

Rules and Regulations

Federal Register

Vol. 83, No. 170

Friday, August 31, 2018

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 103

[CIS No. 2620-18; DHS Docket No. USCIS-2018-0003]

RIN 1615-ZB73

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 by 14.92 percent, the percentage change in inflation since the fee was last adjusted in 2010 according to the Consumer Price Index for All Urban Consumers (CPI-U). The adjustment increases the fee from \$1,225 to \$1,410.

DATES: This rule is effective on October 1, 2018. Applications postmarked on or after that date must include the new fee.

FOR FURTHER INFORMATION CONTACT: Joseph D. Moore, 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) 272-1969 (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—Form I-129, Petition for a Nonimmigrant Worker
 Form I-140—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 a 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 customers, 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. INA section 286(u), 8 U.S.C. 1356(u); Public Law 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)(1). 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 costs of providing the premium services, and modernize its information technology systems.

Premium processing is currently authorized for certain petitioners filing a Petition for a Nonimmigrant Worker (Form I-129), or an Immigrant Petition for Alien Worker (Form I-140) seeking certain employment-based classifications. See 8 CFR 103.7(b)(1)(i)(SS) and (e).¹ DHS last 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)).

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 Oct. 3, 2017, last visited June 7, 2018).

II. Basis for Adjustment

Consistent with INA section 286(u), 8 U.S.C. 1356(u), DHS has calculated the percent change in the CPI-U to measure inflation. For the end point for the period of inflation to establish the current premium processing fee, DHS used the Consumer Price Index-Urban Consumers (CPI-U) as of June 2010. See 75 FR 58961. Accordingly, we have used July 2010 as the starting point for this change. In July 2010 the CPI-U was 218.01, and in April 2018 it was 250.55.² Therefore, between July 2010 and April 2018, the CPI-U increased by 14.92 percent.³ When the percentage increase is applied to the current premium processing fee of \$1,225, the adjusted premium processing fee is \$1,408 (\$1,410 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 \$1,410. See final 8 CFR 103.7(b)(1)(i)(SS).

USCIS intends to use the premium funds that are 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 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.⁴

² The latest CPI-U data is available at <http://data.bls.gov/cgi-bin/survey/most?b1s>. Select CPI for All Urban Consumers (CPI-U) 1982-84=100 (Unadjusted)—CUUR0000SA0 and click the Retrieve data button.

³ We calculated this by subtracting the July 2010 CPI-U (218.01) from the April 2018 CPI-U (250.55). We divided the result (32.54) by the July 2010 CPI-U (218.01). Calculation: $(250.55 - 218.01) / 218.01 = 14.92$ percent.

⁴ 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).

The additional staff hired through the premium funds will allow USCIS to provide premium processing service with less disruption and improve the adjudications and customer service process. USCIS also plans to make adequate investment in information technology systems that will improve the adjudications process and the services provided to applicants and petitioners.

A request for premium processing postmarked on or after October 1, 2018 must include the new fee. Petitioners must pay the \$1,410 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).⁵

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 Consumer Price Index. 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. 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 amount of the increase would not be changed by public comment. The sole exercise of discretion here relates to the determination whether, as a matter of internal agency management, DHS and USCIS needs additional premium processing fee revenue to provide premium processing services and to make infrastructure improvements in the adjudications and customer-service processes as authorized by INA 286(u), 8 U.S.C. 1356(u), 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 APA, 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

⁵ This rule also makes a technical correction to the authority citation for 8 CFR part 103. In a previous DHS rule, a citation to 48 U.S.C. 1806 was inadvertently removed. See 76 FR 53764, 53780. This rule reinserts that citation.

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). 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 fees according to the CPI-U. DHS is adjusting the premium processing fee by 14.92 percent resulting in an increase of \$185 per Form I-907 (from a fee of \$1,225 per premium processing Form I-907 to \$1,410 per Form I-907). Table 1 shows the total number of premium processing Forms I-907 received by USCIS from fiscal year 2013 to 2017. On average, USCIS received 238,784 Forms I-907 annually during this timeframe.

TABLE 1—TOTAL NUMBER OF PREMIUM PROCESSING (FORM I-907) REQUESTS RECEIVED, FISCAL YEARS 2013–2017

Fiscal year	Total Form I-907 receipts received
2013	189,588
2014	218,400
2015	234,576
2016	319,517
2017	231,839
Average	238,784

Source: USCIS, Office of the Chief Financial Officer.

DHS estimates an additional annual \$44 million in revenue to be collected from the increase in premium processing fees due to adjustment of inflation.⁶ As discussed earlier, the premium processing fee revenue will be used to make infrastructure improvements in the adjudications and

⁶ Additional revenue collected = 238,784 average number of premium processing Forms I-907 received * \$185 increase in premium processing fees = \$44,175,040.

customer service processes 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

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, 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 is revised 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; 48 U.S.C. 1806; 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 “\$1,225” and adding in its place “\$1,410”.

Claire M. Grady,

Acting Deputy Secretary.

[FR Doc. 2018–19108 Filed 8–30–18; 8:45 am]

BILLING CODE 9111–97–P