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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 103

[CIS No. 2649-19; DHS Docket No. USCIS-2019-0018]

RIN 1615-ZB81

Adjustment to Premium Processing Fee

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

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is increasing the premium processing fee charged by U.S. Citizenship and Immigration Services (USCIS). DHS is increasing the fee to reflect the full amount of inflation from the institution of the premium processing fee in June 2001 through August 2019 according to the Consumer Price Index for All Urban Consumers (CPI-U). The adjustment increases the fee from \$1,410 to \$1,440.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Applications postmarked on or after that date must include the new fee.

FOR FURTHER INFORMATION CONTACT: Kika M. Scott, Chief Financial Officer, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529-2130; or by phone at (202) 272-8377 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR – Code of Federal Regulations
CPI – Consumer Price Index
CPI-U – Consumer Price Index for All Urban Consumers
DHS – Department of Homeland Security
Form I-129 – Petition for a Nonimmigrant Worker
Form I-140 – Immigrant Petition for Alien Worker
INA – Immigration and Nationality Act
USCIS – U.S. Citizenship and Immigration Services

I. Background and Authority

The Immigration and Nationality Act (INA) permits certain employment-based immigration benefit applicants and petitioners to request, for an additional fee, premium processing. The applicable statute authorizes the Secretary of Homeland Security (Secretary) to charge and collect a premium processing fee for employment-based petitions and applications. The fee must be used to provide certain premium-processing services to business petitioners and to make infrastructure improvements in the adjudications and customer service processes. By statute, the fee, initially set at \$1,000, must be paid in addition to any normal petition/application fee that may be applicable. The statute provides that the Secretary may adjust this fee according to the Consumer Price Index (CPI). *See* INA section 286(u), 8 U.S.C. 1356(u); Pub. L. 106-553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A-68 (Dec. 21, 2000).

Premium processing allows filers to request 15-day processing of certain employment-based immigration benefit requests if they pay an extra amount. *See* 8 CFR 103.7(b)(1)(i)(SS) and (e). The premium processing fee is paid in addition to the base filing fee and any other applicable fees. *See* 8 CFR 103.7(b)(1)(i)(SS)(I). It cannot be waived. *See* 8 CFR 103.7(b)(1)(i)(SS)(3). USCIS uses premium processing fee revenue

to improve its adjudications and customer service processes, fund the cost of providing premium services, and modernize its information technology systems.

Premium processing is currently authorized for certain petitioners filing a Form I-129, Petition for a Nonimmigrant Worker, or a Form I-140, Immigrant Petition for Alien Worker, and seeking certain employment-based classifications. *See* 8 CFR 103.7(b)(1)(i)(SS) and (e).¹ DHS first adjusted the premium processing fee to \$1,225 in its 2010 USCIS fee rule. *See USCIS Fee Schedule; Final Rule*, 75 FR 58961, 58978, 58988 (Sept. 24, 2010); 8 CFR 103.7(b)(1)(i)(RR) (effective Nov. 23, 2010, codified as amended at 8 CFR 103.7(b)(1)(i)(SS), 81 FR 73292, 73331 (Oct. 24, 2016)). DHS last adjusted the premium processing fee to \$1,410 in October 2018. *See Adjustment to Premium Processing Fee; Final Rule*, 83 FR 44449 (Aug. 31, 2018); 8 CFR 103.7(b)(1)(i)(SS) (effective Oct. 1, 2018).

II. Basis for Adjustment

Consistent with INA section 286(u), 8 U.S.C. 1356(u), DHS has calculated the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) to measure inflation. DHS used the CPI-U as of April 2018 as the end point for the period of inflation to establish the current premium processing fee. *See* 83 FR 44449. For this adjustment, DHS calculated the total amount of inflation from June 2001, when the premium processing fee was first implemented, through August 2019.² In June 2001 the

¹ *See also* USCIS, How Do I Use the Premium Processing Service, <https://www.uscis.gov/forms/how-do-i-use-premium-processing-service> (last reviewed/updated June 20, 2019, last visited Aug. 14, 2019).

² DHS uses June 2001 as its baseline because, although section 286(u), 1356(u) was enacted on December 21, 2000, the fee was not put in place until June 2001. 66 FR 29682. This is consistent with previous premium processing fee adjustments. *See* 75 FR 33446, 33477 (June 11, 2010). It also produces the same fee that would have been produced by using the methodology in last year's inflation adjustment. DHS plans to use this methodology moving forward.

CPI-U was 178.0, and in August 2019 it was 256.558.³ Therefore, between June 2001 and August 2019, the CPI-U increased by 44.13 percent.⁴ When this percentage increase is applied to the June 2001 premium processing fee of \$1,000, the adjusted premium processing fee is \$1,441.34 (\$1,440 when rounded to the nearest \$5 increment). Thus, under INA section 286(u), 8 U.S.C. 1356(u), the USCIS premium processing fee will be \$1,440. *See* new 8 CFR 103.7(b)(1)(i)(SS).

USCIS intends to use the funds generated by the fee increase to provide certain premium processing services to business customers and to make infrastructure improvements in the adjudications and customer service processes. In recent years, premium processing has been temporarily suspended on employment-based petitions to permit officers working on premium processing cases to process long-pending non-premium filed petitions, as well as to prevent a lapse in employment authorization for beneficiaries of extension petitions resulting from the high volume of incoming petitions and a significant surge in premium processing requests.⁵ Since DHS last adjusted the premium processing fee in October 2018, USCIS has used the additional resources from the increased fee plus existing resources, to restart premium processing service for all

³ The latest CPI-U data is available at <http://data.bls.gov/cgi-bin/surveymost?bls>. Select CPI-U 1982-84=100 (Unadjusted) - CUUR0000SA0 and click the Retrieve data button.

⁴ DHS calculated this by subtracting the June 2001 CPI-U (178.0) from the August 2019 CPI-U (256.558), then dividing the result (78.558) by the June 2001 CPI-U (178.0). Calculation: $(256.558 - 178.0) / 178.0 = .4413 \times 100 = 44.13$ percent.

⁵ *See* USCIS Will Temporarily Suspend Premium Processing for All H-1B Petitions, <https://www.uscis.gov/archive/uscis-will-temporarily-suspend-premium-processing-all-h-1b-petitions> (last reviewed/updated: 03/03/2017); USCIS Will Temporarily Suspend Premium Processing for Fiscal Year 2019 H-1B Cap Petitions, <https://www.uscis.gov/news/alerts/uscis-will-temporarily-suspend-premium-processing-fiscal-year-2019-h-1b-cap-petitions> (last reviewed/updated: 03/20/2018); USCIS Extends and Expands Suspension of Premium Processing for H-1B Petitions to Reduce Delays, <https://www.uscis.gov/news/uscis-extends-and-expands-suspension-premium-processing-h-1b-petitions-reduce-delays> (last reviewed/updated: 08/28/2018).

eligible petitions that had been temporarily suspended.⁶ DHS believes that adjusting the fee for inflation will enable USCIS to continue providing the current level of premium processing service without future interruption or suspension; however, the modest fee increase would not eliminate the potential that other changes may be needed to mitigate the risk of processing disruptions.

A request for premium processing postmarked on or after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] must include the new fee. Petitioners must pay the \$1,440 fee in addition to and separate from other filing fees. 8 CFR 103.7(b)(1)(i)(SS)(1). The premium processing fee may not be waived. 8 CFR 103.7(b)(1)(i)(SS)(3).

III. Regulatory Requirements

A. Administrative Procedure Act

DHS is making this fee increase final without notice and comment because it is unnecessary. 5 U.S.C. 553(b)(B). By law, DHS may adjust the premium processing fee for inflation according to the CPI. *See* INA section 286(u), 8 U.S.C. 1356(m). DHS has previously established by regulation that DHS may adjust the fee annually by notice in the *Federal Register*. 8 CFR 103.7(b)(1)(i)(SS)(2). No comments were received on the USCIS Fee Schedule; Final Rule regarding USCIS's authority to adjust the premium processing fee for inflation in the future. *See* 75 FR 58961-58991. The sole exercise of discretion here relates to the determination whether, as a matter of internal agency management, DHS and USCIS need additional premium processing fee revenue to

⁶ *See* USCIS Resumes Premium Processing for All H-1B Petitions, <https://www.uscis.gov/news/alerts/uscis-resumes-premium-processing-all-h-1b-petitions> (last reviewed/updated: 03/11/2019). Premium processing has not been suspended for any product line since this announcement.

provide at least the same level of premium services and to make infrastructure improvements for adjudication processes and customer service as authorized by INA 286(u), 8 U.S.C. 1356(u); which months to use for purposes of the adjustment; and whether, as a procedural matter, payment of such increased fee will be a precondition for receiving the premium processing service. Therefore, further delay of this regulation change to solicit public comments is unnecessary.

B. Other Regulatory Requirements

Because this action is not subject to the notice-and-comment requirements under the Administrative Procedure Act, a final regulatory flexibility analysis is not required. *See* 5 U.S.C. 604(a). In addition, this rule is not a “major rule” as defined by the Congressional Review Act, 5 U.S.C. 804(2), and thus is not subject to a 60-day delay in the rule becoming effective. This action is not subject to the written statement requirements of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Orders 13132 or 13175. This rule also does not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). *See* 40 CFR 1507.3(b)(2)(ii) and 1508.4. This action does not affect the quality of the human environment and fits within Categorical Exclusion number A3(d) in Dir. 023-01 Rev. 01, Appendix A, Table 1, for rules that interpret or amend an existing regulation without changing its environmental effect.

Finally, this action does not require review by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563. As previously discussed, DHS has the authority to adjust the premium processing fee according to the CPI-U. DHS is

increasing the premium processing fee by \$30 per Form I-907, Request for Premium Processing Service (from a fee of \$1,410 to \$1,440 per Form I-907). Table 1 shows the total number of premium processing Forms I-907 received by USCIS from fiscal year 2014 to 2018. On average, USCIS received 262,301 Forms I-907 annually during this timeframe.

Table 1: Total Number of Premium Processing (Form I-907) Requests Received, Fiscal Years 2014 – 2018.	
Fiscal Year	Total Form I-907 Receipts Received
2014	218,400
2015	234,576
2016	319,517
2017	231,839
2018	307,173
Average	262,301

DHS estimates an additional annual \$7.9 million in revenue to be collected from the increase in premium processing fees due to adjustment of inflation.⁷ As discussed earlier, the premium processing fee revenue will be used to make infrastructure improvements for adjudication processes and customer service as well as to fund the cost of providing premium services.

This rule imposes transfer payments between the public and the government.

Thus, this action is exempt from Executive Order 13771.

List of Subjects in 8 CFR Part 103

⁷ Additional revenue collected = 262,301 average number of premium processing Forms I-907 received * \$30 increase in premium processing fees = \$7,869,030.

Administrative practice and procedure, Authority delegations, Freedom of information (Government agencies), Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

For the reasons stated in the preamble, DHS amends part 103 of chapter I of title 8 of the Code of Federal Regulations as follows:

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1356b, 1372; 31 U.S.C. 9701; Pub. L.107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112-54, 125 Stat 550..

§103.7 [Amended]

2. Section 103.7 is amended in paragraph (b)(1)(i)(SS) introductory text by removing “\$1,410” and adding in its place “\$1,440”.

Kevin K. McAleenan,
Acting Secretary.

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