



DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 103

[DHS Docket No. ICEB-2020-0005]

RIN 1653-AA82

Fee Adjustment for U.S. Immigration and Customs Enforcement Form I-246, Application for a Stay of Deportation or Removal

AGENCY: U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: DHS proposes to increase the fee for adjudicating Form I-246, *Application for a Stay of Deportation or Removal*, from \$155 to \$755. The rule proposes to adjust the Form I-246 fee to recover costs, which has not been adjusted since 1989. DHS also proposes to make technical edits to the stay of deportation and removal fee regulation.

DATES: Electronic comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments on the entirety of this proposed rule, identified by Docket No. ICEB-2020-0005, through the following method:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the website instructions to submit comments.

Comments submitted in a manner other than the one listed above, including e-mails or letters sent to DHS officials, will not be considered comments on the proposed rule, and may not receive a response from DHS. Please note that DHS cannot accept any comments that are mailed, hand delivered, or couriered. In addition, DHS cannot accept mailed comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. If you cannot submit your material using

<https://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Office of the Principal Legal Advisor, Regulatory Affairs Unit, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street SW, Washington, DC 20536-5901. Telephone 202-732-6960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Acronyms and Abbreviations

ABC	Activity-Based Costing
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive Order
EOIR	Executive Office of Immigration Review
FTE	Full Time Equivalent
FY	Fiscal Year
HSA	Homeland Security Act of 2002
ICE	U.S. Immigration Customs Enforcement
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act of 1996
NEPA	National Environmental Policy Act
OMB	Office of Management and Budget
RFA	Regulatory Flexibility Act
SFFAS	Statement of Federal Financial Accounting Standards
U.S.C.	United States Code

II. Public Participation

DHS encourages all interested parties to participate in this rulemaking by submitting data, views, comments, and arguments on all aspects of this proposed rule. Comments providing the most assistance to DHS will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include the data, information, or authority that supports the recommended change. See the ADDRESSES section above for information on where to submit comments.

A. Submitting Comments

To submit your comments online, go to <https://www.regulations.gov> and insert “ICEB-2020-0005” in the “Search” box. Click on the “Comment” box and input your comments in the text box provided. When you are satisfied with your comments, follow the prompts, and then click “Submit Comment.”

DHS will post comments to the federal e-Rulemaking portal at <https://www.regulations.gov> and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines is offensive. For additional information, please read the “Privacy & Security Notice,” via the link in the footer of <https://www.regulations.gov>. DHS will consider all comments and materials received during the comment period and may change this rule based on comments received.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov> and insert “ICEB-2020-0005” in the “Search” box. Next, click on “Dockets Folder,” then on the name of the rule, and finally on “Browse All Comments.” Individuals without internet access can make

alternate arrangements for viewing comments and documents related to this rulemaking by contacting the individual listed in the FOR FURTHER INFORMATION CONTACT section above. You may also sign up for email alerts on the online docket to be notified when comments are posted, or a final rule is published.

III. Background and Purpose

A. Legal Authority

The Homeland Security Act of 2002 (HSA) provides the Secretary of Homeland Security (the Secretary) a broad range of immigration authorities. Section 102 of the HSA (Pub. L. 107-296, 116 Stat. 2135), 6 U.S.C. 112, and section 103(a)(1) and (3) of the Immigration and Nationality Act (INA), 8 U.S.C. 1103(a)(1), (3), charge the Secretary with the administration and enforcement of the immigration and naturalization laws of the United States. Section 241 of the INA authorizes the Secretary to grant a stay of deportation or removal (hereafter referred to as “stay”) in the Secretary’s unreviewable discretion. *See* INA sec. 242(g), 8 U.S.C. 1252(g) (stripping the federal courts of jurisdiction to hear any case or claim arising from the decision to execute removal orders).¹ The regulations implementing the Secretary’s authority to stay deportation or removal that are applicable to U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), include 8 CFR 241.6 and 8 CFR 103.7. Through delegation of powers from the Secretary,² ICE is authorized to adjudicate applications for stays submitted to ICE. *See* INA sec. 241(c)(2), 8 U.S.C. 1231(c)(2) and 8 CFR 241.6.³

¹ However, the INA provides alternative methods for a petitioner to contest a removal order, including a petition for review filed in the court of appeals. *See, e.g.*, INA 242(a)(2)(D).

² Under the Homeland Security Act, references to the “Attorney General” in the INA also encompass the Secretary, either solely or additionally, with respect to the statutory authorities vested in the Secretary in the Homeland Security Act or subsequent legislation. *See* 6 U.S.C. 557.

³ *See also* DHS Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement. (DHS Do. No. 7030.2 (a)(w)).

Section 286(m) of the INA authorizes the Secretary to set and collect fees for providing adjudication and naturalization services.⁴ The statute authorizes DHS to set fees at an amount that would collect the full cost of providing the services.⁵ The fee level may also include recovery of any additional costs associated with the administration of the fees.⁶ All fees collected under these authorities are deposited as offsetting receipts into the Immigration Examinations Fee Account and are available to the Secretary until expended for authorized purposes. *See* 8 U.S.C. 1356(m), (n). The current fee for Form I-246, *Application for a Stay of Deportation or Removal*, and ICE’s authority to waive the fee are set forth in 8 CFR 103.7(d)(6).

As a general matter, in developing fees and fee rules, DHS looks to a range of governmental accounting provisions. The Office of Management and Budget (OMB) Circular No. A-25, *User Charges (Revised)*, sets federal policy regarding user fees assessed for Government services and for the sale or use of Government goods or resources. OMB Circular A-25 provides guidance to executive branch agencies regarding the scope and type of activities subject to user fees and how to set such user fees.⁷ It applies to all federal activities that convey special benefits to recipients beyond those accruing to the general public. OMB Circular A-25, para. 6, 58 FR 38142 (July 15, 1993), defines “full cost” to include all direct and indirect costs to any part of the federal government for providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of the following: direct and indirect personnel cost, physical overhead, consulting and other indirect cost, management and supervisory cost,

⁴ 8 U.S.C. 1356(m) authorizes the Secretary to set and collect fees at a level that would ensure recovery of the full costs of providing such services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants.

⁵ *Id.*

⁶ *Id.*

⁷ By policy, OMB Circular A-25 shall be applied by agencies in their assessment of user charges under Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701), however, OMB Circular A-25 merely provides guidance to agencies regarding their assessment of user charges under other statutes, such as here, where ICE is assessing a fee authorized under 8 U.S.C. 1356(m).

investigation, information collection and research, and establishment of standards and regulation, including any required environmental review. Section 31.5 of OMB Circular A-11, Preparation, Submission and Execution of the Budget, July 1, 2016, directs agencies to develop user charge estimates based on the full cost recovery policy set forth in OMB Circular A-25, (budget formulation and execution policy regarding user fees).

The Federal Accounting Standards Advisory Board (FASAB) Statement of Federal Financial Accounting Standards (SFFAS) No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government, July 31, 1995, updated June 2017, provides the standards for managerial cost accounting and full cost. SFFAS No. 4 defines “full cost” to include “direct and indirect costs that contribute to the output, regardless of funding sources.” FASAB identifies various classifications of costs to be included and recommends various methods of cost assignment to identify full cost.

B. Background

After an alien becomes subject to an administratively final order of deportation or removal from the United States, ICE has discretion to grant a stay to temporarily delay the alien’s physical removal. Aliens may apply for a stay with ICE by filing Form I-246, *Application for a Stay of Deportation or Removal*, under 8 CFR 241.6.⁸ Aliens may apply for a stay from ICE once they are subject to an administratively final order of deportation or removal. An order is final when all available administrative appeals of a removal or deportation order have been exhausted, and the only remaining step is the alien’s physical removal.⁹ A stay is not considered an immigration benefit or waiver because it only provides temporary delay in the physical removal of the alien.

⁸ Pursuant to different authorities, stays of removal may also be granted in certain circumstances by the Department of Justice’s Executive Office for Immigration Review (EOIR) and the federal courts.

⁹ *But see Hechavarria v. Sessions*, 891 F.3d 49, 55-56 (2d Cir. 2018) (holding sec. 1231 does not govern when the appellate court stays removal); *Leslie v. Att’y Gen.*, 672 F.3d 265, 270 (3d Cir. 2012) (same).

When adjudicating an alien's application for a stay, in its discretion, ICE considers a number of factors, including the presence of compelling humanitarian reasons to delay the removal and if immediate physical removal is practicable or appropriate. For instance, ICE may take into consideration circumstances such as if the alien has a serious medical condition, is a minor, is required to be present in U.S. court proceedings, or other such circumstances that may result in a determination that physical removal is not in the public interest. Activities related to the adjudication of an application for an administrative stay of removal consist of, but are not limited to, conducting interviews, reviewing documentation, detecting and deterring fraud, and assessing eligibility to remain temporarily in the United States. When a stay is determined to be in the interest of the government or the public, ICE may use its discretion to grant a stay for a set period and under conditions that ICE determines are appropriate. When applying to ICE for a stay, the alien must file Form I-246 and pay the filing fee. This proposed rule seeks to adjust the filing fee that the alien must pay in the absence of an approved fee waiver.

An alien who is unable to pay the fee may request a fee waiver for Form I-246. Under the current procedures, ICE adjudicates fee waiver requests for Form I-246 based on its internal fee waiver policy established in 2008.¹⁰ Aliens can apply for a fee waiver for Form I-246 by submitting an affidavit or declaration to the officer that details their financial circumstances and their inability to pay the prescribed fee. The affidavit or declaration must be made under the penalty of perjury pursuant to 28 U.S.C. 1746. ICE does not require a specific form to be completed by aliens for the fee waiver. These procedures are flexible in that it does not specifically prescribe a set of evidentiary documents but rather allows the applicant to provide any relevant documentation that may assist the ICE officer in assessing the applicant's inability to pay.

¹⁰ U.S. Immigration and Customs Enforcement, *Fee Waiver Guidelines* (Feb. 11, 2008), https://www.ice.gov/doclib/foia/policy/11023.1_FeeWaiverGuidelines.pdf.

IV. Proposed Changes

A. Form I-246 Fee Adjustment

The Chief Financial Officers Act, 31 U.S.C. 901-03, requires agencies to review, on a biennial basis, the fees imposed by the agency for services it provides and to recommend changes to the agency's fees. Since 1989, the fee, which was intended to cover the costs associated with adjudication, has remained at \$155,¹¹ and currently does not account for inflation or the current costs associated with adjudicating Form I-246. ICE is now proposing to update the fee to recover the costs associated with Form I-246. Going forward, ICE will adhere to the biennial fee review requirements established by the Chief Financial Officers Act and expects to adjust its fees more periodically.

ICE conducted a fee analysis in 2025, based on a labor survey in the Spring of 2020,¹² which showed that the current Form I-246 fee does not cover the full cost of adjudicating the form. According to ICE's 2025 fee analysis, it would cost approximately \$755 to cover the costs of adjudicating each stay request. This cost includes costs associated with the form including labor, equipment, and overhead costs for the personnel involved in review and adjudication. The fee analysis has been posted for review in the rulemaking docket for this rule at www.regulations.gov.

A \$755 fee would cover the costs required for providing adjudication services, which include customer support, fraud detection, background checks, and administrative tasks. Increasing the fee to \$755 would also reallocate the costs of processing the Form I-246 to those receiving the direct services, thereby ensuring that the U.S. taxpayers do not bear a disproportionate burden in funding the immigration system. This fee increase generally aligns with Executive Order (E.O.) 14218, *Ending Taxpayer Subsidization of*

¹¹ See INS/EOIR Fee Schedule, 54 FR 13513 (April 4, 1989).

¹² In the spring of 2025, ICE confirmed with ERO leadership that the conclusions of the survey remain representative of current Form I-246 adjudication activities.

*Open Borders*¹³ which emphasizes the need to “prevent taxpayer resources from acting as a magnet and fueling illegal immigration to the United States, and to ensure, to the maximum extent permitted by law, that no taxpayer-funded benefits go to unqualified aliens.” Notably, aliens seeking a stay of removal are subject to final orders of removal and are consequently present in the United States unlawfully. The aliens are requesting that DHS delay the execution of a lawful removal order through the exercise of DHS’ discretion and not as a matter of right or procedural due process. As such, the burden and costs associated with adjudicating and processing the request for stay should not be imposed on the taxpayers. To continue fulfilling its mission and supporting DHS priorities, DHS is proposing this fee increase for Form I-246.

DHS proposes to exercise its discretion to increase the fee for Form I-246 to recover the labor costs in adjudicating the form. *See* INA section 286(m), 8 U.S.C 1356(m). DHS proposes increasing the Form I-246 fee from \$155 to \$755.

DHS is cognizant of the potential increased economic burden this fee change may have on applicants and notes that fee waivers may continue to be requested. DHS believes that the availability of fee waivers will alleviate the financial burden on aliens who are unable to pay the new fee for Form I-246. DHS is also aware that an increased fee may dissuade aliens with limited means from submitting Form I-246. DHS believes that the availability of fee waivers sufficiently ensures that aliens are not discouraged from applying for a stay of removal due to their limited means or inability to pay.

B. Technical Changes

DHS proposes to make non-substantive technical changes for clarity and accuracy including revising outdated language in the Form I-246 fee provision, 8 CFR 103.7(d)(6). These changes are minor and technical. In this provision, DHS proposes to remove the reference to 8 CFR part 243, which has been reserved, and replace it with the correct

¹³ E.O. 14218, *Ending Taxpayer Subsidization of Open Borders*, 90 FR 10581 (Feb. 19, 2025).

reference to 8 CFR part 241.¹⁴ DHS also proposes to add the term “removal” for consistency with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and with Form I-246. The regulation currently references a “stay of deportation,” but Form I-246 and IIRIRA use the phrase “stay of deportation and removal.” These proposed changes would make the regulation consistent with the passage of IIRIRA in 1996 and Form I-246.

V. Statutory and Regulatory Requirements

A. Executive Orders 12866, 14192 and 13563

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14192 (Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that “any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.”

This rule has not been designated a “significant regulatory action” as defined under section 3(f) of EO 12866. Accordingly, the rule has not been reviewed by OMB.

This rule is not an Executive Order 14192 regulatory action because it is being issued with respect to an immigration-related function of the United States. The rule’s primary direct purpose is to implement or interpret the immigration laws of the United States (as described in INA sec. 101(a)(17), 8 U.S.C. 1101(a)(17)) or any other function

¹⁴ See 8 CFR 243 – [Reserved] and 8 CFR 103.7(d)(6) (Filing for application for stay of deportation under 8 CFR part 243).

performed by the U.S. Federal Government with respect to aliens. *See* OMB Memorandum M-25-20, “Guidance Implementing Section 3 of Executive Order 14192, titled ‘Unleashing Prosperity Through Deregulation’” (Mar. 26, 2025).

DHS is proposing to increase the Form I-246 fee from \$155 to \$755. DHS last adjusted the Form I-246 fee in 1989. DHS is proposing to adjust the fee upward to recover the costs of adjudicating the form.¹⁵ This proposed change would result in an increase in transfers from fee payers to ICE.

DHS is also proposing technical revisions of outdated language in 8 CFR 103.7(d)(6). These changes would improve clarity by updating references and aligning the language with the IIRIRA and Form I-246. The technical changes do not alter user fees or impose any burden. The technical changes introduce no substantive changes, are not expected to raise existing costs, and do not impose any additional burden on applicants or DHS.

Incremental Transfers

Transfer payments are monetary payments from one group to another that do not affect the total resources available to society.¹⁶ Transfers such as insurance payments, fees, direct subsidies, and indirect subsidies can have significant efficiency effects in addition to distributional effects and are not included in the estimates of the benefits and costs of a regulation. Transfers are analyzed in this proposed rule because the proposed increase in the Form I-246 fee is a transfer from the fee payers to ICE. DHS is not proposing new adjudication activity or new costs from this proposed rule.

DHS estimated the size of the transfer that would occur from DHS increasing the fee by \$600, from \$155 to \$755 per application. Table 1 illustrates the incremental fee

¹⁵ DHS conducted a fee analysis in 2025, based on a labor survey conducted in the Spring of 2020, which showed that the current Form I-246 fee does not cover the cost of adjudicating the form. According to DHS’s 2025 fee analysis, DHS determined that approximately \$755 to cover the costs of adjudicating each stay request, which is subject to increase due to economic factors in the future. The fee analysis has been posted for review in the rulemaking docket for this rule at www.regulations.gov.

¹⁶ OMB Circular A-4, Regulatory Analysis (2003).

increase DHS is proposing. Aliens who submit a Form I-246 would pay an additional \$600 under this proposed rule, a 387 percent increase from the current fee.

Table 1: Fee Increase

Type	Current Fee	New Fee	Difference (New-Current)	Percent Increase
I-246	\$155	\$755	\$600	387%

Total Transfers

To estimate the total transfers, DHS used the number of I-246 fee payments received from FY 2016 to 2025 to estimate the annual number of I-246 fee payments. The annual number of I-246 fee payments in the last ten years has varied significantly, as high as 10,494 payments in FY2017 and as low as 1,537 payments in FY2022. In FY2025, ICE received 3,745 I-246 fee payments. ICE plans to conduct a biennial fee review in accordance with the Chief Financial Officers Act. Therefore, ICE uses a two-year regulatory analysis period of FY2026 through FY2027. Due to uncertainty in the number of fee payments, based on the high number variance and no trendline in the data, ICE assumes that FY2026 and FY2027 will be similar to FY2025 for the estimates. DHS estimated the anticipated number of fee payments in FY2026 and FY 2027 to be 3,745, equal to the number of fee payments received in FY2025. DHS then determined the annual transfer increase as the product of the fee increase and the estimated annual number of I-246 fees paid. DHS estimates that the fee increase would result in an increase in annual transfers from the public to the government of \$2.25 million in FY2026 and FY2027.¹⁷ Table 2 displays the annual increase in transfers.

Table 2. Transfer from the Fee Change (\$ 2024)

¹⁷ The estimate of fee payments does not include Form I-246 filings that have had their fees waived. Thus, there were likely more filings than payments for each of the years accounted for in this estimate. DHS cannot estimate the number of fee waivers that will be received because ICE has very little data on fee waivers approved in the past.

FY Year	Nominal Transfer Per Form (from change in fee)	Forecasted Number of Payments Per Year	Annual Increase in Transfers
2026-2027	\$600	3,745	\$2.25 million

DHS acknowledges that an increase in the fee could increase the number of fee waivers requested. However, DHS does not have data on fee waivers approved in the past to estimate the potential impacts of a fee increase. Approval of fee waivers is at the discretion of the ICE personnel and the number of fee waivers is not limited. Any increase in fee waivers, however small, would have the effect of reducing the size of the amount of the transfer.

Benefits

Since 1989, the Form I-246 fee has remained static. The current fee is not sufficient to recover ICE’s full cost, including labor costs to adjudicate each stay request. The proposed fee adjustment would cover costs of adjudicating the form, support ICE efforts to maintain the current level of service, and better distribute the costs of adjudication to those receiving the direct services. This fee increase generally aligns with E.O. 14218,¹⁸ which emphasizes the need to “prevent taxpayer resources from acting as a magnet and fueling illegal immigration to the United States, and to ensure, to the maximum extent permitted by law, that no taxpayer-funded benefits go to unqualified aliens.”

Alternatives

DHS considered the following alternatives for this proposed rule.

DHS considered allowing the Form I-246 fee to remain unchanged. However, as previously stated, the Chief Financial Officers Act of 1990, requires each agency to review, on a biennial basis, the fees imposed by the agency for services and make

¹⁸ E.O. 14218, *Ending Taxpayer Subsidization of Open Borders*, 90 FR 10581 (Feb. 19, 2025).

recommendations on revising those charges to reflect cost incurred. DHS's 2025 fee analysis showed that the current Form I-246 fee does not cover the cost of adjudicating the form. Given that DHS has not increased the fee since 1989 and DHS is not recovering its cost in adjudicating the Form I-246, DHS rejected this alternative.

DHS also considered changing the fee to \$395, using the CPI-U to adjust the fee upward to account for changes in inflation between 1989 and 2024. An inflation-adjusted fee of \$395 for filing Form I-246 in 2024 would reflect approximately the same purchasing power as the \$155 fee did in 1988.¹⁹ This option would allow DHS to recover more of the adjudication costs from applicants while being cognizant of the increased burden on applicants. However, DHS rejected this option because this method would only account for a general increase in CPI rather than the adjusted costs of adjudicating the form. This option is inconsistent with the congressional intent for DHS to recover the costs of adjudicating the form and with the 1989 fee analysis that created and set the fee for cost recovery. Using this method, ICE would require a relatively greater level of appropriated funds to recover the costs not covered by the inflation adjusted alternative fee.

DHS also considered a higher fee that would better reflect the pay scale levels of ICE personnel adjudicating each Form I-246 and the multiple activities at each step of the adjudication process. As discussed in the fee analysis, the GS-level of adjudicators varied between a GS-11 or GS-12, and approximately 30 percent of the work was completed by supervisors.²⁰ However, DHS assumed a typical adjudicator would be a GS-11 to

¹⁹ U.S. Bureau of Labor Statistics, CPI for All Urban Consumers (CPI-U), available at https://data.bls.gov/timeseries/CUUR0000SA0?years_option=all_years. The last full calendar year of data available at the time of this analysis was 2024. DHS calculated the inflation adjustment by comparing the average CPI-U in 1989 (123.967), the year when the fee was set to \$155, with the average CPI-U for 2024 (313.689). This resulted in an inflation adjustment factor of 1.530, and then multiplied the inflation adjustment factor by the current fee of \$155 to calculate the inflation increment of \$237.15, resulting in a total inflation adjusted fee of \$395 (rounded up from \$392).

²⁰ For a breakdown of the work hours, *see* Table 1 of the Fee Analysis, available on the docket for this rulemaking.

estimate the fee. In addition, budget forecasts for operating costs and overhead expenses associated with ICE personnel are likely to increase in the future. Applying expenses that reflect operations over a longer term and an average of personnel levels to estimate the labor costs would have resulted in a higher fee. This approach would also cover a wider range of input costs associated with resources needed to support the adjudication process. DHS chose not to propose this change because the percentage increase from the current \$155 fee to \$755 fee already covers a substantial amount of the labor costs. However, DHS does believe this alternative may be more aligned with the total cost incurred.

DHS is seeking public comment on these alternatives, especially the alternative of setting a higher fee with a different labor cost estimate.

Total Impact of Proposed Rule

Table 3 presents an accounting statement summarizing the annualized transfer amounts and the qualitative benefits of the proposed rule.

Table 3: Accounting Statement for FY2026-FY2027 (\$ 2024)

<i>Category</i>	<i>3 Percent Discount Rate</i>	<i>7 Percent Discount Rate</i>	<i>Source Citation (RIA, preamble, etc.)</i>
<i>BENEFITS</i>			
Annualized monetized (\$Mil)	None		Preamble, E.O. 12866 analysis
Annualized quantified	None		Preamble, E.O. 12866 analysis
Qualitative	Covers the resources needed for DHS to provide Form I-246 services. Increased regulatory clarity.		Preamble, E.O. 12866 analysis
<i>TRANSFERS</i>			
Annualized monetized (2024 \$Mil)	\$2.25	\$2.25	Preamble, E.O. 12866 analysis
From/To	Individual applicants to ICE		
Effects on State, Local, and/or Tribal Government	None		

Effects on small businesses	None. Form I-246 fees are paid by individuals who are not, for purposes of the RFA, within the definition of small entities established.	RFA
Wages	None	
Growth	None	

B. Regulatory Flexibility Act

DHS has reviewed this proposed regulation in accordance with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, tit. II, 110 Stat. 847, and has determined that this rule would not have a significant economic impact on a substantial number of small entities. The rule would not regulate “small entities” as the term is defined in 5 U.S.C. 601(6). The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people.

By adjusting the Form I-246 fee, this proposed rule would increase transfers to the government. Form I-246 fees are paid by individuals who are not, for purposes of the RFA, within the definition of small entities established by 5 U.S.C. 601(6). While it is possible that some aliens may pay the fee through a representative, ultimately the alien is responsible for the Form I-246 fee, not the representative. Therefore, DHS certifies this proposed rulemaking would not have a significant economic impact on a substantial number of small entities.

C. Small Business Regulatory Enforcement Fairness Act of 1996

Pursuant to Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, 110 Stat. 847, 858-59, DHS wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects and participate in the rulemaking. If the proposed rule would affect your small business,

organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the individual listed in the FOR FURTHER INFORMATION CONTACT section.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector in any one year of \$100 million or more in 1995 dollars, updated annually for inflation. That threshold is currently approximately \$206 million in 2024 dollars based on the Consumer Price Index for All Urban Consumers (CPI-U).²¹ Though this proposed rule would not result in such an expenditure, DHS does discuss the effects of this rule elsewhere in this preamble.

E. Paperwork Reduction Act

All Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a rule under the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13, 109 Stat. 163 (codified at 44 U.S.C. 3501 *et seq.*). Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from OMB for the collection and the collection displays a valid OMB control number. *See* 44 U.S.C. 3506, 3507.

²¹ *See* Bureau of Labor Statistics, “Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month,” <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202412.pdf> (last visited September 9, 2025). Calculation of inflation: (1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2024); (2) Subtract reference year CPI-U from current year CPI-U; (3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U; (4) Multiply by 100= $[(\text{Average monthly CPI-U for 2024} - \text{Average monthly CPI-U for 1995}) \div (\text{Average monthly CPI-U for 1995})] \times 100 = [(313.689 - 152.383) \div 152.383] = (161.306/152.383) = 1.059 \times 100 = 105.86\% = 106$ percent (rounded). Calculation of inflation-adjusted value: \$100 million in 1995 dollars $\times 2.06 =$ \$206 million in 2024 dollars.

This rule does not propose a new “collection[s] of information” as that term is defined under the PRA. There would be no changes to the reporting burden for the existing collection of information associated with Form I-246 (OMB control number 1653-0021, titled *Application for Stay of Deportation or Removal*, expiration date October 31, 2027). Although DHS proposes to revise the fee amount for Form I-246, there are no substantive changes to the forms as a result of this rulemaking.

F. Executive Order 13132: Federalism

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

G. Executive Order 12988: Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988, *Civil Justice Reform*, to minimize litigation, eliminate ambiguity, and reduce burden.

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

DHS has analyzed this proposed rule under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. DHS has determined that it is not a “significant energy action” under that order because it is a “significant regulatory action” under E.O. 12866 but is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Environmental Policy Act

DHS and its components analyze final actions to determine whether the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., applies to them and, if so, what degree of analysis is required. DHS Directive 023-01 Rev. 01²² and Instruction Manual 023-01-001-01 Rev. 01 (Instruction Manual)²³ establish the policies and procedures that DHS and its components use to comply with NEPA.

NEPA allows Federal agencies to establish categories of actions (categorical exclusions) that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment (EA) or environmental impact statement (EIS). An agency is not required to prepare an EA or EIS for a proposed action “if the proposed agency action is excluded pursuant to one of the agency’s categorical exclusions.” 42 U.S.C. 4336(a)(2). The Instruction Manual, Appendix A, lists the DHS Categorical Exclusions. For an action to be categorically excluded under DHS’s Instruction Manual, the action must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.²⁴

This proposed rule is categorically excluded from DHS’s NEPA implementing procedures because it satisfies all three relevant conditions. First, DHS has determined that the proposed rule fits clearly within categorical exclusions A3(d) of DHS’s Instruction Manual, Appendix A, for the promulgation of rules “that interpret or amend an existing regulation without changing its environmental effect.” This rule merely

²² DHS, Implementation of the National Environmental Policy Act, Directive 023-01, Revision 01 (Oct. 31, 2014).

²³ DHS, Implementation of the National Environmental Policy Act (NEPA), Instruction Manual 023-01-001-01, Revision 01 (Nov. 6, 2014).

²⁴ Instruction Manual 023-01-001-01 at V.B(2)(a) through (c) and Appendix A at A-1–A-2.

proposes to increase the fee for adjudicating Form I-246 from \$155 to \$755 and to make minor technical edits to the stay regulations. DHS proposes to adjust the Form I-246 fee in order to recover the cost of activities needed to sufficiently review and adjudicate the forms. Second, this proposed rule is a standalone rule and is not part of any larger action. Third, DHS is not aware of any extraordinary circumstances that would cause significant environmental effects. Therefore, this proposed rule is categorically excluded, and no further NEPA analysis or documentation is required.

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

This proposed rule does not have tribal implications under E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

K. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights

This proposed rule would not cause a taking of private property or otherwise have taking implications under E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*.

L. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

E.O. 13045, *Protection of Children from Environmental Health Risks and Safety Risks*, requires agencies to consider the impacts of environmental health risks or safety risks that may disproportionately affect children. DHS has reviewed this proposed rule and determined that this rule is not an economically significant rule and would not create

an environmental risk to health or risk to safety that might disproportionately affect children. Therefore, DHS has not prepared a statement under this E.O.

M. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, DHS did not consider the use of voluntary consensus standards.

N. Family Assessment

DHS has determined that this proposed action would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681).

Lists of Subjects in 8 CFR Part 103

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

Regulatory Amendments

Accordingly, DHS proposes to amend part 103 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, 1365b; 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; 31 CFR part 223.

2. Section 103.7 is amended by revising paragraph (d)(6) to read as follows:

§ 103.7 Fees.

* * * * *

(d) ***

(6) *Form I-246*. For filing application for stay of deportation or removal under 8 CFR part 241: \$755. The application fee may be waived by DHS.

* * * * *

Markwayne Mullin
Secretary
U.S. Department of Homeland Security

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