service Centers have the capacity to process immigration benefit requests in a timely manner. USCIS has implemented “bi-specialization” of forms at its Service Centers, which aligns the processing of most forms at one of two pairs of Service Centers, such that any individual form subject to bi-specialization is adjudicated at only two of the four regional Service Centers. This change increases processing uniformity and allows the Service

Centers to improve proficiency in adjudications. USCIS is also shifting certain tasks, such as intake, to centralized locations in order to take advantage of economies of scale and develop expertise in processing methods.

Some commenters requested that USCIS increase its ability to receive different forms of payment. USCIS agrees with these comments and has deployed credit card processing machines to all of its Field Offices. Credit card payment is available for immigration benefit requests submitted in-person. Some have suggested that USCIS expand credit card payments to immigration benefit requests that are mailed to USCIS, but USCIS believes that option could provide a path for fraud and abuse. USCIS continues to explore ways to modernize and streamline fee collection processes.

A number of commenters protested the increase in the Application to Replace Permanent Resident Card, Form I-90. Some commenters offered anecdotal evidence outlining multiple instances when a permanent resident card was not delivered to the recipient. Commenters opined that it was easier to pay the I-90 fee again, even though their cards were not delivered, than to protest the lack of delivery of the cards. In FY 2008, USCIS developed a secure mail delivery process referred to as the Secure Mail Initiative (SMI) whereby re-entry permits and refugee travel documents are delivered via the U.S. Postal Service Priority (USPS) Mail. This change allows documents to be delivered by USPS in two to three days with delivery confirmation. This year, the SMI process was expanded to USCIS locations that receive and re-mail undeliverable permanent resident cards and employment authorization documents. Permanent resident cards not initially received by recipients are processed using the SMI. However, USCIS agrees that permanent resident card delivery deserves special consideration. USCIS intends to deliver all permanent resident cards (initial deliveries and re-deliveries) through SMI once revenue is deemed sufficient to fully support the initiative.

Ultimately, USCIS fees are based on the processing costs for immigration benefit requests. Any structural deficit between costs and fees could create and accelerate the growth of backlogs and deteriorate service levels. The proposed fee adjustments and this final rule reflect this concern. Thus, while USCIS addresses the spirit of the comments by continually searching for ways to improve its service, no specific changes

are being made to the final rule to address these comments.

2. Multiple Biometric Data Requests

A few commenters pointed to the fact that applicants or petitioners must provide biometric data more than once if they file several applications or petitions and their biometrics submitted for previous requests has expired. Some commenters considered the expiration of fingerprint submissions to be inefficient. Others suggested that it was inefficient for USCIS to again request biometrics when they apply for sequential benefit applications.

Biometrics (which include fingerprints and photographs) submitted to USCIS are valid for 15 months. This validity period, in most cases, provides sufficient time for an immigration benefit request to be processed. USCIS utilizes the Biometrics Storage System and the Benefits Biometric Storage System to store biometric data and 10-print fingerprints, respectively. These systems allow USCIS to reuse and resubmit biometrics as long as an immigration benefit request has been adjudicated within the 15 month validity period. If there are processing delays at USCIS, USCIS does not charge the applicant the biometrics fee again if the 15 month validity period expires. When an applicant later reapplies to renew a benefit or for another benefit, the biometrics appointment is not simply an opportunity to re-take the biometrics again; it is an opportunity to use biometrics to verify his or her identity.

The biometrics fee covers costs associated with the use of the collected biometrics to pay the cost of FBI and other background checks. Thus, an applicant will pay the biometrics fee whenever he or she files another immigration benefit request that requires the collection, updating, or use of biometrics for background checks.

As USCIS transforms its systems to a more fully electronic application process, biometrics will be stored and generally reused for the purpose of the same and/or multiple benefit purposes. Consequently, current operational practices in this area for most benefit types are based primarily on pre-transformation business structures and information systems. Future fee rules will take into account the transformation program, and therefore no adjustments are made to this final rule based on these comments. Biometric fees will continue to balance the initial capture, reuse, identity verification, and anti-fraud functions performed whenever an applicant or

petitioner, or other individual, is required to submit fingerprints.

3. Transformation

A number of commenters noted that USCIS should not increase fees until business process reengineering takes place. Commenters stated that USCIS should move from a primarily paper-based processing environment to a web-based one. Many commenters called for simplified processes and more electronic processing. Commenters also questioned the management and viability of USCIS' current transformation program.

USCIS agrees that transitioning to electronic adjudication is an important priority. USCIS is committed to improving the efficiency and effectiveness of its immigration processing system and will dedicate the funds and management attention necessary to complete this task. Electronic filing is currently available for seven of the most common benefit requests, as well as premium processing service requests. USCIS expects to deploy the initial increment of its transformation program by the end of FY 2011. As one of the Administration's High Priority Performance Goals, USCIS has committed to ensuring that at least 25% of applications will be electronically filed and adjudicated using the new transformed integrated operating environment by FY 2012.

Transforming the paper-based USCIS adjudication process is crucial to fundamentally improving USCIS response to evolving applicant and petitioner needs and modern immigration demands. USCIS transformation is an employee-driven effort to redefine business processes and systems and create a more modern, secure, and customer-focused organization. For benefit seekers, this means 24-7 online account access and real-time updates. For employees and interagency partners, it means more efficient case management and improved information sharing. For the American public, it means greater national security due to enhanced risk and fraud detection capabilities.

Ultimately, transformation will fundamentally alter the way USCIS does business and will advance it from a paper-based organization to a more efficient government component, capable of meeting 21st century immigration demands. However, USCIS transformation will not happen overnight. Changes will be implemented over the next five years, and stakeholder input is at the forefront of this process. Feedback from employees, inter-governmental partners, and the

immigration community is critical to the success of the transformation program.

The transformation solution will be implemented in two phases that follow the natural progression of the immigration lifecycle, beginning with nonimmigrant benefits. The first phase, which is scheduled to deploy beginning in the fourth quarter of FY 2011, will shift USCIS from application-based services to applicant- and petitioner-based electronic services for nonimmigrant benefits. The second phase, which is scheduled to deploy from calendar years 2012 to 2014, will apply the new capabilities progressively to the remaining USCIS benefits in three distinct releases, starting with immigrant benefits, followed by humanitarian benefits, and ending with citizenship. As lines of business are transformed, instead of using paper forms and manually transmitting information, applicants and petitioners will primarily apply for benefits using online accounts—similar to the way most banks use electronic accounts today. Data will be transmitted electronically and USCIS employees will view the data in a streamlined automated environment. Cases will automatically be assessed for risk and assigned to appropriate adjudicators. Office caseloads will be managed according to volume, allowing supervisors and managers the ability to make informed decisions and balance workloads across USCIS. Adjudicators will have access to complete case records in user-friendly, electronic formats, allowing them to make timely, accurate, “one-touch adjudication” decisions.

4. Increases Relative to Time

Some commenters suggested that some fees were excessive for certain benefit requests relative to the time it takes to process the requests. Commenters also recommended that USCIS consider reducing fees for variations of a form that may take less time to process. For example, one commenter suggested that it may take less time to process an Immigrant Petition for Alien Worker, Form I-140, when it is accompanied by a labor certification than at other times. DHS agrees with the concerns of the commenter in principle, but the current modeling and data do not support the detailed analysis that is necessary to drive these distinctions into the activity-based costs. In the future, USCIS intends to use its transformed systems to perform a more in-depth analysis of immigration benefit requests, eventually examining the fee structure and processing costs of each of the various

benefit requests that are filed regardless of the form used, such as the multiple employee types petitioned for on Forms I-140 and I-129, Petitions for Immigrant and Nonimmigrant Workers. USCIS does not possess the data gathering and reporting capacity to support such analysis and this type of fee system at this time.

USCIS also understands the commenters' desire to have their requests processed as quickly as possible and that some USCIS-administered benefits are subject to more processing delays than others. In general, delays do not factor into the calculation of fees, except as they relate to the complexity of the adjudication. The primary basis of the USCIS fee model is administrative complexity, which is the amount of work necessary to process a particular kind of application or petition (identified as “Make Determination” activity in the proposed rule). The calculation also factors in other direct costs, such as the cost of producing and delivering a document when that is part of the processing of a particular benefit. In addition to these costs, the fee calculation model factors in the full costs of USCIS operations, including services provided to other applicants and petitioners at no charge, overhead costs (e.g., office rent, equipment, and supplies) associated with the adjudication of the immigration benefit request, and other processing costs. These latter costs include responding to inquiries from the public (“Inform the Public” activity); immigration benefit request data capture and fee receipting (“Intake” activity); conducting background checks (“Conduct Interagency Border Inspection System Checks” activity); the acquisition and creation of files (“Review Records” activity); preventing and detecting fraud (“Fraud Prevention and Detection” activity); when applicable, producing and distributing secure cards (“Issue Document” activity); and electronically capturing biometrics (fingerprint and photograph), background checks performed by the FBI, or use of the collected biometrics to verify the identities of applicants (“Capture Biometrics” activity). Thus, no changes are made in the final rule as a result of these comments.

5. Fee Refunds

Some commenters were opposed to the fee increase for the Notice of Appeal or Motion, Form I-290B. Commenters thought that the fee, though waivable, could hinder individuals and prevent them from receiving benefits they deserve. They noted that the time

involved in submitting a fee waiver request jeopardized their chance of meeting the 30-day filing deadline for an appeal. Commenters also expressed disappointment in the appeals process in general, noting that it was particularly burdensome for those who are attempting to, as they perceive it, rectify an error made by USCIS. Commenters suggested that USCIS develop a system to refund fees paid because of USCIS error. Multiple commenters cited being required to pay for Form I-290B or the Application for Action on an Approved Application or Petition, Form I-824, due to USCIS error.

USCIS has in the past agreed with the findings of the USCIS Ombudsman, who recommended developing more consistent and clear procedures for processing motions to reopen and reconsider. See http://www.uscis.gov/USCIS/Office%20of%20Communications/Homepage/Ombudsman%20Liaison%20Unit/OLU%20Responses%20to%20Formal%20Recommendations/rec42_18aug09.pdf. USCIS is also developing a fee refund process. The intent of that process is to provide a simple, expeditious system to point out clear administrative errors made by USCIS and to receive a rapid remedy from USCIS mistakes. USCIS has undertaken an internal review of the fee refund process, its associated internal procedural policy memo, and a new fee refund form. The results of this review are planned for inclusion in USCIS' next fee study.

Some commenters also mentioned the perceived risk in filing Forms I-290B, noting that they may not be routed properly. In addition to the aforementioned process changes, USCIS now accepts Form I-290B at its lockbox facilities for applicants and petitioners filing an appeal or motion concerning a decision made in a USCIS field office. Filing at a lockbox facility provides individuals with a receipt and facilitates enhanced case tracking for USCIS applicants and petitioners. Lockbox use also ensures that the I-290B intake process is timely. DHS believes this centralized filing and handling will alleviate the timing issues that the commenters raised and that these actions and changes are responsive to the comments, though no changes to the final rule were made as a result of them.

DHS is adding one additional change to the fee for the Notice of Appeal or Motion. Based on an analysis of the public policy objectives and related legislation, DHS is providing that there is no fee for an Iraqi or Afghan national who worked for or on behalf of the U.S.

Government in Iraq or Afghanistan to appeal a denial of a petition for a special immigrant visa. The National Defense Authorization Act of 2008 provided that neither DOS nor DHS may collect any fee in connection with an application for, or issuance of, a special immigrant visa for an Iraqi or Afghan national who worked for or on behalf of the U.S. Government in Iraq or Afghanistan. Section 1244 of the National Defense Authorization Act, 2008, Public Law 110–181, 122 Stat. 3, as amended by Public Law 110–242, 122 Stat. 1567 (Jan. 28, 2008). DHS believes it is keeping with the language of that statute to also provide an appeal of such an application for no charge. Thus, DHS has changed the final rule to provide that when such a petition is denied, the petitioner may appeal by filing a Notice of Appeal or Motion without fee.

6. Customer Service and the Office of Public Engagement

Some commenters requested more access to USCIS to encourage a constructive and efficient dialogue between the parties with the hopes of significantly reducing overall processing times, helping identify policy and process defects, resolving questions, and providing corrections and clarifications on various immigration benefit requests. Many commenters detailed customer service issues, and incidences of poor customer service, with various USCIS offices. A number of commenters believed that USCIS should not increase fees until customer service improves.

USCIS is dedicated to ensuring that stakeholders are fully informed of its programs and processes, and can provide input regarding USCIS priorities, policies and programs, and assessing organizational performance. USCIS seeks to build new partnerships and enhance existing relationships with a broad range of stakeholders, including community-based and faith-based organizations, state and local government representatives, advocacy groups, and other stakeholders interested in USCIS policies and operations. Such partnerships enable USCIS to maintain a transparent and collaborative approach to policy making and operations through information sharing, stakeholder feedback, and engagement opportunities. USCIS hosts frequent engagements on a broad range of issues, welcomes input on topics of concern from the stakeholder community, and seeks to provide opportunities for stakeholders to submit feedback to USCIS. The recently established USCIS Office of Public Engagement (OPE) facilitates and coordinates outreach and engagement

and directs USCIS-wide dialogue with external stakeholders.

USCIS is currently implementing a policy review to comprehensively examine policy, guidance, and procedures. Collectively, we believe that these actions are responsive to these comments. We have not revised this final rule in response to the comments.

F. Premium Processing

Premium processing is a program by which a petitioner for a nonimmigrant worker may pay an extra amount to ensure that the petition will be processed in 15 days. The premium processing fee was statutorily authorized in 2000 for employment-based applications and petitions and was set at \$1,000. *See* INA section 286(u), 8 U.S.C. 1356(u); 8 CFR 103.2(f); new 8 CFR 103.7(b)(1)(i)(QQ), and (e). Premium processing is currently authorized for certain classifications filing a Petition for a Nonimmigrant Worker, Form I–129, or an Immigrant Petition for Alien Worker, Form I–140. *See* new 8 CFR 103.7(b)(1)(i)(RR), and (e); USCIS Web site at www.uscis.gov. For example, petitioners would pay the \$580 fee for a Form I–140 under this rule, plus \$1,225 for premium processing.

Some commenters suggested that premium processing be expanded to other immigration benefit requests, while other commenters argued against an increase to the premium processing fee. Some commenters stated that premium processing is essentially mandatory, rather than optional, to ensure the timely and efficient processing of their employment-based petitions.

1. Expansion of Premium Processing Service

The comments suggesting the expansion of premium processing are similar to other comments that believe fee increases generally will result in better service. USCIS understands the desire of the commenters to be able to obtain faster processing of all immigration benefit requests. Such comments indicate that at least some are willing to pay substantially more if USCIS can guarantee faster service.

USCIS has considered expanding premium processing to other immigration benefit requests beyond those currently allowed in conjunction with this fee rule. In future reviews, USCIS will perform the necessary analysis to identify candidates for faster processing guarantees, while also considering operational limitations that may prohibit expansion of premium processing into certain areas. USCIS

will also need to determine the appropriate amount to charge for each benefit if permitted, and the logistical requirements for implementing expanded premium services. USCIS has not, to date, analyzed the effect of premium processing on specific application and petition types, but plans to consider doing so in the future. Premium processing actually moves applicants and petitioners to the head of the line for adjudication and the additional fee permits the devotion of specific resources to resolving that application or petition. No change is made in this rule as a result of these comments. Nevertheless, USCIS believes that this issue does justify more analysis for consideration in future fee reviews.

2. Adjustment to Premium Processing Fee

Some commenters disagreed with an increase to the premium processing fee. Many cited delays in the process that required them to file a request for premium processing to ensure receipt of a visa in a reasonable amount of time. Other commenters mentioned what they perceived to be frivolous RFEs that contribute to delays in processing these visas. For many commenters, premium processing increased the likelihood of their success in managing the RFE process and the visa process in general. The commenters stated that an increase to the premium processing fee, when multiplied by the number of aliens for whom they may petition, would be particularly burdensome.

USCIS is striving to increase its efficiency in all visa processing and, at this time, O and P visa processing. Efficiencies in these areas will alleviate the need for premium processing services and ensure that applicants and petitioners can expect to procure these visas in a timely manner. USCIS recognizes the concerns of the commenters and has made the 14-day adjudication processing time a goal for O and P visa petitions. USCIS is meeting that goal at both Service Centers that process these petitions.

In addition to improving processing times, USCIS has also undertaken several initiatives to improve the quality of O and P visa adjudication. An RFE project is being developed at the Service Centers to revise current RFE standard operating procedures to facilitate consistent, relevant, concise and clear RFE templates. The O and P visa classifications are a part of the first phase of this project. USCIS is also reviewing the Adjudicator's Field Manual, existing policy guidance, and training materials to identify focal

points for additional guidance and training for O and P visa processing. Through these efforts, USCIS hopes to reduce the number of premium processing service requests related to these visa categories.

The percent change in the Consumer Price Index for All Urban Consumers (CPI-U) was used to adjust the premium processing fee. Between June 2001, when Congress established the fee, and June 2010, the CPI-U increased by 22.45%. When that percentage increase is applied to the current premium processing fee of \$1,000, the adjusted premium processing fee is \$1,224 (\$1,225 when rounded to the nearest \$5). See INA section 286(u), 8 U.S.C. 1356(u). This amount is the same fee in the proposed rule and represents the final premium processing fee. Adjusting this fee by the Consumer Price Index is statutorily permissible and is a reasonable method for accounting for increases in costs for this service. Since Congress enacted this original fee level (almost ten years ago), labor and resource costs have increased significantly. The revenues that USCIS derives from premium processing exceed the marginal costs for providing such services. Fees from this activity contribute to significant system and business process modernization which will benefit all applicants and petitioners. Therefore, DHS has increased the fee in this rule as proposed.

G. New Fees and Forms

1. Immigrant Visa DHS Domestic Processing Fee

Several commenters questioned the appropriateness and the amount of work required to justify the proposed immigrant visa processing fee. Another commenter suggested that fee waivers should be available for immigrant visas, an issue which is addressed elsewhere in this preamble. One commenter questioned how USCIS plans to implement this new fee, including when and where the fee would be payable, such as when the immigrant visa petition is filed with USCIS, with the immigrant visa fee payable to DOS, at the time of immigrant visa issuance, at the port of entry (POE) prior to admission, or by mail after admission is completed. Due to staffing and logistical issues and convenience for the applicant, USCIS has requested that DOS collect the fee on USCIS's behalf. Under the Economy Act, 31 U.S.C. 1535, USCIS will reimburse DOS for the costs DOS incurs in performing this service on behalf of USCIS. Still another

commenter asked how the new fee impacts immigrant visa demand.

USCIS has not conducted an analysis to determine the potential impact on visa demand, but DHS has determined that, irrespective of any potential effect, USCIS should no longer shift its costs of providing immigrant visas to those paying fees for other immigration benefits. Based on current projections, USCIS expects this fee to generate \$74.2 million during the next fiscal year, a sum that otherwise would be charged as overhead to all other fee-paying applicants and petitioners.

While the new fee for processing an immigrant visa admission packet is mostly for an internal recordkeeping function based on the transfer of documents from one government entity to another, the relatively limited nature of this activity does not exempt it from cost recovery through a unique fee. Costs include the initial creation of the alien's "A-File" and production and shipment of the permanent resident card. These costs are currently borne by USCIS, as the DHS agency administratively responsible for the assigned task, and charged to all fee paying applicants and petitioners as an overhead expense. Accordingly, DHS has decided that these are costs that are better charged directly and recovered from immigrants as an appropriate immigrant visa processing fee.

A commenter suggested that the imposition of a fee for the processing of the immigrant visa packet incorrectly amounted to funds being paid to USCIS for the consular officer's visa approval decision and/or the U.S. Customs and Border Protection (CBP) officer's lawful permanent residence admission decision to become effective. DHS disagrees. The immigrant visa domestic processing fee recovers the costs of USCIS staff time to process, file, and maintain the immigrant visa package and the cost of producing the permanent resident card. Although the labor or effort may seem inconsequential, USCIS processes approximately 36,000 of these requests per month, totaling almost 430,000 visa applications, or \$70,950,000, annually. The volume of this activity warrants a significant amount of dedicated USCIS resources. The costs for these resources are currently charged to all fee payers. DHS believes that this is an undue burden for other fee-paying applicants and petitioners and is, therefore, shifting the cost of processing immigrant visas to the immigrant visa recipients who are the beneficiaries of this service. Some commenters lauded the implementation of the additional fees, recognizing that these fees remove some of the cost

burden from fee-paying applicants. This new fee does not alter the costs of, or reimburse for, any activity by CBP. No changes to the final rule were made as a result of these comments.

2. Civil Surgeon Designation Fee and Form

Some commenters requested that military civil surgeons be exempt from the new Civil Surgeon Designation Fee. DHS agrees. DHS is exempting physicians serving in the military or employed by the U.S. government from the fee required of civil surgeons if performing examinations for members or veterans of the military, or their dependents, who receive care at a U.S. military, Department of Veterans Affairs, or U.S. government facility in the United States. See New 8 CFR 103.7(b)(1)(i)(SS).

Another commenter asked clarifying questions concerning military civil surgeons who must move due to reassignment. Specifically, the commenter was concerned that civil surgeons who must move frequently due to military orders would be subject to the fee on multiple occasions. DHS recognizes that any civil surgeon, whether military or civilian, may move to a different jurisdiction. Any civil surgeon changing his or her address will be required to update USCIS on the change, and include evidence of continued eligibility to serve as a civil surgeon by submitting this information to their local field office so the civil surgeon roster can be updated accordingly. At this time, USCIS does not intend to charge a fee to update an address if a civil surgeon has already been designated appropriately.

An additional concern expressed about the civil surgeon designation fee was its impact on the availability of civil surgeons throughout the United States. In particular, a commenter indicated that few civil surgeons are available in certain parts of the country and that the new fee will make it more difficult for individuals to receive the designation. The commenter also indicated that this result will, in turn, ultimately prohibit eligible applicants for immigration benefits from receiving the necessary medical clearance and applying for their benefits.

While DHS is aware of the fact that the availability of civil surgeons in some areas of the country is greater than in others, it does not believe that this discrepancy and the imposition of the new fee denies applicants the opportunity to apply for immigration benefits. Based on the existing roster of civil surgeons, the number of civil surgeons in any given area appears to

correlate favorably with the projected number of potential immigrants needing medical examinations. USCIS is always interested in increasing the number of civil surgeons in areas of low availability in an effort to reduce the potential cost impact of this statutorily-required exam. While access to civil surgeons in rural areas may be limited, the commenter has only speculated that a new fee would preclude reasonable access to civil surgeons. DHS is not aware of evidence that supports the commenter's speculation and the commenter did not provide any additional data to support these claims.

DHS has a responsibility to ensure the integrity of the civil surgeon program and has set a fee that recovers the operational costs for this program, the appropriate overhead and the appropriate spread of policy decision costs. Without this fee, work performed to designate and maintain the civil surgeon roster would continue to be borne by all fee-paying applicants and petitioners. Requiring physicians to pay for this designation shifts the costs from the general applicant population to the physicians who perform the examinations and who may derive financial benefit (such as a fee) from such examinations. No changes to the final rule were made as a result of these comments.

3. EB-5 Regional Center Designation Fee and Form

Most EB-5 related comments acknowledged the need for a regional center designation fee. The commenters expressed support for the fee, while also noting the need for improvements in processing times, collaborative efforts, and regulatory development. USCIS continues to strive for improved processing times, has committed to improved stakeholder communications with quarterly stakeholder meetings, and will pursue regulatory development when practical.

Several commenters, referencing the supporting documentation, suggested that DHS calculated the Regional Center Amendment fee in violation of OMB Circular A-25. These comments suggested that the DHS Supporting Statement: Application for Regional Center under the Immigrant Investor Pilot Program, Form I-924, and Form I-924A (OMB No. 1615-NEW), Docket No. USCIS-2009-0033-0003-0006, show 40 hours to adjudicate an initial designation and only 10 hours to adjudicate an amendment. DHS disagrees with the commenters. The time burden outlined in the supporting statement is an estimate of the amount of time it takes for filers to complete the

form, not the time it takes to adjudicate the form. This review, and documentation required by the Paperwork Reduction Act, are discussed elsewhere in this preamble. A review of a substantial number of recently filed amendment requests by previously designated regional centers reveals that most amendments involve a diverse variety of adjudicative issues, such as changes in geographic scope, organizational structure, capital investment projects, and exemplar Forms I-526, Immigrant Petition by Alien Entrepreneur. No changes were made to the final rule as a result of these comments.

Another commenter mentioned the proposed amendment to 8 CFR 204.6(m)(6), which would provide for an annual reporting requirement for Regional Centers in connection with the USCIS authority to terminate a regional center's designation. The commenter suggested that the language "no longer serves the purpose of promoting economic growth," was vague, and in need of more specifics regarding practices that are either prohibited or required in order for the regional center to continue to "serve the purpose of promoting economic growth." The commenter recommended that USCIS adopt a rule to ensure ongoing regional center compliance, such as termination proceedings if a regional center does not file a single Immigrant Petition by Alien Entrepreneur within a fiscal year.

DHS notes that the regulation at 8 CFR 204.6(m)(6) already provides a means to terminate a regional center if the regional center "no longer serves the purpose" of the program. DHS believes that the potential reasons for the termination of a regional center extend beyond inactivity on the part of a regional center. This regulation currently provides for a process of notice and rebuttal. The amended regulatory language leaves this process intact. Regional centers have been and will be provided with ample opportunity to overcome the reasons for termination of the regional center under this process. DHS is exploring means by which information regarding termination proceedings may be shared, and will consider making this information available in the annual disclosure report. DHS is making no changes in the final rule as a result of this comment.

A number of comments mentioned statutory, regulatory, and policy-oriented issues that were outside the scope of the proposed rule, like job creation requirements for the Immigrant Investor Pilot Program. The final rule does not address comments seeking

changes in United States statutes, changes in regulations or immigration benefits unrelated to, not reasonably related to the fee structure or impacting the fee structure, and not addressed by the proposed rule, changes in procedures of other components within DHS or other agencies, or the resolution of any other issues not within the scope of the rulemaking or the authority of DHS.

H. Methods Used To Determine Fee Amounts

A number of comments questioned or requested additional information on the methodology used to determine USCIS costs. Others questioned the costs and calculations provided in the proposed rule, while some requested an invoice that details the costs of services. USCIS has made no changes to the final rule as a result of these comments.

Detailed information on the fee review methodology and the cost components and calculations was provided in the proposed rule and remains posted in the docket of this rule at www.regulations.gov. This information will also be provided directly by USCIS upon request. The underlying supporting elements, such as independent legal requirements, the General Schedule pay scales, or travel reimbursement rates, are all publicly available. In the proposed rule, USCIS offered an opportunity to review the functioning of the computerized cost model used by USCIS through onsite viewing on its computer system. While USCIS cannot provide complete access to the computer software purchased under license, the USCIS fee determination is, within reason, an open process. A summary of how calculations were made and results achieved was available for review upon request. USCIS did not receive any requests to access the modeling program. We have made no changes to the final rule as a result of these comments.

1. Reductions to USCIS Costs

A number of commenters suggested that USCIS reduce its costs before implementing a fee increase. USCIS agrees that cost savings are an important part of its fee evaluation. The FY 2010 enacted appropriation and the FY 2011 President's budget request provided significant appropriations (\$55 million in FY 2010 and \$238 million in FY 2011) to reduce surcharges placed on fee-paying applicants and petitioners for programs related to refugee and asylum benefits. The FY 2011 appropriations request also includes the cost of the Office of Citizenship and the SAVE programs—two programs previously

funded by immigration benefit fees. The President's total appropriation request for USCIS was more than \$385 million.

In addition to removing almost 10% of costs from the fee structure, at the beginning of FY 2010, USCIS implemented approximately \$160 million in operational budget cuts. USCIS has reduced about 170 federal positions, executed a number of hiring freezes, and significantly reduced overtime spending. All USCIS offices faced an across-the-board reduction to general expenses and certain contracts were reduced due to lower workloads. DHS believes that these actions to reduce costs and fee burdens on fee-funded programs have been significant, and fully expects USCIS to continue to focus on cost reduction and efficiency in future fee reviews. No changes have been made to the final rule as a result of these comments.

2. Appropriations

Many commenters commended the Administration's request for appropriated funding to eliminate surcharges. Some commenters stated that USCIS should request even more appropriated funding to cover its costs. Commenters suggested expanding the use of appropriated funds to fraud-related activities, asylum and refugee services, infrastructure improvements, overhead, and long-term investments. Other commenters opined that taxpayers should not bear the burden of funding immigration-related activities and strongly opposed the use of appropriated funding for USCIS operational purposes. DHS is committed to reducing surcharges through the use of appropriations and will continue to consider such options that have the potential of providing additional cost relief without undue burden on taxpayers.

Some commenters questioned the reliance by USCIS on appropriations in cost estimates determined prior to the approval of those appropriations. USCIS recognizes a certain level of uncertainty that is created by the timing of the federal budget process and this fee rule (if the congressional budget process for the fee rule's biennial period was completed before the fee rule was finalized). Nonetheless, USCIS must review its fees biennially and cannot delay necessary rulemaking for the benefit of the appropriations process. DHS is well aware of the impact of including appropriated funding in USCIS cost estimates and USCIS has analyzed (included in the proposed rule) fee schedules under a number of different appropriation scenarios to satisfy the requirements of the

Administrative Procedure Act. The various fee schedules provided the public with the highest and lowest possible fees based on the highest and lowest cost base.

Further, DHS statutory and regulatory reviews considered the uncertainty of appropriations funding. DHS shares the commenters' concerns and took steps to insulate the regulatory flexibility analysis from understating impacts to small entities. To this end, as stated in the proposed rule, DHS utilized fees calculated without appropriations in the analysis, which illustrated the largest potential impact of the fee increase on small entities. DHS has determined that the fee schedule should continue to be based on the President's requested appropriation. USCIS will make necessary operational changes to accommodate an appropriation that does not fulfill the President's request. Accordingly, DHS makes no changes to the final rule as a result of these comments.

I. Other Comments

A number of comments were not linked to the substance of the proposed rule and criticized the rule for not addressing other immigration law issues. Some commenters addressed issues related to comprehensive legislative immigration reform. Others suggested changes to the substantive regulations implementing the immigration laws by USCIS, CBP, U.S. Immigration and Customs Enforcement, and other agencies that do not have an impact on the fee structure or amounts. Some commenters expressed dissatisfaction with the visa allocation process, which is established by the Congress, and outside of the scope of DHS operations.

DHS cannot address comments seeking changes in United States statutes, changes in regulations or immigration benefits unrelated to the proposed rule, changes in procedures of other components within the Department of Homeland Security that are not linked to the fee schedule or processes, or regulations of other agencies, or the resolution of any other issues not within the authority of DHS. Although beyond this scope, three comments are discussed below in order to clarify certain issues.

1. Visa Allocation and Unused Visa Numbers

Several commenters expressed concern that USCIS would raise fees during a time when many employment-based adjustment of status filers are experiencing long waits for their visas. Although these long waits are due to

visa retrogression in oversubscribed categories, some attributed it to USCIS processing inefficiencies and questioned a fee hike in the face of such delays. Others attributed the long waits to the mismanagement of the visa allocation and coordination process between USCIS and DOS and noted that many numerically-limited visas have gone unused.

The notion that USCIS processing inefficiencies contribute to the long wait for visas appears unfounded, as there is currently an average processing time of four months for an Application to Register Permanent Residence or Adjust Status, Form I-485, for which visas remain available. This timeframe meets the processing goal set forth in the 2008/2009 fee rule. *See* 72 FR 4888, 4893. Significant improvements have also been made in the visa coordination process between DOS and USCIS. USCIS and DOS confer monthly on pending visa demand, workload capabilities, and forecasting of immigration trends. For example, if USCIS analysis finds a period of low demand in a particular visa preference category, DOS is able to respond by advancing the priority dates rapidly to ensure that all allotted visas will be used in a particular fiscal year. USCIS and DOS continue to consider ideas and options to further improve the visa coordination process between the two and reduce the occurrence of visa retrogression or future unused numbers.

Some commenters suggested that USCIS recapture unused visa numbers from recent years as a way to reduce the backlog of pending adjustment of status cases. By recapturing these numbers, it was suggested that visa priority cut-off dates would advance, allowing for many new filings and thereby increasing USCIS revenue without a need to raise fees. However, the authority to recapture any unused visa numbers from previous years resides with Congress and is not available to USCIS as an administrative remedy. *See* INA section 201, 8 U.S.C. 1151. Moreover, increasing the number of filings concurrently increases the amount of work to be performed, thus consuming the fees generated. Even if legally possible, this solution would not be practical.

Due to the long wait for visa numbers in particular categories, several commenters disagreed with a fee hike as they noted costs would rise for intending immigrants either seeking to maintain their status in the United States or receiving ongoing interim benefits while awaiting visa numbers. It is noted, however, that U.S. employers may not recoup the costs required to file

for a nonimmigrant employee or his/her extension or change of status; thus, the costs are borne by the employer and not the intending immigrant seeking to maintain his/her status. Furthermore, as of the fee structure instituted in 2007, applicants for adjustment of status who request advance parole and employment authorization are exempt from payment of additional fees while their Forms I-485 are pending. Thus, this is not a valid concern for these individuals.

USCIS acknowledges that employment-based Form I-485 filers who filed under the old fee structure, prior to August 18, 2007, must continue to pay fees associated with interim benefits. While USCIS has no control over the Department of State's allocation of visa numbers, nor over the yearly visa numerical limits as established by Congress, it has nonetheless been sympathetic to those who have pending adjustment of status applications in categories experiencing extreme visa retrogression. To alleviate the filing burden on these individuals and associated costs, USCIS initiated a policy in June 2008 whereby an EAD would have a two-year validity period for these affected individuals, effectively reducing ongoing costs for the benefit by an estimated 50 percent. USCIS is further adopting a policy whereby those same affected individuals may receive an advance parole document with a two-year validity period to further alleviate their filing burdens. The number of filers affected by FY 2007 visa retrogression continues to decline as visa numbers are allocated.

One commenter suggested the creation of a variable fee structure depending on the wait for a visa number. As wait times fluctuate due to a myriad of factors, including visa number restrictions, per-country limits, and changes in demand, it would be impractical to adopt this suggestion as there would be no way to project what the future delays and fees would be.

2. Increased Periods of Validity for Travel and Employment Documents

A number of commenters requested that USCIS offer multi-year employment authorization documents (Form I-765) and travel documents (Form I-131). Commenters cited the financial burden of submitting multiple applications for both services while their adjustment of status cases are pending. Some commenters also mentioned the administrative burden created when trying to time the filing of the documents so as not to produce instances of overlapping validity.

USCIS has no interest in artificially limiting the validity periods of these documents. In many instances, these validity periods are directly related to the length of the underlying status which created eligibility for these associated benefits. For example, a permanent resident who remains outside the United States for more than one year may be questioned on his or her return based on the validity of his or her Permanent Resident Card, Form I-551. 8 CFR 211.3. If that individual applied for a reentry permit before departure from the foreign country, and the application is granted, then the one year validity of the Form I-551 is extended to two years. 8 CFR 223.3(a), (d). The current two-year validity of the reentry permit matches this period. Issuing it for a longer validity period could create confusion and result in some permanent residents remaining abroad for too long and potentially jeopardizing their status. The validity period of a travel document or EAD is generally linked to the validity period of the relating immigration status.

The issuance of interim benefits based on an application for an adjustment of status was in some respects an exception to this rule. However, in the 2008/2009 final fee rule, USCIS eliminated extension application fees for both advance paroles and EADs—issuing them without charge since they were paid as part of the Form I-485 fee. See 72 FR 29851, 29873. Subsequently, USCIS extended the validity period to two years for new EADs issued to applicants for adjustment of status for whom a visa number was not available. See 8 CFR 274a.12(a) (authorizing USCIS to determine the validity period for EADs). This change was done in part to eliminate any perception that different renewal cycles were simply a means of generating revenue from applicants and petitioners who had applied under the prior fee structure. The two-year renewal is based on the need to periodically evaluate continuing eligibility for these associated benefits, whether provided without additional charge or through a fee.

3. Suggested I-94 Fee

One commenter suggested that USCIS charge a fee for the cost of recordkeeping and filing of an Arrival-Departure Record, Form I-94, issued at the POE for non-immigrant visa and visa waiver admissions. The commenter believed that this is a much larger population and a more tedious task than collection of the new immigrant visa domestic processing fee. DHS has not adopted the commenter's suggestion. Form I-94 and any fees associated with

the form are handled by CBP, another DHS component, and are beyond the scope of this rulemaking.

J. Discussion of Comments Received in Response to the June 1, 2001, Interim Rule

On June 1, 2001, the Immigration and Naturalization Service, as predecessor to USCIS, published an interim rule with request for comments in the **Federal Register** which:

- Added a new paragraph to 8 CFR 103.2(f) to set the procedural requirements to request premium processing, designate applications and petitions as eligible, clarify the fees, and provide for the announcement of the temporary termination of the service;
 - Amended 103.7(b) and (c) to establish a premium processing fee;
 - Amended 103.7(c) to provide that the premium processing fee cannot be waived; and
 - Amended 299.1 to provide that Form I-907 should be used to request premium processing service.
- Establishing Premium Processing for Employment-Based Petitions and Applications, 66 FR 29682 (June 1, 2001). The interim rule implemented the District of Columbia Appropriations Act, 2001, Public Law 106-553, 114 Stat. 2762 (2000). The legislation added a new INA section 286(u) that authorized the collection of a \$1,000 "premium processing" fee in addition to the regular filing fee for certain petitions and applications. The legislation limited the authority to collect the premium processing fee to employment-based petitions and applications. INA section 286(u), 8 U.S.C. 1356(u).

INS provided a 60 day comment period and received 78 public comments relating to the interim rule from performing arts organizations; attorneys, management companies, and representatives of performing arts organizations; and associations of attorney and business personnel. Many of the issues raised were addressed above in response to comments received on the proposed fee rule and that discussion will not be repeated. Virtually all commenters repeated the following points:

- Although INS allows non-profit organizations to request expedited processing without charge, some do not qualify and the process is unreliable;
- Expedited processing should be completed in less than 15 days;
- INS did not provide enough advance notice of this immediately effective change or how it would affect cases already filed; and
- O-2 and P visa support petitions and petition amendments should be

included within the premium processing fee for the principal. Each of these comments will be discussed below.

The commenters suggested that USCIS complete its processing in a shorter timeframe than 15 days. Although we understand this request, DHS has determined that 15 days is reasonable and it is unable to guarantee processing in any time shorter than the 15 day period provided in the rule.

The commenters complained that the interim rule was immediately effective on publication and did not address its applicability to cases already filed. As explained in the interim rule, INS determined that it found good cause to adopt the rule without prior notice and comment and that any delayed implementation would be contrary to the public interest. 66 FR 29682, 29684. Since the interim rule has now been in effect for over nine years and any then-pending cases have been decided, DHS will not make any changes to the rule in response to these comments.

The commenters also suggested that there be no additional charge for petitions filed on behalf of O-2 non-immigrant visa dependents, P visa essential support personnel, and petition amendments. As discussed above, USCIS fee methodology is premised on the relative cost to adjudicate each petition and therefore, it must charge a fee for each petition and each request for premium processing. As such, DHS cannot adopt the commenters' suggestion that one premium processing fee cover several petitions or petition amendments.

In addition, two commenters mentioned the impact of the rule on Canadian performers who depend on income received from short notice, short term engagements in the United States. USCIS has decreased its processing times for O and P petitions; therefore, no special accommodation is needed for Canadian performers. USCIS has made no change to the interim rule as a result of them.

One commenter praised the premium processing service but complained that it would exacerbate H-1B processing for teachers and school administrators. The commenter also noted the adverse impact of the timing of H-1B filing season on educational institutions. USCIS has decreased its processing times for H-1B petitions and seeks to further improve that process. However, the number of H-1B visas available each year is fixed by statute and beyond the control of USCIS. INA section 214(g), 8 U.S.C. 1184(g).

Two commenters sought assurances that USCIS would promptly respond to

submissions made in response to Requests for Evidence and Notices of Intent to Deny to avoid further processing delays and suggested amending the regulation to require it. As mentioned, USCIS has decreased its processing times for O and P petitions and has improved its processing and efficiency overall and strives to decide all cases promptly. USCIS has made no change to the interim rule as a result of these comments.

Another commenter reminded that the use of premium processing fees is limited by statute and suggested that a fee waiver be permitted. INA section 286(u), 8 U.S.C. 1356(u). USCIS is certainly aware of the statutory limitation of such fees to "premium-processing services to business customers, and to make infrastructure improvements in the adjudications and customer-service processes" and limits its use of such fees to the authorized purposes. *Id.* Given the significant improvement in processing times, DHS has decided not to permit a fee waiver of the premium processing fee. DHS has made no change to the interim rule as a result of the comment.

One commenter requested that the Application to Register Permanent Residence or Adjust Status, Form I-485, be added to the list of forms eligible for premium processing service. Given the complexity and significance of the adjudication of an application for lawful permanent residence, USCIS is unable to commit to such a timeframe. Although USCIS has decreased its processing time for Forms I-485, at this time it is unable to extend premium processing service to employment-based Forms I-485.

For these reasons, no changes are made to the interim rule as a result of the comments received and the interim rule is adopted as final and changed as described in this rule.

IV. Statutory and Regulatory Reviews

A. Regulatory Flexibility Act—Final Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(6), USCIS examined the impact of this rule on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than fifty thousand people). Below is a summary of the small entity analysis. A more detailed analysis titled "Small Entity Analysis for

Adjustment of the U.S. Citizenship and Immigration Services Fee Schedule" 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. Entities that would be affected by this rule are those that file and pay the alien's fees for certain immigration benefit applications. Consequently, there are four categories of USCIS benefits that are subject to a RFA analysis for this rule: Petition for a Nonimmigrant Worker (Form I-129); Immigrant Petition for an Alien Worker (Form I-140); Civil Surgeon Designation; and the new Application for Regional Center under the Immigrant Investor Pilot Program (Form I-924). DHS does not believe that the increase in fees proposed in this rule will have a significant economic impact on a substantial number of small entities; nevertheless, DHS is publishing a final regulatory flexibility analysis.

1. Objectives of, and Legal Basis for, the Final Rule

DHS's objectives and legal authority for this final rule are discussed in section III.A of this preamble.

2. Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis

Only one commenter specifically mentioned the IRFA. The commenter was concerned that uncertainty of appropriations funding from Congress would impact the results of the IRFA. DHS shared this concern and took steps to insulate the analysis from understating impacts to small entities. As stated in the proposed rule, DHS utilized fees calculated without appropriations when preparing the IRFA, which illustrated the largest impact of this fee increase on small entities.

A number of general comments on the rule raised concerns about the increase in Form I-129 fees, particularly with respect to non-profit agencies sponsoring musicians to perform in the U.S. These comments were directed at operational and efficiency issues rather than the initial regulatory flexibility analysis. The operational and efficiency comments have been addressed above in section III(B)(2)(d) of this final rule. One of those commenters suggested a separate fee structure for non-profit organizations, but did not provide any further information. As described in the IRFA, this type of fee structure would ultimately lead to increased costs for non-profit organizations in the form of

longer wait times and reduced customer service.

Most comments concerning EB-5 Regional Center Designation centered on operational and form-related issues, which are discussed in section III(E)(3) of this final rule. Some commenters recommended a fee-exemption for non-profit Regional Centers. The comments did not provide any analysis to support the need for a fee-exemption for non-profit Regional Centers, such as data indicating that the DHS analysis was lacking and have not been adopted.

Many commenters asserted that fees were too high. These comments are addressed in the response to public comments in section III(B)(2) of this final rule.

3. Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

Entities affected by this final rule are those that file and pay fees for certain immigration benefit applications on behalf of an alien. These petitions and applications include Form I-129, Petition for Nonimmigrant Worker; Form I-140, Immigrant Petition for Alien Worker; Request for Civil Surgeon Designation; and Form I-924, Application for Regional Center. Annual numeric estimates of the small entities impacted by this fee increase total: Form I-129 (87,220 entities), Form I-140 (44,500 entities), Civil Surgeon Designation (1,200 entities), and Form I-924 (132 entities).

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 will see a number of industry clusters impacted by this rule (see Appendix A of the Small Entity Analysis for a list of the impacted industry codes). The fee for Civil Surgeon designation will impact physicians seeking to be designated as Civil Surgeons. Finally, Form I-924 will impact any entity requesting approval and designation to be a Regional Center under the Immigrant Investor Pilot Program.

4. Reporting, Recordkeeping and Other Compliance Requirements

This final rule imposes higher fees for filers of Forms I-129 and I-140, and new fees for filers of Civil Surgeon Designation requests and Form I-924, EB-5 Regional Center applications. The new fee structure, as it applies to the small entities outlined above, results in the following fees: Form I-129 (\$355), Form I-140 (\$630), Civil Surgeon Designation (\$615), and Form I-924 (\$6,820). As discussed in the IRFA, in

order not to underestimate the impact of this rule, DHS analyzed fees based on non-appropriated funding. DHS has applied these same assumptions to the FRFA. The final rule does not require any new professional skills for reporting.

5. Steps Taken To Minimize Significant Adverse Economic Impacts on Small Entities

Section 286(m) of 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 collected for other immigration benefits. Without an increase in fees, USCIS will not be able to provide applicants and petitioners with the same levels of service for immigration and naturalization benefits. DHS has considered and rejected the alternative of maintaining fees at the current level with reduced services and increased wait times.

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 on small entities. An alternative to the increased economic burden of the fee adjustment is to maintain fees at their current level for small entities. The strength of this alternative is that it assures that no additional fee-burden is placed on small entities; however, this alternative also would cause negative impacts to small entities.

Without the fee adjustments provided in this final rule, significant operational changes to USCIS 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 customer service, and reduced efficiency over time. These cuts would ultimately represent an increased cost to small entities by causing delays in benefit processing and less customer service.

B. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires certain actions to be taken before an agency promulgates any notice of rulemaking "that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year." 2 U.S.C. 1532(a). 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, 2 U.S.C. 658(6), as 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. 2 U.S.C. 658(7)(A)(ii). Therefore, no actions were deemed necessary under the provisions of the UMRA.

C. Small Business Regulatory Enforcement Fairness Act

This rulemaking is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rulemaking will result in an annual effect on the economy of more than \$100 million, in order to generate the revenue necessary to fully fund the increased cost associated with the processing of immigration benefit requests and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the proposed regulation, at no charge. The increased costs will be recovered through the fees charged for various immigration benefit applications.

D. Executive Order 12866

This rule is considered by the Department of Homeland Security to be an economically significant regulatory action under Executive Order 12866, section 3(f)(1), Regulatory Planning and Review. Accordingly, this rule has been reviewed by the Office of Management and Budget.

The implementation of this rule would provide USCIS with an average of \$209 million in FY 2010 and FY 2011 annual fee revenue, based on a projected annual fee-paying volume of 4.4 million immigration benefit requests and 1.9 million requests for biometric services, over the fee revenue that would be

collected under the current fee structure. This increase in revenue will be used pursuant to sections 286(m) and (n) of the INA, 8 U.S.C. 1356(m) and (n), to fund the full costs of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to others at no charge.

If USCIS does not adjust current fees to recover the full costs of processing immigration benefit requests, USCIS would be forced to implement additional significant spending reductions resulting in a reversal of the considerable progress it has made over the last several years to reduce the backlogs of immigration benefit filings, to increase the integrity of the immigration benefit system, and to

protect national security and public safety. The revenue increase is based on USCIS costs and projected volumes that were available at the time the final rule was drafted. USCIS has placed a detailed analysis in the rulemaking docket that explains the basis for the annual fee increase and has included the required OMB Circular A-4 detailing the annualized impacts of the rule in table 2.

TABLE 2—OMB CIRCULAR A-4 ACCOUNTING STATEMENT
[FY 2010 through FY 2011 (2009 Dollars)]

Category	Primary estimate
Transfers	
Annualized Monetized Transfers at 3%	\$209,264,850
Annualized Monetized Transfers at 7%	\$209,264,850

E. Executive Order 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Homeland Security has determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988

This 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 (PRA) of 1995, Public Law 104-13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule creates two new information collections.

- Application for Civil Surgeon Designation, and
 - Form I-924 and Form I-924A, Application for Regional Center under the Immigrant Investor Pilot Program.
- In accordance with the PRA, DHS published a 60-day notice in the **Federal Register** on June 11, 2010, at 75 FR 33446, requesting comments on the two new information collections. The comments on the Application for Civil Surgeon Designation and DHS's response can be found in section IV(G)(2) of this final rule. The comments on the Forms I-924 and I-924A, Application for Regional Center under the Immigrant Investor Pilot Program,

and DHS's response can be found in section IV(G)(3) of this final rule, and in an attachment to the supporting statement that will be posted to www.regulations.gov.

As required by the PRA, the two new information collections were submitted to the Office of Management and Budget (OMB) for review and approval. OMB has approved the Application for Civil Surgeon Designation. The approved OMB Control No. is 1615-0114.

DHS made some edits to the Forms I-924, and I-924A, based on the public comments and resubmitted these amended forms to OMB for review and approval.

DHS is requesting comments on the Forms I-924 and I-924A for 30 days until October 25, 2010. 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: Immigration Investor Pilot Program.

- a. *Type of information collection:* Revised information collection.
 - b. *Abstract:* This collection will be used by individuals and businesses to file a request for USCIS approval and designation as a Regional Center on behalf of an entity under the Immigrant Investor Pilot Program.
 - c. *Title of Form/Collection:* Application for Regional Center under the Immigrant Investor Pilot Program.
 - d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-924 and Form I-924A; U.S. Citizenship and Immigration Services.
 - e. *Affected public who will be asked or required to respond:* Individuals and businesses.
 - f. *An estimate of the total number of respondents:* 132 respondents filing Form I-924, and 116 respondents filing Form I-924A.
 - g. *Hours per response:* Form I-924 at 40 hours per response, and Form I-924A at 3 hours per response.
 - h. *Total Annual Reporting Burden:* 4,428 hours.
- Comments concerning Form I-924 and I-924A can be submitted to the Department of Homeland Security, USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, NW., Washington, DC 20529-2210.
- The changes to the fees will require minor amendments to immigration benefit and petition forms to reflect the new fees. The necessary changes to the annual cost burden and to the forms have been submitted to OMB using OMB Form 83-C, Correction Worksheet, and OMB has approved these changes.

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Authority delegations (government agencies), Freedom of Information; Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 244

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274A

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

■ Accordingly, the interim rule “Establishing Premium Processing for Employment-Based Petitions and Applications,” published at 66 FR 29682 on June 1, 2001, is adopted as a final rule with the following changes:

PART 103—POWERS AND DUTIES; 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; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 et seq.); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

§ 103.2 [Amended]

■ 2. Section 103.2 is amended by:
 ■ a. Removing paragraph (e)(4)(ii);
 ■ b. Redesignating paragraphs (e)(4)(iii), and (e)(4)(iv), as paragraphs (e)(4)(ii), and (e)(4)(iii), respectively; and by
 ■ c. Removing paragraph (f).

■ 3. Section 103.7 is amended by:
 ■ a. Revising paragraphs (b) and (c);
 ■ b. Redesignating paragraph (d) as paragraph (f);
 ■ c. Adding new paragraphs (d) and (e); and by
 ■ d. Revising newly redesignated paragraph (f).

The revisions and additions read as follows:

§ 103.7 Fees.

* * * * *

(b) *Amounts of fees.* (1) *Prescribed fees and charges.* (i) *USCIS fees.* A request for immigration benefits submitted to USCIS must include the required fee as prescribed under this section. The fees prescribed in this

section are associated with the benefit, the adjudication, and the type of request and not solely determined by the form number listed below. The term “form” as defined in 8 CFR part 1, may include a USCIS-approved electronic equivalent of such form as USCIS may prescribe on its official Web site at <http://www.uscis.gov>.

(A) *Certification of true copies:* \$2.00 per copy.

(B) *Attestation under seal:* \$2.00 each.

(C) *Biometric services (Biometric Fee).* For capturing, storing, or using biometrics (Biometric Fee). A service fee of \$85 will be charged of any individual who is required to have biometrics captured, stored, or used in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), whose application fee does not already include the charge for biometric services. No biometric services fee is charged when:

(1) A written request for an extension of the approval period is received by USCIS prior to the expiration date of approval of an Application for Advance Processing of Orphan Petition, if a Petition to Classify Orphan as an Immediate Relative has not yet been submitted in connection with an approved Application for Advance Processing of Orphan Petition. This extension without fee is limited to one occasion. If the approval extension expires prior to submission of an associated Petition to Classify Orphan as an Immediate Relative, then a complete application and fee must be submitted for a subsequent application.

(2) The application or petition fee for the associated benefit request has been waived under paragraph (c) of this section; or

(3) The associated benefit request is an Application for Posthumous Citizenship (Form N–644); Refugee/Asylee Relative Petition (Form I–730); Application for T Nonimmigrant Status (Form I–914); Petition for U Nonimmigrant Status (Form I–918); Application for Naturalization (Form N–400) by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service under paragraph (b)(1)(i)(WW) of this section; Application to Register Permanent Residence or Adjust Status (Form I–485) from an asylee under paragraph (b)(1)(i)(U) of this section; Application To Adjust Status under Section 245(i) of the Act (Supplement A to Form I–485) from an unmarried child less than 17 years of age, or when the applicant is the spouse, or the unmarried child less than 21 years of age of a legalized alien and who is qualified for and has applied for

voluntary departure under the family unity program from an asylee under paragraph (b)(1)(i)(V) of this section; or a Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360) meeting the requirements of paragraphs (b)(1)(i)(T)(1), (2), (3) or (4) of this section.

(D) *Immigrant visa DHS domestic processing fees.* For DHS domestic processing and issuance of required documents after an immigrant visa is issued by the Department of State: \$165.

(E) *Request for a search of indices to historical records to be used in genealogical research (Form G–1041):* \$20. The search fee is not refundable.

(F) *Request for a copy of historical records to be used in genealogical research (Form G–1041A):* \$20 for each file copy from microfilm, or \$35 for each file copy from a textual record. In some cases, the researcher may be unable to determine the fee, because the researcher will have a file number obtained from a source other than USCIS and therefore not know the format of the file (microfilm or hard copy). In this case, if USCIS locates the file and it is a textual file, USCIS will notify the researcher to remit the additional \$15. USCIS will refund the records request fee only when it is unable to locate the file previously identified in response to the index search request.

(G) *Application to Replace Permanent Resident Card (Form I–90).* For filing an application for a Permanent Resident Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name: \$365.

(H) *Application for Replacement/Initial Nonimmigrant Arrival-Departure Document (Form I–102).* For filing a petition for an application for Arrival/Departure Record (Form I–94) or Crewman’s Landing Permit (Form I–95), in lieu of one lost, mutilated, or destroyed: \$330.

(I) *Petition for a Nonimmigrant Worker (Form I–129).* For filing a petition for a nonimmigrant worker: \$325.

(J) *Petition for Nonimmigrant Worker in CNMI (Form I–129CW).* For an employer to petition on behalf of one or more beneficiaries: \$325 plus a supplemental CNMI education funding fee of \$150 per beneficiary per year. The CNMI education funding fee cannot be waived.

(K) *Petition for Alien Fiancé(e) (Form I–129F).* For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act: \$340; there is no fee 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 United States citizen on a Petition for Alien Relative (Form I-130).

(L) *Petition for Alien Relative (Form I-130)*. For filing a petition to classify status of an alien relative for issuance of an immigrant visa under section 204(a) of the Act: \$420.

(M) *Application for Travel Document (Form I-131)*. For filing an application for travel document:

(1) \$165 for a Refugee Travel Document for an adult age 16 or older.

(2) \$105 for a Refugee Travel Document for a child under the age of 16.

(3) \$360 for advance parole and any other travel document.

(4) No fee if filed in conjunction with a pending or concurrently filed Application to Register Permanent Residence or Adjust Status (Form I-485) when that application was filed with a fee on or after July 30, 2007.

(N) *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: \$580.

(O) *Application for Advance Permission to Return to Unrelinquished Domicile (Form I-191)*. For filing an application for discretionary relief under section 212(c) of the Act: \$585.

(P) *Application for Advance Permission to Enter as a Nonimmigrant (Form I-192)*. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case or where the approval of the application is in the interest of the United States Government: \$585.

(Q) *Application for Waiver for Passport and/or Visa (Form I-193)*. For filing an application for waiver of passport and/or visa: \$585.

(R) *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 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 in lieu of deportation: \$585.

(S) *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: \$630. 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 from an Iraqi or Afghan national who worked for or on behalf of the U.S. Government in Iraq or Afghanistan.

(T) *Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)*. For filing a petition for an Amerasian, Widow(er), or Special Immigrant: \$405. The following requests are exempt from this fee:

(1) A petition seeking classification as an Amerasian;

(2) A self-petitioning battered or abused spouse, parent, or child of a United States citizen or lawful permanent resident;

(3) A Special Immigrant Juvenile; or

(4) An Iraqi or Afghan national who worked for, or on behalf of the U.S. Government in Iraq or Afghanistan.

(U) *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) \$985 for an applicant 14 years of age or older; or

(2) \$635 for an applicant under the age of 14 years when it is:

(i) Submitted concurrently for adjudication 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.

(3) There is no fee if an applicant is filing as a refugee under section 209(a) of the Act.

(V) *Application to Adjust Status under section 245(i) of the Act (Supplement A to Form I-485)*. Supplement A to Form I-485 for persons seeking to adjust status under the provisions of section 245(i) of the Act: \$1,000. There is no fee when the applicant is an unmarried child less than 17 years of age, or when the applicant is the spouse, or the unmarried child less than 21 years of age of a legalized alien and who is qualified for and has applied for voluntary departure under the family unity program.

(W) *Immigrant Petition by Alien Entrepreneur (Form I-526)*. For filing a petition for an alien entrepreneur: \$1,500.

(X) *Application To Extend/Change Nonimmigrant Status (Form I-539)*. For filing an application to extend or change nonimmigrant status: \$290.

(Y) *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. Only one fee is required when more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters: \$720.

(Z) *Application for Advance Processing of Orphan Petition (Form I-600A)*. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.): \$720. No fee is charged if Form I-600 has not yet been submitted in connection with an approved Form I-600A subject to the following conditions:

(1) The applicant requests an extension of the approval in writing and the request is received by USCIS prior to the expiration date of approval.

(2) The applicant's home study is updated and USCIS determines that proper care will be provided to an adopted orphan.

(3) A no fee extension is limited to one occasion. If the Form I-600A approval extension expires prior to submission of an associated Form I-600, then a complete application and fee must be submitted for any subsequent application.

(AA) *Application for Waiver of Ground of Inadmissibility (Form I-601)*. For filing an application for waiver of grounds of inadmissibility: \$585.

(BB) *Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Act) (Form I-612)*. For filing an application for waiver of the foreign residence requirement under section 212(e) of the Act: \$585.

(CC) *Application for Status as a Temporary Resident under Section 245A of the Act (Form I-687)*. For filing an application for status as a temporary resident under section 245A(a) of the Act: \$1,130.

(DD) *Application for Waiver of Grounds of Inadmissibility under Sections 245A or 210 of the Act (Form I-690)*. For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act in conjunction with the application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: \$200.

(EE) *Notice of Appeal of Decision under Sections 245A or 210 of the 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: \$755.

(FF) *Application to Adjust Status from Temporary to Permanent Resident*

(Under Section 245A of Public Law 99-603) (Form I-698). For filing an application to adjust status from temporary to permanent resident (under section 245A of Public Law 99-603): \$1020. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.

(GG) *Petition to Remove the Conditions of Residence based on marriage* (Form I-751). For filing a petition to remove the conditions on residence based on marriage: \$505.

(HH) *Application for Employment Authorization* (Form I-765): \$380; no fee if filed in conjunction with a pending or concurrently filed Application to Register Permanent Residence or Adjust Status (Form I-485) when that request was filed with a fee on or after July 30, 2007.

(II) *Petition to Classify Convention Adoptee as an Immediate Relative* (Form I-800).

(1) 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 approval period.

(2) If more than one Form I-800 is filed during the approval period for different children, the fee is \$720 for the second and each subsequent petition submitted.

(3) If the children are already siblings before the proposed adoption, however, only one filing fee of \$720 is required, regardless of the sequence of submission of the immigration benefit.

(JJ) *Application for Determination of Suitability to Adopt a Child from a Convention Country* (Form I-800A). For filing an application for determination of suitability to adopt a child from a Convention country: \$720.

(KK) *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-800 has not been filed based on the approval of the Form I-800A, and Form I-800A Supplement 3 is filed in order to obtain a first extension of the approval of the Form I-800A: \$360.

(LL) *Application for Family Unity Benefits* (Form I-817). For filing an application for voluntary departure under the Family Unity Program: \$435.

(MM) *Application for Temporary Protected Status* (Form I-821). For first time applicants: \$50. This \$50 application fee does not apply to re-registration.

(NN) *Application for Action on an Approved Application or Petition* (Form

I-824). For filing for action on an approved application or petition: \$405.

(OO) *Petition by Entrepreneur to Remove Conditions* (Form I-829). For filing a petition by entrepreneur to remove conditions: \$3,750.

(PP) *Application for Suspension of Deportation or Special Rule Cancellation of Removal* (Pursuant to Section 203 of Pub. L. 105-100) (Form I-881):

(1) \$285 for adjudication by the Department of Homeland Security, except that the maximum amount payable by family members (related as husband, wife, unmarried child under 21, unmarried son, or unmarried daughter) who submit applications at the same time shall be \$570.

(2) \$165 for adjudication by the Immigration Court (a single fee of \$165 will be charged whenever applications are filed by two or more aliens in the same proceedings).

(3) The \$165 fee is not required if the Form I-881 is referred to the Immigration Court by the Department of Homeland Security.

(QQ) *Application for Authorization to Issue Certification for Health Care Workers* (Form I-905): \$230.

(RR) *Request for Premium Processing Service* (Form I-907). The fee must be paid in addition to, and in a separate remittance from, other filing fees. The request for premium processing fee will be adjusted annually by notice in the **Federal Register** based on inflation according to the Consumer Price Index (CPI). The fee to request premium processing: \$1,225. The fee for Premium Processing Service may not be waived.

(SS) *Civil Surgeon Designation*. For filing an application for civil surgeon designation: \$615. There is no fee for an application from a medical officer in the U.S. Armed Forces or civilian physician employed by the U.S. government who examines members and veterans of the armed forces and their dependents at a military, Department of Veterans Affairs, or U.S. Government facility in the United States.

(TT) *Application for Regional Center under the Immigrant Investor Pilot Program* (Form I-924). For filing an application for regional center under the Immigrant Investor Pilot Program: \$6,230.

(UU) *Petition for Qualifying Family Member of a U-1 Nonimmigrant* (Form I-929). For U-1 principal applicant to submit for each qualifying family member who plans to seek an immigrant visa or adjustment of U status: \$215.

(VV) *Application to File Declaration of Intention* (Form N-300). For filing an application for declaration of intention to become a U.S. citizen: \$250.

(WW) *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: \$650.

There is no fee if filed on or after October 1, 2004, by 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.

(XX) *Application for Naturalization* (Form N-400). For filing an application for naturalization (other than such application filed on or after October 1, 2004, by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service, for which no fee is charged): \$595.

(YY) *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: \$330.

(ZZ) *Application for Replacement Naturalization/Citizenship Document* (Form N-565). For filing an application for a certificate of naturalization or declaration of intention in lieu 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: \$345. 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.

(AAA) *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 for applications filed on behalf of a biological child: \$600. For applications filed on behalf of an adopted child: \$550. There is no fee for any application filed by a member or veteran of any branch of the United States Armed Forces.

(BBB) *Application for Citizenship and Issuance of Certificate under section 322 of the Act* (Form N-600K). For filing an application for citizenship and issuance of certificate under section 322 of the Act: \$600, for an application filed on behalf of a biological child, and \$550 for an application filed on behalf of an adopted child.

(ii) *Other DHS immigration fees*. The following fees are applicable to one or more of the immigration components of DHS:

(A) DCL System Costs Fee. For use of a Dedicated Commuter Lane (DCL)

located at specific ports-of-entry of the United States by an approved participant in a designated vehicle: \$80.00, with the maximum amount of \$160.00 payable by a family (husband, wife, and minor children under 18 years of age). Payable following approval of the application but before use of the DCL by each participant. This fee is non-refundable, but may be waived by DHS. If a participant wishes to enroll more than one vehicle for use in the PORTPASS system, he or she will be assessed with an additional fee of: \$42 for each additional vehicle enrolled.

(B) *Form I-17*. For filing a petition for school certification: \$1,700, plus a site visit fee of \$655 for each location listed on the form.

(C) *Form I-68*. For application for issuance of the Canadian Border Boat Landing Permit under section 235 of the Act: \$16.00. The maximum amount payable by a family (husband, wife, unmarried children under 21 years of age, and parents of either husband or wife) shall be \$32.00.

(D) *Form I-94*. For issuance of Arrival/Departure Record at a land border port-of-entry: \$6.00.

(E) *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.

(F) *Form I-246*. For filing application for stay of deportation under 8 CFR part 243: \$155.00.

(G) *Form I-823*. For application to a PORTPASS program under section 286 of the Act—\$25.00, with the maximum amount of \$50.00 payable by a family (husband, wife, and minor children under 18 years of age). The application fee may be waived by the district director. 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. Both the application fee (if not waived) and the fingerprint fee must be paid to CBP before the application will be processed. The fingerprint fee may not be waived. For replacement of PORTPASS documentation during the participation period: \$25.00.

(H) *Form I-901*. For remittance of the I-901 SEVIS fee for F and M students: \$200. For remittance of the I-901 SEVIS fee for certain J exchange visitors: \$180. For remittance of the I-901 SEVIS fee for J-1 au pairs, camp counselors, and participants in a summer work/travel program: \$35. There is no I-901 SEVIS fee remittance obligation 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.

(I) *Special statistical tabulations*—a charge will be made to cover the cost of the work involved: DHS Cost.

(J) *Set of monthly, semiannual, or annual tables entitled "Passenger Travel Reports via Sea and Air"*: \$7.00.

Available from DHS, then the Immigration & Naturalization Service, for years 1975 and before. Later editions are available from the United States Department of Transportation, contact: United States Department of Transportation, Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

(K) *Classification of a citizen of Canada to be engaged in business activities at a professional level pursuant to section 214(e) of the Act (Chapter 16 of the North American Free Trade Agreement)*: \$50.00.

(L) *Request for authorization for parole of an alien into the United States*: \$65.00.

(2) *Fees for copies of records*. Fees for production or disclosure of records under 5 U.S.C. 552 shall be charged in accordance with the regulations of the Department of Homeland Security at 6 CFR 5.11.

(3) *Adjustment to fees*. The fees prescribed in paragraph (b)(1)(i) of this section may be adjusted annually by publication of an inflation adjustment. The inflation adjustment will be announced by a publication of a notice in the **Federal Register**. The adjustment shall be a composite of the Federal civilian pay raise assumption and non-pay inflation factor for that fiscal year issued by the Office of Management and Budget for agency use in implementing OMB Circular A-76, weighted by pay and non-pay proportions of total funding for that fiscal year. If Congress enacts a different Federal civilian pay raise percentage than the percentage issued by OMB for Circular A-76, the Department of Homeland Security may adjust the fees, during the current year or a following year to reflect the enacted level. The prescribed fee or charge shall be the amount prescribed in paragraph (b)(1)(i) of this section, plus the latest inflation adjustment, rounded to the nearest \$5 increment.

(4) *Fees for immigration court and Board of Immigration Appeals*. Fees for proceedings before immigration judges and the Board of Immigration Appeals are provided in 8 CFR 1103.7.

(c) *Waiver of fees*. (1) *Eligibility for a fee waiver*. Discretionary waiver of the fees provided in paragraph (b)(1)(i) of this section are limited as follows:

(i) The party requesting the benefit is unable to pay the prescribed fee.

(ii) A waiver based on inability to pay is consistent with the status or benefit sought including requests that require demonstration of the applicant's ability to support himself or herself, or individuals who seek immigration status based on a substantial financial investment.

(2) *Requesting a fee waiver*. To request a fee waiver, a person requesting an immigration benefit must submit a written request for permission to have their request processed without payment of a fee with their benefit request. The request must state the person's belief that he or she is entitled to or deserving of the benefit requested, the reasons for his or her inability to pay, and evidence to support the reasons indicated. There is no appeal of the denial of a fee waiver request.

(3) *USCIS fees that may be waived*. No fee relating to any application, petition, appeal, motion, or request made to U.S. Citizenship and Immigration Services may be waived except for the following:

(i) Biometric Fee,

(ii) Application to Replace Permanent Resident Card,

(iii) Petition for a CNMI-Only Nonimmigrant Transitional Worker,

(iv) Application for Travel Document when filed to request humanitarian parole,

(v) Application for Advance Permission to Return to Unrelinquished Domicile,

(vi) Notice of Appeal or Motion, when there is no fee for the underlying application or petition or that fee may be waived,

(vii) Petition to Remove the Conditions of Residence based on marriage (Form I-751),

(viii) Application for Employment Authorization,

(ix) Application for Family Unity Benefits,

(x) Application for Temporary Protected Status,

(xi) Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Pub. L. 105-110),

(xii) Application to File Declaration of Intention, Request for a Hearing on a Decision in Naturalization Proceedings (under section 336 of the INA),

(xiii) Application for Naturalization,

(xiv) Application to Preserve Residence for Naturalization Purposes,

(xv) Application for Replacement Naturalization/Citizenship Document,

(xvi) Application for Certificate of Citizenship,

(xvii) Application for Citizenship and Issuance of Certificate under section 322 of this Act, and

(xviii) Any fees associated with the filing of any benefit request by a VAWA

self-petitioner or under sections 101(a)(15)(T) (T visas), 101(a)(15)(U) (U visas), 106 (battered spouses of A, G, E-3, or H nonimmigrants), 240A(b)(2) (battered spouse or child of a lawful permanent resident or U.S. citizen), and 244(a)(3) (Temporary Protected Status), of the Act (as in effect on March 31, 1997).

(4) The following fees may be waived only for an alien for which a determination 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.:

- (i) Application for Advance Permission to Enter as Nonimmigrant;
- (ii) Application for Waiver for Passport and/or Visa;
- (iii) Application to Register Permanent Residence or Adjust Status;
- (iv) Application for Waiver of Grounds of Inadmissibility.

(5) *Immigration Court fees.* The provisions relating to the authority of the immigration judges or the Board to waive fees prescribed in paragraph (b) of this section in cases under their jurisdiction can be found at 8 CFR 1003.8 and 1003.24.

(6) *Fees under the Freedom of Information Act (FOIA).* FOIA fees may be waived or reduced if DHS determines that such action would be in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(d) *Exceptions and exemptions.* The Director of USCIS may approve and suspend exemptions from any fee required by paragraph (b)(1)(i) of this section or provide that the fee may be waived 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 discretionary authority will not be delegated to any official other than the USCIS Deputy Director.

(e) *Premium processing service.* A person submitting a request to USCIS may request 15 calendar day processing of certain employment-based immigration benefit requests.

(1) *Submitting a request for premium processing.* A request for premium processing must be submitted on the form prescribed by USCIS, including the required fee, and submitted to the address specified on the form instructions.

(2) *15-day limitation.* The 15 calendar day processing period begins when USCIS receives the request for premium processing accompanied by an eligible

employment-based immigration benefit request.

(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.

(ii) USCIS may retain the premium processing fee and not reach a conclusion on the request within 15 days, and not notify the person who filed the request, if USCIS opens an investigation for fraud or misrepresentation relating to the benefit request.

(3) *Requests eligible for premium processing.*

(i) USCIS will designate the categories of employment-related benefit requests that are eligible for premium processing.

(ii) USCIS will announce by its official Internet Web site, 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.

(f) *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.

PART 204—IMMIGRANT PETITIONS

■ 4. 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.

■ 5. Section 204.6 is amended by revising paragraph (m)(6) to read as follows:

§ 204.6 Petitions for employment creation aliens.

* * * * *

(m) * * *

(6) *Termination of participation of regional centers.* To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, a regional center must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area. Such information must be submitted to USCIS on an annual basis, on a cumulative basis, and/or as otherwise requested by USCIS, using a form designated for this purpose. USCIS will issue a notice of

intent to terminate the participation of a regional center in the pilot program if a regional center fails to submit the required information or upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination. The regional center must be provided 30 days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged in the notice of intent to terminate. If USCIS determines that the regional center's participation in the Pilot Program should be terminated, USCIS shall notify the regional center of the decision and of the reasons for termination. As provided in 8 CFR 103.3, the regional center may appeal the decision to USCIS within 30 days after the service of notice.

* * * * *

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

■ 4. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

§ 244.20 [Removed]

■ 5. Section 244.20 is removed.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 6. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; Title VII of Public Law 110-229; 8 CFR part 2.

■ 7. Section 274a.12 is amended by revising paragraphs (a)(8) and (a)(11) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) * * *

(8) An alien admitted to the United States as a nonimmigrant pursuant to the Compact of Free Association between the United States and of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau;

* * * * *

(11) An alien whose enforced departure from the United States has been deferred in accordance with a directive from the President of the United States to the Secretary.

Employment is authorized for the
period of time and under the conditions

established by the Secretary pursuant to
the Presidential directive;

* * * * *

Janet Napolitano,

Secretary.

[FR Doc. 2010-23725 Filed 9-23-10; 8:45 am]

BILLING CODE 9111-97-P