

**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Parts 1, 103, 204, 207, 208, 209, 210, 212, 214, 215, 216, 235, 236, 240, 244, 245, 245a, 264, 287, 316, 333, and 335**

[CIS No. 2644–19 USCIS Docket No. USCIS–2019–0007]

RIN 1615–AC14

**Collection and Use of Biometrics by U.S. Citizenship and Immigration Services**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This rule proposes to amend DHS regulations concerning the use and collection of biometrics in the enforcement and administration of immigration laws by U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). First, DHS proposes that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with an immigration benefit or request, including United States citizens, must appear for biometrics collection without regard to age unless DHS waives or exempts the biometrics requirement. Second, DHS proposes to authorize biometric collection, without regard to age, upon arrest of an alien for purposes of processing, care, custody, and initiation of removal proceedings. Third, DHS proposes to define the term biometrics. Fourth, this rule proposes to increase the biometric modalities that DHS collects, to include iris image, palm print, and voice print. Fifth, this rule proposes that DHS may require, request, or accept DNA test results, which include a partial DNA profile, to prove the existence of a claimed genetic relationship and that DHS may use and store DNA test results for the relevant adjudications or to perform any other functions necessary for administering and enforcing immigration and naturalization laws. Sixth, this rule would modify how VAWA and T nonimmigrant petitioners demonstrate good moral character, as well as remove the presumption of good moral character for those under the age of 14. Lastly, DHS proposes to further clarify the purposes for which biometrics are collected from individuals filing immigration applications or petitions, to include criminal history and national security background checks; identity enrollment, verification, and management; secure document

production, and to administer and enforce immigration and naturalization laws.

The changes proposed in this rule are intended to: Provide DHS with the flexibility to change its biometrics collection practices and policies to ensure that necessary adjustments can be made to meet emerging needs, enhance the use of biometrics beyond background checks and document production to include identity verification and management in the immigration lifecycle, enhance vetting to lessen the dependence on paper documents to prove identity and familial relationships, preclude imposters, and improve the consistency in biometrics terminology within DHS.

**DATES:** Written comments must be submitted on this rule on or before October 13, 2020. Comments on the Paperwork Reduction Act section of this rule (the information collection discussed therein) must be received on or before November 10, 2020.

**ADDRESSES:** You may submit comments on the entirety of this proposed rule package, identified by DHS Docket No. USCIS–2019–0007, through the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the website instructions for submitting comments.

Comments submitted in a manner other than the one listed above, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS. Please note that DHS and USCIS cannot accept any comments that are hand delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. Due to COVID–19, USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using <http://www.regulations.gov>, please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at 202–272–8377 for alternate instructions.

**Collection of Information:** You must submit comments on the collection of information discussed in this notice of proposed rulemaking to either DHS’ docket or the Office of Management and Budget’s (OMB) Office of Information and Regulatory Affairs (OIRA). OIRA will have access to and view the comments submitted in the docket. OIRA submissions can also be sent

using any of the following alternative methods:

- **Email (alternative):** [DHSDeskOfficer@omb.eop.gov](mailto:DHSDeskOfficer@omb.eop.gov) (include the docket number and “Attention: Desk Officer for U.S. Citizenship and Immigration Services, DHS” in the subject line of the email).

- **Fax:** 202–395–6566.

- **Mail:** Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; Attention: Desk Officer, U.S. Citizenship and Immigration Services, DHS.

**FOR FURTHER INFORMATION CONTACT:** Michael J. McDermott, Security and Public Safety Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave. NW, Washington, DC 20529–2240, telephone (202) 272–8377 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

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**Table of Abbreviations**

AAC	Accompanied Alien Children
ASC	Application Support Center
AWA	Adam Walsh Child Protection and Safety Act
BFR	Biometrics fee ratio
CBP	U.S. Customs and Border Protection
CJIS	FBI Criminal Justice Information Services
CPMS	Customer Profile Management System
DHS	Department of Homeland Security
	DNA deoxyribonucleic acid
DOS	Department of State
FBI	Federal Bureau of Investigation
ICE	U.S. Immigration and Customs Enforcement

IDENT Automated Biometric Identification System  
 IdHS Identity History Summary  
 IIRIRA Illegal Immigration Reform and Immigrant Responsibility Act  
 IMBRA International Marriage Broker Regulation Act  
 INA Immigration and Nationality Act  
 NTA Notice to Appear (issued to initiate removal proceedings under INA section 240)  
 OBIM DHS Office of Biometric Identity Management  
 RAO Refugee, Asylum, and International Operations  
 SEVP Student and Exchange Visitor Program  
 TVPRA Trafficking Victims Protection Reauthorization Act  
 UAC Unaccompanied Alien Children Services  
 USCIS U.S. Citizenship and Immigration Services  
 USRAP United States Refugee Admissions Program  
 VAWA Violence Against Women Act

## I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. The Department of Homeland Security (DHS) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that provide the most assistance to DHS will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

**Instructions:** All submissions received must include the agency name and USCIS Docket No. USCIS–2019–0007 for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

## II. Executive Summary

As previously stated, this rule proposes to amend DHS regulations concerning the use and collection of biometrics in the administration and enforcement of immigration and naturalization laws as well as the adjudication of benefit requests. This Executive Summary summarizes the changes made by this rule so readers may obtain a brief overview of the changes DHS proposes herein without reading the entire rule. DHS has included full legal citations of authorities, explanations, and more details regarding the proposed changes

in the section of the main preamble that discusses the background, need, and authority for the change.

### A. Purpose and Summary of the Regulatory Action

DHS has general and specific statutory authority to collect or require submission of biometrics from applicants, petitioners, and beneficiaries for immigration benefits; and from aliens upon their arrest for purposes of processing, care, custody, and initiation of removal proceedings.<sup>1 2</sup> As detailed in the Authority section of the preamble that follows this Executive Summary, the Immigration and Nationality Act (INA) at section 103(a), 8 U.S.C. 1103(a), provides general authority for DHS to collect or require submission of biometrics and specific authority in several sections.<sup>3</sup> DHS currently collects, stores, and uses biometrics for the following purposes: Conducting background checks to determine eligibility for a benefit or other request; document production associated with an application, petition, or other request for certain immigration and naturalization benefits or actions; and performing other functions related to administering and enforcing the immigration and naturalization laws such as identity verification upon issuance of a Notice to Appear (NTA) under section 240 of the INA.

DHS is precluded in many cases from approving, granting, or providing immigration benefits to individuals with

<sup>1</sup> This rule proposes changes to the regulations governing collection of biometrics for benefit requests administered by U.S. Citizenship and Immigration Services (USCIS). It also impacts U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), which have immigration enforcement responsibilities that may require collection, use, and storage of biometrics and use USCIS systems or service forms for which biometrics would be required by this rule. Those provisions are discussed further below. For example, ICE, Student and Exchange Visitor Program (SEVP) uses USCIS Form I-539, Application to Extend/Change Nonimmigrant Status, and Form I-765, Application for Employment Authorization Document. This rule generally does not propose to authorize CBP or ICE to expand biometrics collections beyond either agency's current, independent authorities. However, this rule does propose to authorize CBP and ICE to expand their current biometrics collections for immigration benefit requests to individuals under the age of 14 and authorize collection of additional biometrics modalities.

<sup>2</sup> For the purposes of this rule, DHS is including all requests processed by USCIS in the term "benefit request" or "immigration benefit request" although the form or request may not be to request a benefit. For example, deferred action is solely an exercise of prosecutorial discretion by DHS and not an immigration benefit, but would fit under the definition of "benefit request" at 8 CFR 1.2 for purposes of this rule.

<sup>3</sup> The applicable statutory sections of each provision are explained in the body of the preamble which follows this Executive Summary.

a record of certain criminal offenses or administrative violations. Criminal histories are relevant because they are used to determine eligibility for both discretionary and non-discretionary immigration benefits. Therefore, DHS must include national security considerations and criminal history background checks in its adjudications. Several statutes authorize DHS to conduct biometric collection in relation to national security and public safety purposes, as well as for document production. Other statutes authorize DHS to collect the biometrics of U.S. citizen and lawful permanent resident petitioners of family-based immigrant and nonimmigrant fiancé(e) petitions to determine if a petitioner has been convicted of certain crimes. In addition, certain laws and executive branch guidance requires DHS to have a robust system for biometrics collection, storage, and use related to providing adjudicating immigration benefits and performing other functions necessary for administering and enforcing of immigration and naturalization laws.

Current regulations also provide both general authorities for the collection of biometrics in connection with administering immigration and naturalization benefits requests and administering and enforcing immigration laws. For example, any applicant, petitioner, sponsor, beneficiary, or individual filing a benefit request may be required to appear for biometrics collection. *See* 8 CFR 103.2(b)(9). DHS currently has authority to require an individual to submit biometric information to conduct background and security checks and perform other functions related to administering and enforcing immigration laws. *See* 8 CFR 103.16(a). DHS proposes to change the regulations in a number of ways.

The immigration benefit request adjudications process requires DHS to verify the identity of an individual applying for or seeking to receive any benefit, and also requires national security and criminal history background checks to determine if such an individual is eligible for the benefit. The adjudication includes a review of the individual's current immigration status, current immigration filings, past immigration filings, and whether previous benefits were granted or denied. Immigration laws preclude DHS from granting many immigration and naturalization benefits to individuals with certain criminal or administrative violations, or with certain disqualifying characteristics, while also providing DHS discretion in granting an immigration benefit in many instances.

DHS conducts checks to determine if an individual has a history that could render him or her inadmissible or removable, a criminal record, an association with human rights violations, or involvement in terrorist activities or organizations. The current DHS biometric collection process for benefits adjudication begins with the collection of an individual's photograph, fingerprints, and signature at an authorized biometric collection site. Collections outside the United States may be conducted on behalf of DHS by other federal agencies. Under this rule, DHS may also require, request, or accept DNA (deoxyribonucleic acid) test results as evidence of genetic relationships.

While DHS has the authority to collect biometrics from any applicant, petitioner, sponsor, beneficiary, requestor, or individual filing or associated with a request, or to perform other functions related to administering and enforcing the immigration and naturalization laws, submission of biometrics is only mandatory for certain benefit requests and enforcement actions upon request of DHS. For all other benefit requests and enforcement actions, DHS must decide, in accordance with its statutory and regulatory authorities, if the request or enforcement action justifies collection of biometrics and notify the individual where they will be collected when a collection is warranted and for what purposes they will be used. DHS has decided that the more limited focus on background checks and document production is outdated because immigration benefit request adjudication and the enforcement and administration of immigration laws include verifying identity and determining whether or not the individual poses a risk to national security or public safety. DHS has decided that it is necessary to increase routine biometric collections to include individuals associated with immigration benefits and to perform other functions related to administering and enforcing the immigration and naturalization laws. Therefore, DHS proposes in this rule that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated<sup>4</sup> with a certain benefit or request, including U.S. citizens and without regard to age, must appear for biometrics collection unless DHS

waives or exempts the requirement.<sup>5</sup> In addition to removing the age restrictions in the context of adjudicating immigration benefit requests, DHS is also removing the age restrictions for biometrics collection in the context of Notice to Appear (NTA) issuance for the same purposes (*i.e.*, identity verification, national security and criminal history background checks, etc.). See Proposed 8 CFR 236.5.

DHS emphasizes that it is not proposing an absolute biometrics collection requirement. Rather, the purpose of this rule is to provide notice that every individual requesting a benefit before or encountered by DHS is subject to the biometrics requirement unless DHS waives or exempts it. This notice will be added to relevant forms in the Privacy Notice. The increased use of biometrics by DHS will include identity management in the immigration lifecycle, which will enable it to transition to a person-centric model to organize and manage its records, manage unique identities, verify immigration records, and will reduce reliance on biographic data for identity management in the immigration lifecycle. Biographic data possess inherent inconsistencies that could result in immigration benefits being granted to ineligible applicants or imposters. Using biometrics for identity verification and management in the immigration lifecycle will help ensure that an individual's immigration records pertain only to that individual, and help DHS locate, maintain, and update the individual's immigration status, previously submitted identity documentation, as well as certain biographic data. DHS proposes to collect biometrics at any age to ensure the immigration records created for children can be related to their adult records later, help combat child trafficking, smuggling, and labor exploitation by facilitating identity verification, while confirming the absence of criminal history or associations with terrorist organizations or gang membership.

DHS also plans to implement a program of continuous immigration vetting, and require that aliens be subjected to continued and subsequent evaluation to ensure they continue to present no risk of causing harm subsequent to their entry. This rule proposes that any individual alien who is present in the United States following an approved immigration benefit may be

required to submit biometrics unless and until they are granted U.S. citizenship. The rule further proposes that a lawful permanent resident or U.S. citizen may be required to submit biometrics if he or she filed an application, petition, or request in the past and it was either reopened or the previous approval is relevant to an application, petition, or benefit request currently pending with DHS.

The changes to the use and collection of biometrics and expanded scope of populations also are pertinent to U.S. Immigration and Customs Enforcement (ICE) and the Executive Office for Immigration Review (EOIR), a component of the U.S. Department of Justice (DOJ), given that immigration judges and the Board of Immigration Appeals (BIA) are prohibited from granting relief or protection from removal to an alien 14 years of age or older unless an ICE attorney reports that all required "identity, law enforcement, or security investigations or examinations" have been completed. See INA section 262, and 8 CFR 1003.1(d)(6), 1003.47(g). ICE relies, in part, on USCIS biometric collection in this regard. Further, DHS has leeway in terms of the exact types of such background and security checks. See *Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals*, 70 FR 4743, 4744 (2005) ("There is no need for this rule to specify the exact types of background and security checks that DHS may conduct with respect to aliens in proceedings.").

DHS recognizes that removing the age restrictions associated with biometrics collection in DHS regulations, without removing the age restrictions in DOJ EOIR regulations, could create disparate processes for biometric collections in immigration adjudications. Specifically, a child under 14 may be required to submit biometrics for an application submitted to USCIS, but the same child would be exempt from biometrics for an application submitted with DOJ EOIR. These disparate authorities could also cause confusion given USCIS collects biometrics at its ASCs for many applications and petitions adjudicated by EOIR. However, DHS and DOJ will continue to be bound by their respective regulations. To the extent that any controversy may arise interpreting DHS and DOJ regulations regarding the removal of age restrictions for biometrics collection, until DOJ removes its age restrictions DHS intends to follow DOJ regulations with respect to age restrictions when collecting

<sup>4</sup> By "associated" DHS means a person with substantial involvement in the immigration benefit request, such as a named derivative, beneficiary, petitioner's signatory, or co-applicant. DHS will not require biometrics to be submitted by agents, representatives, interpreters, preparers, or guardians.

<sup>5</sup> The terms "file," "submit," "associated with" or variations thereof, as used throughout this rule, do not encompass attorneys and accredited representatives, although attorneys and accredited representatives may physically "file" or "submit" a request on behalf of a client.

biometrics for an application or petition that will be adjudicated by EOIR.

DHS anticipates that by removing age restrictions on the collection of biometrics this rule will enhance the ability of ICE and CBP to identify fraudulent biological relationships claimed at the border and upon apprehension.<sup>6</sup> Under the current interpretation of the *Flores* Settlement Agreement, DHS typically releases alien minors apprehended at the border from its detention facilities within 20 days—often in conjunction with the adults with whom these minors were encountered. This may encourage the proliferation of fraudulent family unit schemes wherein unrelated adults and children claim biological relationships in order to secure prompt release into the United States. Alien smuggling organizations are aware of this loophole and are taking full advantage of it, placing children into the hands of adult strangers, so they can pose as families and be released from immigration custody after crossing the border, creating another safety issue for these children. DHS's ability to collect biometrics, including DNA, regardless of a minor's age, will allow DHS to accurately verify or refute claimed genetic relationships among apprehended aliens and ensure that unaccompanied alien children (UACs) are properly identified and cared for.<sup>7</sup>

Regarding the use of DNA evidence, where evidence of a relationship is required, this rule proposes to grant DHS express authority to require, request, or accept DNA test results from relevant parties as evidence of a claimed genetic relationship.<sup>8</sup> DHS recognizes that there are qualifying family members, such as adopted children, who do not have a genetic relationship to the individual who makes an immigration benefit request on their behalf. To the extent the rule discusses using DNA evidence to establish qualifying relationships in support of certain immigration benefit requests, it is referring only to genetic relationships that can be demonstrated through DNA testing. Current regulations generally

require documentary evidence such as marriage and birth certificates, and secondary evidence such as medical records, school records, religious documents, and affidavits to support claims based on familial relationships. DHS currently does not have in place express regulatory provisions to require, request, or accept DNA testing results to prove genetic relationships, but because documentary evidence may be unreliable or unavailable, in some situations, individuals are allowed to voluntarily submit DNA test results. Under this rule, DHS may expressly require, request, or accept DNA evidence to demonstrate the existence of the claimed genetic relationship. DHS proposes to treat raw DNA (the physical sample taken from the applicable individual) that is taken as a distinctive biometric modality from the other biometric modalities it is authorized to collect, and not handle or share any raw DNA for any reason beyond the original purpose of submission (*e.g.*, to establish or verify a claimed genetic relationship), unless DHS is required to share by law. DNA test results, which include a partial DNA profile, like other evidence of a familial relationship, becomes part of the record, and DHS will store and share DNA test results, which include a partial DNA profile, for adjudication purposes, or to perform any other functions necessary for administering and enforcing immigration and naturalization laws, to the extent permitted by law.

In recent years, government agencies have grouped together identifying features and actions, such as fingerprints, photographs, and signatures under the broad term, biometrics. The terms, biometric “information,” “identifiers,” or “data,” are used to refer to all of these features, including additional features such as iris image, palm print, DNA, and voice print. As a result, DHS has adopted the practice of referring to fingerprints and photographs collectively as “biometrics,” “biometric information,” or “biometric services.” Most laws on the subject do not specify individual biometric modalities such as iris image, palm print, voice print, DNA, and/or any other biometric modalities that may be collected from an individual in the future. DHS is proposing to update the terminology in the applicable regulations to uniformly use the term “biometrics.” DHS seeks to utilize a single, inclusive term comprehensively throughout regulations and form instructions. DHS proposes to define the term, “biometrics,” to clarify and fully explain its authority to collect more

than just “fingerprints” in connection with administering and enforcing the immigration and naturalization benefits or other services, and to expressly define “biometrics” to include a wider range of modalities than just fingerprints and photographs. DHS proposes to define the term “biometrics” to mean “the measurable biological (anatomical and physiological) or behavioral characteristics used for identification of an individual,” including a list of modalities of biometric collection. See proposed 8 CFR 1.2. Further, DHS proposes the following biometrics as authorized biometric modalities that DHS may request, require, or accept from individuals in connection with services provided by DHS and to perform other functions related to administering and enforcing the immigration and naturalization laws:

- Fingerprint;
- palm print;
- photograph (facial images specifically for facial recognition, as well as photographs of physical or anatomical features such as scars, skin marks, and tattoos);
- signature;
- voice print;
- iris image; and
- DNA (DNA test results, which include a partial DNA profile attesting to genetic relationship).

The proposed definition of biometrics would authorize the collection of specific biometric modalities and the use of biometrics for: Identity enrollment, verification, and management in the immigration lifecycle; national security and criminal history background checks to support determinations of eligibility for immigration and naturalization benefits; the production of secure identity documents; and to perform other functions related to administering and enforcing the immigration and naturalization laws. DHS has internal procedural safeguards to ensure technology used to collect, assess, and store the differing modalities is accurate, reliable, and valid. Further, as with any other USCIS petition or application, if a decision will be adverse to an applicant or petitioner and is based on derogatory information the agency considered, he/she shall be advised of that fact and offered an opportunity to rebut the information. 8 CFR 103.2(b)(16)(i). DNA, while a biometric, would only be collected in limited circumstances to verify the existence of a claimed genetic relationship. To conform to the proposed changes that would expand biometric collection, DHS proposes to

<sup>6</sup> To clarify, DHS is not proposing DNA collection at ports of entry.

<sup>7</sup> For example, between July 2019 and November 2019, DHS, identified 432 incidents of fraudulent family claims by conducting a Rapid DNA testing under a pilot program named Operation Double Helix. This is over 20% of the total family units tested (1,747).

<sup>8</sup> This rule is not concerned with, and creates no authority to limit, DNA sample collection required by 34 U.S.C. 40702(a)(1)(A) and 28 CFR 28.12 from individuals who are arrested, facing charges, or convicted and from non-United States persons who are detained under the authority of the United States.

remove individual references to “fingerprints,” “photographs,” and/or “signatures” and replace them with the term “biometrics.”

DHS originally codified restrictions on the ages of individuals from whom biometrics could be collected based on the policies, practice, or technological limitations. For biometrics use to expand to identity management and verification in the immigration lifecycle, this rule would allow for biometric collection from any individual, without age limitation; thus, DHS proposes to remove all age limitations or restrictions on biometrics collection from the regulations in the context of both immigration benefit requests, entering or exiting the United States, NTA issuance, and to perform other functions related to administering and enforcing the immigration and naturalization laws.

DHS also proposes to consolidate sections of 8 CFR providing what USCIS can or will do with an immigration benefit request when required biometrics are not submitted and how biometrics appointments can be rescheduled. In addition, DHS is proposing to remove and/or replace language that applies to paper filings with language that encourages electronic filing. References to position titles, form numbers, mailing addresses, copies, and office jurisdiction are proposed to be removed. In addition, internal USCIS processes are proposed to be removed from the regulatory text. DHS is also proposing to clarify submission of passport-style paper photographs with certain applications or petitions, and eliminating outdated requirements for submitting photographs with immigration benefit requests. Photograph submission and use requirements of the INA would be met in the future by electronic photograph collection.

DHS is also proposing to require biometrics from U.S. citizens or lawful permanent residents when they submit a family-based visa petition. DHS has determined that U.S. citizen and lawful permanent resident petitioners must submit biometrics in order for DHS to comply with the Adam Walsh Child Protection and Safety Act of 2006 (AWA),<sup>9</sup> which prohibits DHS from approving family-based immigrant visa petitions and nonimmigrant fiancé(e) visa petitions if the petitioner has been convicted of certain offenses. In addition, the International Marriage

Broker Regulation Act (IMBRA)<sup>10</sup> provides that petitioners for an alien fiancé(e) or alien spouse must submit criminal conviction information for certain crimes. To comply with AWA and IMBRA, DHS proposes to require biometrics from all family-based petitioners, which would allow DHS to review a Federal Bureau of Investigation (FBI) report of the petitioner's criminal history. The proposed requirement would extend to family-based petitions for a spouse, fiancé(e), parent, unmarried child under 21 years of age, unmarried son or daughter 21 years of age or over, married son or daughter of any age, sibling, and any derivative beneficiary immigrant or nonimmigrant visa based on a familial relationship.

DHS proposes to require Violence Against Women Act (VAWA) self-petitioners appear for biometric collection, and to remove the requirement that self-petitioners who have resided in the United States submit police clearance letters as evidence of good moral character because DHS will be able to obtain the self-petitioner's criminal history using the biometrics. VAWA self-petitioners are currently required to provide (1) a personal statement from the self-petitioner, (2) police clearance letters from the self-petitioner's places of residence for the three years before filing, and (3) other credible evidence, including affidavits from third parties attesting to the self-petitioner's good moral character. DHS proposes to require biometrics from VAWA self-petitioners to obtain the self-petitioner's criminal history and support identity enrollment, verification, and management in the immigration lifecycle and conduct national security and criminal history background checks. The proposed change will reduce the evidence required to establish good moral character for many self-petitioners, however law enforcement clearances are still required for self-petitioners who recently resided outside the United States. In addition, DHS proposes that good moral character for a VAWA self-petitioner may extend beyond the three years immediately before filing. *See* generally 8 CFR 316.10(a)(2). DHS further proposes to remove the automatic presumption of good moral character for VAWA self-petitioners under 14 years of age. Self-petitioners under 14 would submit biometrics like any other VAWA self-petitioner.

Similarly, DHS proposes to eliminate the requirement that T nonimmigrant adjustment of status applicants submit self-reported police clearance letters, unless they lived outside the United States during the requisite period. Adjudicators would assess good moral character based on the applicant's criminal history, national security background check, and any other credible and relevant evidence submitted. DHS also proposes to amend 8 CFR 245.23(g) to refer to the relevant “continuous period” rather than “continued presence,” and to provide that USCIS would be able to consider the applicant's conduct beyond the requisite period, where earlier conduct is relevant to the applicant's moral character and conduct during the requisite period does not reflect a reform of character.

DHS also proposes to remove the presumption of good moral character for T nonimmigrant adjustment of status applicants under 14 years of age. The rule provides that such applicants will submit biometrics that USCIS will use in the determination of good moral character and provides USCIS with the authority to require additional evidence of good moral character. Proposed 8 CFR 245.23(g). The proposed changes would remove the superfluous need for police clearance letters from T nonimmigrant adjustment applicants.

DHS proposes to collect biometrics and perform background checks on U.S. citizen and lawful permanent resident principals of a regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Public Law 102-395, 106 Stat. 1828, 8 U.S.C. 1153 note (“Such pilot program shall involve a regional center in the United States for the promotion of economic growth[.]”). USCIS would review the results of national security and criminal history background checks in order to decide whether the principals of the intending or existing regional center, and the regional center itself, are bona fide and capable of credibly promoting such economic growth. This proposal would provide USCIS relevant information regarding whether the regional center will, or is continuing to, promote economic growth in accordance with regional center program requirements.

DHS also proposes to remove 8 CFR 216.4(b)(1) and (2), and 216.6(b)(1) and (2) to clarify interview procedures for conditional permanent residents, to reduce potential redundancies, and ensure greater uniformity within DHS operations.

<sup>9</sup>Public Law 109-248, section 402; 120 Stat. 587, 622 (July 27, 2006); INA 204(a)(1)(A)(viii) & (B)(i)(I).

<sup>10</sup>Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109-162, 119 Stat. 2960 (2006); and (VAWA 2013), Public Law 113-4, sections 807-8, 127 Stat. 54, 112-17; 8 U.S.C. 1375a; INA sections 214(d)(1), (3).



DHS does not plan to immediately expand all of its programs to provide that all new biometrics modalities would be required of all potentially amenable individuals as of the effective date of a potential final rule. Only those revised forms that propose to add a particular biometric collection or DNA submission requirement in conjunction with this rule (as described in the Paperwork Reduction Act (PRA) section of this preamble) will be immediately subject to new biometrics, modalities, or DNA requirements. DHS proposes that DHS component agencies may expand or contract their biometrics submission requirements within the parameters of this rule in the future by notice in the **Federal Register** or updated form instructions.

USCIS is authorized to collect an \$85 biometric services fee, but has proposed to incorporate the biometric services costs into the underlying immigration benefit request fees for which biometric services are applicable in a recent final rule. See *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*, 85 FR 46788 (Aug. 3, 2020) (Fee Rule). The \$85 biometric services fee required by 8 CFR 103.7(b)(1)(i)(C) that DHS estimates will be collected as a result of this proposed rule will not be collected if the Fee Rule takes effect before this rule does.

#### B. Summary of Costs and Benefits

DHS proposes to expand the collection of biometrics to require any individual filing or associated with an immigration benefit or request to appear for biometrics collection, and, if applicable, pay the \$85 biometric services fee unless exempted or waived from appearing and/or paying for such biometrics collection. This proposed rule would also change current regulations by defining the term “biometrics” to clarify and fully explain DHS’s regulatory authority to collect biometrics information. The proposal to expand the collection of biometrics would impact certain populations without regard to age or U.S. citizenship status. Additionally, DHS proposes to further clarify the purposes for which biometrics are collected, stored, and utilized. Last, this rule proposes that DHS may require, request, or accept the submission of DNA or DNA test results to verify a claimed genetic relationship.

DHS estimates that under the proposed rule, from those seeking an immigration benefit, about 2.17 million new biometrics submissions will be collected annually, and the resulting biometrics submitting population will

increase from 3.90 million currently to 6.07 million, and, from a generalized collection rate across all forms of 46 percent currently to 71.2 percent (projected). The increase in biometrics submissions would accrue to three population segments: (i) A small subset of forms in which biometrics collection is collected routinely in which the age-eligible population will expand; (ii) the broadening of routine collection to a dozen or so forms in which collection is not currently routine; and (iii) the expansion of the age-eligible biometrics population to a collection of forms characterized by very low filing volumes, unspecified forms, and forms in which DHS does not intend to broadly extend collection on a routine basis at this time. USCIS is also removing the age restrictions for biometrics collection in the context of an NTA issuance. However, the issuance of an NTA is not an “application, petition, or other request for certain immigration and naturalization benefits.” See 8 CFR 103.7(b)(1)(i)(C). For this stated reason, USCIS will not (and does not currently) collect the \$85 biometric services fee from those whose DNA was collected in the course of being issued NTAs or for other immigration law enforcement purposes. Based on FY 2018 statistics, the proposed rule, could result in DHS collecting biometrics from as many as 63,000 additional individuals under the age of 14 years annually associated with NTAs.<sup>11</sup>

The proposed rule would expand the collection of the \$85 biometric services fee to include any individual appearing for biometrics collection in connection with a benefit request unless the individual is statutorily exempt from paying the biometric services fee or if he or she has received a fee waiver. DHS estimates that there will be 1.63 million new biometrics fee payments annually. The annual quantified costs associated with submitting new biometrics submissions could be \$158.9 million, and the costs associated with the new fees could be \$138.4 million, for a combined total of \$297.3 million in quantified costs. There could be some unquantified impacts related to privacy concerns for risks associated with the collection and retention of biometric information, as discussed in DHS’s Privacy Act compliance documentation. However, this rule would not create

<sup>11</sup> To be clear, DHS is not estimating that this rule would result in the issuance of 63,000 *additional* NTAs by its components; rather, 63,000 NTAs were issued in FY 2018 to minors under the age of 14 who would be subject to biometric collection (for the purpose of verifying identity) under the parameters of this proposed rule.

new impacts in this regard but would expand the population that could have privacy concerns. When costs of \$705,555 are incorporated to include fees the FBI would collect for providing fingerprint-based and name-based Criminal History Record Information (CHRI) checks for NTAs, the annual costs are about \$298 million.

In addition, DHS proposes to expand its regulatory authority so that it may require, request, or accept DNA or DNA test results, which include a partial DNA profile, to prove the existence of a genetic relationship for any benefit request where such a relationship must be established, such as certain family-based benefit requests, including but not limited to the following:

- Petition for Alien Relative (Form I-130);
- Refugee/Asylee Relative Petition (Form I-730);
- Application for T Nonimmigrant Status, Supplement A (Form I-914A);
- Petition for U Nonimmigrant Status, Supplement A (Form I-918A);
- Petition for Qualifying Family Member of a U-1 Nonimmigrant (Form I-929);
- Application for Certificate of Citizenship (Form N-600);
- Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K);
- And any other form where the existence of a genetic relationship is at issue for a beneficiary, dependent, derivative, rider, or other qualifying family member.

DHS is not proposing with this rule to require in all cases proof of a genetic relationship submission in connection with these forms via raw DNA or DNA test results, which include a partial DNA profile. However, the rule will allow immediately for DHS, in its discretion, to request, require, or accept DNA or DNA test results, which include a partial DNA profile, for individual benefit requests requiring proof of a genetic relationship. Since the actual volume cannot be predicted at this time with accuracy, DHS conducted a sensitivity analysis using a range of 10 to 100 percent to estimate the potential costs for eligible populations associated with these family-based benefit requests. The costs to principal filers and beneficiaries/qualifying family members who may submit DNA or DNA test results, which include a partial DNA profile, to establish a genetic relationship in support of these benefit requests would range from \$22.4 million to \$224.1 million annually, in undiscounted terms.

Combining the cost of the biometrics collection (in both the benefits and law

enforcement contexts) with the DNA costs, DHS estimated the total monetized costs of the proposed rule at three points of the DNA submission range, to represent a lower bound (10 percent), a midrange (50 percent), and a high range (90 percent). In undiscounted terms, the ten-year (2021–2030) costs could range from \$3,204.1 to \$4,996.9 million, with a midrange of \$4,100.5 million. At a 3 percent rate of discount, the ten-year present values could range from \$2,773.2 million, to \$4,262.4 million, with a midrange of \$3,497.8 million. At a 7 percent rate of discount, the ten-year present values could range from \$2,250.4 million to \$3,509.6 million, with a midrange of \$2,880.0 million. The average annualized equivalence costs could range from \$320.4 million to \$499.7 million, with a midrange of \$410 million.

The proposed rule would provide benefits that are not possible to quantify. Qualitatively, the proposed rule would provide individuals requesting certain immigration and

naturalization benefits with a more reliable system for verifying their identity when submitting a benefit request. This would limit the potential for identity theft while also reducing the likelihood that DHS would be unable to verify an individual’s identity and consequently deny the benefit. In addition, the proposal to allow individuals to use DNA testing as evidence to demonstrate the existence of a claimed genetic relationship would provide them the opportunity to demonstrate a genetic relationship using a quicker and more effective technology than the blood testing method currently provided for in the regulations. *See* 8 CFR 204.2(d)(2)(vi).

The proposed rule would benefit the U.S. Government by enabling DHS with more fidelity and efficiency in identity verification, identity management in the immigration lifecycle, and vetting of individuals seeking certain immigration and naturalization benefits, as well as in DHS functions related to law enforcement purposes. The expanded use of biometrics stands to provide DHS

with the improved ability to identify and limit fraud because biometrics technology measures unique physical characteristics that are more difficult to falsify than documentary evidence of biographic information, when collected under controlled circumstances and retained and used for a limited period of time. Biometrics would also help reduce the administrative burden involved in identity verification and the performance of criminal history checks, by reducing the need for manual document review and name-based security checks. The proposed rule also would enhance the U.S. Government’s capability to identify criminal activity and protect vulnerable groups by supporting identity enrollment and verification in the immigration lifecycle by extending the collection of biometrics to populations under certain benefit requests.

Table 1 provides a more detailed summary of the proposed provisions and their impacts.

TABLE 1—SUMMARY OF PROVISIONS AND IMPACTS

Proposed change	Expected cost of the provision	Expected benefit of the provision
<p>DHS proposes to expand collection of biometrics to require any individual filing or associated with an immigration benefit or request to appear for biometrics collection without regard to age.</p>	<p>Individuals Submitting Biometrics— .....  <i>Quantitative:</i> .....                      • Total annual direct costs of the proposed rule:                          ○ \$158,940,196 for about 2.17 million ..... individuals to submit .....                      biometrics .....                          ○ \$138,356,283 for about 1.63 million new \$85 biometric services fees.</p>	<p>Individuals Submitting Biometrics—  <i>Qualitative:</i>                      • The proposed rule provides individuals requesting certain immigration and naturalization benefits with a more reliable system for verifying their identity when submitting a benefit request. This would limit the potential for identity theft. It would also reduce the likelihood that DHS would not be able to verify an individual’s identity and therefore possibly deny a benefit request.</p> <p>Government—  <i>Qualitative:</i>                      • DHS would be able to routinely collect biometrics information from children under the age of 14, and therefore, increase the U.S. Government’s capabilities of determining the identity of a child who may be vulnerable to gang affiliation, human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling.                      • The proposed rule would provide a benefit to the U.S. Government by enabling DHS to know with greater certainty the identity of individuals requesting certain immigration and naturalization benefits. The expanded use of biometric information would provide DHS with the ability to limit identity fraud because biometrics technologies measure unique physical characteristics and more difficult to falsify than biographic documents.</p>

TABLE 1—SUMMARY OF PROVISIONS AND IMPACTS—Continued

Proposed change	Expected cost of the provision	Expected benefit of the provision
<p>DHS proposes to increase the biometric modalities that it uses to collect biometrics information for benefits adjudication and law enforcement purposes to include the following: Palm prints, facial and iris image, and voice prints.</p>	<p>Government—  <i>Qualitative:</i>  <ul style="list-style-type: none"> <li>DHS does not know what the costs of expanding biometrics collection to the government in terms of assets and equipment; it is possible that costs could be incurred for the new equipment and information technologies and typologies needed to collect, process, store, and utilize biometrics, including software updates; cameras that are able to collect iris and facial images; devices used to record a voice print; and other equipment.</li> </ul> </p>	<p>Government—  <i>Qualitative:</i>  <ul style="list-style-type: none"> <li>Use of the new biometric technologies would allow DHS to keep up with technological developments in this area and adjust collection practices for both convenience for applicants and petitioners and to ensure the improved service for all stakeholders.</li> </ul> </p>
<p>DHS may require, request, or accept the submission of DNA or DNA test results, which include a partial DNA profile, to verify the existence of a claimed genetic relationship for benefits adjudication and law enforcement purposes.</p>	<p>Individuals Submitting DNA Evidence—  <i>Quantitative:</i>  <ul style="list-style-type: none"> <li>Potential annual costs for principal filers and beneficiaries/qualifying family members to submit DNA evidence range from \$22.4 million to \$224.1 million. These figures are based on current costs and depend on how many individuals submit DNA evidence in support of a family-based benefit request.</li> <li>There will be no cost to the individuals from whom DHS will require DNA sample for law enforcement purposes.</li> </ul> </p>	<p>Individuals Submitting DNA test result Evidence—  <i>Quantitative:</i>  <ul style="list-style-type: none"> <li>DNA testing would provide a means to demonstrate a claimed genetic relationship using a quicker and more effective technology than the current reliance on primary and secondary records and document-based evidence that may be unreliable or unavailable.</li> </ul> </p>
<p>DHS is proposing to remove the age restrictions for biometrics collection in the context of Notice to Appear (NTA) issuance for the same reasons (<i>i.e.</i>, identity verification, criminal history background checks, etc.).</p>	<p>Government—  <i>Qualitative:</i>  <ul style="list-style-type: none"> <li>USCIS facilitates collection of DNA from individuals outside the United States for transmission to accredited laboratories in the United States to ensure proper chain of custody. USCIS currently reimburses the Department of State for the collection of DNA in countries where it does not have a presence. DHS does not currently know how many individuals would submit DNA under the proposed rule but there is the potential for additional costs if the Department of State facilitates additional DNA testing.</li> </ul> </p> <p>Individuals Submitting Biometrics—  <i>Quantitative:</i>  None; there would be no opportunity or travel related costs associated with biometrics collection from individuals for NTAs.</p> <p>Government—  <i>Quantitative:</i>  There could be costs of \$705,555 annually accruing to fees the FBI would collect for providing fingerprint-based and name-based Criminal History Record Information (CHRI) checks.</p>	<p>Individuals Submitting Biometrics  Government—  <i>Qualitative:</i>  The collection of biometrics on children under the age of 14 associated with NTAs would significantly assist DHS in its mission to combat human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling.</p>

In addition to the impacts summarized above and as required by Office of Management and Budget

(OMB) Circular A–4, Table 2 presents the prepared accounting statement

showing the costs associated with this proposed regulation.<sup>12</sup>

<sup>12</sup> OMB Circular A–4 is available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>. The DHS notes that the primary estimate reported here reflects the average

of the highest 50 percent DNA submission rate (100 percent) and the lowest (0 percent). It also corresponds to the 50 percent midrange along the spectrum 10–90 percent that we utilize on grounds

that realistically, there will be some collection (a positive rate) but not complete (100 percent) collection.



TABLE 2—OMB A–4 ACCOUNTING STATEMENT  
[\$ millions, 2019]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
<b>BENEFITS</b>				
Monetized Benefits .....	Not estimated	Not estimated	Not estimated	Preamble. Preamble.
Annualized quantified, but un-monetized, benefits.	0 .....	0 .....	0 .....	
Unquantified Benefits .....	The proposed rule would limit identity fraud and improve USCIS identity management systems. Additionally, the proposed rule would enhance the U.S. Government’s capability to identify criminal activities and protect vulnerable populations. The removal of age restrictions and the proposal to collect on all NTAs under the age of 14 would assist DHS in its mission to combat human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling.			Preamble and RIA.
<b>COSTS</b>				
Annualized monetized costs for 10 year period starting in 2021 to 2030 (discount rate in parenthesis).	(3%) \$410 ....	\$320.4 .....	\$499.7 .....	RIA. RIA.
	(7%) \$410 ....	\$320.4 .....	\$499.7 .....	
Annualized quantified, but un-monetized, costs	There could be costs germane to the procurement of equipment, information technology and typology, and systems possibly needed to support the increased biometrics modalities. There could also be a cost for transferring information regarding biometrics for the NTAs issued to individuals under age 14.			Preamble and RIA.
Qualitative (unquantified) costs .....	N/A.			
<b>TRANSFERS</b>				
Annualized monetized transfers: “on budget” ..	N/A .....	N/A .....	N/A .....	Preamble. Preamble. Preamble. Preamble.
From whom to whom? .....	N/A .....	N/A .....	N/A .....	
Annualized monetized transfers: “off-budget” ..	N/A .....	N/A .....	N/A .....	
From whom to whom? .....	N/A .....	N/A .....	N/A .....	
Miscellaneous analyses/category	Effects			Source citation (RIA, preamble, etc.)
Effects on state, local, and/or tribal governments.	None .....			Preamble.
Effects on small businesses .....	There could be small entity impacts to EB–5 regional centers incurred by biometrics collection germane to the regional center principals. DHS believes these would be indirect but does not know how they could impact the regional center. There are currently 884 approved regional centers and DHS analysis based on limited available suggests that most regional centers could be small entities in terms of their RFA.			Preamble.
Effects on wages .....	None .....			Preamble
Effects on growth .....	None .....			Preamble.

DHS emphasizes that the costs could vary from the figures reported herein. As is detailed in the analysis, in order to estimate the population of future biometrics submissions, it was necessary to extrapolate certain metrics and conditions to the non-existent (in context) future populations. Although

DHS believes the methodology employed is appropriate, because the future actual generalized and form-specific collection rate of biometrics are unknown, the actual populations and costs could vary. In addition, the costs rely on a lower-end average wage to account for opportunity costs associated

with biometrics submissions. If, on average, the wage is higher than that relied upon, the costs could vary as well. This regulatory impact analysis is the best available estimate of the future benefits and costs. Actual results will depend on a number of factors including programmatic, operational,

and practical considerations in the implementation of the collection of biometrics under this rule.

In summary, the proposed rule would enable DHS to conduct the administration and adjudication of immigration benefit requests with increased fidelity, and is conducive to the evolution to a person-centric model for organizing and managing its records, enhanced and continuous vetting, and reduced dependence on paper documents, as is described more fully in the preamble.

### III. Background and Purpose

#### A. Legal Authority and Guidance for DHS Collection and Use of Biometrics

DHS has general and specific statutory authority to collect or require submission of biometrics from applicants, co-applicants, petitioners, requestors, derivatives, beneficiaries and others directly associated with a request for immigration benefits; and for purposes incident to apprehending, arresting, processing, and care and custody of aliens. First, the INA at section 103(a), 8 U.S.C. 1103(a), provides general authority to DHS to administer and enforce immigration laws, including issuing forms, regulations, instructions, other papers, and such other acts the Secretary of Homeland Security (the Secretary) deems necessary to carry out the INA. The INA also provides specific authority for DHS to collect or require submission of biometrics in several sections.

- INA section 235(d)(3), 8 U.S.C. 1225(d)(3), provides that the Secretary and any immigration officer will:

. . . have power . . . to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service.

- INA 287(b), 8 U.S.C. 1357(b), provides DHS authority to, “. . . take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of this chapter and the administration of the Service.”

- INA sections 333 and 335, 8 U.S.C. 1444 and 1446, require the submission of photographs and a personal investigation before an application for naturalization, citizenship or other similar requests may be approved.

- INA section 262(a), 8 U.S.C. 1302(a), provides direct statutory

authority for the collection of fingerprints for the purpose of registering aliens.

- INA section 264(a), 8 U.S.C. 1304(a), provides that the Secretary is authorized to prepare forms for the registration and fingerprinting of aliens, aged 14 and older, in the United States, as required by INA section 262.

DHS interprets the broad statutory authority described above as authority for the collection of biometrics when such information is material or relevant to the furtherance of DHS’ delegated authority to administer and enforce the INA. DHS’ delegated authority includes the adjudication of requests for immigration benefits, as well as authority to “register and fingerprint aliens in the United States.”<sup>13</sup> Establishing and verifying an individual’s identity through the use of biometrics falls within DHS’ authority in the adjudication of immigration benefits and administration and enforcement of immigration laws.

Several other statutes authorize the collection of biometrics by DHS. In 1997, when funding the agency for 1998, Congress directed the former Immigration and Naturalization Service (INS), which preceded the creation of DHS, not to accept any fingerprint cards collected by entities outside the INS for immigration benefits, except in certain instances when collected by law enforcement agencies and in certain overseas situations. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998, Title I, Public Law 105–119, 111 Stat. 2440, 2447–2448 (1997). Previously, certain “designated fingerprint services” entities could collect fingerprints. After passage of this law, which necessitated a change in INS’ practices, INS established the Application Support Centers (ASCs) which exist nationwide today and are operated by DHS for the collection of biometrics for immigration benefits. *See* 63 FR 12979 (Mar. 17, 1998). The 1998 appropriations law also provided for the former INS to charge a fee for fingerprinting. A fingerprinting fee was first charged in March 1998, and has evolved into the biometric services fee in 8 CFR 103.7(b)(1)(i)(C).<sup>14</sup>

<sup>13</sup> 6 U.S.C. 271(b); *see also* Department of Homeland Security Delegation Number: 0150.1, Delegation To the Bureau of Citizenship and Immigration Services (June 5, 2003), available at <https://www.hsdl.org/?view&did=234775> (viewed Nov. 12, 2019).

<sup>14</sup> Another section of the INA specifically authorizes USCIS to collect fees for fingerprinting, biometric, and other necessary services under the Temporary Protected Status (TPS) program. 8 U.S.C. 1254b; DHS Appropriations Act of 2010, Public Law 111–83, sec. 549, 123 Stat. 2142, 2177 (2009).

#### 1. Background Checks

DHS is precluded in many cases from approving, granting, or providing immigration benefits to individuals with a record of certain criminal offenses or administrative violations.<sup>15</sup> Whether granting a benefit is discretionary or not, criminal histories are relevant because they are used to determine eligibility for both discretionary and non-discretionary benefits. Additionally, DHS is mandated to protect the American public from terrorist attacks by foreign nationals admitted to the United States, by “identify[ing] individuals who seek to enter the United States . . . who support terrorism, violent extremism, acts of violence toward any group or class of people within the United States, or who present a risk of causing harm subsequent to their entry.” *See* Executive Order (E.O.) No. 13780, *Protecting the Nation from Foreign Terrorist Entry into the United States*, at section 5(a), 82 FR 13209, 13215 (Mar. 9, 2017) (E.O. 13780). Therefore, DHS adjudications must include national security considerations and criminal history background checks.

For example, one statute precludes the filing of a family-based immigrant petition by someone who has been convicted of a “specified offense against a minor.” *See* INA section 204(a)(1)(A)(viii), 8 U.S.C. 1154(a)(1)(A)(viii). The criminal and security-related grounds of inadmissibility found in INA section 212(a)(2)–(3), 8 U.S.C. 1182(a)(2)–(3), apply to many benefits, such as adjustment to lawful permanent resident status, refugee status, and Temporary Protected Status (TPS). The INA provides that refugee applicants must be admissible as immigrants and the criminal, security, and terrorism-related grounds of inadmissibility apply to refugee applicants. *See* INA section 207(c)(1), 8 U.S.C. 1157(c)(1); INA section 212, 8 U.S.C. 1182. The INA provides that asylum may be granted on a discretionary basis. *See* INA section 208(a)(1)(A), 8 U.S.C. 1158(a)(1)(A). It provides that asylum applicants are subject to mandatory criminal and security bars. *See* INA section 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A). Sections of the INA apply the criminal, security, and terrorism-related bars to TPS applicants, including the mandatory asylum bars above. *See* INA sections 244(c)(2)(A)(iii)–(B), 8 U.S.C.

<sup>15</sup> DHS would like to note that limitations on biometric collection or use in this proposed rule would not impact existing law enforcement authorities or other national security or intelligence gathering activities.

1254a (c)(2)(A)(iii)–(B). Various INA sections require that adjustment of status applicants be admissible in order to qualify. *See, e.g.*, sections 245(a)(2) and 209(b)(5), 8 U.S.C. 1255(a)(2) and 8 U.S.C. 1159(b)(5). The INA also provides a good moral character requirement for any applicant to be naturalized. *See* INA section 316(a)(3), 8 U.S.C. 1427(a)(3).

Other statutes authorize DHS to conduct biometric services in relation to national security and public safety purposes. For example, Congress directed in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56, 115 Stat. 354 (2001), reauthorized by Public Law 114–23, 129 Stat. 268 (2015) (codified at note to 8 U.S.C. 1365a), that “biometric technology” should be utilized in the development of the integrated entry-exit system originally mandated by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Public Law 104–208, 110 Stat. 3009 (1996) (codified at 8 U.S.C. 1365a). The Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, 118 Stat. 3638 (2004) (codified as amended at 8 U.S.C. 1365b), required the completion of a biometric data system to facilitate efficient immigration benefits processing and to protect the United States by preventing the entry of terrorists. For USCIS, any limitations on the collection or use of biometrics in this draft rule does not impact DHS law enforcement authorities or other national security or intelligence gathering activities.

Background checks are also required by EOIR regulation for aliens who apply for relief and protection in removal proceedings. Specifically, immigration judges and the BIA are prohibited from granting relief and protection to an alien unless an ICE attorney reports that all required “identity, law enforcement, or security investigations or examinations” have been completed. *See* 8 CFR 1003.1(d)(6), 1003.47(g). Indeed, as pertaining to asylum applications, there is a statutory basis for such background checks as well. *See* 8 U.S.C. 1158(d)(5)(A)(i); *see also* 8 CFR 1208.10. Once again, to the extent that any controversy may arise interpreting DHS and DOJ regulations regarding the removal of age restrictions for biometrics collection, until DOJ removes its age restrictions, DHS intends to follow DOJ regulations with respect to age restrictions when collecting biometrics for an application or petition that will be adjudicated by EOIR.

## 2. Secure Document Production

Still other statutes authorize or require the collection of biometrics for secure document production. For example, photographs are required by statute to create certificates of naturalization. INA section 333(a), 8 U.S.C. 1444(a). Additionally, an alien granted asylum will be granted an employment authorization document (EAD) that shall at a minimum contain the fingerprint and photograph of such alien. 8 U.S.C. 1738. Relatedly, the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act), Public Law 107–173, 116 Stat. 543 (2002), requires that DHS issue aliens machine-readable, tamper-resistant visas and other travel and entry documents using biometric identifiers. 8 U.S.C. 1732(b)(1).

## 3. Biometric Collection From U.S. Citizens and Lawful Permanent Residents

DHS is also authorized to collect the biometrics of U.S. citizen and lawful permanent resident petitioners of family-based immigrant petitions, and U.S. citizen petitioners of nonimmigrant fiancé(e) petitions, to determine if a petitioner has been convicted of certain crimes pursuant to the AWA, Public Law 109–248, 120 Stat. 587 (2006) (codified as amended in scattered sections of 18 and 42 U.S.C.) (see sections 402(a) and (b) for the applicable immigration provisions), and IMBRA, Public Law 109–162, 119 Stat. 2960 (2006) (codified as amended at 8 U.S.C. 1375a). The AWA:

- Prohibits U.S. citizens and lawful permanent residents who have been convicted of any “specified offense against a minor” from filing a family-based immigrant visa petition on behalf of any beneficiary, unless the Secretary determines in his or her sole and unreviewable discretion that the petitioner poses “no risk” to the beneficiary. INA section 204(a)(1)(A)(viii)(I), (B)(i)(II); 8 U.S.C. 1154(a)(1)(A)(viii)(I), (B)(i)(II).
- Renders ineligible to file “K” nonimmigrant fiancé(e) petitions those U.S. citizens convicted of such offenses, unless the Secretary determines in his or her sole and unreviewable discretion that the petitioner poses “no risk” to the fiancé(e) beneficiary. INA section 101(a)(15)(K), 8 U.S.C. 1101(a)(15)(K).

Independent of the AWA, USCIS is also required to disclose information regarding certain violent arrests and convictions for some U.S.C. petitioners who file K-visas for fiancés or spouses in accordance with IMBRA, 8 U.S.C. 1375a.

## 4. Administrative Guidance

This proposed rule is also consistent with non-statutory guidance on effective mechanisms for foreign national vetting, screening, and identification. DHS was directed by executive branch guidance to take actions that require a robust system for biometrics collection, storage, and use related to providing adjudication and naturalization services of immigration benefits. For example, with respect to secure documents, Homeland Security Presidential Directive (HSPD) 11, “*Comprehensive Terrorist-Related Screening Procedures*,” (August 27, 2004) directs DHS to “incorporate security features . . . that resist circumvention to the greatest extent possible.” DHS is directed to consider the “. . . information individuals must present, including, as appropriate, the type of biometric identifier[s] or other form of identification or identifying information to be presented, at particular screening opportunities.” DHS was also directed to expand the use of biometrics, consistent with applicable law, to identify and screen for individuals who may pose a threat to national security by HSPD 24, “*Biometrics for Identification and Screening to Enhance National Security*,” (June 5, 2008). In addition, E.O. 13780 requires DHS to implement a program, as part of the process for adjudications, to identify individuals who seek to enter the United States on a fraudulent basis, who support terrorism, violent extremism, acts of violence toward any group or class of people within the United States, or who present a risk of causing harm subsequent to their entry. 82 FR 13209, 13215 (Mar. 9, 2017). The E.O. provides that the program must include screening and vetting standards and procedures, a mechanism to ensure that applicants are who they claim to be, assess whether applicants may commit, aid, or support any kind of violent, criminal, or terrorist acts after entering the United States, and evaluation of all grounds of inadmissibility or grounds for the denial of other immigration benefits. *Id.* Further, National Security Presidential Memorandum—7 established the DHS-led National Vetting Center to improve vetting “to identify potential threats to national security, border security, homeland security, and public safety”, and included expanding biometric integration, sharing, and use to that end.<sup>16</sup>

<sup>16</sup> National Security Presidential Memorandum—7, SUBJECT: Integration, Sharing, and Use of National Security Threat Actor Information to Protect Americans (Oct. 5, 2017), available at

### B. The Use of Biometrics by DHS

Current regulations provide both general authorities for the collection of biometrics in connection with administering and enforcing the immigration and naturalization benefits as well as requirements specific to certain benefit types.<sup>17</sup> In a related provision, an applicant, petitioner, sponsor, beneficiary, or individual filing a benefit request may be required to appear for biometrics. See 8 CFR 103.2(b)(9). In addition, DHS has the authority to require biometrics and the associated biometric services fee from any applicant, petitioner, sponsor, beneficiary, or requestor, or individual filing or seeking a benefit request on a case-by-case basis, through form instructions, or through a **Federal Register** notice. *Id.*

The former INS first used fingerprints for immigration processing solely for the purpose of performing criminal history background checks related to applications for which eligibility required good moral character or non-existence of a record of certain criminal offenses. See, e.g., 63 FR 12979 (Mar. 17, 1998) (prohibiting the former INS from accepting fingerprints for the purpose of conducting criminal background checks unless collected by certain U.S. Government entities). The beneficiary or applicant would submit fingerprints which were then checked against FBI databases to determine if they matched any criminal activity on file. The fingerprints were not retained by the INS and delays in processing would often result in individuals needing to submit fingerprints multiple times for the same application. Photographs were not historically collected by INS as a biometric identifier. For those immigration benefit requests that required a photograph to produce a resulting identity document, the regulations required submission of a passport-style photograph. See, e.g., 8 CFR 264.1, 264.5 (requiring identical photographs).

Today, DHS handles biometrics differently. Biometrics are still used in criminal history background checks for immigration benefits where good moral character or absence of certain criminal offenses are required, as well as for overall national security vetting. In addition, biometrics may be stored by

<https://www.whitehouse.gov/presidential-actions/national-security-presidential-memorandum-7/>.

<sup>17</sup> See, e.g., 8 CFR 103.16(a), 204.2(a)(2) (requiring evidence of the claimed relationship), 204.3(c)(3) (requiring fingerprinting), 204.2(d)(2)(vi) (authorizing blood testing), 245a.2(d) (requiring photographs and a completed fingerprint card), 316.4(a) (referring to form instructions which may require photographs and fingerprinting).

DHS and used to verify an individual's identity in subsequent encounters with DHS. These encounters could vary from travel to and from the United States, where an individual may encounter CBP officers, to arrest and detention, by law enforcement components such as ICE, to initiation of removal proceedings.

DHS also uses collected biometric information for document production related to immigration benefits and status, including but not limited to: Travel Documents (Form I-512L), Permanent Resident Cards (Form I-551), Employment Authorization Documents (Form I-766), Certificates of Citizenship (Form N-560), Certificates of Naturalization (Form N-550), Replacement Certificates of Citizenship (Form N-561), and Replacement Certificates of Naturalization (Form N-570).<sup>18</sup> Most of these secure documents are created using the photograph (and signature) that is taken by DHS at an ASC, and not the paper photograph mailed with the benefit request.<sup>19</sup>

As part of the benefit adjudications process, DHS must first verify the identity of an individual applying for or seeking any benefit. Identity verification protects against fraud and imposters. Second, DHS must determine if the individual is eligible to receive the requested benefit. That determination may focus on the criminal, national security, and immigration history of the individual, depending on the eligibility requirements for the particular benefit type, and is accomplished through national security and criminal history background checks.

The immigration history review includes a review of the individual's current immigration status, current immigration filings, past immigration filings, and whether previous benefits were granted or denied. DHS conducts national security and criminal history background checks on individuals applying for an immigration benefit because U.S. immigration laws preclude DHS from granting many immigration and naturalization benefits to individuals with certain criminal or administrative violations, or with

<sup>18</sup> See also 8 U.S.C. 1732(b) (requiring machine-readable travel and entry documents containing biometric identifiers); 8 CFR 264.1(b); Application to Register Permanent Residence or Adjust Status (Form I-485); Application to Replace Permanent Resident Card (Form I-90); Application for Employment Authorization (Form I-765); Application for Certificate of Citizenship (Form N-600); Application for Naturalization (Form N-400); Application for Replacement Naturalization/Citizenship Document (N-565).

<sup>19</sup> The paper photograph is retained and may be used to verify the identity of an applicant who is required to be interviewed by comparing it to the digitally captured photograph or the applicant's motor vehicle operator's license.

certain disqualifying characteristics (e.g., certain communicable diseases or association with terrorist organizations), while also providing DHS discretion in granting an immigration benefit in many instances.<sup>20</sup>

DHS conducts multiple types of national security and criminal history background checks including but not limited to: (1) Name-based checks, (2) FBI fingerprint-based checks, and (3) biometrics checks against the Automated Biometric Identification System (IDENT), the FBI Next Generation Identification system, and the Department of Defense (DoD) Automated Biometric Identification System (ABIS).<sup>21 22 23</sup> DHS also uses biometrics to determine if an individual has activities in their background such as an association with human rights violations, involvement in terrorist activities, or affiliation with terrorist organizations rendering them inadmissible. To that end, DHS may vet an individual's biometrics against data sets of foreign partners in accordance with international arrangements.<sup>24</sup>

<sup>20</sup> See, e.g., INA section 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A) (mandatory bars to asylum); INA section 245(a)(2), 8 U.S.C. 1255(a)(2) (admissibility requirements for adjustment of status applicants); INA section 316(a)(3), 8 U.S.C. 1427(a)(3) (good moral character requirement for naturalization).

<sup>21</sup> IDENT will be replaced by a system called the Homeland Advanced Recognition Technology (HART). DHS will use the term "IDENT" in this rule to refer to both the current and successor systems.

<sup>22</sup> The FBI NGI system is operated by the FBI/CJIS Division, and provides the criminal justice community with multi-modal biometric and criminal history information. See Privacy Impact Assessment Update for Biometric Interoperability Between the U.S. Department of Homeland Security and the U.S. Department of Justice (Oct. 13, 2011). FBI's NGI database, in turn, also provides access to DoD's ABIS database.

<sup>23</sup> DoD's ABIS system is operated by the DoD, and contains biometric records of individuals encountered overseas by the DoD that include KSTs. The biographic and biometric data from ABIS is also transferred to the DoD's Special Operations Force Exhibition (SOFE) Portal for additional biometric matching. Once complete, the NGI system forwards responses back from both the NGI and the ABIS systems to the IDENT system. When data is initially submitted and processed through IDENT, NGI, and ABIS, an ICE Analyst conducts biometric and biographic checks against other law enforcement and classified Intelligence Community databases before processing, exploiting, summarizing, and disseminating findings to the relevant ICE Attaché and Biometric Identification Transnational Migration Alert Program (BITMAP) PMT.

<sup>24</sup> See, e.g., Five Country Conference High Value Data Sharing Protocol, Nov. 2009; Statement of Mutual Understanding on Information Sharing among the Department of Citizenship Immigration Canada (CIC) and the U.S. Immigration and Naturalization Service (INS) and the U.S. Department of State (DOS), Feb. 2003; Agreement between the U.S. and Canada for the sharing of Visa and Immigration Information, Dec. 13, 2012, T.I.A.S. No. 13-1121; and Agreement between the

The DHS biometrics process for benefits adjudication purposes begins with the collection of an individual's biometrics at an authorized biometrics collection site, including DHS offices, ASCs, military installations, U.S. consular offices abroad, and, in some cases, federal, state, and local law enforcement installations. Domestically, DHS established a robust program to allow individuals to provide biometrics at ASC facilities, and generally individuals are scheduled to appear at a location close to their address of record. DHS also established mobile biometrics collection capabilities domestically for those who are homebound, or for certain remote locations, as well as outside the United States to support biometrics collection in the United States Refugee Admissions Program (USRAP). For other collections outside the United States, biometrics may be handled differently. When biometrics are required on a DHS-adjudicated form and DHS does not have a presence in that country, the Department of State (DOS) will continue to collect biometrics on behalf of DHS. In cases where DOS will issue a boarding foil, immigrant visa, or non-immigrant visa associated with a DHS form, DOS will continue to collect biometrics under its existing authority.

Currently, DHS biometrics consist of a photograph, fingerprints, and signature to conduct identity, eligibility, national security, criminal history background checks, and in certain situations, voluntary DNA testing to verify a claimed genetic relationship. For certain family-based benefit requests, where other evidence proves inconclusive, DHS accepts DNA test results obtained from approved laboratories (along with other necessary identifiers, such as a name and date of birth), as evidence to assist in establishing the existence of genetic relationships. *See* 8 CFR 204.2(d)(2)(vi). In these limited cases, DHS requires that DNA test results establish a sufficient probability of the existence of the alleged relationship to be accepted as probative evidence of that relationship.

DHS is bound by the confidentiality provisions of Section 1367 of title 8 of the U.S. Code, "Penalties for disclosure of information" (originally enacted as Section 384 of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA)). All DHS officers and employees are generally prohibited from permitting use by or disclosure to

anyone other than a sworn officer or employee of DHS, DOS, or DOJ of any information relating to a beneficiary of a pending or approved request for certain victim-based immigration benefits, such as an abused spouse waiver of the joint filing requirement, a VAWA self-petition by a spouse or child of an abused U.S. citizen or lawful permanent resident, VAWA cancellation of removal or suspension of deportation, or application for T or U nonimmigrant status, including the fact that they have applied for such a benefit. Importantly, the protection against disclosure extends to all records or other information, including those that do not specifically identify the individual as an applicant or beneficiary of the T Visa, U Visa, or VAWA protections. Therefore, the biometric collection contemplated here would also be protected from disclosure in accordance with the requirements and exceptions found in 8 U.S.C. 1367. Thus, DHS has not separately codified the Section 1367 protections in this proposed rule.

#### IV. Discussion of Proposed Changes

##### A. Use Biometrics for Identity Management and Enhanced Vetting

DHS requires the submission of biometrics for several immigration benefit requests and for law enforcement purposes, including functions incident to apprehending, arresting, processing, and care and custody of aliens.<sup>25</sup> In addition, DHS has the authority to require biometrics and the associated biometric services fee from any applicant, petitioner, sponsor, beneficiary, or requestor, or individual filing a request on a case-by-case basis, through form instructions or as provided in a **Federal Register** notice. 8 CFR 103.2(b)(9), 103.7(b)(1)(i)(C), 103.17. Under that construct, although DHS has the authority to collect biometrics from any applicant, petitioner, sponsor, beneficiary, or requestor, or individual filing a request, biometrics are only mandatory for certain benefit requests. For all others, DHS must decide if the benefit requested, or circumstances of the request, justifies collection of biometrics and, if so, notify an individual that their biometrics are required along with when and where they should be collected.

DHS's use of biometrics for criminal history background checks and document production is outdated and not fully in conformity with current

biometrics use policies by government agencies.<sup>26</sup> In addition, as outlined above, DHS has the legal authority to administer and enforce immigration laws and collect biometrics when such information is necessary to that authority. For individuals, any adjudication necessarily includes verifying identity and determining whether or not the individual poses a risk to national security or public safety in those instances where these factors may impact eligibility for an immigration benefit and upon arrest of an alien for purposes of processing, care, custody, and initiation of removal proceedings.

Biometrics collection upon apprehension or arrest by DHS will accurately identify the individuals encountered, and verify any claimed genetic relationship. This in turn will allow DHS to make better informed decisions as to the processing, transporting, and managing custody of aliens subject to DHS's law enforcement authorities. Having more reliable data about detainees' identities will increase safety of DHS detention facilities for both DHS law enforcement officers and the detainees. It would also eliminate an incentive that currently exists for unscrupulous individuals to jeopardize the health and safety of minors to whom they are unrelated, transporting the minors on a dangerous journey across the United States border, and claiming to be the parents of unrelated minors in order to claim to be a "family unit" and thus obtain a relatively quick release from DHS custody.

Thus, DHS decided that it is necessary to increase the use of collected biometric information beyond only eligibility and admissibility determinations to include identity management in the immigration lifecycle and continuous immigration vetting. To accomplish this goal, DHS proposes in this rule to flip the current construct from one where biometrics may be collected based on past practices, regulations, or the form instructions for a particular benefit, to a system under which biometrics are required for any immigration benefit

<sup>26</sup> *See, e.g., Individuals with Multiple Identities in Historical Fingerprint Enrollment Records Who Have Received Immigration Benefits*, Department of Homeland Security, Office of Inspector General, Office of Inspections and Special Reviews, OIG-17-111 (Sept. 2017); *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records*, Department of Homeland Security, Office of Inspector General, Office of Inspections and Special Reviews, OIG-16-130 (Sept. 2016); *Review of U.S. Citizenship and Immigration Services' Alien Security Checks*, Department of Homeland Security, Office of Inspector General, Office of Inspections and Special Reviews, OIG-06-06 (Nov. 2005).

U.S. and the Government of the United Kingdom of Great Britain and Northern Ireland for the Sharing of Visa, Immigration, and Nationality Information, April 18, 2013, T.I.A.S. No. 13-1108.

<sup>25</sup> *See, e.g.,* 8 CFR 204.310(a)(3)(ii), 210.2(c)(2)(i), 210.5(b)(2), 212.7(e)(3)(i), 214.11(d)(5)-(7), 214.11(m)(2), 214.2(w)(15), 244.6, 244.17, 245.15(g)(1), 245.21(b), 245a.2(d), 245a4(b)(4), 248.3, 1(a)-(b).

request unless DHS determines that biometrics are unnecessary. Therefore, DHS proposes that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with a benefit or other request, including U.S. citizens and without regard to age, must appear for biometrics collection, unless DHS or its designee affirmatively decides to not issue a biometrics appointment notice to the individual, or unless DHS waives or exempts the requirement in the form instructions, a **Federal Register** notice, or as otherwise provided by law or regulation. DHS may waive or exempt the biometrics requirement at its discretion or based on a request for reasonable accommodation. See proposed 8 CFR 103.16(a)(1). The Department will make reasonable efforts that are also consistent with the Government's need for biometrics in certain contexts, and will follow all required procedures that are applicable under the Americans with Disabilities Act and the Federal Rehabilitation Act.<sup>27</sup>

However, DHS does not propose to impose an absolute biometrics collection requirement in all instances for all forms filed with the agency.<sup>28</sup> There may be limited circumstances where biometric collection would be unnecessary or duplicative. A particular application or petition (e.g., an inadmissibility waiver request) may not require its own biometric collection because a different application or petition filed in conjunction with the first application or petition already carries a biometrics collection requirement. Under limited circumstances, DHS proposes to retain discretion to exempt certain forms from the biometric collection requirement because it would result in waste or redundancy to both the agency and the public. For example, when an applicant files an Application to Register Permanent Residence or Adjust Status (Form I-485) biometrics are collected from all applicants. However, if the same applicant also files an Application for Waiver of Grounds of Inadmissibility (Form I-601) due to an inadmissibility concern, that form is associated with the Form I-485. There is no need to independently require biometrics collection in conjunction with Form I-

601 because DHS is already collecting biometrics in association with Form I-485. Form I-601 would never be filed without an associated form carrying a biometrics collection requirement (i.e., an immigrant visa application, adjustment of status application, certain non-immigrant visa applications, etc.).

In this type of situation, DHS recognizes that there is no value in imposing a biometric collection for forms that are only filed in conjunction with other forms that already require biometrics collection. Consequently, the DHS forms that are being revised and posted in accordance with the PRA for public comments do not include an absolute requirement for biometrics collection. Instead, the revised form instructions put the applicant on notice that every individual who is an applicant, petitioner, derivative, beneficiary, or sponsor of an immigration benefit request or other request submitted to DHS is required to provide biometrics unless DHS waives or exempts the requirement and that the applicant will be notified of the time and place for the appointment. For those forms for which DHS proposes to mandate biometrics in all cases as proposed under this rule, DHS included the requirement for payment of the biometric services fee with the underlying application or petition filing (unless there is an approved fee waiver). See the PRA section of this rule for information on how to comment on the proposed form instructions for implementing the changes proposed in this rule.

#### 1. Identity Management

DHS is proposing to use biometrics for identity management in the immigration lifecycle for several reasons. Most importantly, DHS is transitioning to a person-centric model for organizing and managing its records. DHS plans to begin using biometrics to establish and manage unique identities as it organizes and verifies immigration records in a highly-reliable, on-going, and continuous manner. Currently, DHS relies on declared biographic data for identity management in the immigration lifecycle. Once an identity has been enrolled in IDENT and established within DHS, future activities and encounters may be added to the original enrollment and will be confirmed through identity verification at various points in the immigration lifecycle. Identity verification may be done outside of the United States (by DHS or DOS) or within the United States (at ASCs, USCIS offices, or other DHS facilities). Identity verification also allows the reuse of enrolled identity

data (both biometric and biographic) that has already been vetted. Such reuse reduces the amount of erroneous or conflicting data that can be entered into systems, and reduces the cost and complexity of repetitive collection and validation. Reusable fingerprints allow for more immediate and recurrent background checks, and reusable photographs allow for quick production of documents with high consistency and integrity.

DHS recognizes that biometric reuse is acceptable, when there is identity verification, but in the case of children biometric reuse could be impacted by the rapidly changing physical attributes of children. DHS has a duty to the public to ensure that immigration benefits are granted only to those who are eligible for them, to ensure that no benefit is provided to the wrong individual, and to verify that individuals entering the country are who they say they are. See *generally* INA section 103, 8 U.S.C. 1103 (charging DHS with the administration and enforcement of the INA). A biometrically-based, person-centric records model would ensure that an individual's records are complete and pertain only to that individual. Under this model, DHS would be able to easily locate, maintain, and update the correct individual's information such as: Current address (physical and mailing), immigration status, or to associate previously submitted identity documentation, such as birth certificates and marriage licenses, in future adjudications thereby reducing duplicative biographic or evidentiary collections.

Biometrics are unique to each individual and provide USCIS with tools for identity management while improving the services provided to those who submit immigration benefit requests. With regard to age, DHS proposes to reserve the authority to collect biometrics at any age to ensure the immigration records created for children can more assuredly be related to their subsequent adult records despite changes to their biographic information. USCIS notes that with respect to these biometrics, as with any other agency decision on a petition or application, if a decision will be adverse to an applicant or petitioner and is based on derogatory information the agency considered, he/she will be advised of that fact and offered an opportunity to rebut the information. 8 CFR 103.2(b)(16)(i).

Another key driver for eliminating the age restrictions for biometric collection is the number of Unaccompanied Alien Children (UAC) and Accompanied

<sup>27</sup> As explained more fully later in this preamble, DHS is not proposing that the requirement that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with a benefit or other request, including U.S. citizens and without regard to age, must appear for biometrics collection will apply to DNA.

<sup>28</sup> Only certain family-based benefit requests would be impacted by the proposed provision to allow, request, or require DNA evidence to establish a claimed genetic relationship.



Alien Children (AAC) being intercepted at the border. The DHS proposal to remove age restrictions will help combat human trafficking, specifically human trafficking of children, including the trafficking and exploitation of children forced to accompany adults traveling to the United States with the goal of avoiding detention and exploit immigration laws.

Beginning in July 2019 DHS has been conducting a small-scale pilot program where, with consent from individuals presenting themselves as family units, officers use Rapid DNA testing technologies as a precise and focused investigative tool to identify suspected fraudulent families and vulnerable children who may be potentially exploited. Between July 1, 2019 and November 7, 2019, DHS encountered 1747 self-identified family units with indicators of fraud who were referred for additional screening. Of this number, DHS identified 432 incidents of fraudulent family claims (over 2020 percent).

Collecting biometrics on children that DHS encounters would permit definitive identification of them and may show that they have been reported missing. Generally, DHS plans to use the biometric information collected from children for identity management in the immigration lifecycle only, but will retain the authority for other uses in its discretion, such as background checks and for law enforcement purposes. DHS does not intend to routinely submit all UAC or AAC biometrics to the FBI for criminal history background checks; rather, the biometrics collected from the majority of these children would be stored in IDENT<sup>29</sup> to help DHS with future encounters. USCIS is authorized to share relevant information with law enforcement or other DHS components, including “biometrics” for identity verification and, consequently, it may share DNA test results, which include a partial DNA profile, with other agencies as it does other record information pursuant to existing law.

DHS will have the express authority to send UAC or AAC biometrics to the FBI for criminal history background checks, but depending on the DHS component encountering the individual, may only send biometrics to the FBI if

<sup>29</sup> IDENT is the DHS enterprise repository for biometrics and provides biometric identification management services to DHS Components with technology for matching, storing, and sharing biometric data. DHS Office of Biometric Identity Management (OBIM) is the lead designated provider of biometric identity services for DHS, and maintains the largest biometric repository in the U.S. government. See [www.dhs.gov/obim](http://www.dhs.gov/obim) (last visited June 15, 2020).

DHS had some articulable derogatory information on the subject and needed to confirm criminal history or an association with other illegal or terrorist organizations in the interests of public safety and national security. Biometrics collected for the identification of genetic relationships at the border would be maintained in law enforcement systems for future identify verification, subject to the restrictions found in proposed 8 CFR 103.16.

## 2. Enhanced and Continuous Vetting

Individuals with certain types of criminal convictions, or those who present a threat to national security or public safety are not eligible for certain benefits. Benefit eligibility determinations in these cases often focus on the criminal, national security, and immigration history of the individual. The immigration history review considers the individual’s current immigration status, past immigration filings, and whether previous benefits were granted or denied. DHS conducts national security and criminal history background checks on individuals applying for or seeking an immigration benefit because U.S. immigration laws preclude DHS from granting many immigration and naturalization benefits to individuals with certain criminal or administrative violations, or with certain disqualifying characteristics (*e.g.*, certain communicable diseases or association with terrorist organizations), while also providing DHS discretion in granting an immigration benefit in many instances. See, *e.g.*, INA section 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A) (mandatory bars to asylum); INA section 245(a)(2), 8 U.S.C. 1255(a)(2) (admissibility requirements for adjustment of status applicants and agency discretion); and INA section 316(a)(3), 8 U.S.C. 1427(a)(3) (good moral character requirement for naturalization).

Biometrics are collected and referenced throughout the immigration law administration and enforcement lifecycle, from first application, encounter, or apprehension to naturalization or removal. In the enforcement context, biometric collection when an individual is first encountered can help officers detect fraudulent identities and relationships between adults and children. This helps identify child smuggling, trafficking, and exploitation. It can also help identify when an adult who has been previously encountered is posing as child. Collection of biometrics during removal proceedings is primarily to identify that the individual is the correct individual being removed.

As part of the adjudication process, DHS needs a strong system for the collection and use of biometrics from foreign nationals who enter or wish to enter the United States in order to, as directed by the President, “identify individuals who seek to enter the United States on a fraudulent basis, who support terrorism, violent extremism, acts of violence toward any group or class of people within the United States, or who present a risk of causing harm subsequent to their entry.” See E.O. 13780 section 5, 82 FR 13209, 13215 (Mar. 9, 2017). The changes proposed in this rule would assist DHS in developing appropriate means for ensuring the proper collection of all information necessary for a rigorous evaluation of any grounds of inadmissibility or grounds for the denial of an immigration benefit. *Id.*

In addition, as part of the effort to implement Uniform Screening and Vetting Standards for All Immigration Programs, DHS plans to implement a program of continuous immigration vetting. Under continuous vetting, DHS may require aliens to be subjected to continued and subsequent evaluation of eligibility for their immigration benefits to ensure they continue to present no risk of causing harm subsequent to their entry. This rule proposes that any individual alien who is present in the United States following an approved immigration benefit may be required to submit biometrics unless and until they are granted U.S. citizenship.<sup>30</sup> The rule further proposes that a lawful permanent resident or U.S. citizen may be required to submit biometrics if he or she filed an application, petition, or request in the past, and it was either reopened or the previous approval is relevant to an application, petition, or benefit request currently pending with USCIS. Proposed 8 CFR 103.16(c)(2).

DHS welcomes public comment on the increased use of biometrics beyond criminal history background checks, to include identity management in the immigration lifecycle and enhanced vetting or other purposes, as well as any relevant data, information, or proposals.

## B. Verify Identity, Familial Relationships, and Preclude Imposters

### 1. Use of DNA Evidence<sup>31</sup>

U.S. citizens and lawful permanent residents petitioning for a biological

<sup>30</sup> See DHS Privacy Impact Assessment for Continuous Immigration Vetting (Feb. 14, 2019), available at <https://www.dhs.gov/privacy>.

<sup>31</sup> T The DNA Fingerprint Act authorizes the Attorney General to collect DNA from individuals arrested, facing charges, convicted, or from non-U.S. persons who are detained under the authority

family member, or individuals seeking to include a biological family member as a dependent or derivative (accompanying or follow-to-join) in an application for an immigration benefit, must demonstrate the existence of the claimed genetic relationship, and current regulations generally require documentary evidence such as marriage and birth certificates as primary evidence of such a claimed relationship.<sup>32</sup> In the absence of primary evidence, acceptable secondary evidence includes medical records, school records, religious documents, and affidavits. *See, e.g.*, 8 CFR 204.2(d)(2). However, documentary evidence may be unreliable or unavailable, and individuals need additional means to establish claimed genetic relationships to avoid denial of a petition, application, or other benefit request. USCIS currently accepts DNA test results from laboratories accredited by the AABB (formerly the American Association of Blood Banks) as proof of the existence of a claimed genetic relationship where other evidence is unavailable.<sup>33</sup>

DHS proposes to revise its regulations to provide that DNA genetic testing can be required, requested, or accepted as probative evidence, either primary or secondary, to establish a claimed genetic relationship where required.<sup>34</sup> *See* proposed 8 CFR 103.16(e). DNA is the only biometric that can verify a claimed genetic relationship. Current regulations allow USCIS to require Blood Group Antigen or Human Leukocyte Antigen (HLA)

of the United States. 34 U.S.C. 40702. The implementing DOJ regulations require any agency of the United States that arrests or detains individuals or supervises individuals facing charges to collect DNA samples from individuals who are arrested, facing charges, or convicted, and from non-United States persons who are detained under the authority of the United States. 28 CFR 28.12(b). DHS notes that the DNA collection requirements of 34 U.S.C. 40702 and 28 CFR part 28, subpart B are for law enforcement identification purposes, whereas this rule proposes to establish the authority for the use of DNA to verify claimed genetic relationships in the adjudication of immigration benefit requests.

<sup>32</sup> *See, e.g.*, 8 CFR 103.2(b)(2)(i); 204.2(c)(2)(ii), (d)(2)(i)–(iii), (d)(5)(ii), (f)(2)(i)–(iii), (g)(2)(i)–(iii); 207.7(e); 208.21(f), 245.11(b), 245.15(l)(2), 254.24(h)(1)(iii).

<sup>33</sup> Although most of the collection of DNA samples is performed by the AABB-accredited laboratory conducting the testing, for individuals residing overseas, DHS or the Department of State facilitate collection and transmission of the DNA sample to the laboratory to ensure regularity in the collection and proper chain of custody of the DNA sample.

<sup>34</sup> This includes requiring, requesting, or accepting DNA testing to establish a genetic relationship with a birth parent in the context of a petition to classify a beneficiary as an orphan under INA 101(b)(1)(F) or as a Convention adoptee under INA 101(b)(1)(G).

tests to prove parentage only after other forms of evidence were inconclusive. *See* 8 CFR 204.2(d)(2)(vi). But those tests are no longer widely available and are not as conclusive as a DNA test because, while blood-typing can be used as proof that an individual is not a child's biological parent, it cannot be used to *confirm* the individual is the child's parent.<sup>35</sup> According to the AABB, DNA testing provides the most reliable scientific test available to resolve a genetic relationship and replaced older serological testing such as blood typing and serological HLA typing.<sup>36</sup> Blood tests are also more invasive than DNA tests, DNA collection generally does not require blood to be drawn from any individuals tested, and the most common method is a noninvasive buccal (mouth) swab.

DHS proposes to define the term “DNA” in regulation as “deoxyribonucleic acid, which carries the genetic instructions used in the growth, development, functioning, and reproduction of all known living organisms.” Proposed 8 CFR 1.2. When DHS uses the term “DNA” in this rule it is a reference to the raw genetic material, typically saliva, collected via buccal swab from an individual in order to facilitate DNA testing to establish genetic relationships. DHS will only require, request, or accept DNA testing to verify a claimed genetic relationship. DHS will not store or share any raw DNA or biological samples, other than to the extent necessary to facilitate the DNA testing (by using an on-site automated machine or transmitting to the AABB-accredited laboratory conducting the testing), unless DHS is required to share by law. Proposed 8 CFR 103.16(e).

For DHS, there are two different means of actually testing the raw DNA to verify a claimed genetic relationship. After DNA samples are collected, an individual's raw DNA material would then be either tested locally by an automated machine (*i.e.*, Rapid DNA)<sup>37</sup> or mailed to a traditional AABB-accredited laboratory for testing. This testing allows for the comparison of

<sup>35</sup> Gunther Geserick & Ingo Wirth, *Genetic Kinship Investigation from Blood Groups to DNA Markers*, 39 *Transfus Med Hemother* 163–75 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3375130/>.

<sup>36</sup> AABB, *Standards for Relationship Testing Laboratories*, Appendix 10—Immigration Testing (14th ed. 2019).

<sup>37</sup> The Department of Homeland Security (DHS) Science and Technology Directorate (S&T) has been working in conjunction with DoD and DOJ to fund the development of cost-effective Rapid DNA equipment to allow non-technical users with appropriate training to analyze the DNA of individuals in a field setting and receive reliable results in about one hour.

partial DNA profiles to determine the statistical probability that the individuals tested have the claimed genetic relationship. In either case, a partial DNA profile would be produced as a result of the test. When DHS uses the term “partial DNA profile” it is a reference to a visual or printed partial representation of a small portion of an individual's particular DNA characteristics. An individual's partial DNA profile is a biometric identifier as unique as their fingerprints. Significantly, when an individual's DNA is tested in order to verify a claimed genetic relationship, the test does not reveal medical or hereditary conditions. The particular genetic markers profiled for relationship testing are markers used to verify the claimed genetic relationship. More specifically, the partial DNA profile created for relationship testing is actually a very small portion of an individual's full DNA characteristics. At present, DHS relationship tests profile between 16 and 24 genetic markers out of the nearly two million genetic markers typically contained in human DNA. In contrast with raw DNA or biological samples, which will not be shared or stored under any circumstances unless required to share by law, DHS may store or share DNA test results, which include a partial DNA profile, with other law enforcement agencies to the extent permitted by and necessary to enforce and administer the immigration and naturalization laws. Proposed 8 CFR 103.16(e).

The testing entity conducts the DNA test, either automatically by machine or in a traditional laboratory environment, and generates a DNA test result. DHS uses the term “DNA test result” as a reference to the ultimate scientific conclusion made by the AABB-accredited testing entity as to the claimed genetic relationship. The DNA test result is represented by a probability or percentage of the likelihood of the existence of the claimed genetic relationship as a result of comparing at least two partial DNA profiles. DHS has established by policy what minimum threshold probability for the relationship that it would accept in verifying a claimed genetic relationship, depending on the particular relationship claimed (*i.e.*, parent, full-sibling, half-sibling, etc.).<sup>38</sup> DNA test results which

<sup>38</sup> *See DNA Evidence of Sibling Relationships*, PM 602.0106.1, issued April 17, 2018 (establishing the threshold probabilities for full and half sibling relationships); *Genetic Relationship Testing; Suggesting DNA Tests Revisions to the Adjudicators Field Manual (AFM) Chapter 21 (AFM Update AD07–25)*, signed by Michael Aytes, Associate

include a partial DNA profile, where they indicate a sufficient probability of the existence of the relationship tested, are now accepted as a probative evidence to establish parent and sibling genetic relationships. *See Matter of Ruzku*, 26 I&N Dec. 731 (BIA 2016).

Consistent with current practice, the DNA test results obtained by DHS, which contain the ultimate probability of relationship and a partial DNA profile, would be retained in the individual's Alien file (A-file) and made part of the record. USCIS may use and store DNA test results with other law enforcement agencies to the extent permitted by and necessary to administer and enforce the immigration and naturalization laws. Proposed 8 CFR 103.16(e).

Currently, DHS allows individuals in certain situations to voluntarily submit DNA test results from AABB-accredited laboratories<sup>39</sup> where other documentary evidence is inconclusive or unavailable.<sup>40</sup> This rule proposes to clarify that DHS may require, request, or accept DNA testing from relevant parties to a benefit request, where probative, as evidence of a claimed genetic relationship. It also proposes to clarify that DHS may consider DNA test results in adjudicating certain immigration benefits as a means of verifying a claimed genetic relationship. And the rule proposes to clarify DHS's authority to collect raw DNA from relevant parties and either perform a DNA relationship test with an AABB-accredited machine in-house or send the raw DNA to a traditional AABB-accredited lab for DNA testing. DHS requests comments on all aspects of this proposal, including the collection, use, and retention of DNA evidence.

Director, Domestic Operations, issued March 19, 2008 (establishing voluntary or suggested nature of DNA testing to verify claimed relationships and citing AABB testing standards); DOS, Foreign Affairs Manual 9 FAM 601.11-1(A)(a)(2) (CT: VISA-936 Sept. 10, 2019) (stating that DNA "test results reporting a 99.5 percent or greater degree of certainty" may be accepted by consular officers as "sufficient to support a biological relationship between a parent and child in visa cases"); *see also Matter of Ruzku*, 26 I&N Dec. 731 (BIA 2016) (holding direct sibling-to-sibling DNA test results reflecting a 99.5 percent degree of certainty or higher that a full sibling biological relationship exists should be accepted and considered to be probative evidence of the relationship).

<sup>39</sup> *See* AABB home page at <http://www.aabb.org/Pages/default.aspx> (last visited Apr. 7, 2020).

<sup>40</sup> *See* Genetic Relationship Testing; Suggesting DNA Tests Revisions to the Adjudicators Field Manual (AFM) Chapter 21 (AFM Update AD07-25), signed by Michael Aytes, Associate Director, Domestic Operations, issued March 19, 2008 (establishing voluntary or suggested nature of DNA testing to verify claimed relationships and citing AABB testing standards).

## 2. Special Treatment of DNA Evidence

While DNA is fundamentally a biometric identifier, DHS recognizes the increased sensitivity surrounding the use of genetic information. DHS believes the other biometric modalities that will be collected are sufficient for most of the goals of this rule. *See* proposed 8 CFR 1.2 (definition of biometrics); proposed 8 CFR 103.16(a) (biometric collection). Therefore, DHS proposes to treat raw DNA as a distinctive biometric modality from the other biometric modalities it is authorized to collect. *See* proposed 8 CFR 1.2 (definition of DNA); proposed 8 CFR 103.16(e). For purposes of DNA collected under this rule, DHS proposes that it will not handle or share any raw DNA for any reason beyond the original purpose of submission (*i.e.*, to establish or verify the claimed genetic relationship), unless DHS is required to share by law. DHS would only store, use, and share DNA test results, which include a partial DNA profile derived from the raw DNA, as provided by the testing entity or as produced by DHS, for adjudication purposes and would retain the results to perform any other functions necessary for administering and enforcing immigration and naturalization laws, to the extent permitted by law. DHS would also only use the raw DNA and DNA test results, which include a partial DNA profile, for the original purpose of submission (*i.e.*, to establish or verify the claimed genetic relationship) or as authorized by the immigration and naturalization laws. DHS components are authorized to share relevant information with law enforcement or other DHS components and, consequently, it may share DNA test results, which include a partial DNA profile, with other agencies when there are national security, public safety, fraud, or other investigative needs, but always pursuant to existing law. Proposed 8 CFR 103.16(e). DHS especially welcomes comments on these proposed provisions.

## 3. Identity Management

DHS must ensure that immigration benefits are not fraudulently obtained and are granted to the rightful person, and that individuals entering the country are who they say they are. As part of the benefit adjudications process, USCIS must verify the identity of an individual applying for or seeking any benefit to protect against fraud and imposters. In all circumstances, DHS must identify persons using aliases after prior immigration encounters and assist in efforts to prevent human smuggling and trafficking. Currently DHS relies

mainly on documentary, paper evidence of identity in administering its programs. Unfortunately, there is no guaranteed way to prevent the manufacturing, counterfeiting, alteration, sale, and/or use of identity documents or other fraudulent documents to circumvent immigration laws or for identity theft. On the other hand, biometric identifiers are not transferrable and may provide confirmation of an individual's identity. Therefore, DHS believes that the best approach to address the vulnerabilities in the immigration process, preclude imposters, and deter fraud would be to rely more on biometrics for identity management in the immigration lifecycle.

### C. Flexibility in Biometrics Requirements

#### 1. Definition of Biometrics

In recent years, government agencies have grouped together identifying features and actions, such as fingerprints, photographs, and signatures under the broad term, biometrics.<sup>41</sup> The terms, biometric "information," "identifiers," or "data" are used to refer to all of these features, including additional features such as iris image, palm print, DNA, and voice print.<sup>42</sup> For example, authorities such as 18 U.S.C. 1028(d)(7)(B) and 17 CFR 162.30(b)(8) refer to identifying information including "unique biometric data, such as fingerprint, voice print or iris image, or other unique physical representation." The term "biometrics" is also used in other laws and regulations. *See, e.g.*, 18 U.S.C. 1028(d)(7)(B), 17 CFR 162.30(b)(8), 21 CFR 11.3(b)(3), and 27 CFR 73.3. As a result, DHS has adopted the practice of referring to fingerprints and photographs collectively as "biometrics," "biometric information," or "biometric services."

For example, the instructions for Application to Replace Permanent Resident Card (Form I-90) refer to a "biometric services appointment," while the Application for Asylum and for Withholding of Removal (Form I-589), refers to "biometrics, including fingerprints and photographs." Many forms also include a signature as a type of biometric identifier. *See* instructions

<sup>41</sup> *See* Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division (CJIS), Fingerprints and Other Biometrics, Next Generation Identification (NGI), <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi> (last visited Apr. 7, 2020).

<sup>42</sup> *See* FBI, CJIS, Fingerprints and Other Biometrics, <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics> (last visited Apr. 7, 2020).

for Form I-485 which references providing “fingerprints, photograph, and/or signature.” Most laws on the subject do not specify individual biometric modalities such as iris image, palm print, voice print, DNA, and/or any other biometric modalities that may be collected from an individual in the future. *See, e.g.*, 8 U.S.C. 1732(b)(1) (requiring the issuance of travel documents that use biometric identifiers recognized by international standards organizations). By proposing to update the terminology in the regulations to uniformly use the term “biometrics” DHS seeks to utilize a single, inclusive term comprehensively throughout regulations and form instructions.

DHS proposes to define the term, “biometrics,” to clarify and expand its authority to collect more than just fingerprints in connection while administering and enforcing the immigration and naturalization benefits or other services. To do this, DHS proposes to expressly define “biometrics” to include a wider range of modalities than just fingerprints and photographs. DHS proposes to define the term “biometrics” to mean “the measurable biological (anatomical and physiological) or behavioral characteristics used for identification of an individual.” Proposed 8 CFR 1.2. Further, DHS proposes the following biometrics as authorized biometric modalities that may be requested or required from individuals in connection with the administration and enforcement of immigration and naturalization laws:

- Fingerprint;
- palm print;
- photograph (including facial images specifically for facial recognition, as well as photographs of physical or anatomical features such as scars, skin marks, and tattoos);
- signature;
- voice print;
- iris image; and
- DNA (DNA test results, which include a partial DNA profile attesting to genetic relationship).

The term “biometric modality” is used to describe a type or class of biometric system. The collection of a biometric implies its use in a system used to identify an individual; hence the use of the term “modality.” “Modality” is often interchanged, or used in conjunction, with the term “biometric” because the collection of a biometric implies automation. For example, an individual’s face is a biometric, but DHS intends to collect a photograph or image of an individual’s face, making a facial photograph the modality. Similarly, an individual’s iris is a biometric, but DHS intends to

collect a photograph or image of an individual’s iris, making an iris image the “modality.” An individual’s voice is a “biometric,” but DHS intends to collect an audible recording of an individual’s voice, making a voice print the “modality.” Finally, an individual’s raw DNA is a “biometric,” but upon testing, the partial DNA profile becomes the “modality” and the DNA test result is the memorialization or evidence of the existence of the claimed genetic relationship. DHS will collect a photograph, fingerprint, audible recording, DNA, etc., for use in facial recognition, fingerprint recognition, iris image recognition, voice recognition, DNA testing, etc.

The proposed definition of biometrics would authorize the collection of specific biometric modalities and the use of biometrics for: Identity enrollment, verification, and management in the immigration lifecycle; national security and criminal history background checks; determinations of eligibility for immigration and naturalization benefits; and the production of secure identity documents. *See* proposed 8 CFR 1.2. DNA, while a biometric, would only be collected by USCIS in limited circumstances to verify the existence of a claimed genetic relationship where relevant to the administration and enforcement of immigration and naturalization laws. *See* proposed 8 CFR 1.2 and 8 CFR 103.16(e).

## 2. Additional Modalities

In addition to the current use of fingerprints<sup>43</sup> as a biometric modality, DHS proposes to begin requesting biometric collection (now and through emerging technologies) with the following additional biometric modalities: Iris, palm, face, voice, and DNA.<sup>44</sup> The technology for collecting and using biometrics has undergone constant and rapid change.<sup>45</sup> DHS needs to keep up with technological developments that will be used by the FBI and agencies with which we will be sharing and comparing biometrics in this area and adjust collection and retention practices for both convenience and security, and to ensure the maximum level of service for all stakeholders. USCIS also has internal

<sup>43</sup> Currently USCIS does not routinely use photographs or signatures for identity verification purposes other than for document production and visual verification of the photo.

<sup>44</sup> DNA, while included in the list of additional modalities, is a distinct modality and is discussed at length separately above.

<sup>45</sup> FBI, Science and Technology Branch, <https://www.fbi.gov/about/leadership-and-structure/science-and-technology-branch> (last visited Apr. 7, 2020).

procedural safeguards to ensure technology used to collect, assess, and store the differing modalities is accurate, reliable, and valid. Additionally, as with any other USCIS petition or application, if a decision will be adverse to an applicant or petitioner and is based on derogatory information the agency considered, he/she shall be advised of that fact and offered an opportunity to rebut the information. 8 CFR 103.2(b)(16)(i). Therefore, DHS proposes that, as of the effective date of this rule, it would begin collecting new biometrics modalities as follows.

### a. Iris Image

DHS proposes to collect and use iris images as a biometric modality. Iris as a biometric modality is a valuable identifier especially for individuals whose fingerprints are unclassifiable or unattainable through loss of fingers, hand amputation, normal wear in the ridges and patterns over time (*i.e.*, due to age, types of employment, etc.), or deliberate eradication/distortion of fingerprint ridges to avoid identification and detection. Iris scanning biometric technology measures the unique patterns in the colored circle of the eye to verify and authenticate identity. Biometric iris recognition is fast, accurate, and offers a form of identification verification that requires no physical contact to collect an iris image. DHS intends to collect iris images as part of the ASC and mobile biometric enrollment process to enroll and verify identity against IDENT, as well as to assist in the adjudication process by verifying against previous immigration encounters.

### b. Palm Print

DHS proposes to add palm prints as a biometrics modality in this rule. This proposal is consistent with what the FBI has announced as part of its Next Generation Identification (NGI) initiative for the development of the requirements for and deployment of an integrated National Palm Print Service.<sup>46</sup> Law enforcement agencies indicate that at least 30 percent of the prints lifted from crime scenes—from knife hilts, gun grips, steering wheels,

<sup>46</sup> *See* Executive Office of the President, National Science and Technology Council, Committee on Technology, Committee on Homeland and National Security, Subcommittee on Biometrics, Palm Print Recognition, [https://www.fbi.gov/file-repository/about-us-cjis-fingerprints\\_biometrics-biometric-center-of-excellences-palm-print-recognition.pdf](https://www.fbi.gov/file-repository/about-us-cjis-fingerprints_biometrics-biometric-center-of-excellences-palm-print-recognition.pdf) view. For a basic explanation of NGI, see also <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi>. [https://www.fbi.gov/file-repository/about-us-cjis-fingerprints\\_biometrics-biometric-center-of-excellences-palm-print-recognition.pdf](https://www.fbi.gov/file-repository/about-us-cjis-fingerprints_biometrics-biometric-center-of-excellences-palm-print-recognition.pdf) view.

and window panes—are of palms, not fingers. For this reason, capturing and scanning latent palm prints is becoming an area of increasing interest among the law enforcement community. The National Palm Print Service is being developed to improve law enforcement's ability to exchange a more complete set of biometric information, make additional identifications, and improve the overall accuracy of identification through criminal history records. Collecting palm prints would permit DHS to align our background checks capability with the total available records at the FBI Criminal Justice Information Services (CJIS), keep current with the changing records of law enforcement, and make sure immigration benefit background checks are as accurate and complete as possible. Therefore, DHS proposes to reserve the authority to incorporate palm prints into its biometrics collection.

#### c. Facial Image

DHS proposes to use facial photographs to reduce the burden of visiting an ASC for individuals previously biometrically enrolled by USCIS. For example, 1:1 face biometric verification can be used in determining whether an applicant is who he/she is claiming to be and allowing EAD re-issuance for certain immigration benefits. Facial recognition can also be used to verify an identity if fingerprints are unobtainable subsequent to the initial biometric enrollment at an ASC. Currently, CBP is undergoing a separate rulemaking and concurrently piloting the use of facial recognition at several airports and early results are very favorable, with suggested potential benefits of the program in identifying fraud. CBP has identified three imposters in less than 40 days using facial recognition.<sup>47</sup> DHS would also use facial images and facial recognition technology for fraud, public safety or criminal history background checks, and national security screening and vetting. Facial photographs, as a biometric modality, are already collected by DHS primarily for the purpose of secure document production. DHS has collected facial photographs for some time, such as for identity verification at ports of entry; however,

<sup>47</sup> See Customs and Border Protection, Dulles CBP's New Biometric Verification Technology Catches Third Impostor in 40 Days (Oct. 2, 2018), <https://www.cbp.gov/newsroom/national-media-release/dulles-cbp-s-new-biometric-verification-technology-catches-third>. More generally, for the use of facial biometrics for international travelers, see Biometrics at <https://www.cbp.gov/travel/biometrics> (last visited Apr. 7, 2020).

DHS is proposing to increase the authorized use of a previously collected biometric modality, facial photographs, to include a facial recognition system.

#### d. Voice Print

DHS proposes to collect and use voice prints as a biometric modality. DHS can use voice as a biometric in several ways to improve identity verification in several business processes. First, when immigration benefits are submitted electronically, an individual's voice print can be used to indicate that the individual who submitted the application is the same person who subsequently returns to access or change information.

Second, an individual's voice print can be used for integration into the call center process to accomplish faster, automated identification. Collecting and using an individual's voice print may reduce concerns about the caller's identity. With simpler identification and less effort, individuals will more effectively be able to call for assistance or inquire about the status of a pending immigration benefit request. The current identity verification process is typically more time-consuming than voice; on an average day USCIS receives 50,000 phone calls<sup>48</sup> on the toll-free national call center line and the use of a voice biometric holds the promise of significantly reducing the time to verify a person's identity. Voice biometrics can be passive, where the user can say anything and a match is made from the voice to a voiceprint, or it can be active, where the caller is asked to recite a previously captured passphrase. Either way, the process is a natural, effortless way to identify the caller.

Third, voice verification could be used for identity verification in remote locations where an interview is required to adjudicate a benefit being sought, reducing the need for an applicant to travel to a USCIS Office. Finally, USCIS may also use voice prints, where applicable, to identify indicia of fraud, screen for public safety or criminal history, and vet potential national security issues.

DHS welcomes public comment on the various proposed modalities, reliability of technology, suggestions for alternative modalities, as well as its proposal for future modalities.

<sup>48</sup> See DHS, USCIS, A Day in the Life of USCIS, <https://www.uscis.gov/about-us-0> (last visited Apr. 7, 2020).

### 3. Improve Regulations To Facilitate Electronic Filing

#### a. Clarify Terms

To conform with the proposed changes to expand biometric collection as previously discussed, DHS proposes to remove restrictive language elsewhere in regulations. Therefore, DHS proposes to remove individual references to “fingerprints,” “photographs,” and/or “signatures” where appropriate, and replace them with the more appropriate term “biometrics.” DHS proposes the following changes to replace references to “fingerprint” with “biometrics” or to remove “biometrics” references on account of proposed 8 CFR 103.16:

- Deleting 8 CFR 204.3(c)(3), which requires biometric submissions from prospective adoptive parent(s), or adult members of the adoptive parents' household, and outlining potential waivers;
- Removing the fingerprint requirement at 8 CFR 204.4(d)(1), and references to fingerprint and completed background checks as elements specifically mentioned in 8 CFR 204.4(g)(2)(i) regarding the determination that a sponsor is of good moral character;
- Deleting biometric submission and fee requirements in 8 CFR 204.5(p)(4);
- Deleting and reserving 8 CFR 204.310(b), which outlines the biometrics, waiver, and alternative evidentiary requirements for the Application for Determination of Suitability to Adopt a Child from a Convention Country (Form I-800A);
- Deleting the reference to biometric information and 8 CFR 1.2 in 8 CFR 207.1(a);
- Replacing “fingerprint processing” in the second sentence of 8 CFR 208.7(a)(2) with “an interview or biometric collection”;
- Removing the biometrics submission requirement from 8 CFR 209.1(b);
- Revising 8 CFR 208.10, on account of proposed 8 CFR 103.2 and 103.16;
- Removing and reserving 8 CFR 210.1(b); and
- Replacing “must be fingerprinted for the purpose of issuance of Form I-688A” with “submit biometrics”, and replacing “shall” with “will” in proposed 8 CFR 210.2(c)(2)(iv), and “presentation or completion of Form FD-258 (Fingerprint Card)” with “biometric collection” in proposed 8 CFR 210.2(c)(3)(iv).

#### b. Remove Age Restrictions

DHS originally codified several of its regulatory biometric submission requirements with restrictions on the

ages of individuals from whom biometrics could be collected. The codified ages were based on the policies and practices at the time such as not running criminal history background checks on children<sup>49</sup> or technological limitations on collecting fingerprints from elderly persons.<sup>50</sup> As stated earlier, DHS proposes that biometrics uses expand beyond criminal history background checks to include identity management and verification in the immigration lifecycle. Identity verification and management in the immigration lifecycle via biometrics is even more important in the case of children because their physical appearances can change relatively rapidly and children often lack identity documents.

Consistent with this determination, DHS is removing the age restrictions for biometric collection writ large, including those for NTA issuance. See 8 CFR 236.5. DHS has authority, under the immigration laws,<sup>51</sup> to issue Notice to Appear (Form I-862) and Notice of Referral to Immigration Judge (Form I-863), which are thereafter filed with the Immigration Court to commence removal proceedings under the INA. In removing the age restrictions for biometric collection relating to NTA issuance, DHS is ensuring that every individual's identity is established or verified—regardless of age—when they are placed in removal proceedings under the INA. Just as with the granting of immigration benefits, biographical identifiers are of limited use when verifying identity because individuals share common names and an individual may misrepresent his or her identity when facing immigration enforcement action. Furthermore, with respect to children under the age of 14 issued who are issued NTAs, the collection of biometric information to determine identity will significantly assist DHS in its mission to combat human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling, while simultaneously promoting national

security, public safety, and the integrity of the immigration system.

DHS is authorized to share relevant information internally and with other law enforcement agencies, including “biometrics” and, consequently, is proposing that it may share DNA test results, which include a partial DNA profile, with other agencies where there are national security, public safety, fraud, or other investigative needs, but always consistent with any legal limitations on such information sharing. For those reasons, the removal of age restrictions may lead to more frequent biometric collections compared to adults. Therefore, because the proposed requirements in this rule, requiring appearance for biometric collection or interview would apply to any individual, without age limitation, DHS proposes to remove all age limitations or restrictions on biometrics collection. However, DHS also proposes that the biometric collection may be waived at DHS's discretion. See proposed 8 CFR 103.16.

Under the authority granted by the proposed rule, individual DHS components will be able to establish an age threshold for biometric collection specific to that component's operational needs. Immigration officers may collect biometrics, pursuant to the authority granted in 8 U.S.C. 1357(b) from individuals under the age of 14 categorically or on a case-by-case basis, depending on the circumstances. DHS interprets 8 U.S.C. 1357(f)(1) as requiring fingerprinting and photographing of aliens 14 years or older in removal proceedings, but DHS interprets that authority as not prohibiting the collection of biometrics from aliens younger than 14 as authorized by other laws. Removing the age restrictions associated with biometric collections from the regulations will permit DHS components maximum flexibility in their day-to-day operations.

DHS reviewed statutes containing requirements for individuals to submit biometrics to DHS at a certain age and determined those statutes do not restrict or limit the collection of biometrics to these ages. First, INA section 262(b), 8 U.S.C. 1302, states, “Whenever any alien attains his fourteenth birthday in the United States he shall, within thirty days thereafter, apply in person for registration and to be fingerprinted.” Second, INA section 264(a), 8 U.S.C. 1304, provides that the Secretary is authorized “to prepare forms for the registration and fingerprinting of aliens” aged 14 and older in the United States, as required by INA section 262. DHS interprets section 264(a) as requiring

that biometrics be submitted by lawful permanent residents aged 14 and older, but not as imposing a lower age limit prohibiting DHS from requiring anyone, including lawful permanent residents or individuals seeking immigration benefits who are under the age of 14, from submitting biometrics as authorized by other laws.

#### c. Remove Redundant Provisions

DHS proposes in this rule to have one regulatory provision that governs the requirement to submit biometrics for all immigration benefit requests. Proposed 8 CFR 103.16. This new provision will also include the requirements for rescheduling and the acceptable reasons for failure to submit biometrics unless waived. *Id.* In addition, DHS proposes to consolidate the multiple sections of 8 CFR providing what USCIS can or will do with an immigration benefit request when required biometrics are not submitted. For example, 8 CFR 240.68(b) currently provides that failure to comply with fingerprint processing requirements without reasonable excuse may result in dismissal of the asylum application or waiver of the right to adjudication by an asylum officer. Because proposed 8 CFR 103.16 will apply to all immigration benefits adjudicated by USCIS, there is no need for a separate provision for what happens in the context of an asylum application submitted pursuant to 8 CFR 240.68. Therefore, DHS is proposing to either revise separate provisions regarding failure to submit biometrics to cross-reference 8 CFR 103.16 or remove them entirely. See proposed 8 CFR 103.2(b)(9), 103.16(b), 208.10, 240.68, 240.70(d)(4), and 245.7.

#### d. Remove Unnecessary Procedures and Requirements

DHS is proposing changes in this rule consistent with continued efforts to provide flexibility for applicants, petitioners, requestors and associated individuals to submit biometrics, file benefit requests, and provide supporting documentation, as well as for USCIS to receive and process those requests in an electronic environment. In sections of the regulations governing biometrics submission requirements, DHS is also proposing to remove and/or replace language that applies solely to paper filings and benefit requests with language that is applicable in both a paper and electronic environment. For example, references to position titles, form numbers, mailing, copies, and office jurisdiction are proposed to be removed, replacing “the director,” “service office having jurisdiction over the prior petition,” “service legalization

<sup>49</sup> “Children” and “minor” are used interchangeably here and without regard to any single or specific INA definition.

<sup>50</sup> See *Fingerprint Waiver Policy for All Applicants for Benefits under the Immigration and Naturalization Act and Procedures for Applicants Whose Fingerprint Responses Expire after the Age Range during Which Fingerprints are Required* by Michael Pearson, Executive Associate Commissioner, Office of Field Operations United States Department of Justice, Immigration and Naturalization Service, dated July 20, 2001 (waiving general fingerprinting requirements for certain ages and classifications of individuals otherwise required under regulation).

<sup>51</sup> See, e.g., INA sections 103(a), 239; 8 CFR 2.1, 239.1.



office,” “legalization office,” “service office designated for this purpose,” and “The INS,” with “USCIS” in 8 CFR 204.4(d)(1), 210.2(c)(2)(iv), 210.2(c)(4)(iii) and 210.5(b). In proposed 8 CFR 204.4(d)(1), the internal USCIS process is removed from the regulatory text, by replacing the requirement that petitioners submit documents within one year of the date requested, with a deadline provided in the request. Similarly, in proposed 8 CFR 208.21(d), the specific procedure regarding transmissions to the U.S. Embassy or consulate is deleted from the regulatory text. In other sections, requirements to provide a paper fingerprint card or FD-258 are revised to simply require “biometrics.” See 8 CFR 210.2(c)(2)(i), 210.2(c)(4), 240.68, 240.70, 245a.2(e)(1)(iii) and 245a.4(b)(5)(i)(C).

To promote electronic filing and lessen dependence on paper, DHS is also proposing to clarify the regulatory requirements for submitting passport-style paper photographs with certain applications or petitions. DHS proposes to eliminate references to the “ADIT-style” photograph requirement as outdated and revising any requirement for submitting photographs with immigration benefit requests to reference photographs “as required by form instruction.” See proposed 8 CFR 103.16 and 333.1. USCIS may continue requiring paper photographs to be submitted with a benefit request, where required by form instruction, to use in its adjudications for either identity verification or document production. However, as proposed, under no circumstances would submission of passport-style photographs relieve an individual from their obligation to appear for biometric collection.

DHS believes that the photograph submission and use requirements in the INA may be met in the future by electronic photographs collected by USCIS as a biometric identifier. INA section 333, 8 U.S.C. 1444, states:

(a) Three identical photographs of the applicant shall be signed by and furnished by each applicant for naturalization or citizenship. One of such photographs shall be affixed by the Attorney General to the original certificate of naturalization issued to the naturalized citizen and one to the duplicate certificate of naturalization required to be forwarded to the Service.

(b) Three identical photographs of the applicant shall be furnished by each applicant for—

(1) a record of lawful admission for permanent residence to be made under section 249;

(2) a certificate of derivative citizenship;

(3) a certificate of naturalization or of citizenship;

(4) a special certificate of naturalization;

(5) a certificate of naturalization or of citizenship, in lieu of one lost, mutilated, or destroyed;

(6) a new certificate of citizenship in the new name of any naturalized citizen who, subsequent to naturalization, has had his name changed by order of a court of competent jurisdiction or by marriage; and

(7) a declaration of intention.

One such photograph shall be affixed to each such certificate issued by the Attorney General and one shall be affixed to the copy of such certificate retained by the Service.

As DHS interprets INA section 333, its requirements may be met when an individual’s photographs are obtained by USCIS, signed, and furnished by the individual when USCIS or its designee collects the individual’s biometrics. Therefore, DHS proposes to revise 8 CFR 333.1 to provide that every applicant under section 333 of the Act must provide photographs as prescribed by USCIS in the applicable form instructions.

#### *D. Biometrics Requirement for United States Citizens and Lawful Permanent Residents*

While the focus of attention in the immigration context is usually on foreign nationals, aliens, and immigrants, DHS is also proposing to require biometrics from U.S. citizens or lawful permanent residents when they submit a family-based visa petition. See proposed 8 CFR 103.16. Current regulations only *require* biometrics from applicants, petitioners, their spouses, and all adult members of the household in the intercountry adoption context involving orphan and Hague Adoption Convention cases. See 8 CFR 204.3(c)(3); 8 CFR 204.310(b). For family-based petitioners filing Petition for Alien Relative (Form I-130) or Petition for Alien Fiancé(e) (Form I-129F), the regulations are silent with respect to the routine submission of a petitioner’s biometrics in support of a petition. See *generally* 8 CFR 204.1 and 214.2(k). As discussed below, DHS has determined that U.S. citizen and lawful permanent resident petitioners must submit biometrics in order for DHS to comply with existing laws.

#### 1. The Adam Walsh Child Protection and Safety Act of 2006

The INA bars USCIS from approving any family-based immigrant visa petitions and nonimmigrant fiancé(e) visa petitions filed by a U.S. citizen or lawful permanent resident petitioner if he or she has been convicted of any “specified offense against a minor” unless the Secretary first determines in his or her sole and unreviewable discretion that the petitioner poses “no risk” to the beneficiary and/or

derivative beneficiaries. See INA sections 204(a)(1)(A)(viii)(I) & (B)(i)(II), 8 U.S.C. 1154(a)(1)(A)(viii)(I) & (B)(i)(II), and 101(a)(15)(K), 8 U.S.C. 1101(a)(15)(K), as amended.

The AWA<sup>52</sup> defines “specified offense against a minor” as an offense against a minor that involves any of the following:

- An offense (unless committed by a parent or guardian) involving kidnapping.
- An offense (unless committed by a parent or guardian) involving false imprisonment.
- Solicitation to engage in sexual conduct.
- Use in a sexual performance.
- Solicitation to practice prostitution.
- Video voyeurism as described in 18 U.S.C. 1801.
- Possession, production, or distribution of child pornography.
- Criminal sexual conduct involving a minor, or the use of the internet to facilitate or attempt such conduct.
- Any conduct that by its nature is a sex offense against a minor.

#### 2. The International Marriage Broker Regulation Act

IMBRA<sup>53</sup> provides that petitioners for a K nonimmigrant visa for an alien fiancé(e) (K-1) or alien spouse (K-3) must submit with his or her Form I-129F criminal conviction information for the petitioner on any of the following “specified crimes”:

- Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking;
- Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of these crimes; and
- Crimes relating to a controlled substance or alcohol where the petitioner has been convicted on at least three occasions and where such crimes did not arise from a single act.

If a petitioner indicates that he or she has been convicted by a court or by a military tribunal for one of these specified crimes, or if USCIS ascertains through relevant background checks that the petitioner was convicted, the

<sup>52</sup> Adam Walsh Child Protection and Safety Act of 2006 section 111(7), Public Law 109-248, 120 Stat. 587, 592 (2006) (codified at 34 U.S.C. 20911(7) after editorial reclassification).

<sup>53</sup> Violence Against Women and Department of Justice Reauthorization Act of 2005 (T 2005), Public Law 109-162, 119 Stat. 2960 (2006); and (VAWA 2013), Public Law 113-4, sections 807-8, 127 Stat. 54, 112-17; 8 U.S.C. 1375a); INA sections 214(d)(1), (3).

petitioner is required to submit certified copies of all court and police records showing the charges and dispositions for every such conviction. See USCIS Form I-129F and Form I-129F Instructions, Part 3. If the petition is approved, the petitioner's Form I-129F (including all criminal background information submitted by the petitioner and any related criminal conviction information that USCIS discovers during the course of conducting its routine background check) must be provided to DOS. *Id.*; see also 8 U.S.C. 1375a(a)(5)(A)(iii). DOS will then disclose this information to the beneficiary during the consular interview. See Form I-129F Instructions, Part 3.

### 3. All Family-Based Petitioners

USCIS is committed to complying with and furthering the purposes of AWA and IMBRA so that intended beneficiaries of family-based visa petitions are not placed at risk of harm from the persons who seek to facilitate their immigration to the United States. Without complete biometrics for all family-based petitioners, USCIS is required to rely only on name-based criminal checks to assess AWA and IMBRA. These name-based checks do not identify all offenders with visa petitions who have been convicted of qualifying crimes under AWA and/or IMBRA. Name-based checks only yield petitioners who are *currently* required to register as a sex offender or who have a *current* order of protection in place. However, AWA and IMBRA apply to all family-based petitioners with qualifying convictions regardless of when the criminality occurred, and whether they are currently registered sex offenders or subject to an order of protection. The current reliance on name-based checks means that certain family-based visa petitioners are not currently identified and vetted under AWA and IMBRA because USCIS does not routinely request biometrics from these populations. Requiring biometrics collection for all family-based petitioners will result in production of an official FBI criminal history result (currently referred to as an Identity History Summary "IdHS" and formerly referred to as a Record of Arrest and Prosecution "RAP sheet") which provides greater accuracy and detail relating to the petitioner's criminal history.

USCIS already requires biometrics from all applicants, petitioners, their spouses, and all adult members of the household in the intercountry adoption context involving orphan and Hague Adoption Convention cases as part of its

evaluation of the prospective adoptive parents' suitability to adopt a foreign-born child.<sup>54</sup> 8 CFR 204.3(c)(3), 8 CFR 204.310(b). USCIS likewise needs to review the criminal histories of other petitioners before approving a family-based immigration benefit. USCIS needs to utilize biometrics to conduct criminal history background checks to identify individuals convicted of any "specified offense against a minor" or "specified crime" and prevent the approval of a petition in violation of the AWA or without the proper disclosure required by IMBRA.<sup>55</sup> Therefore, DHS proposes to amend the regulations governing the requirements for USCIS Form I-130 and Form I-129F to require those petitioners to routinely submit biometrics as required by proposed 8 CFR 103.16. See proposed 8 CFR 204.1(h) and 8 CFR 214.2(k)(1).

Affected family-based petitions include those petitioning for the following individuals:

- Spouse;
- Fiancé(e);
- Parent;
- Unmarried child under 21 years of age;
- Unmarried son or daughter over 21 years of age or over;
- Married son or daughter of any age;
- Sibling; or
- Any derivative beneficiary permitted to receive an immigrant or nonimmigrant visa based on his or her familial relationship to the beneficiary of such petition.

See INA sections 101(a)(15)(K), 201(b)(2)(A)(i) and 203(a) and (d), 8 U.S.C. 1101(a)(15)(K), 1151(b)(2)(A)(i) and 1153(a) and (d) (governing nonimmigrant fiancé(e)s, immediate relatives, and family-based preference and derivative categories/classifications).

### 4. Violence Against Women Act (VAWA) Self-Petitioners

Separate from the AWA and IMBRA provisions discussed above, VAWA self-petitioners are currently not generally required to submit biometrics for adjudication. For many immigrant victims of domestic violence, battery, or extreme cruelty, the U.S. citizen or lawful permanent resident family members who sponsor their applications threaten to withhold legal

immigration sponsorship as a tool of abuse. VAWA allows abused immigrants to petition for legal status in the United States without relying on abusive U.S. citizen or lawful permanent resident spouses, parents, or children to petition for and sponsor their immigrant petition and Form I-485. The purpose of the VAWA program is to allow victims the opportunity to "self-petition" or independently seek legal immigration status. DHS proposes in this rule that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with a benefit or other request must appear for biometrics collection unless biometrics are waived. Accordingly, DHS proposes to remove the regulations that provide that VAWA self-petitioners are not required to appear for biometric collection. In addition, as noted in the PRA section of this preamble, DHS proposes to revise the applicable forms to require VAWA self-petitioners to comply with the biometrics submission requirement proposed in this rule.

VAWA self-petitioners are currently not subject to biometric collection and they establish good moral character required under 8 CFR 204.2(c)(2)(v) and 204.2(e)(2)(v) by: (1) Personal statement from the self-petitioner; (2) police clearance letters from the self-petitioner's places of residence for the three years before filing; and (3) other credible evidence, including affidavits from third parties attesting to the self-petitioner's good moral character. USCIS does not currently use biometrics to verify the identity of the self-petitioner or verify the accuracy or completeness of the disclosed criminal history information.

The proposed requirement for biometrics collection for VAWA self-petitioners would result in production of the self-petitioner's IdHS which provides greater accuracy and detail relating to the self-petitioner's criminal history. This would accomplish several goals. First, it would support the identity enrollment, verification, and management in the immigration lifecycle purpose for USCIS biometrics collection. Second, it supports the national security and criminal history background checks purpose for USCIS biometrics collection because relying on self-petitioners to obtain and present appropriate local police clearance letters is not the most reliable means of obtaining, or verifying, an accurate and complete criminal history for a self-petitioner. Third, it will simplify the petition for the self-petitioner as well as the adjudication for USCIS by reducing the evidence required to establish good moral character. The self-petitioner will

<sup>54</sup> In intercountry adoption cases, DHS must be satisfied that proper care will be provided to the child if admitted to the United States. INA section 101(b)(1)(F), (G), 8 U.S.C. 1101(F), (G).

<sup>55</sup> INA section 204(a)(1)(A)(viii)(I) & (B)(i)(II), 8 U.S.C. 1154(a)(1)(A)(viii)(I) & (B)(i)(II), and INA section 101(a)(15)(K), 8 U.S.C. 1101(a)(15)(K), as amended by the Adam Walsh Act, tit. IV, sec. 402, 120 Stat. at 622.

not need to contact the police department in every city in which he or she has lived and USCIS will not need to analyze multiple police letters for their findings. Due to certain limitations with biometric information sharing among foreign countries, self-petitioners who resided outside the United States in the three years before filing will still have to provide a law enforcement clearance, criminal background check, or similar report issued by an appropriate authority from any jurisdiction in which the self-petitioner resided for six or more months during the three year period immediately preceding the filing of the self-petition.

The proposed revision to 8 CFR 204.2(c)(2)(v) and 204.2(e)(2)(v) to require biometrics from VAWA self-petitioners will eliminate the need for self-petitioners who resided in the United States three years before filing to obtain multiple police or law enforcement clearance letters. The majority of self-petitioners would only need to travel to one USCIS ASC for biometrics collection. Further, USCIS adjudicators would no longer need to verify past addresses against police clearance letters, as the information discovered by collecting biometrics for a criminal history and national security background checks will be credible and relevant evidence when considering the good moral character requirement.

Consistent with other adjudicative determinations of good moral character, DHS proposes that, when assessing good moral character for a VAWA self-petitioner, USCIS may consider the self-petitioner's conduct beyond the three years immediately before filing, where: (1) The earlier conduct or acts appear relevant to a determination of the self-petitioner's present moral character; and (2) the conduct of the self-petitioner during the three years immediately before filing does not reflect that there has been a reform of character from an earlier period. *See generally* 8 CFR 316.10(a)(2). USCIS currently allows officers to look outside the 3-year period if there is reason to believe that the self-petitioner may not have been a person of good moral character during that time. This has been a long-standing practice at USCIS and memorialized in both a 2005 policy and the preamble to the 1996 VAWA regulation. *See*, Policy Memorandum, William R. Yates, Associate Director of Operations, *USCIS Memorandum Determinations of Good Moral Character in VAWA-Based Self-Petitions*—HQOPRD 70/8.1/8.2 (January 19, 2005); 61 FR 13065, 13066 (Mar. 26, 1996); USCIS is simply clarifying this point in the regulatory text.

DHS further proposes to revise 8 CFR 204.2(e)(2)(v) to remove the automatic presumption of good moral character for VAWA self-petitioners under 14 years of age. Rather, DHS proposes that VAWA self-petitioners under 14 years of age will submit biometrics like any other VAWA self-petitioner, which USCIS will use in the determination of good moral character and which preserves USCIS's discretionary authority to require that VAWA self-petitioners provide additional evidence of good moral character. *See* proposed 8 CFR 204.2(e)(2)(v). DHS does not believe this change is a significant departure from the existing regulatory scheme or that it will burden self-petitioners under 14 generally, because they will still not be required to submit evidence of good moral character apart from biometrics as initial evidence with their self-petitions. Furthermore, the existing presumption is rebuttable. USCIS may currently request evidence of good moral character for self-petitioning children under 14 years of age if USCIS has reason to believe the self-petitioning child lacks good moral character. The proposed structure is intended to align the VAWA provisions with the agency's goals regarding biometrics collection from all applicants, petitioners, sponsors, derivatives, dependents, beneficiaries and individuals, without regard to age, unless USCIS waives or exempts the biometrics requirement, while still preserving USCIS' authority to define evidentiary requirements for demonstrating good moral character for child VAWA self-petitioners in its discretion. Additionally, as with any other USCIS petition or application, if a decision will be adverse to an applicant or petitioner and is based on derogatory information the agency considered, he/she shall be advised of that fact and offered an opportunity to rebut the information. *See* 8 CFR 103.2(b)(16)(i).

##### 5. T Nonimmigrant Adjustment of Status Applicants

Similar to the VAWA self-petitioners discussed above, applicants applying to adjust status based on underlying T nonimmigrant status also have a good moral character requirement. The INA permits the Secretary to grant T nonimmigrant status to individuals who are or were victims of a severe form of trafficking in persons who have complied with any reasonable request by a law enforcement agency for assistance in the investigation or prosecution of a crime involving acts of trafficking in persons (unless they are under 18 years of age or are unable to cooperate due to physical or psychological trauma). *See* INA section

101(a)(15)(T)(i)(I), (III), 8 U.S.C. 1101(a)(15)(T)(i)(I), (III). After the grant of T nonimmigrant status, an individual can apply for lawful permanent residence under INA section 245(l) and 8 CFR 245.23 by filing a Form I-485. Among several other eligibility requirements, an applicant seeking to adjust under INA 245(l) must demonstrate good moral character from the date of lawful admission as a T nonimmigrant until the time USCIS adjudicates his or her adjustment of status application. 8 CFR 245.23(g).

Good moral character for T nonimmigrant adjustment applicants is presently assessed by the applicant's affidavits, the results of biometric-based security checks, the submission of a "local police clearance or a state-issued criminal background check," and other credible evidence. 8 CFR 245.23(g). There are several concerns with the use of affidavits and police clearance letters to establish good moral character where the applicant has resided domestically for the requisite period. First, local police clearance letters for domestic residences will become unnecessary with the publication of this rule, which will authorize biometrics for all applicants and petitioners, including T nonimmigrant adjustment of status applicants. DHS proposes in this rule that any applicant, petitioner, sponsor, derivative, dependent, beneficiary, or individual filing or associated with a benefit or other request must appear for biometrics collection unless biometrics are exempted or waived. Second, official criminal history results from biometric-based security checks provide a more reliable means for obtaining, or verifying, an accurate and complete criminal history for an applicant than official criminal history results from that rely on applicants to obtain and present appropriate local police clearances or state-issued criminal background checks. Third, the submission of local police clearance letters is already redundant, because T nonimmigrant adjustment of status applicants are currently subject to a biometrics requirement, and it logically follows that the regulation should reflect that adjudicators assess good moral character with the most reliable and comprehensive evidence available for good moral character (*i.e.*, official criminal history results from the biometric-based security checks). *Cf. Matter of Castillo-Perez*, 27 I&N Dec. 664, 666-67 (A.G. 2019) (discussing meaning of "good moral character" and explaining that "an alien's criminal record is highly probative of whether he possesses good moral character").

Presently, USCIS requires biometrics for T adjustment of status applicants, however, the regulations also require applicants to submit police clearance letters, if available, which adjudicators consider in addition to other credible evidence when determining good moral character. For these reasons, DHS proposes to eliminate the requirement that applicants applying to adjust status based on underlying T nonimmigrant status submit self-obtained police clearance letters, unless they lived outside the United States during the requisite period.

There are several benefits to eliminating this police clearance requirement. First, requiring adjudicators to assess good moral character based in part on an official FBI criminal history result or IdHS provides greater accuracy and detail relating to the T nonimmigrant adjustment applicant's criminal history. Second, it supports the national security and criminal history background checks purpose for USCIS biometrics collection. Third, it will simplify the application and adjudication for the T nonimmigrant adjustment of status applications. The applicant will not need to contact the police department in every city in which he or she has lived and USCIS will not need to analyze multiple police letters for their findings. Due to certain limitations with biometric information sharing among foreign countries, applicants who resided outside the United States in the requisite period will still have to provide a law enforcement clearance, criminal background check, or similar report issued by an appropriate authority from any jurisdiction in which the applicant resided during the requisite period.

DHS notes that USCIS currently assesses good moral character based on biometric-based security check results and other relevant evidence in the file and it does not require T nonimmigrant adjustment applicants to obtain multiple police or law enforcement clearance letters unless they lived outside the United States. Thus the proposed revision of 8 CFR 245.23(g) would simply codify the current USCIS policy and practice. Applicants would only need to travel to a USCIS ASC for biometrics collection. Further, USCIS adjudicators would no longer be required to verify past addresses against police clearance letters, because the information discovered by reviewing the applicant's criminal history and national security background check result will be the most relevant, probative, and reliable evidence when

assessing the good moral character requirement.

DHS also proposes to clarify language referring to the requisite period of good moral character for T nonimmigrant adjustment of status applicants. The current regulation references evaluating good moral character during a requisite period of "continued presence." 8 CFR 245.23(g)(1). "Continued presence" is an established term in the immigration and trafficking in persons context, but is not the correct term to refer to the period relevant to USCIS' evaluation of good moral character. Rather, USCIS believes the current language was intended to refer to the requirement that the applicant be physically present "for a continuous period of at least 3 years since the date of admission as a nonimmigrant" or "continuous period during the investigation or prosecution of acts of trafficking." See INA 245(l)(1)(A). Therefore, DHS proposes to amend 8 CFR 245.23(g) to refer to the relevant "continuous period" rather than "continued presence." Consistent with other adjudicative determinations of good moral character, when assessing good moral character for T nonimmigrant adjustment applicants, USCIS would be able to consider the applicant's conduct beyond the requisite period, where: (1) The earlier conduct or acts appear relevant to a determination of the applicant's present moral character; and (2) the conduct of the applicant during the requisite period does not reflect that there has been a reform of character from an earlier period. See generally 8 CFR 316.10(a)(2).

DHS further proposes to revise 8 CFR 245.23(g) to remove the presumption of good moral character for T nonimmigrant adjustment of status applicants under 14 years of age. Rather, the rule provides that such applicants will submit biometrics like any other applicant, and it preserves USCIS' discretionary authority to require that applicants provide additional evidence of good moral character. Proposed 8 CFR 245.23(g). DHS does not believe this change is a significant departure from the existing regulatory scheme or that it will burden applicants under 14 generally, because they will still not be required to submit evidence of good moral character apart from biometrics as initial evidence with their applications. Furthermore, the existing presumption is rebuttable. USCIS may currently request evidence of good moral character for applicants under 14 years of age if USCIS has reason to believe the applicant lacks good moral character. The proposed changes would remove the superfluous need for police

clearance letters from T nonimmigrant adjustment applicants and remove the good moral character presumption for T nonimmigrant adjustment of status applicants under age 14. As noted in the PRA section of this preamble, DHS will revise the applicable forms to eliminate the police clearance letter requirement for T nonimmigrant adjustment applicants concomitant with this rule.

DHS proposes this change to align the T nonimmigrant adjustment of status provisions with the agency's goals regarding biometrics collection from all applicants, petitioners, sponsors, derivatives, dependents, beneficiaries and individuals, including identity management in the immigration lifecycle, without regard to age, unless USCIS waives or exempts the biometrics requirement, while still preserving USCIS' authority to define the evidentiary requirements for child applicants to demonstrate good moral character requirements in its discretion.

#### 6. Regional Center Principals Under the EB-5 Program

DHS proposes to require biometrics collection and perform biometric-based criminal history and national security background checks, as well as for purposes of identity verification, on all regional center principals, including U.S. citizens and lawful permanent residents, of an intending or existing regional center as part of its determination of whether the regional center will, or is continuing to, promote economic growth in accordance with regional center program requirements. DHS proposes that the biometric collection for background checks also extend, if the regional center principal is a legal entity or organization, to those persons having ownership, control, or beneficial interest in such principal legal entity or organization. Further, DHS proposes that the biometrics requirement may also include additional collections or checks for purposes of continuous vetting. INA section 203(b)(5), 8 U.S.C. 1153(b)(5), authorizes the EB-5 program, and the regional center program was authorized in 1992 in an appropriations act.<sup>56</sup> The regulations at 8 CFR 204.6 contain the requirements for employment creation aliens under INA section 203(b)(5), 8 U.S.C. 1153(b)(5), including those investing under the regional center program (also known as the Immigrant Investor Program), and criteria for the designation of regional centers.

<sup>56</sup> Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Public Law 102-395, sec. 610, 106 Stat 1828, 1874 (1992).

With respect to the requirements for regional centers, DHS regulations at 8 CFR 204.6 require the submission of a proposal describing how the regional center, an economic unit, will promote economic growth. DHS regulation at 8 CFR 204.6 also requires updated information to demonstrate continued promotion of economic growth in compliance with program requirements once an economic unit is designated as a regional center. As part of these determinations, USCIS considers whether the principals of the intending or designated regional center, and the regional center itself, are bona fide and capable of credibly promoting such economic growth. Background checks using the biometrics of the principals would provide information relevant to this determination such as instances of fraud, financial crimes, or other activities that would demonstrate a lack of ability to promote economic growth. For example, USCIS could consider whether an applicant for regional center principal had convictions for fraud or financial misconduct, as directly bearing on their ability to promote economic growth, as required by 8 CFR 204.6. Using biometrics, USCIS would screen and vet the applicant for regional center principal in an effort to protect the investors in the regional center.

In the EB-5 regional center program, the applicant is the entity seeking regional center designation. “Principals” of a regional center are collectively any persons or entities that own, are in a position of executive managerial authority over, or are otherwise in a position to control, influence, or direct the management or policies of, the regional center entity. In the event that the principal of the regional center entity is a legal entity or organization, USCIS will require biometrics from all persons having ownership, control, or beneficial interest in that legal entity or organization. To identify potential national security concerns relating to regional centers and the individuals who operate them, biometric-based background checks on principals would provide USCIS with relevant information on the people who control the regional centers and interact with immigrant investors and the credibility of the projects they sponsor. USCIS already conducts background checks on regional center principals based on Social Security numbers.

Biometric-based background checks would also help USCIS verify identities of principals, because there are identified trends of regional centers

engaging in fraud.<sup>57</sup> USCIS tracks when regional centers are terminated; a list is publicly available from USCIS.<sup>58</sup> With respect to regional center termination, mandating biometrics and conducting biometric-based background checks would strengthen USCIS’ ability to determine whether a regional center, including through its principals, continues to serve the purpose of promoting economic growth in compliance with program requirements. See 8 CFR 204.6(m)(6).

DHS welcomes public comment on all aspects of this proposal, including expanding biometric collection to U.S. citizen or lawful permanent resident family-based petitioners in order to comply with AWA and IMBRA, expanding biometric collection to VAWA self-petitioners, eliminating police clearance letters for VAWA self-petitioners and T nonimmigrant adjustment applicants, modifying the VAWA self-petitioner and T nonimmigrant adjustment applicant’s good moral character requirements for those under 14 years of age, and expanding biometric collection to U.S. citizen and lawful permanent resident principals of an intending or existing regional center under the EB-5 program, as well as additional collections or checks for purposes of continuous vetting.

#### E. Interviews

DHS also proposes to amend its regulations to remove 8 CFR 216.4(b)(1) and (2), and 216.6(b)(1) and (2) because the four sections are purely operational and superfluous given the statutory requirements and regulatory revisions at proposed 8 CFR 103.2(b)(9). See INA sections 216 and 216A; 8 U.S.C. 1186a and 1186b. The proposed changes would not alter regulatory eligibility requirements, but rather would clarify certain interview procedures for conditional permanent residents to reduce potential redundancies and

<sup>57</sup> See U.S. Government Accountability Office (GAO), GAO-15-696, *Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits* (2015), available at <https://www.gao.gov/products/GAO-15-696>; GAO, GAO-16-431T, *Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits* (2016), available at <https://www.gao.gov/products/GAO-16-431T>; and GAO, GAO-16-828, *Immigrant Investor Program: Progress Made to Detect and Prevent Fraud, but Additional Actions Could Further Agency Efforts* (2016), available at <https://www.gao.gov/products/GAO-16-828>.

<sup>58</sup> See Regional Center Terminations, <https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-process/regional-center-terminations> (last visited Apr. 7, 2020).

ensure greater uniformity within USCIS operations.

#### 1. Alien Spouses

Seeking the removal of the conditional basis for status—under INA section 216, 8 U.S.C. 1186a, and INA section 216(c)(2), 8 U.S.C. 1186a(c)(2)—requires that the alien spouse and the petitioning spouse appear for a personal interview, although DHS may waive the interview requirement in its discretion. See INA section 216(d)(3), 8 U.S.C. 1186a(d)(3). Under this rule, DHS is proposing to remove current 8 CFR 216.4(b)(1) because it simply repeats the authority in INA section 216(d)(3), which allows DHS to waive the interview requirement in its discretion in such cases as may be appropriate. Furthermore, proposed 8 CFR 103.2(b)(9)(ii) provides equivalent discretionary authority to waive such interviews. Because the decision to waive the mandatory interview is purely discretionary, and 8 CFR 216.4(b)(1) simply reiterates this discretion, it serves no purpose, especially since determining whether the eligibility requirements for removal of conditions in 8 CFR 216.4(c) were established is central to the adjudication of the petition itself.

DHS also proposes to remove 8 CFR 216.4(b)(1) because it contains unnecessary procedural requirements and outdated terms. For example, the mention of “regional service center director” is unnecessary because 8 CFR 1.2 already describes the interchangeability of certain terms such as “director.” Such references are purely internal and operational.

#### 2. Alien Investors

When seeking the removal of the conditional basis for status under INA section 216A, 8 U.S.C. 1186b, INA section 216A(c)(1)(B), 8 U.S.C. 1186b(c)(1)(B), generally requires petitioners who file a USCIS Petition by Entrepreneur to Remove Conditions on Permanent Resident Status (Form I-829) to be interviewed before final adjudication of the petition, although DHS may waive the interview requirement in its discretion. INA section 216A(d)(3), 8 U.S.C. 1186b(d)(3). USCIS recently updated 8 CFR 216.6 to make certain technical changes in the *EB-5 Immigrant Investor Program Modernization*, Final Rule. See 84 FR 35750. Under current regulations, USCIS reviews the petition to remove conditions and the supporting documents to determine whether to waive the interview. 8 CFR 216.6(b)(1). If the eligibility requirements for removal of conditions in 8 CFR

216.6(c)(1) have been satisfied, USCIS may waive the interview and approve the petition. 8 CFR 216.6(b)(1). If the eligibility requirements for removal of conditions in 8 CFR 216.6(c)(1) have not been satisfied, USCIS may require that an interview of the investor be conducted. 8 CFR 216.6(b)(1). In addition, under current 8 CFR 216.6(b)(2), unless waived, an interview is conducted by a USCIS immigration officer at the office that has jurisdiction over the location of the investor's commercial enterprise in the United States, the investor's residence in the United States, or the location of the adjudication of the petition, at the agency's discretion.

DHS proposes to modify 8 CFR 216.6 in this rule, because DHS is seeking to reduce redundancy and make its interview and waiver procedures more uniform and consistent across adjudications, as permitted by law. DHS proposes to remove current 8 CFR 216.6(b)(1) because it is redundant with INA section 216A(d)(3), which allows DHS to waive the interview requirement in its discretion in such cases as may be appropriate, and it is not necessary to codify the reason such a waiver may be appropriate in regulations. In addition, proposed 8 CFR 103.2(b)(9)(ii) provides that an interview may be waived by DHS (for an entire population or on a case-by-case basis) solely at its discretion. As the decision whether to waive the mandatory interview is purely discretionary, and the regulation simply reiterates this discretion, the regulation serves no purpose, especially since determining whether the eligibility requirements for removal of conditions in 8 CFR 216.6(c)(1) were established is central to the adjudication of the petition itself.

Additionally, for both alien spouses and investors, DHS is proposing to remove current 8 CFR 216.4(b)(2) and 216.6(b)(2) regarding interview location because the statute already sets parameters for the location of the interview, requiring the interview to be conducted at a location convenient to the parties involved. See INA section 216(d)(3), 8 U.S.C. 1186a(d)(3); INA section 216A(d)(3), 8 U.S.C. 1186b(d)(3). Furthermore, proposed 8 CFR 103.2(b)(9) will address interview requirements generally, making 216.4(b)(2) unnecessary. DHS is also proposing to remove current 8 CFR 216.6(b)(2) so that interviews may be conducted at the locations listed above or at other locations convenient to the parties, taking into account workload, operational needs and capabilities as they evolve.

Lastly, 8 CFR 216.4(b)(3) and 216.6(b)(3) will be redesignated as proposed 8 CFR 216.4(b) and 216.6(b) respectively. Proposed 8 CFR 103.2(b)(9)(iv) provides that failure to appear for a scheduled interview without prior authorization may result in a variety of consequences, including termination of conditional permanent resident status. Under proposed 8 CFR 216.4(b) and 216.6(b), failure to appear for an interview in connection with an alien spouse or investor petition, when requested by USCIS, will result in automatic termination of the alien's permanent resident status. DHS proposes that the petitioners may, before the interview, request, for good cause, (such as, for lack of proper notice of the interview) that the interview be rescheduled or withdraw the petition. Proposed 8 CFR 103.2(b)(9)(v). However, the provisions at proposed 8 CFR 216.4(b) and 216.6(b) would still permit petitioners to request rescheduling or waiver of the interview, for good cause, if the petitioners failed to appear. With respect to a showing of exceptional circumstances for good cause in the asylum context, USCIS proposes to maintain the status quo. The exceptional circumstances standard is vital to the asylum context as it is a part of the existing regulations, an important tool to referring missed interview cases to an immigration judge without adjudication, and is also applied when an applicant misses a hearing before the immigration judge and is ordered removed in absentia—an order which can only be re-opened by showing exceptional circumstances.

#### F. Proposed Implementation

##### 1. Phased-In Additional Biometrics Collection

DHS does not plan to immediately expand all biometric programs to provide that all populations or all new modalities would be required as of the date the new regulations proposed in this rule take effect. Only those revised forms that propose to add a particular biometric submission requirement in conjunction with this rule (as described in the PRA section of this preamble) will be immediately subject to new biometric requirements, though this rule permits DHS to request, require, or accept DNA and associated DNA test results for individual benefit requests at its discretion. As provided in proposed 8 CFR 103.16, DHS may expand or contract its biometrics submission requirements in the future by notice in the **Federal Register** or updated form instructions. DHS will comply with the PRA, 44 U.S.C. 3501 *et seq.*

requirements for imposing new information collections when it decides to collect biometrics from a new category of filers or to collect new biometric modalities.<sup>59</sup>

##### 2. Collection of the Biometric Services Fee

USCIS is authorized to collect an \$85 biometric services fee from any individual who is required to submit biometric information to pay for background checks and have their biometric information collected, stored, and used for certain immigration and naturalization benefits (other than asylum or refugee status). 8 CFR 103.7(b)(1)(i)(C). Effective October 2, 2020, DHS is incorporating the fee for biometric services into the underlying immigration benefit request fees for which biometric services are applicable to simplify the fee structure, reduce rejections of benefit requests for failure to include the biometric services fee, and better reflect how USCIS uses biometric information. 85 FR 46788 (Aug. 3, 2020). The additional fees that DHS estimates will be collected as a result of this proposed rule will not materialize if that rule takes effect before this rule does.

##### G. Evidence of Age and Birth Parentage for an Adopted Child

DHS proposes to require a copy of a prospective adopted child beneficiary's birth certificate to establish the child's identity and age, and the identities of the child's birth parents. Proposed 8 CFR 204.2(d)(2)(vii). INA section 101(b)(1)(E), 8 U.S.C. 1101(b)(1)(E), can be the basis of the approval of an immigrant visa petition filed by a U.S. citizen or an alien lawfully admitted for permanent residence on behalf of an adopted child whose adoption meets the requirements of INA 101(b)(1)(E). Under INA 101(b)(1)(E), an adopted child is the adoptive parent's child for immigration purposes, if the adoptive parent adopted the child before the child reached the age of 16 (or 18 if the sibling exception at INA 101(b)(1)(E)(ii) applies), and the child has jointly resided with the adoptive parent in a bona fide parent child relationship for at least two years, and has been under the legal custody of the adoptive parent for at least two years. To show that the adopted child was under the requisite age, the petitioner must prove the beneficiary's date of birth. To show a bona fide parent child relationship, the petitioner must,

<sup>59</sup> Form revisions requiring a new biometric submission will also be subjected to public notice in accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3512, and its implementing regulations at 5 CFR 1320.



among other things, identify the beneficiary's birth parents and show that they no longer reside with the child in a parent-child relationship and no longer exert primary parental control over the child. The best evidence to show age and birth parentage is a birth certificate issued by civil authorities. Therefore, DHS proposes to require that the petitioner submit a copy of the beneficiary's birth certificate, if available, to establish the beneficiary's identity, age, and the identities of the beneficiary's birth parents. Proposed 8 CFR 204.2(d)(2)(vii).

DHS additionally proposes to update the regulation to align with INA section 101(b)(1)(E)(ii), 8 U.S.C. 1101(b)(1)(E)(ii), which provides that a beneficiary adopted while under age 18 (rather than age 16) may qualify as an adopted child under that provision if he or she is the birth sibling of a child described in INA section 101(b)(1)(E)(i) or (F)(i), was adopted by the same adoptive parent(s), and otherwise meet the requirements of INA section 101(b)(1)(E). While the INA uses the term "natural sibling," DHS generally uses the term "birth siblings" synonymously, which includes half-siblings but does not include adoptive siblings. Proposed 8 CFR 204.2(d)(2)(vii).

DHS is soliciting public comment on all aspects of implementation, including alternative implementation plans (phased-in or otherwise).

## V. Statutory and Regulatory Requirements

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

Executive Orders 12866 and 13563 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is an economically significant regulatory action because it exceeds the \$100 million threshold, under section 3(f)(1) of E.O. 12866. Accordingly, the OMB has reviewed this proposed regulation.

## 1. Summary

DHS proposes to expand the collection of biometrics to require any individual filing or associated with an immigration benefit or request to appear for biometrics collection, and, if applicable, pay the \$85 biometric services fee unless exempted or waived from appearing and/or paying for such biometrics collection. This proposed rule would also change current regulations by defining the term "biometrics" to clarify and expand DHS' regulatory authority to collect biometrics information. The proposal to expand the collection of biometrics would impact certain populations without regard to age or U.S. citizenship status. Additionally, DHS proposes to further clarify the purposes for which biometrics are collected, stored, and utilized. Last, this rule proposes that DHS may require, request, or accept the submission of DNA or DNA test results to verify a claimed genetic relationship.

DHS estimates that under the proposed rule, about 2.17 million new biometrics submissions will be collected annually, and the resulting biometrics submitting population will increase from 3.90 million currently to 6.07 million, and, from a generalized collection rate across all forms of 46 percent currently to 71.2 percent (projected). The increase in biometrics submissions would accrue to three population segments: (i) A small subset of forms in which biometrics collection is collected routinely in which the age-eligible population will expand; (ii) the broadening of routine collection to a dozen or so forms in which collection is not currently routine; and (iii) the expansion of the age-eligible biometrics population to a collection of forms characterized by very low filing volumes, unspecified forms, and forms in which DHS does not intend to broadly extend collection on a routine basis at this time. DHS is also removing the age restrictions for biometrics collection in the context of an NTA issuance. However, the issuance of an NTA is not an "application, petition, or other request for certain immigration and naturalization benefits." See 8 CFR 103.7(b)(1)(i)(C). For this stated reason, USCIS will not (and does not currently) collect the \$85 biometric services fee from individuals whose DNA was collected in the course of being issued NTAs or for other immigration law enforcement purposes. Based on FY 2018 statistics, under the proposed rule DHS could collect biometrics from as many as 63,000 individuals under the

age of 14 years old annually associated with NTAs.<sup>60</sup>

The proposed rule would expand the collection of the \$85 biometric services fee to include any individual appearing for biometrics collection in connection with a benefit request unless the individual is statutorily exempt from paying the biometric services fee or if he or she has received a fee waiver. DHS estimates that there will be 1.63 million new biometric fee payments annually. The annual quantified costs associated with submitting new biometric submissions could be \$158.9 million, and the costs associated with the new fees could be \$138.4 million, for a combined total of \$297.3 million in quantified costs. There could be some unquantified impacts related to privacy concerns for risks associated with the collection and retention of biometric information, as discussed in DHS's Privacy Act compliance documentation. However, this rule would not create new impacts in this regard but would expand the population that could have privacy concerns. When costs of \$705,555 are incorporated to include fees the FBI would collect for providing fingerprint-based and name-based Criminal History Record Information (CHRI) checks for NTAs, the annual costs are about \$298 million.

The proposed rule would expand the collection of the \$85 biometric services fee to include any individual appearing for biometrics collection unless the individual is statutorily exempt from paying the biometric services fee or if they have received a fee waiver. DHS estimates that there will be 1.63 million new biometric fee payments annually. The annual costs associated with submitting new biometric submissions could be \$158.9 million, and the costs associated with the new fees could be \$138.4 million, for a combined total of \$297.3 million. When costs of \$705,555 are incorporated to include fees the FBI would collect for providing fingerprint-based and name-based Criminal History Record Information (CHRI) checks for NTAs, the annual costs are \$280 million.

In addition, DHS proposes to expand its regulatory authority so that it may require, request, or accept DNA evidence to demonstrate the existence of a genetic relationship for any benefit request where such a relationship must be established, such as certain family-

<sup>60</sup> As noted earlier, DHS is not estimating that this rule would result in the issuance of 63,000 additional NTAs by its components; rather, 63,000 NTAs were issued in FY 2018 to minors under the age of 14 who would be subject to biometric collection (for the purpose of verifying identity) under the parameters of this proposed rule.

based benefit requests, including but not limited to the following:

- Petition for Alien Relative (Form I-130);
- Refugee/Asylee Relative Petition (Form I-730);
- Application for T Nonimmigrant Status Supplement A (Form I-914A);
- Petition for U Nonimmigrant Status Supplement A (Form I-918A);
- Petition for Qualifying Family Member of a U-1 Nonimmigrant (Form I-929);
- Application for Certificate of Citizenship (Form N-600);
- Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K);
- And any other form where the existence of a genetic relationship is at issue for a beneficiary, dependent, derivative, rider, or other qualifying family member.

DHS is not proposing with this rule to require DNA submission for such forms generally. However, the rule will immediately allow DHS to require, request, or accept DNA or DNA test results, in its discretion, for individual benefit requests to verify a claimed genetic relationship, where establishing a claimed genetic relationship is required. Since the actual volume cannot be predicted at this time with accuracy, DHS conducted a sensitivity analysis using a range of 10 to 100 percent to estimate the potential costs for eligible populations associated with these family-based benefit requests. The costs to principal filers and beneficiaries/qualifying family members who may submit biometrics to establish

a genetic relationship in support of these benefit requests would range from \$22.4 million to \$224.1 million annually, in undiscounted terms. Depending on the actual future DNA submission rate, the total annual costs of the rule could range from \$319.6 to \$521.3 million annually.

Combining the cost of the biometrics (which includes the service fees and NTA fees) with the DNA costs, DHS estimated the total monetized costs of the proposed rule at three parts of the DNA submission range to represent a lower bound (10 percent), a midrange (50 percent), and a high range (90 percent). In undiscounted terms, the ten-year (2021–2030) costs could range from \$3,204.1 to \$4,996.9 million, with a midrange of \$4,100.5 million. At a 3 percent rate of discount, the ten-year present values could range from \$2,773.2 million, to \$4,262.4 million, with a midrange of \$3,497.8 million. At a 7 percent rate of discount, the ten-year present values could range from \$2,250.4 million, to \$3,509.6 million, with a midrange of \$2,880.0 million. The average annualized costs could range from \$320.4 million to \$499.7 million, with a midrange of \$410 million.

The proposed rule would provide benefits that DHS has not been able to quantify. Qualitatively, the proposed rule would provide individuals requesting certain immigration and naturalization benefits with a more reliable system for verifying their identity when submitting a benefit request. This would limit the potential for identity theft while also reducing the

likelihood that DHS would be unable to verify an individual's identity and consequently deny the benefit. In addition, the proposal to allow individuals to use DNA testing as evidence to demonstrate the existence of a claimed genetic relationship would provide them the opportunity to demonstrate a genetic relationship using a quicker, less intrusive, and more effective technology than the blood tests currently provided for in the regulations. See 8 CFR 204.2(d)(2)(vi).

The proposed rule would benefit the U.S. Government by enabling DHS with more fidelity and efficiency in identity management in the immigration lifecycle and vetting of individuals seeking certain immigration and naturalization benefits. The expanded use of biometrics stands to provide DHS with the ability to identify and limit fraud because biometrics comprise unique physical characteristics that are difficult to falsify and that do not change over time. Biometrics would also help reduce the administrative burden involved in identity verification and the performance of criminal history checks, by reducing the need for manual document review and name-based security checks. The proposed rule would also enhance the U.S. Government's capability to identify criminal activity and protect vulnerable groups by extending the collection of biometrics to populations under certain benefit requests.

Table 1 provides a more detailed summary of the proposed provisions and their impacts.

TABLE 1—SUMMARY OF PROVISIONS AND IMPACTS

Proposed change	Expected cost of the provision	Expected benefit of the provision
<p>DHS proposes to expand collection of biometrics to require any individual filing or associated with an immigration benefit or request to appear for biometrics collection without regard to age.</p>	<p>Individuals Submitting Biometrics— .....  <i>Quantitative:</i></p> <ul style="list-style-type: none"> <li>• Total annual direct costs of the proposed rule:                             <ul style="list-style-type: none"> <li>○ \$158,940,196 for about 2.17 million individuals to submit biometrics.</li> <li>○ \$138,356,283 for about 1.63 million new \$85 biometric services fees.</li> </ul> </li> </ul>	<p>Individuals Submitting Biometrics—  <i>Qualitative:</i></p> <ul style="list-style-type: none"> <li>• The proposed rule provides individuals requesting certain immigration and naturalization benefits with a more reliable system for verifying their identity when submitting a benefit request. This would limit the potential for identity theft. It would also reduce the likelihood that DHS would not be able to verify an individual's identity and therefore possibly deny a benefit request.</li> </ul> <p>Government—  <i>Qualitative:</i></p> <ul style="list-style-type: none"> <li>• DHS would be able to routinely collect biometrics information from children under the age of 14, and therefore, increase the U.S. Government's capabilities of determining the identity of a child who may be vulnerable to gang affiliation, human trafficking child sex trafficking, forced labor exploitation, and alien smuggling.</li> </ul>

TABLE 1—SUMMARY OF PROVISIONS AND IMPACTS—Continued

Proposed change	Expected cost of the provision	Expected benefit of the provision
<p>DHS proposes to increase the biometric modalities that it uses to collect biometrics information to include the following: Palm prints, facial and iris image, and voice prints.</p>	<p>Government— <i>Qualitative:</i></p> <ul style="list-style-type: none"> <li>• DHS does not know what the costs of expanding biometrics collection to the government in terms of assets and equipment; it is possible that costs could be incurred for the new equipment and information technologies and typologies needed to collect, process, store, and utilize biometrics, including software updates; cameras that are able to collect iris and facial images; devices used to record a voice print; and other equipment.</li> <li>• DHS does not know what the costs of expanding biometrics collection to the DHS in terms of assets and equipment; it is possible that costs could be incurred for the new equipment and information technologies and typologies needed to collect, process, store, and utilize biometrics, including software updates; cameras that are able to collect iris and facial images; devices used to record a voice print; and other equipment.</li> </ul>	<ul style="list-style-type: none"> <li>• The proposed rule would provide a benefit to the U.S. Government by enabling DHS to verify with greater certainty the identity of individuals requesting certain immigration and naturalization benefits. The expanded use of biometric information would provide DHS with the ability to limit identity fraud because biometrics are unique physical characteristics and more difficult to falsify.</li> </ul> <p>Government— <i>Qualitative:</i></p> <ul style="list-style-type: none"> <li>• Use of the new biometric technologies would allow DHS to keep up with technological developments in this area and adjust collection practices for both convenience and to ensure the maximum level of service for all stakeholders.</li> </ul>
<p>DHS may require, request, or accept the submission of DNA or DNA test results to verify the existence of a claimed genetic relationship.</p>	<p>Individuals Submitting DNA Evidence— ..... <i>Quantitative:</i></p> <ul style="list-style-type: none"> <li>• Potential annual costs for principal filers and beneficiaries/qualifying family members to submit DNA evidence range from \$22.4 million to \$224.1 million depending on how many individuals submit DNA evidence in support of a family-based benefit request.</li> </ul> <p>Government— <i>Qualitative:</i></p> <ul style="list-style-type: none"> <li>• USCIS currently reimburses the Department of State for the collection of DNA in countries where it does not have a presence. DHS does not currently know how many individuals would submit DNA under the proposed rule but there is the potential for additional costs if the Department of State facilitates additional DNA testing.</li> </ul>	<p>Individuals Submitting DNA Evidence— <i>Quantitative:</i></p> <ul style="list-style-type: none"> <li>• DNA testing would give individuals the opportunity to demonstrate a genetic relationship using a quicker, less intrusive, and more effective technology.</li> </ul>
<p>DHS is proposing to remove the age restrictions for biometrics collection in the context of Notice to Appear (NTA) issuance for the same reasons (<i>i.e.</i>, identity verification, criminal history background checks, etc.).</p>	<p>Individuals Submitting Biometrics— ..... <i>Quantitative:</i></p> <p><i>None; there would be no opportunity or travel related costs associated with NTA collection to individuals.</i></p> <p>Government— <i>Quantitative:</i></p> <p>There could costs of \$705,555 annually accruing to fees the FBI would collect for providing fingerprint-based and name-based Criminal History Record Information (CHRI) checks.</p>	<p>Individuals Submitting Biometrics Government— <i>Qualitative:</i></p> <p>The collection of biometrics on children under the age of 14 associated with NTAs would significantly assist DHS in its mission to combat human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling.</p>

In addition to the impacts summarized above and as required by Office of Management and Budget

(OMB) Circular A–4, Table 2 presents the prepared accounting statement

showing the costs associated with this proposed regulation.<sup>61</sup>

TABLE 2—OMB A–4 ACCOUNTING STATEMENT  
[\$ millions, 2019]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
<b>Benefits</b>				
Monetized Benefits ..... Annualized quantified, but un-monetized, benefits.	Not estimated 0 .....	Not estimated 0 .....	Not estimated 0 .....	Preamble. Preamble.
Unquantified Benefits .....	The proposed rule would limit identity fraud and improve USCIS identity management systems. Additionally, the proposed rule would enhance the U.S. Government’s capability to identify criminal activities and protect vulnerable populations. The removal of age restrictions and the proposal to collect on all NTAs under the age of 14 would assist DHS in its mission to combat human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling.			Preamble and RIA.
<b>Costs</b>				
Annualized monetized costs for 10 year period starting in 2021 to 2030 (discount rate in parenthesis).	(3%) \$410 .... (7%) \$410 ....	\$320.4 ..... \$320.4 .....	\$499.7 ..... \$499.7 .....	RIA. RIA.
Annualized quantified, but un-monetized, costs	There could be costs germane to the procurement of equipment, information technology and typology, and systems possibly needed to support the increased biometrics modalities. There could also be a cost to transferring information regarding biometrics for the NTAs issued to individuals under age 14.			Preamble and RIA.
Qualitative (unquantified) costs .....	N/A.			
<b>TRANSFERS</b>				
Annualized monetized transfers: “on budget” .. From whom to whom? .....	N/A .....	N/A .....	N/A .....	Preamble. Preamble.
Annualized monetized transfers: “Off-budget” From whom to whom? .....	N/A .....	N/A .....	N/A .....	Preamble. Preamble.
Miscellaneous analyses/category	Effects			Source citation (RIA, preamble, etc.)
Effects on state, local, and/or tribal governments.	None .....			Preamble.
Effects on small businesses .....	There could be small entity impacts to EB–5 regional centers incurred by biometrics collection germane to the regional center principals. DHS believes these would be indirect but does not know how they could impact the regional center. There are currently 884 approved regional centers and DHS analysis based on limited available suggests that most regional centers could be small entities in terms of the RFA.			Preamble.
Effects on wages .....	None .....			Preamble.
Effects on growth .....	None .....			Preamble.

<sup>61</sup> OMB Circular A–4 is available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>. The primary estimate reported here reflects the average of the highest

DNA submission rate (100 percent) and the lowest (0 percent). It also corresponds to the 50 percent midrange along the spectrum 10–90 percent that we utilize on grounds that realistically, there will be

some collection (a positive rate) but not complete (100 percent) collection.

DHS emphasizes that the costs could vary from the figures reported herein. As detailed in the analysis, in order to estimate the population of future biometrics submissions, it was necessary to extrapolate certain metrics and conditions to the non-existent (in context) future populations. Although DHS believes the methodology employed is appropriate, because the future actual generalized and form-specific collection rate of biometrics are unknown, the actual populations and costs could vary. In addition, the costs rely on a lower-end average wage to account for opportunity costs associated with biometrics submissions. If, on average, the wage is higher than that relied upon, the costs could vary as well. This regulatory impact analysis is the best available estimate of the future benefits and costs. Actual results will depend on a number of factors, including policy, programmatic, operational and practical considerations in the implementation of the collection of biometrics requirements under this rule.

In summary, the proposed rule would enable USCIS to conduct the administration and adjudication of immigration benefit requests with increased fidelity, and is conducive to the evolution to a person-centric model for organizing and managing its records, enhanced and continuous vetting, and reduced dependence on paper documents, as is described more fully in the preamble.

## 2. Background and Purpose of the Proposed Rule

Current statutes and regulations provide USCIS the authority to collect biometrics information with immigration and naturalization benefit requests.<sup>62</sup> USCIS has the authority to collect biometrics and the associated biometric services fee from an applicant, petitioner, sponsor, beneficiary, requestor, or individual filing an immigration request on a case-by-case basis, through form instructions, or through a **Federal Register** notice.<sup>63</sup> Based on the relevant statutory and regulatory authorities, USCIS collects, stores, and utilizes biometrics to conduct background checks to determine eligibility for an immigration benefit or other request; and, for document production associated with

certain immigration and naturalization benefits or actions.

The USCIS biometrics process begins with the collection of an individual's biometric information at an authorized location, including USCIS offices, ASCs, military installations, and U.S. consular offices abroad. Currently, the types of biometrics information that USCIS collects generally consist of a photograph, fingerprints, and signature. For certain refugee or asylum family-based petitions, USCIS also suggests the submission of DNA test results obtained from approved laboratories, as either primary or secondary evidence to assist in establishing the existence of claimed genetic relationships.

Although DHS has broad authority to collect biometrics from populations associated with immigration benefit requests, collection is only mandatory and routine for certain age groups and forms.<sup>64</sup> As a result, there are substantial populations associated with immigration benefit requests that do not routinely submit biometrics. In Fiscal Year (FY) 2017, for example, about 3.93 million people submitted biometrics across 8.53 million immigration applications, petitions, and requests, yielding a generalized biometrics collection rate of 46 percent for that year.<sup>65</sup>

For individuals who currently do not provide biometric information in support of an immigration benefit request, USCIS mainly relies on biographical information for identity management in the immigration lifecycle. Such biographical information is provided as part of the benefit request package.<sup>66</sup> However, biographical information provided by individuals is generally not constant, consistent, or inherently unique. For example, biographical information can include an individual's height, weight, or other physical characteristics that are very likely to change over time and can be similar to the physical characteristics of others. Additionally, biographical information utilized for identity management in the immigration lifecycle imposes an administrative burden for USCIS adjudicators, as the document management and review associated with maintaining immigration files and verifying

identities involve intensive manual processes. Finally, some biographical information is not inherently unique by definition, as there are numerous individuals around the world share names and dates of birth.

Some individuals who are not currently required to submit biometrics information may pose a risk to vulnerable populations. For example, U.S. citizen and lawful permanent resident petitioners are not currently required to routinely submit biometrics information in support of family-based immigrant and nonimmigrant fiancé(e) petitions, except for orphan and Hague Adoption Convention-related applications and petitions. Accordingly, DHS has limited capabilities to determine if a petitioner has been convicted of criminal conduct associated with the AWA and the IMBRA.<sup>67</sup> Moreover, DHS does not routinely collect biometric information from children under the age of 14, and therefore, has limited capabilities to determine the identity of a child who may be vulnerable to human trafficking, child sex trafficking, forced labor exploitation, alien smuggling, or other exploitative transgressions. For example, a vulnerable child with similar characteristics to a child who has lawful immigration status may be moved across U.S. state and international borders under the assumed identity of that other child. Collecting biometrics from individuals who do not currently submit such information would provide DHS with further data, information, and tools to more effectively protect such vulnerable populations.

The proposed rule would change current regulations and the overall DHS biometrics protocol in several ways. First, DHS proposes to define the term "biometrics" to clarify and expand its regulatory authority to collect biometrics information. Second, DHS proposes to expand the collection of biometrics information to require any individual filing or associated with immigration benefits or requests to appear for biometrics collection without regard to age or U.S. citizenship status. The expansion of biometrics would concurrently expand the collection of the \$85 biometric services fee.<sup>68</sup> Third, DHS proposes to further clarify the purposes for which biometrics are

<sup>62</sup> See generally INA section 103(a), 8 U.S.C. 1103, INA section 235(d)(3), 8 U.S.C. 1225(d)(3), and INA section 287(b), 8 U.S.C. 1357(b). For a list of specific authorities, refer to the preamble, Section III. Background. A. Legal Authority and Guidance for USCIS Collection and Use of Biometrics.

<sup>63</sup> See 8 CFR 103.2(b)(9).

<sup>64</sup> USCIS routinely collects biometric information and the \$85 biometric services fee from individuals between the ages of 14 and 79.

<sup>65</sup> Multiple people may be associated with one filing or one person may submit multiple, simultaneous or sequential requests.

<sup>66</sup> Biographic information provided by individuals can include birth certificates and marriage licenses, among other physical types of information.

<sup>67</sup> USCIS currently uses name-based checks to determine if a petitioner has been convicted of a criminal activity.

<sup>68</sup> This proposal would not include any individual that receives a fee waiver or any individual who is statutorily exempt from paying the \$85 biometric services fee. The proposal would also remove any existing age requirements for submitting the \$85 biometric services fee.

collected, stored, and utilized. Fourth, DHS proposes to increase the biometric modalities that it is authorized to collect to include the following: Palm prints, facial and iris image, voice prints, and DNA. Fifth, this rule proposes that DHS may require, request or accept the submission of DNA or DNA test results, which include a partial DNA profile, to verify the existence of a claimed genetic relationship.

The proposed rule would provide the U.S. Government with tools to verify with greater certainty the identity of individuals requesting immigration and naturalization benefits. The expanded use of biometrics technologies and information provides DHS with the ability to strengthen national security and limit identity fraud because biometrics are unique characteristics and more difficult to falsify than biographic information alone. In addition, the use of biometrics information for identity verification would be more efficient and reduce the administrative burdens associated with verifying identities and performing criminal history checks. The proposed rule would also enhance the U.S. Government's capability to identify criminal activities and protect vulnerable populations. Further, it is conducive and relevant to the evolution to a person-centric model for organizing and managing of immigration records, enhanced and continuous vetting, and reduced dependence on paper documents.

### 3. Population

The ensuing analysis presents an extensive array of data points, calculations, and technical details. Estimating the populations that would be impacted requires multiple interlinked steps across overlapping population segments. To assist readability, some key points applicable to the biometrics-specific (*i.e.*, non-DNA) proposal are presented upfront. DHS identified the baseline population as the annual average volume of biometrics submissions, which has been heavily concentrated within in a small subset of specific USCIS forms. It is necessary to identify this baseline because technically it will be impacted by the rule, even though DHS does not expect it to incur additional monetized costs. The new populations that the rule will impact accrue to the "expansion" of the baseline in terms of the heavy-concentration forms due to the removal of age restrictions, as well as a broadening of biometrics collection to forms in which biometrics have not been routinely collected. The expansion of the population subject to biometrics

would also increase the fee-paying population. Because the new populations do not exist yet in context—including those involving the expanded baseline—DHS must develop logically and mathematically sound procedures in order to carry out the calculations needed to estimate these populations who are newly subject to biometric collection and fees. Such estimation requires extrapolations, and while the methodology employed is sound, it is possible that the past will not mimic the future, as it relates to a specific form, grouping of forms, or biometrics collection in general.

For the five-year span from FY 2013 to FY 2017, an average of 3.61 million individuals who filed for an immigration benefit or request were required to submit biometrics. In this analysis, DHS assumes that this population would continue to submit biometrics, although the modalities would expand, as has been noted above and explained in more detail in the preamble. First, DHS would collect biometrics from certain populations from which DHS already has the authority to collect biometrics without a change in the regulations, but does not currently do so routinely. The biometrics-submitting population would be broadened across form types as a result. Second, the elimination of the current age restrictions for submitting biometrics so that individuals of any age might be requested to submit biometrics information under the proposed rule would expand the biometrics submissions within the form types already embedded in the existing population (and will apply to the new populations appropriate to the expanded form types). Finally, DHS would require, request, or accept DNA evidence from certain populations to establish or verify a claimed genetic relationship.

DHS estimates the different populations that would be impacted by this proposed rule through five analytical phases. The first phase (Phase I) involves identifying the number of individuals who would continue to submit biometrics in the absence of this proposed rule. This group is referred to throughout this analysis as "baseline" (interchangeable with "past," "current," or "existing") population and is derived by using historical biometric submissions data. This group would likely face a very minor additional time burden to submit biometrics information, including palm prints, facial and iris image, or voice prints as a result of this proposed rule due to the increased modalities, but DHS did not estimate any additional monetized costs

for this because the time increase for this group is expected to be small.

In the second phase (Phase II), DHS presents the underlying logic and formulas that are used to estimate the additional populations, not yet existent in context, that could be impacted by the proposed rule. These resultant formulas will be applied to the populations that would be impacted by the proposed elimination of the age restrictions, the broadening of collection across forms, the biometrics service fee, proposal to require, request, or accept DNA evidence to verify a claimed genetic relationship. In the third phase (Phase III), DHS develops the additional populations that could be impacted as a result of the proposed elimination of the age restrictions for collecting biometrics and the broadening of biometrics collection. Four such formulas are requisite.

The fourth phase (Phase IV) focuses on the biometric fee payments. The final phase estimates the populations that would be impacted by the proposed provision to require, request, or accept DNA evidence to verify a claimed genetic relationship.

#### a. Phase I Baseline Data—Populations Who Currently Submit Biometrics and DNA Evidence

In Phase I of this analysis, DHS develops the baseline, as the set of biometrics submitted in the past. It is the population who would continue to submit biometrics in the absence of the proposed rule, including all eligible applicants, petitioners, sponsors, beneficiaries, requestors, or individuals who currently submit biometrics information at an ASC in support of an immigration or naturalization benefit request. Because specific USCIS forms are used to request immigration benefits, and biometrics are submitted under certain USCIS form types, DHS uses the form type to group data and then formulate its baseline population estimates.

To derive the baseline population, DHS has delineated Phase I into five steps. The first step provides a description of the data sources and technical approach for deriving the baseline population. Second, DHS presents the number of biometric submissions by form. The third step quantifies the filing volume for Application to Extend/Change Nonimmigrant Status (Form I-539) including the total number of applicants, co-applicants, and derivative family members, pursuant to the following. As of March 22, 2019, DHS started to routinely collect biometrics information from all Form I-539



applicants, co-applicants, and derivative family members.<sup>69</sup> Therefore, DHS includes the Form I-539 population in the baseline. Fourth, DHS quantifies the baseline biometrics fee-paying volume. Fifth, DHS identifies the number of current DNA tests that are used to demonstrate a claimed genetic relationship in support of a family-based benefit request.

(i) Step 1: Data Description and Technical Approach

Based on current practice, when an individual appears at a USCIS facility for a biometrics appointment, their photograph, signature, and right index fingerprint is digitally collected and stored in the Customer Profile Management System (CPMS) database, which is the USCIS data repository for biometrics information. For eligible populations between the ages of 14 and 79, ten fingerprints are also collected and stored in CPMS. For this baseline analysis, the biometrics collection volume data originates from the CPMS database.

The baseline population consists of individuals who submit biometric information under one immigration

benefit request. For certain forms, as well as for certain biometric appointments, an individual may submit biometrics in support of each individual immigration benefit request. Under these circumstances, there is a one-to-one match between the biometrics information submitted and the benefit request. However, there are instances where it is possible for an individual to have a single biometrics appointment in support of multiple forms, meaning the individual would only submit biometric information once, and not separately, for each individual immigration benefit request. Although this scenario represents a one-to-multiple match between the biometric information submitted and the immigration benefits requested, the physical act of submitting biometric information can be tracked under a primary form type in the CPMS database. A form may be logged as the primary form based upon the type of biometric data being submitted, the type of benefit being requested, or the order with which an individual's paperwork is received. Conversely, there are also instances where it is possible for multiple individuals to have biometrics

appointments in support of a single form, meaning one immigration benefit request would yield multiple biometrics appointments and collections (*i.e.*, Form I-539 requiring biometrics for primary applicant and any derivatives/family members, Application for Advance Processing of an Orphan Petition (Form I-600A) requiring biometrics for all adult household members, etc.). In the baseline population, a single physical biometric transaction is accounted for under one primary form type to avoid double-counting.

(ii) Step 2: Baseline Biometric Submissions by Form

Data captured in CPMS reveals that for the five-year span of FY 2013 to FY 2017, an average of 3.61 million individuals submitted biometrics information annually to USCIS in support of immigration and naturalization benefit requests (Table 5).<sup>70</sup> In FY 2017, a total of 3.93 million individuals submitted biometrics information compared to 3.19 million in FY 2013. The largest volume over the period occurred in FY 2015, when over 4.20 million individuals submitted biometrics information to USCIS.

TABLE 5—BIOMETRIC SUBMISSIONS BY FORM GROUPING [FY 2013–FY 2017]

Form	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	5-year average	5-year percent of total
“Prev-9”:							
N-400 .....	778,172	779,221	772,648	961,092	1,013,252	860,877	23.78
I-90 .....	554,918	790,069	780,050	743,589	770,552	727,836	20.11
I-765 .....	421,011	391,650	800,711	489,553	588,008	538,187	14.87
I-485 .....	459,298	506,991	494,664	500,369	547,755	501,815	13.86
I-589 .....	95,938	116,668	173,248	230,900	304,308	184,212	5.09
I-821D .....	350,339	102,192	242,101	125,489	224,899	209,004	5.77
I-131 .....	89,146	87,012	87,755	88,977	86,299	87,838	2.43
I-751 .....	185,587	172,478	93,359	71,823	83,417	121,333	3.35
I-601A .....	16,381	37,293	48,978	52,654	67,494	44,560	1.23
Prev-9 .....	2,950,790	2,983,574	3,493,514	3,264,446	3,685,984	3,275,662	90.49
Phase III .....	1,310	944	949	1,307	874	1,077	0.03
Other .....	240,295	197,593	708,628	327,032	241,730	343,055	9.48
Total .....	3,192,395	3,182,111	4,203,091	3,592,785	3,928,588	3,619,794	100

Over this 5-year period, 90.49 percent<sup>71</sup> of biometric submissions were associated with the following nine forms:

a. Application for Naturalization (Form N-400);

b. Application to Replace Permanent Resident Card (Form I-90);

c. Application for Employment Authorization (Form I-765);

d. Application to Register Permanent Residence or Adjust Status (Form I-485);

e. Application for Asylum and for Withholding of Removal (Form I-589);

f. Consideration of Deferred Action for Childhood Arrivals (Form I-821D);

g. Application for Travel Document (Form I-131);

<sup>69</sup> See USCIS, Update: USCIS to Publish Revised Form I-539 and New Form I-539A on March 8, <https://www.uscis.gov/news/alerts/update-uscis-publish-revised-form-i-539-and-new-form-i-539a-march-8> (last reviewed/updated March 5, 2019).

<sup>70</sup> Biometric data can be processed and stored on other USCIS systems, but CPMS is the database that

represents the aggregated collection of biometrics by primary form type. We note that not all biometric modalities were covered in every data point we count as a biometric submission. The figures in the baseline represent at least one type of biometric collected with an associated benefit request. In this sense, we treat “biometric” as

essentially a binary action—either it was collected or it was not without passing out individual modalities.

<sup>71</sup> Calculation: 3,275,662 average biometric submissions by 9 form-types/3,619,794 total biometric submissions = 90.49 percent (rounded).

h. Petition to Remove the Conditions of Residence (Form I-751); and  
 i. Application for Provisional Unlawful Presence Waiver (Form I-601A).

Because this set of forms is central to the ensuing analysis, we designate their prevalence under the term “Prev-9.”

The remaining forms not broken out by specific type in Table 5 have been separated into two groups. The first group is referred to in this analysis as Phase III Forms and represents the set under which DHS does not routinely collect biometrics information, but instead collect biometric information on a case-by-case basis.<sup>72</sup> Under the proposed rule, DHS would broaden routine collection of biometrics to these existing forms (the new populations apropos to this group are developed in Phase III of this analysis, which is why we label them as such, although they are not the only set discussed in that phase). From FY 2013 to FY 2017, the Phase III Forms accounted for a very small 0.03 percent of total biometric submissions.<sup>73</sup>

The second group is referred to as “Other” and includes three sub-categories of forms. The first sub-

category includes forms where DHS does not routinely collect biometrics information but does so on a case-by-case basis. However, in contradistinction to the Phase III Forms, DHS does not plan currently to broadly increase biometrics collection for eligible populations under these forms.<sup>74</sup> The second category includes forms where DHS does routinely collect biometrics; the overall volume of biometric data makes up less than 10 percent of biometric submissions. For these forms, DHS will rely on characteristics from Prev-9 to estimate the additional populations who would submit biometrics specifically as a result of the proposed removal of the age restrictions for submitting biometrics. The third category includes forms for which there is no specific form designation within the CPMS database.<sup>75</sup> From FY 2013 to FY 2017, the Other group represented just under a tenth, 9.48 percent, of biometric submissions.<sup>76</sup>

(iii) Step 3: Filing Volume for Form I-539

DHS calculates the filing volumes for Form I-539 to account for populations who began to routinely submit biometrics information in the second quarter of 2019. USCIS made revisions to Form I-539, informing the public of DHS’s intention to collect biometrics information from all eligible nonimmigrant principal applicants, co-applicants, and derivative family members. Because DHS started to collect biometrics information from the Form I-539 population before the publication of this proposed rule, DHS includes this population in its baseline.

From FY 2013 to FY 2017, USCIS received an average of 280,767 Form I-539 applications annually consisting of 199,696 primary applicants and 81,071 co-applicants and derivative family members (Table 6). Because all Form I-539 applicants, co-applicants, and their derivative family members are now required to submit biometric data, DHS relies on the historic filing volumes for the baseline number of individuals who submit biometric information in support of a Form I-539 benefit request.<sup>77</sup>

TABLE 6—FORM I-539 VOLUMES BY APPLICANTS, CO-APPLICANTS AND DERIVATIVES [FY 2013–FY 2017]

Sub-population	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	5-year avg.
Primary Applicant .....	149,581	158,513	181,080	216,302	293,004	199,696
Applicants, Co-applicants and Derivative Family Members .....	56,643	63,552	73,976	88,236	122,947	81,071
Total .....	206,224	222,065	255,056	304,538	415,951	280,767

To estimate the number of individuals who currently submit biometric data, DHS uses the five-year average population of biometric submissions for each form type, which includes the Prev-9, Phase III Forms, the Other categories from Table 5 and the Form I-539 population (Table 6). In total, DHS uses a baseline population of 3,900,561 average biometric submissions per year, which is comprised of the 3,275,662 biometric submissions under Prev-9; 1,077 under the Phase V form types;

343,055 under the Other form types; and, 280,767 under the Form I-539 population. The relevant figures are condensed in Table 7, and DHS utilizes these baseline in support of remaining sections of the analysis.

TABLE 7—CURRENT BIOMETRIC SUBMISSIONS BY CATEGORIES [Baseline, 5-year average]

Form category	5-year average
Prev-9 Forms .....	3,275,662
Phase V Form Types .....	1,077
Other Forms .....	343,055
Subtotal .....	3,619,794
+ Form I-539 .....	280,767

<sup>72</sup> DHS may request biometrics on a case-by-case basis when the adjudicating officer would like to establish an identity prior to adjudicating a benefit. This could occur when there are any potential identify or fraud issues. DHS may also request biometrics information in compliance with the AWA or IMBRA.

<sup>73</sup> Calculation: 1,077 average biometric submissions by Phase V forms/3,619,794 average biometric submissions = 0.03 percent (rounded).

<sup>74</sup> For some of the forms in the Other category, biometrics submissions were actually zero. However, many of these had very small filing

volumes as well. For some forms in the Other category, DHS is removing the requirement to submit biometrics information in support of a benefit request. DHS is removing the biometrics requirement because these individuals need to concurrently file with other forms where biometrics information is currently required.

<sup>75</sup> This may happen when biometrics information has not been assigned to a primary form in the CPMS database.

<sup>76</sup> Calculation: 343,055 average biometric submissions by Other forms/3,619,794 average biometric submissions = 9.48 percent.

<sup>77</sup> DHS expects less than 100 percent of Form I-539 applicants, co-applicants, and derivative family members to submit biometrics due to the existence of exemptions and waivers. However, DHS is not able to identify Form I-539 filers that file concurrently with other forms from current existing data sources. Therefore, DHS assumes that 100 percent of Form I-539 applicants, co-applicants, and derivative family members will submit biometrics for the purposes of this analysis.

TABLE 7—CURRENT BIOMETRIC SUBMISSIONS BY CATEGORIES—Continued

[Baseline, 5-year average]

Form category	5-year average
Baseline (Total) .....	3,900,561

(iv) Step 4: Baseline Biometrics Fee-Paying Volume

The proposed expansion of biometrics collection would increase the volume of service fees. DHS currently collects the \$85 biometric services fee payments from all individuals submitting biometrics associated with a benefit request unless there are specific age restrictions for submitting the \$85 biometric services fee associated with each benefit request or there is an approved fee waiver.<sup>78</sup> However, several factors warrant consideration before assessing the populations that currently submit the \$85 biometric services collection fee. Foremost, anyone who submitted a biometrics fee by definition also submitted biometrics—but the converse does not hold. As such, the volume of biometric submissions by primary form does not reflect the volume of \$85 biometrics service fee payments. This discrepancy is primarily due to the existence of fee exemptions and fee waivers for immigration benefit requests. DHS grants fee exemptions that are required by statute.<sup>79</sup> Under this proposed rule, the appropriate portions of the biometrics fee-paying population will continue to receive fee exemptions for biometric services. The current (and future) biometrics fee population is by definition smaller than the biometrics population.

In addition, individuals may apply for and be granted a fee waiver for certain immigration benefits and services.<sup>80</sup> In general, fee-waiver requests are

<sup>78</sup> Certain benefit requests, such as Form I-765 and Form I-131, have specific age requirements for paying the \$85 biometric services fee. DHS proposes to remove these age requirements.

<sup>79</sup> See INA section 245(l)(7), 8 U.S.C. 1255(l)(7). DHS is required by law to permit certain applicants to request a fee waiver including Violence Against Women Act (VAWA) self-petitioners, INA section 245(j)(7), 8 U.S.C. 1255(j)(7), T Visas—Victims of Severe Form of Trafficking, INA section 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T), U Visas—Victims of Criminal Activity, INA section 101(a)(15)(U), 8 U.S.C. 1101(a)(15)(U), Battered spouses of A, G, E-3, or H nonimmigrants, INA section 106, 8 U.S.C. 1105a, Battered spouses or children of a lawful permanent resident or U.S. citizen, INA section 240A(b)(2), 8 U.S.C. 1229b(b)(2), and Temporary Protected Status—as in effect on March 31, 1997, INA section 244(a)(3), 8 U.S.C. 1254a(a)(3).

<sup>80</sup> See 8 CFR 103.7(c) and <https://www.uscis.gov/i-912>.

reviewed by considering whether the applicant is receiving a means-tested benefit, whether the applicant's household income level renders him or her unable to pay, or whether recent financial hardship renders an inability to pay. With regard to the biometric services fee, USCIS waives the \$85 fee based on the inability to pay if the underlying benefit application is granted a fee waiver. For instance, if an applicant receives a fee waiver for a particular form filing fee, he or she will generally also receive a waiver for the biometrics fee. Under this proposed rule, DHS assumes that the same portions of the biometrics fee-paying population would continue to receive fee waivers for biometric services fees. In other words, the rule does not alter or impact the fee waiver protocol currently in place.

For the three-year span of FY 2015 to FY 2017, an average of 2,771,279 biometric services fee payments were received by USCIS (Table 8).<sup>81</sup> DHS uses the average baseline value of 2,771,279 individual payments and the baseline volume of biometric submissions to derive population estimates for the number of individuals who would pay the \$85 biometric services fee as a result of the proposed provision to eliminate the age restrictions for submitting biometrics and paying the biometric services fee.

TABLE 8—BIOMETRIC FEE VOLUMES, ALL FORMS [FY 2015–FY 2017]

Fiscal year	Fee-paying volume
FY 2015 .....	2,765,927
FY 2016 .....	2,746,261
FY 2017 .....	2,801,648
Average .....	2,771,279

(v) Step 5: DNA Testing Volume

The proposed rule would provide USCIS with the authority to require, request, or accept DNA evidence to verify a claimed genetic relationship. The proposed rule would allow relevant filers to use DNA evidence to establish a claimed genetic relationship where relevant for certain immigration benefit requests, including but not limited to the following:<sup>82</sup>

<sup>81</sup> As a result of possible inaccuracies regarding the volume of biometric service fee payments in FY 2013 and FY 2014, the fee-paying volume for biometrics services is only reported from FY 2015 to FY 2017. The source of the data is USCIS, Office of the Chief Financial Officer (OCFO).

<sup>82</sup> As was mentioned earlier in the preamble, DHS recognizes that there are qualifying family

- Petition for Alien Relative (Form I-130);
- Refugee/Asylee Relative Petition (Form I-730);
- Application of T Nonimmigrant Status (Form I-914A);
- Petition for U Nonimmigrant Status (Form I-918A);
- Petition for Qualifying Family Member of a U-1 Nonimmigrant (Form I-929);
- Application for Certificate of Citizenship (Form N-600);
- Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K); and
- Any other form where the existence of a claimed genetic relationship is at issue for a beneficiary, derivative, rider, or qualifying family member.<sup>83</sup>

These family-based applications and petitions have been included in the proposed rule because DNA testing is a technology that can be used to verify a claimed genetic relationship where one is required for these benefit requests. Additionally, DNA testing, by verifying or not verifying genetic relationships, would help DHS to identify criminal activity (*i.e.*, immigration fraud, visa fraud, etc.) and protect vulnerable populations associated with human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling.

Certain immigration benefit requestors are currently able to establish the existence of a genetic relationship with family who wish to immigrate to the United States. The petitioner may submit, on a voluntary basis, DNA test results as evidence to establish authenticity of the claimed genetic relationship.

DNA test results are only accepted by USCIS from laboratories accredited by the AABB. However, testing occurs between the petitioner and his or her claimed biological relative, the latter of whom may be located domestically or abroad. In general, the petitioner submits his or her DNA evidence at a U.S.-accredited AABB lab, while the beneficiary/qualifying family member submits his or her DNA evidence at an

members, such as adopted children, who do not have a genetic relationship to the individual who files an immigration benefit request on their behalf. To the extent the rule discusses using DNA evidence to establish qualifying relationships in support of certain immigration benefit requests, it is referring only to genetic relationships that can be demonstrated through DNA testing.

<sup>83</sup> This includes requiring, requesting, or accepting DNA testing to establish a genetic relationship with a birth parent in the context of a petition to classify a beneficiary as an orphan under INA section 101(b)(1)(F) or as a Convention adoptee under INA section 101(b)(1)(G), 8 U.S.C. 1101(b)(1)(F) or (G), respectively.

overseas facility.<sup>84</sup> For DNA evidence submitted at an international U.S. Government facility, DHS historically facilitated the collection through USCIS Refugee, Asylum, and International Operations (RAIO) Directorate’s international offices, and it has a memorandum of understanding with DOS to facilitate the collection in countries where USCIS does not have a presence.

The data used to make the following calculations come from the RAIO Directorate. Table 9 summarizes the total number of DNA tests that were submitted to USCIS and DOS in support of immigration benefit requests for Forms I–130, I–730, and the Haitian Family Reunification Parole Program.<sup>85</sup> From FY 2015 to FY 2017, a total of 34,150 DNA tests were submitted to USCIS including 18,345 DNA tests that

were collected by USCIS and 15,805 DNA tests that were collected by DOS.<sup>86</sup> During this period, an annual average of 11,383 DNA tests were submitted to USCIS, including an average of 6,115 DNA tests collected by USCIS and 5,268 DNA tests collected by DOS. DHS uses these annual average volumes to account for the current collection of DNA evidence in support of an immigration benefit request.

TABLE 9—DNA TEST SUBMISSIONS AT INTERNATIONAL FACILITIES FOR FORM I–130, FORM I–730, THE HAITIAN FAMILY REUNIFICATION PAROLE PROGRAM, THE CUBAN FAMILY REUNIFICATION PAROLE PROGRAM, AND THE FILIPINO WWII VETERANS PAROLE PROGRAM

[FY 2015–FY 2017]

Fiscal year	Number of DNA collections (USCIS)	Number of DNA collections (DOS)	Total
2015 .....	7,769	5,748	13,517
2016 .....	6,735	5,961	12,696
2017 .....	3,841	4,096	7,937
Total .....	18,345	15,805	34,150
Average .....	6,115	5,268	11,383

b. Phase II—Formulas for Estimating Additional Biometrics Populations

New populations would be created by the rule, in context, via the general proposals to broaden collection across an expanded set of forms and remove age restrictions, and the proposal to allow more DNA submissions. Since the populations are not yet existent in context, DHS must develop appropriate tools to extrapolate certain conditions forward. Here, formulas to estimate the additional populations (and sub-populations relevant to specific cost factors) that would be impacted by the proposed rule are developed. Specifically, four formulas are required,

and the purpose of this current Phase II is to motivate their underlying logic and setup.

- *Biometrics Collection Rate (BCR)*: A measurement of the proportion of biometric submissions out of the total age-eligible population within a form type.
- *Biometrics Fee Ratio (BFR)*: A measurement of the proportion of biometric services fee payments out of the total age-eligible biometrics fee-paying population.
- *Biometrics Age Multiplier (BAM)*: A measurement of the extra number of biometric submissions for the Other form type category due to the proposed

elimination of the age restrictions for submitting biometrics.

- *Dependents Multiplier (DM)*: A measurement of the number of principal applicants or petitioners relative to the number of claimed genetic relationships.

(i) Biometrics Collection Rate

DHS develops a BCR, a formula estimating the proportion of biometric submissions out of the total current age-eligible population within a form type. In this analysis, the BCR will be applied to certain populations to estimate the additional population that would submit biometrics. The BCR formula is provided below (Formula 1):

**Formula 1: Biometrics Collection Rate (BCR)**

$$BCR = \frac{BI}{P}$$

<sup>84</sup> DNA tests can be submitted in the United States at an accredited AABB lab if the principal and biological family members are all in the country. Alternatively, DNA tests can be submitted at an official overseas government facility. DHS is only able to quantify the exact number of DNA tests where at least one of the individuals is submitting his or her DNA evidence overseas. Although DHS does not track the location of the petitioner or biological family members giving his or her DNA evidence, based on the experience of USCIS’ Refugee, Asylum and International Operations

(RAIO), DHS expects that most DNA submissions at overseas facilities are from eligible biological family members and most principal applicants or petitioners submitting DNA would submit their DNA evidence within the United States.

<sup>85</sup> Only certain family-based benefit requests would be impacted by the proposed provision to allow, request, or require DNA evidence to establish a biological relationship. The DNA tests associated with Form I–130 and Form I–730 are the only family-based benefit requests that would be impacted by the proposed rule that currently use

DNA evidence to establish a biological relationship. Additionally, DHS is unable to identify separately the specific number of DNA tests associated with each form, the Haitian Family Reunification Parole (HFRP) Program, the Cuban Family Reunification Parole (CFRP) Program, and the Filipino World War II Veterans Parole (FWVP) Program. Therefore, DHS is using the aggregate number of DNA submissions to estimate the baseline population.

<sup>86</sup> The relevant data and information in Table 10 was provided by USCIS RAIO was only available for 3 fiscal years, from FY 2015 to FY 2017.

Where BCR represents the Biometrics Collection Rate for a specific form type, BI represents intensity, as the average number of individuals who currently submit biometrics information by form type in a fiscal year and P represents the volume of age-eligible benefit requests associated with a form type by fiscal year.<sup>87</sup>

Calibration will be undertaken in the next phase, when the actual population estimates are conducted, but we introduce point of discussion here. An important consideration relevant to biometrics collection for eligible populations under each of the Prev-9 forms involves the number of biometric submissions that are collected as a proportion of the total filing volume for specific forms. There may be a low volume of biometric submissions relative to the filing volume (a low BCR). The heavy concentration of biometric submissions within this grouping does not map directly to a relatively intense rate of biometric collection within each form in this group. The reason is that biometrics may be submitted under a separate primary form when someone concurrently files multiple immigration benefit requests. As will be shown in Phase III, two prevalent forms, Forms I-765 and I-131, invoke “artificially” low BCRs, as biometrics information is only collected on certain requests, or, biometrics information may be collected under another form if an individual concurrently files multiple forms.

(ii) Biometrics Fee Ratio

DHS uses the current volumes of biometric services fee payments (Table 8) and current volume of biometric submissions (Table 5) to estimate the additional populations that would pay the \$85 biometric services fee (due to the removal of age restrictions and the broadening of collection). Although USCIS accounts for the financial inflow of resources originating from the \$85 biometric services fee, the CPMS database accounts for the number of biometric submissions by primary form type, which may not match the form type for which the \$85 biometric services fee is collected. For example, an individual concurrently files Form I-821D and Form I-765 but would only have to submit the \$85 biometric services fee with the Form I-765 application. However, the individual’s biometric information may be logged under Form I-821D in the CPMS database. This is true for all form types with the exception of Form I-589, as these applicants may not submit biometrics information under another form type and they are exempt from the \$85 biometric services fee. As a result, DHS uses the total volume of biometric services fee payments and the overall volume of biometric submissions (with the exception of Form I-589) to derive a BFR, a formula identifying the portion of individuals who pay the biometric services fee out of the total population of those submitting biometrics who may

be required to pay the \$85 biometrics fee.

The formula for the BFR calculation is provided below (Formula 2):

**Formula 2: Biometrics Fee Ratio**

$$BFR = \frac{F}{BI}$$

Where BFR represents the Biometrics Fee Ratio, F is the estimated number of individuals who pay the biometric services fee in a fiscal year and BI represents the number of biometric submissions in a given fiscal year, which was introduced above in the BCR setup. The BFR is calculated by comparing the biometric fee-paying volumes to total biometric submissions (with the exception for Form I-589) for each fiscal year, for reasons explained above. In FY 2017, for example, a BFR of 0.77 obtains by dividing a volume of 2.80 million biometric service fee payments by a total of 3.62 million biometric submissions (Table 10). For every known non-exempt benefit request with a biometric submission, DHS estimates that in 2017, 77 percent of individuals pay the biometric services fee payment while the remaining 23 percent of individuals receive a fee exemption, a biometric services fee waiver, or they fall outside of the current age restrictions for submitting the \$85 biometric services fee. Since the calculation of the BFR is relatively straightforward, it is compiled here and referred to downstream as needed. Table 10 provides the BFR calculations for each fiscal year, including a 3-year average BFR of 0.75 that will be used for subsequent calculations.<sup>88</sup>

TABLE 10—BIOMETRIC FEE RATIO, ALL FORMS  
[FY 2015–FY 2017]

Fiscal year	Fee-paying volume	Biometric submissions (excludes Form I-589)	Biometrics fee rate (BFR)
FY 2015 .....	2,765,927	4,029,843	0.69
FY 2016 .....	2,746,261	3,361,885	0.82
FY 2017 .....	2,801,648	3,624,280	0.77
Average .....	2,771,279	3,672,003	0.75

It is noted that the BFR calculation of .75 relies on the total volumes across the three years, and is thus implicitly weighted (it takes into account the relative magnitude of yearly submissions). However, the unweighted average would be very similar, at 0.76.

(iii) Biometrics Age Multiplier

From FY 2013 to FY 2017, an average of 343,055 biometric submissions (just

under 10 percent of the total) annually were classified as Other. DHS does not explicitly plan to broadly increase collection here, but nonetheless, there are populations within this classification that could be impacted by the proposed elimination of the age restrictions for collecting biometrics. Since this group contains non-specific form types, DHS cannot determine the appropriate filing volumes, and

therefore an additional step (in addition to the employment of the BCR, as will be shown) will be needed to estimate the new biometrics population under this Other category. DHS constructs an age multiplier to estimate the maximum population within the Other classification who would submit biometrics information as a result of the proposed provision to eliminate the age restrictions for submitting biometrics.

<sup>87</sup> The BCR for different form types may vary due to the eligibility categories and age characteristics of the filers and dependents.

<sup>88</sup> DHS notes that the general BFR of .75 is essentially weighted by year since it is calculated by dividing the total three-year fee payments by the

three-year volume of biometrics. The unweighted (raw) average would be very similar, at .76.

The relevant metric is an age multiplier based on the proportion of filers or benefit requests for individuals

between the ages of 14 and 79 relative to the total volume of filers or benefit requests for each of the Prev-9 form

types where biometrics are routinely collected. The formula for the age multiplier is (Formula 3):

**Formula 3: Biometrics Age Multiplier Formula**

$$BAM = \frac{T}{ESP}$$

Where BAM is the 5-year average age multiplier for a form type; T is the 5-year total number of filers or benefit requests; and, ESP (Eligible Sub-population) is the 5-year total number of filers or benefit requests between the ages of 14 and 79. To annotate one specific example, between FY 2013 and FY 2017, a Form I-485 BAM of 1.095 is calculated by dividing a total of 670,560

benefit requests by 612,148 benefit requests for individuals between the ages of 14 and 79.<sup>89</sup> For every Form I-485 benefit request for individuals between the ages of 14 and 79, there are approximately 1.095 Form I-485 benefit requests for individuals of all ages.

Table 11 provides a summary of the age multiplier for each of the Prev-9

form types, including the total number of filers and benefit requestors by age segment between FY 2013 and FY 2017. Using these figures, the 5-year average age multiplier across all 9 form types would be 1.047.

**TABLE 11—AGE MULTIPLIER, PREV-9 FORM TYPES**  
[FY 2013–FY 2017]

Form type	Age segments (5-year average)			Age multiplier
	All ages	Ages 14–79	Ages under 14; +79	
N-400 .....	850,695	839,601	11,094	1.013
I-90 .....	738,704	703,707	34,997	1.050
I-765 .....	1,960,672	1,892,366	68,307	1.036
I-485 .....	670,560	612,148	58,412	1.095
I-821D .....	371,068	370,838	230	1.001
I-589 .....	127,499	111,597	15,902	1.142
I-751 .....	165,738	164,441	1,297	1.008
I-131 .....	441,226	409,699	31,527	1.077
I-601A .....	45,640	45,633	7	1.000
Average Age Multiplier .....	.....	.....	.....	1.047

In contradistinction to the BFR, the BAM is a raw average; that is, it is unweighted across form types volumes, such that each form’s particular value receives an equal weight.

(iv) Dependents Multiplier

The proposed rule would allow or require certain filers to use DNA evidence to verify a claimed genetic relationship in support of certain immigration benefit requests, including, but not limited to: Form I-130; Form I-360, Form I-730; Form I-914A; Form I-918A; Form I-929; and any other form

where the existence of a claimed genetic relationship is at issue for a beneficiary, derivative, rider, or qualifying family member. Based on current processes, each individual DNA test would incur a separate cost. For instance, a principal seeking a benefit request for 3 eligible beneficiaries or qualifying family members would incur 3 separate costs for the DNA testing.<sup>90</sup>

Therefore, DHS is using a dependents multiplier (DM) to estimate the average number of dependents who may be required to submit DNA tests with the principal immigration benefit requestor.

Specifically, DHS calculates a DM based on the proportion of applicants or petitioners relative to the number of applications or beneficiaries/qualifying family members for each of the forms where DNA evidence would likely be used to verify a claimed genetic relationship.<sup>91</sup> In certain circumstances, DHS uses the 5-year<sup>92</sup> average DM to estimate the number of applicants or petitioners and beneficiaries/qualifying family members who could be eligible to submit DNA evidence under the proposed rule. The formula for the DM is (Formula 4):

<sup>89</sup> Calculation: 670,560 average Form I-485 benefit requests/612,148 average Form I-485 benefit requests between the ages of 14 and 79 = 1.095 (rounded). When you multiply an age multiplier of 1.095 by 612,148, the number of Form I-485 beneficiaries between the ages of 14 and 79, the resulting figure is 670,032. This figure is less than the overall number of Form I-485 beneficiaries (670,560) because the age multiplier has been rounded.

<sup>90</sup> The principal would need to pay 3 separate fees. The first fee would cover the cost of the DNA test with the first dependent, while the second and third fee would cover the additional costs for the remaining family members. However, the principal petitioner and the dependents would each incur separate travel and time burden costs.

<sup>91</sup> In instances where it is possible to identify the claimed biological relationship between the

principal applicant and petitioner, DHS is using only these figures to derive the DM. In instances where it is not possible to identify the claimed biological relationship, DHS derives a DM based upon the total volume of principal applicants and their dependents.

<sup>92</sup> DHS uses data from FY 2013 to FY 2017 to make these calculations.



**Formula 4: Dependents Multiplier Formula**

$$DM = \frac{T}{P}$$

Where DM is the dependents multiplier for a form type in a given fiscal year; T is the total number of benefit requests; and P is the number of petitioners or principal benefit requests by form type. For example, the FY 2017 Form I-130 DM of 1.38 is obtained by dividing a total of 455,275 benefit requests for beneficiaries with a claimed genetic relationship by a total of 328,737 unique petitioners who are directly affiliated with these Form I-130 petitions.<sup>93</sup> Based on this approach, DHS is estimating the average DM for forms where it is possible to verify the principal filers' claimed genetic relationship with beneficiaries or qualifying family

members, including DMs for Forms I-130, I-730, and I-929. DHS is using the average DM for these forms to estimate the number of petitioners and beneficiaries or qualifying family members who could submit DNA evidence to verify a claimed genetic relationship in instances where it is not possible to identify the petitioner's relationship with the beneficiary or qualifying family member, including calculations for Form I-914A and Form I-918A.<sup>94</sup> The calibration for a generalized DM will be provided in the relevant following section.

**c. Phase III—Estimating New Populations That Would Submit Biometrics**

Having first identified the baseline volume of biometric submissions and, second, having developed requisite metrics, DHS can proceed to estimate the new populations that would submit biometrics under the proposed rule. Foremost, Table 12 provides the BCRs for Prev-9.

**TABLE 12—BIOMETRICS COLLECTION RATE (BCR) FOR THE PREV-9 FORMS**

Form	Biometrics	Baseline population	BCR
N-400	860,877	850,695	1.012
I-90	727,836	738,704	0.985
I-765	538,187	1,892,366	0.284
I-485	501,815	612,148	0.820
I-589	184,212	88,072	2.092
I-821D	209,004	370,838	0.564
I-131	87,838	409,699	0.214
I-751	121,333	164,441	0.738
I-601A	44,560	45,633	0.976

Table 12 reproduces the average five-year biometrics submissions (Table 5) and introduces the baseline population—the current age-eligible population from which the biometrics was obtained (in other words, the basis of BCR). An explanation of the results in Table 12 is needed before proceeding to estimation. Forms N-400 and I-90 currently have complete collection, essentially, which is evidenced by the respective BCRs near unity. Forms N-400 and I-90 currently do not have age restrictions for biometrics collection. The BCR of 2.092 for Form I-765, is driven by derivative family members submitting biometrics along with the

principal asylum applicants. For the Forms I-765 and I-131, significant portions of these populations currently do not submit biometrics information under these primary forms, and the BCRs are artificially low. The primary issue for Form I-765 is the large amount of concurrent filings. Form I-131 has concurrent filings as well, but the low collection rate is because of the limited number of eligibility categories that currently are required to submit biometrics.<sup>95</sup>

To estimate the new populations, DHS proceeded as follows. First, DHS analyzed Forms I-765 and I-131 separately so removed them from this

analysis. Second, Forms N-400, I-90, and I-589 essentially have no additional eligible population to draw from and have been excluded. DHS obtained the average five-year filing volumes for the requisite sub-group of four forms and subtracted the current baseline. The resulting figures shown in Table 13 represent the population for each form that currently is not age-eligible but would be under the rule. The BCR for each form was multiplied by the new age-eligible population to obtain the new biometrics population for each form. The results are presented in the last column of Table 13, and total to 48,992.

**TABLE 13—NEW BIOMETRICS POPULATION WITHIN THE PREV-9 SET DUE TO THE REMOVAL OF AGE RESTRICTIONS**

Form	New age-eligible	BCR	New population
I-485	58,412	0.820	47,898
I-821D	230	0.564	130

<sup>93</sup> Calculation: FY 2017 DM for Form I-130 = 328,737 Form I-130 eligible benefit requests / 455,275 Unique Petitioners = 1.38 DM (rounded).

<sup>94</sup> For these forms, DHS is only able to identify the number of dependents who have an eligibility category based upon a claimed biological

relationship. All information pertaining to the petitioner has been removed to protect the identities of applicants and petitioners under Form I-914A and Form I-918A.

<sup>95</sup> Only two eligibility categories under Form I-131 are required to submit biometrics. Specifically,

all applicants for a Refugee Travel Document or a Reentry Permit must complete biometrics at a USCIS ASC or, if applying for a Refugee Travel Document while outside of the United States, at an overseas USCIS facility.

TABLE 13—NEW BIOMETRICS POPULATION WITHIN THE PREV-9 SET DUE TO THE REMOVAL OF AGE RESTRICTIONS—  
Continued

Form	New age-eligible	BCR	New population
I-751 .....	1,297	0.738	957
I-601A .....	7	0.976	7
Total .....			48,992

The first component of the new biometrics population is 48,992 (Table 13 above), obtained above for a subgroup of four forms within Prev-9, for which there are three more. Three other sub-groups will be examined. As has been stated earlier, the goal is to broadly collect biometrics while taking into consideration that there will be exemptions and waivers. Consequently, a proxy for BCR for estimation should be less than unity, but be positive and

relatively high. Table 14 shows the five BCRs selected from Prev-9, noting that Form I-90 is retained here even though collection is almost complete for this form. The representative group is assessed to be reasonable and have a good deal of range, from .584 to .985. Since it is desirable to have as many relevant forms as possible in the proxy collection, we examined the BCRs for the remaining forms in the Other category (for cases in which the form

type was not ambiguous or unspecified) and proceeded to add two, which are the only forms peripheral to Prev-9 that have high BCRs: Form I-914, Application for T Nonimmigrant Status; and Form I-918, Petition for U Nonimmigrant Status. The respective BCRs for these two additional forms, in order, are .952 and .819, as is shown in Table 14.

TABLE 14—AVERAGE BCR FOR SET OF APPROPRIATE FORMS

Selected Prev-9 Forms	BCR
I-90 .....	0.985
I-485 .....	0.820
I-821D .....	0.564
I-751 .....	0.738
I-601A .....	0.976
Added Forms:	
I-918 .....	.819
I-914 .....	.952
Raw BCR for regrouped set .....	.8363

The unweighted (raw) average is utilized because we do not have a priori information on which forms (or subgroup of them) would have a BCR closest to the not yet existing, in context, rule population. Similarly, there is no “target” or desired BCR that we seek to impugn to the generalized population under the proposed rule. Hence, we use the raw average as opposed to a weighted one, because the former weights each BCR in the group equally. For the subgroup of forms, we obtain the unweighted average BCR of .8363 (or 86.63 percent).

Equipped with a workable BCR metric to extrapolate, the second new population component can be estimated. First, DHS obtained filing information for the Form I-765 and was able to parse out filings that were non-concurrent with other forms. Excluding the I-765 biometrics population submitted in the baseline, there was an average of 1,124,648 annual filings for which biometrics could be collected in the future. Multiplying this population by the BCR of .8363 yields 940,543 potential new biometrics submissions. We do not have enough information to

parse out concurrent filings for the I-131, but obtained the difference in average filings and biometrics submissions, of 353,388. Applying the general BCR yields 295,539 possible new biometrics submissions. The total of the two forms is 1,236,082, which is the second component of the new biometrics population.

The third new population component accrues to the set of forms described as Phase III forms, in which biometrics is not broadly collected on currently, but that DHS plans to routinely collect on in the future. DHS obtained the total average filing volume for this set of forms, and annotates the discussion with one particular form, Application for Regional Center Designation Under the Immigrant Investor Program, (Form I-924). As explained in the preamble, DHS will collect biometrics for the principals of regional centers. Regional center principals are typically key leaders in the center, but information concerning them are not captured in formal DHS databases, but rather in individual adjudication reports involving the business plans. DHS was able to sample 130 Annual Certification

of Regional Center (Form I-924A) filings from 2017 and found that the average number of principals per regional center is 2.6, which we round up to three. The average filing figure is 428, which is the annual filings for the Forms I-924 and I-924A, which results in a population of 1,284.<sup>96</sup>

The total filing volume for the relevant group of forms, including the above estimate for regional center principals, is 1,043,606. Subtracting from this total the average of just 1,077 current biometrics collections yields 1,042,529, which, when multiplied by the BCR of .8363, yields 871,867. This is the third component of the new biometrics population, and it is the portion that applies to the dozen or so forms for which DHS would routinely collect biometrics under the rubric of the proposed rule.

Denoting the current biometrics collection for the Other category as OB,

<sup>96</sup> This population that combines I-924 initial and I-924 Amendments essentially captures new regional center applications plus filings from the 884 regional centers (as of June 13, 2019) that are approved by USCIS via earlier initial filings but submit revised or updated projects.

which is 343,055 (Table 5), the new population is obtained via the equation:  $OB \times BCR \times (BAM - 1)$ , which yields

13,484. This is the fourth and final component of the new biometrics population.

The four new sub-populations representing future biometrics are summarized in Table 15.

TABLE 15—SUMMARY OF NEW BIOMETRICS POPULATIONS

Group	Baseline	New	Total
Regrouped prevalent set .....	2,649,637	48,992	2,698,629
Forms I-765/I-131 .....	626,025	1,236,082	1,862,107
Phase III forms expansion .....	1,077	871,867	872,944
Other .....	343,055	13,484	356,539
<b>Sums .....</b>	<b>3,619,794</b>	<b>2,170,425</b>	<b>5,790,219</b>

As Table 15 connotes in the final row, the biometrics submitting population will grow by about 2.17 million annually. The baseline excludes the biometrics recently collected for the Form I-539. When the average biometrics for this form (280,767) are added back, the total biometrics submitting population would jump from 3.90 million (the current baseline derived earlier in the analysis) to 6.07 million. As a result, the generalized biometrics collection rate would rise from 46 to 71.2 percent (based on 2017 figures).

d. Phase IV—Population Estimates for the Biometric Services Fee

In Phase III DHS estimated that the biometrics submitting population would grow by over 2.17 million due to removing age restrictions and expanding collection across more forms. Having made this estimate, it is straightforward to take the next step and estimate the new biometrics fee paying population. The I-589 population is statutorily exempt from the fee, and N-400 applicants over 75 years of age do not pay the fee. However, neither of these two forms incurred new biometrics population segments, and are thus immaterial to this portion of the analysis. There is not a biometric services fee for the Form I-821D, to which we subtract the very small number of its 130 estimated new biometrics submissions (Table 14) from the new population. Applying the BFR of .75 to the adjusted new population, the new biometrics fee population is 1,627,721 and a total of 4,399,000 fee submissions would be collected annually in the future. The fee paying population would increase from 32.5 percent to 51.6 percent.

e. Phase V—Expanded DNA Collection

The proposed rule would allow, request, or require certain populations to use DNA evidence to verify a claimed genetic relationship in support of certain benefit requests. This current

Phase V focuses on population estimates for certain benefit requests where an individual would be eligible to submit DNA evidence in support of a claimed genetic relationship. DNA test results can be used to establish or verify a claimed genetic relationship.<sup>97</sup> Therefore, where possible, DHS estimates the number of individuals who would submit DNA tests due to the proposed rule by first identifying the total number of applicants or petitioners and beneficiaries/qualifying family members who may be eligible to submit DNA tests from the total annual volume of receipts for the form types including Forms I-130, I-730, I-914, Form I-918, and I-929.<sup>98</sup> DHS then uses statistical characteristics from these population estimates to calibrate a DM, which is used to estimate eligible populations when there is missing information regarding the number of principal applicants or petitioners filing on behalf of their beneficiaries/qualifying family members.

For example, Table 16 provides a list of relative categories that a Form I-130 petitioner can file on behalf of. Of these

different relative types, 7 relative types represent a potential for a claimed genetic relationship between the petitioner and beneficiary (see highlighted Form I-130 relative types). For instance, a Form I-130 petitioner filing on behalf of a 17-year old child under the eligibility category, “unmarried child under 21 of permanent resident, 203(a)(2)(A) INA,” represents one claimed genetic relationship that could be verified through DNA testing. To estimate the number of Form I-130 petitioners and beneficiaries who could submit DNA evidence, DHS quantifies the number of unique petitioners and beneficiaries who submit a Form I-130 based on one of the 7 relative types that would allow for DNA testing.<sup>99</sup>

In FY 2017, for example, DHS estimates 466,148 Form I-130 beneficiaries were classified under one of the 7 relative types that involved a claimed genetic relationship.<sup>100</sup> At the same time, DHS estimates that 344,032 Form I-130 petitioners filed on behalf of these beneficiaries. Therefore, the FY 2017 DM for Form I-130 is 1.35.<sup>101</sup> In the context of this, there were 11.35

<sup>97</sup> DNA test results from an AABB-accredited lab can be used to validate a biological relationship. Although there is no expiration date for DNA test results examining a specific biological relationship, some AABB labs only keep the DNA test results for around 30 days. This means the test result documentation would either need to be maintained in the applicant, petitioner or beneficiary’s USCIS file or the documentation would need to be maintained by the applicant or petitioner paying for the DNA test. For the purposes of this analysis, DHS assumes that any applicant, petitioner or beneficiary associated with a benefit request would only submit his or her DNA evidence once annually regardless of the number of benefit requests with which they may be associated. These estimates are made by using a unique ID for each eligible applicant, petitioner or beneficiary to include the full name, birth date and fiscal year of the form receipt for each individual.

<sup>98</sup> DHS proposes to require, request, or accept DNA evidence in support of these family-based benefit requests because DNA testing is an established technology that can help determine if there is a biological relationship between two individuals. Additionally, DNA testing for these family-based benefit requests would help DHS identify criminals and protect vulnerable populations under AWA and IMBRA.

<sup>99</sup> The petitioner may file on behalf of multiple family members, and though this includes individuals to whom the petitioner is not biologically related, such as stepchildren and adopted children, most of these claimed relationships are relationships that could be verified through DNA testing. The petitioner would only need to submit DNA evidence on one occasion, as would each of his or her genetic relatives. . . . In addition, the DNA test results are valid indefinitely, meaning the test results could be used in subsequent benefit requests if the results are retained in USCIS files or the petitioner has an official copy of the test results. Therefore, DHS has used the fiscal year time stamp, full name and date of birth of the applicant, petitioner, and beneficiary to count the number of unique identities within a given fiscal year. This is done to avoid instances where one filer may be filing on behalf of multiple relatives or the same individuals could be filing multiple benefit requests in a given year for which previous DNA test results would be valid.

<sup>100</sup> Data provided by the USCIS Office of Performance and Quality.

<sup>101</sup> Calculation: 344,032 Form I-130 beneficiaries/ 466,148 Form I-130 petitioners = 1.35. (rounded)

beneficiaries with a claimed genetic relationship per unique petitioner.<sup>102</sup>

TABLE 16—RELATIVE TYPES CONSIDERED FOR DNA TESTING FOR FORM I–130 BENEFICIARIES

- Husband or wife of U.S. Citizen, 201(b) INA.
- Unmarried child (under age 21) of U.S. Citizen, 201(b) INA.
- Unmarried son or daughter (21 or older) of U.S.C., 203(a)(1) INA.
- Married son or daughter of U.S. Citizen, 203(a)(3) INA.
- Parent of U.S. Citizen, 201(b) INA.
- Brother or sister of U.S. Citizen, 203(a)(4) INA.
- Fiancé(e) of U.S. Citizen, 214(k) INA.
- Husband or wife of permanent resident, 203(a)(2)(A) INA.
- Unmarried child under 21 of permanent resident, 203(a)(2)(A) INA.
- Unmarried son or daughter (21 or older) of permanent resident, 203(a)(2)(B) INA.

Source: USCIS Analysis.

\* **Note:** Relatives with claimed genetic relationships are highlighted in gray.

Although DHS is able to estimate the number of eligible genetic relationships within the total annual volume of receipts for certain form types, such as populations under Forms I–130, I–730, and I–929, for other form types the definitive nature of the genetic relationship is missing or there is not enough data to provide statistically valid inferences.<sup>103</sup> Therefore, DHS uses the average DM of Forms I–130, I–730, and I–929, and the average number of eligible qualifying family members for Forms I–914A, and I–918A, with a claimed genetic relationship to estimate

the number of eligible Form I–914 applicants and Form I–918 petitioners who could submit DNA evidence under the proposed rule.<sup>104</sup> This grouping of forms are non-exhaustive, as USCIS may require, request, or accept DNA evidence to verify the existence of a claimed genetic relationship for other forms where the existence of a genetic relationship is at issue for a beneficiary, derivative, rider, or qualifying family member.

From FY 2013 to FY 2017, DHS estimates an average of 328,737 Form I–130 petitioners filing on behalf of

455,275 Form I–130 beneficiaries with a claimed genetic relationship. Over this same period of time, an average of 6,252 Form I–730 petitioners filed on behalf of 11,098 Form I–730 beneficiaries with a claimed genetic relationship. Also, from FY 2013 to FY 2017, an average of 131 Form I–929 petitioners filed on behalf of 174 Form I–929 qualifying family members with a claimed genetic relationship. The unweighted average DM for these three forms is 1.50,<sup>105</sup> comprising a Form I–130 DM of 1.38,<sup>106</sup> a Form I–730 DM of 1.78,<sup>107</sup> and a Form I–929 of 1.34.<sup>108</sup>

TABLE 17—POPULATIONS WITH CLAIMED GENETIC RELATIONSHIPS, FORM I–130, FORM I–730 AND FORM I–929 [FY 2013–FY 2017]

Form	Petitioner/applicant	Beneficiary/qualifying family member (genetic relationship)	Dependents multiplier
I–130 .....	328,737	455,275	1.38
I–730 .....	6,252	11,098	1.78
I–929 .....	131	174	1.33
Average .....	.....	.....	1.50

From FY 2013 to FY 2017, an average of 528 Form I–914A qualifying family members and 13,151 Form I–918A qualifying family members requested an immigration benefit based upon a

claimed genetic relationship (Table 17). Applying the average for Forms I–130, I–730, and I–929 DM of 1.50 to these populations, DHS estimates an average of 352<sup>109</sup> Form I–914A applicants and

8,767 Form I–918A petitioners filing on behalf of qualifying family members with a claimed genetic relationship.

<sup>102</sup> A Form I–130 petitioner must file a benefit request for each eligible family member. As a result, these figures represent the total number of petitioners and beneficiaries in a given fiscal year.

<sup>103</sup> Those filing under Form I–914 and Form I–918 are able to file a benefit request on behalf of themselves or an eligible family member. Those applying for their own benefit request are required to file Form I–914 and Form I–918, while those

filing for an eligible family member are required to file Form I–914A and Form I–918A.

<sup>104</sup> DHS uses this approach because it assumes the number of applicants or petitioners relative to the number of dependents to be similar for these family-based benefit requests.

<sup>105</sup> Calculation: (Form I–130 DM of 1.38 + Form I–730 DM of 1.78 + Form I–929 DM of 1.33)/3 = 1.50 (rounded).

<sup>106</sup> Calculation: 455,275 Form I–130 dependents/328,737 Form I–130 petitioners = 1.38 (rounded).

<sup>107</sup> Calculation: 11,098 Form I–730 dependents/6,252 Form I–730 petitioners = 1.78 (rounded).

<sup>108</sup> Calculation: 174 Form I–929 dependents/131 Form I–929 petitioners = 1.33 (rounded).

<sup>109</sup> Calculation: 528 Form I–929 DNA tests for dependents/1.50 DM = 352 principal filers (rounded).

TABLE 18—POPULATIONS WITH CLAIMED GENETIC RELATIONSHIPS, FORM I-914A, FORM I-918A [FY 2013–FY 2017]

Form	Derived principal petitioner/applicant (genetic relationship)	Eligible qualifying family members (genetic relationship)	Average dependents multiplier (Form I-130, Form I-730 and Form I-929)
I-914A .....	352	528	1.50
I-918A .....	8,767	13,151	1.50

Source: USCIS Analysis using data from USCIS Office of Performance and Quality (OPQ).

In total, DHS estimates 824,465 individuals who are associated with a benefit request based upon a claimed genetic relationship (Table 18). Of this total, 344,239 were principal applicants and petitioners who claimed genetic relationships with 480,226 beneficiaries/qualifying family members. Under the proposed rule, DHS would require, request, or accept DNA

evidence to establish or verify a claimed genetic relationship. However, DHS currently accepts DNA test results for 11,383 beneficiaries (on average, Table 8). Using the average DM of 1.50, DHS estimates there are currently 7,589 principal filers who submit DNA evidence in support of a claimed genetic relationship.<sup>110</sup> After accounting for the number of individuals who are

currently submitting DNA evidence, DHS estimates there are 805,493 individuals who could be impacted by the proposed rule. Of this total, there are 336,650 principal applicants and petitioners with claimed genetic relationships with 468,843 beneficiaries/qualifying family members.

TABLE 19—POPULATIONS WITH CLAIMED GENETIC RELATIONSHIPS, FORM I-130, FORM I-730, FORM I-929, FORM I-914A AND FORM I-918A [FY 2013–FY 2017]

Form	Principal petitioner/ applicant	Eligible dependent (genetic relationship)	Total
I-130 .....	328,737	455,275	784,012
I-730 .....	6,252	11,098	17,350
I-914A .....	352	528	880
I-918A .....	8,767	13,151	21,918
I-929 .....	131	174	305
Total .....	344,239	480,226	824,465
Baseline .....	7,589	11,383	18,972
Total Incremental .....	336,650	468,843	805,493

Supplemental Population—NTAs

Figures were provided by DHS components for FY 2018 for the NTAs under age 14, and the relevant population<sup>111</sup> is 62,716.<sup>112</sup>

4. Costs and Benefits of the Proposed Rule

The benefit-cost analysis is separated into two sections. The first section focuses on the total costs of submitting biometrics, including the proposed use of new modalities to collect biometric information. The increased biometrics services fees are also covered here. The second section is concerned with the costs associated with the proposed provision to require, request, or accept

DNA evidence to establish a claimed genetic relationship.

a. Costs to the Biometric-Submitting New Population

The proposed rule would increase the types of biometric modalities required to establish and verify an identity, including the potential use of iris and facial image, palm print, and voice print. Although DHS would implement the use of these proposed technologies, it does not expect a considerable increase in the time burden for an individual to submit biometric information to USCIS. Currently, an individual submits a photograph as part of their biometrics appointment. Under the proposed rule, DHS would be able

to collect an individual’s iris and facial image by using the same process to take a photograph.<sup>113</sup> Similarly, during a biometrics appointment an individual currently submits an index finger press print, an 8 fingerprints, or a full ‘10-roll’ fingerprint. Under the proposed rule, DHS would also collect an individual’s palm print by using the same procedure and equipment, which may take a few additional seconds. The proposed rule would also include an individual’s voice print, which would take a few seconds to record. For these reasons, DHS does not expect the time burden to increase substantially beyond the current estimate of 1 hour and 10 minutes. However, DHS has not

<sup>110</sup> Calculation: 13,151 Form I-918A DNA tests for dependents/1.50 DM = 8,767 principal filers (rounded).

<sup>111</sup> The collection of biometrics will not result in 62,716 additional NTAs being issued by DHS components, rather this population of 62,716 received NTAs in FY2018. Under the proposed authority in this rule, DHS estimates that it would

issue NTAs to the same population but collect biometrics from the under-14-year-old population that receives an NTA to establish or verify their identity.

<sup>112</sup> The population figure is broken out as follows: Under ICE Enforcement Removal Operations (ERO), Administrative actions, 1,712, Criminal cases, 0, and other NTAs, 2,083. Under Homeland Security

Investigations, 123. Under CBP, Office of Field Operations, 19,340, Border Patrol (apprehensions), 39,458.

<sup>113</sup> The photograph would be taken with a camera that has the capacity to collect iris image or facial recognition.

conducted any pilot programs or field tests to test this expectation. Therefore, the population that we have described throughout this analysis as the baseline that currently submits biometrics would not incur a quantified impact from this proposed rule in terms of costs.

New populations that would submit biometrics would incur the opportunity costs of time to submit biometric information at an ASC. Because of this, the wage that individuals earn becomes central to the cost estimates. DHS will rely on the minimum wage. In some DHS rule-makings, the estimates of distributional impacts and time related opportunity costs were linked to the federal minimum wage. The federal minimum wage is \$7.25, which, when burdened for benefits by a multiple of 1.46, is \$10.59 per hour.<sup>114</sup> This reliance is grounded in the notion that most would be new entrants to the labor force and would not be expected to earn relatively high wages. In this proposed rule-making, we rely on a slightly more robust “prevailing” minimum wage of \$8.25. As is reported by the Economic Policy Institute, many states have their own minimum wage, and, even within states, there are multiple tiers.<sup>115</sup> Although the minimum wage could be considered a lower-end bound on true earnings, the prevailing minimum wage is fully burdened, at \$12.05, which is 13.8 percent higher than the federal minimum wage.<sup>116</sup>

DHS is aware that some forms, such as the Immigrant Petition by Alien Entrepreneur (Form I-526) and Form I-924 are linked to investment-authorization and that the minimum wage may not be realistic for these forms. However, the populations associated with these forms are relatively very small, and therefore it would not make much difference to overall costs to assign them a higher

<sup>114</sup> The benefits-to-wage multiplier is calculated by the Bureau of Labor Statistics (BLS) as (Total Employee Compensation per hour)/(Wages and Salaries per hour) =  $\$36.32/\$24.91 = 1.458$  (1.46 rounded). See [https://www.bls.gov/news.release/archives/ecec\\_03192019.pdf](https://www.bls.gov/news.release/archives/ecec_03192019.pdf). Calculation for annual federal minimum salary: Hourly wage of \$10.59 × 2,080 annual work hours = \$15,080.

<sup>115</sup> The Economic Policy Institute (EPI) report (2016) is available at: <https://www.epi.org/publication/when-it-comes-to-the-minimum-wage-we-cannot-just-leave-it-to-the-states-effective-state-minimum-wages-today-and-projected-for-2020/>. There are multiple tiers of minimum wages across many states that apply to size of business (revenue and employment), occupations, working hours, and other criteria. Some of these variations per state are described at: <https://www.minimum-wage.org> (last visited Apr 7, 2020).

<sup>116</sup> Calculations (1) for prevailing minimum wage:  $\$8.25 \text{ hourly wage} \times \text{benefits burden of } 1.46 = \$12.05$ ; (2)  $(\$12.05 \text{ wage} - \$10.59 \text{ wage})/(\$10.59) \text{ wage} = .1378$ , which rounded and multiplied by 100 = 13.8 percent.

wage. While DHS does not rule out the possibility that some portion of the population might earn wages at the average level for all occupations, without solid a priori information, relying on the prevailing and benefits burdened minimum wage is justifiable. DHS welcomes public comment on this issue.

Individuals would need to travel to an ASC for their appointment.<sup>117</sup> DHS estimates that the average round-trip distance to an ASC is 50 miles, and that the average travel time for the trip is 2.5 hours.<sup>118</sup> The cost of travel also includes a mileage charge based on the estimated 50-mile round trip at the 2019 General Services Administration rate of \$0.58 per mile.<sup>119</sup> DHS estimates the total cost of traveling to an ASC to submit biometrics is \$59.13, which is the sum of \$29 in direct travel costs and \$30.13 in time-related opportunity costs.<sup>120</sup>

Because an individual would spend one hour and 10 minutes (1.17 hours) at an ASC to submit biometric information, the total opportunity cost of time is \$14.10 per appointment (separate from the fee and travel-related costs).

DHS estimates the total cost for an individual to submit biometrics by summing the opportunity cost of time to submit biometrics and the total traveling costs for biometric services. The total cost for an individual to submit biometrics is \$73.23 without the service fee and \$158.23 with the \$85 fee.

To determine the annual cost of submitting biometrics, DHS applies the previously discussed individual costs to the populations estimated in Phase III of the analysis. DHS estimated that 2,170,425 additional individuals would submit biometrics under the proposed

<sup>117</sup> DHS expects the majority of biometrics appointments to occur in the United States at an ASC facility. However, in certain instances individuals may submit biometrics at an overseas USCIS or Department of State facility. However, because DHS does not currently have data tracking the specific number of biometric appointments that occur overseas, it uses the cost and travel time estimates for submitting biometrics at an ASC as an approximate estimate for all populations submitting biometrics in support of a benefit request.

<sup>118</sup> See DHS Final Rule, Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives, 78 FR 535 (Jan. 3, 2013).

<sup>119</sup> The General Services Administration mileage rate of \$0.58, effective January 1, 2019, available at <https://www.gsa.gov/travel/plan-book/transportation-airfare-pov-etc/private-owned-vehicle-mileage-rates/pov-mileage-rates-archived> (last visited Apr. 7, 2020).

<sup>120</sup> We note here that in a particular aspect, the costs that would accrue to travel to an ASC may be overstated. It is logical that since children cannot drive, families could travel together, reducing the number of individuals separately incurring travel costs. We do not have salient information for which we could quantify this possibility.

rule. At a per-filer cost of \$73.23, total biometrics submission costs would be \$158,940,196. An estimated 1,627,721 new biometrics fee payments would generate \$138,356,283 in new fee-related costs. The two cost segments tally to \$297,296,479.

In terms of biometric collection from individuals encountered by DHS for law enforcement purposes, *e.g.*, upon apprehension for removal from the United States, under the INA, any scenario there is not likely to be a cost to these individuals whose biometrics are collected for purposes of NTA issuance. With respect to other DHS components (*i.e.*, ICE ERO, CBP OFO, and Border Patrol) individuals who fall into the category would generally be in custody when biometrics are collected, and, as such, there would be no opportunity costs or travel-related costs to the individual. . . . USCIS does not take individuals into custody, so the biometric collections for USCIS will not be in a custodial setting, but will nevertheless result in no cost to individuals. USCIS NTA issuance is currently, as well as historically, predicated on the denial of an immigration benefit request. USCIS resubmits the previously collected biometrics associated with the underlying, denied benefit request to the FBI for updated criminal history information prior to NTA issuance. We expect that there will be some costs that can be monetized that would accrue to USCIS as part of the fees it pays to the FBI for Criminal History Record Information (CHRI) checks submitted by authorized users (it is noted that law enforcement agencies within DHS do not pay the fee, but USCIS is not a law enforcement agency). There could be relatively minor costs to USCIS associated with transferring background check data. The fee that the FBI charges to USCIS was revised most recently to \$11.25 at 83 FR 48335.<sup>121</sup> Based on the population of 62,716, the costs annually would be \$705,555 (62,716 NTAs multiplied by \$11.25). Adding this to the biometrics costs above yields a total cost of \$298,002,034 annually.

Over a 10-year time period, in non-discounted terms, the costs would be \$2,980 million. At three and seven percent rates of discount, the 10-year present values of the combined costs are, in order, \$2,542 million and \$2,093 million. Since the annual inputs to the discounting system is the same each year, the average annualized

<sup>121</sup> The notice, with an effective date of January 1, 2019, is found at: <https://www.federalregister.gov/documents/2018/09/24/2018-20644/fbi-criminal-justice-information-services-division-user-fee-schedule>.



equivalence cost, at either rate of discount, is the same as the non-discounted annual cost, which is \$298 million.

**b. Costs Involving DNA Submissions**

The second section of this analysis evaluates the total cost of submitting DNA evidence in support of a benefit request. DHS performs this analysis by first considering the fees associated with submitting evidence for DNA testing. Next, DHS considers the time burden for submitting DNA evidence. Finally, DHS addresses the travel and time burden costs of traveling to an accredited AABB lab and an overseas USCIS or DOS facility. The compilation of these costs segments will comprise the total costs involving new DNA submissions.

The process for submitting DNA evidence begins when the principal applicant or petitioner submits DNA evidence at an accredited AABB laboratory, including a fee of approximately \$440 to test the first genetic relationship, and \$220 for each additional test.<sup>122</sup> The principal applicant or petitioner would pay the fee directly to the accredited AABB laboratory. For beneficiaries/qualifying family members outside of the United States, a DNA testing kit is sent from the

AABB lab to a USCIS or DOS facility located overseas.<sup>123</sup> For all DNA tests conducted outside of the United States, the beneficiaries/qualifying family members would be responsible for paying a trained professional who swabs his or her cheek to collect the DNA sample. DHS estimates this DNA swab test would cost the beneficiary an average of \$100 per DNA collection.<sup>124</sup> Therefore, for a DNA test conducted overseas, the total cost would be \$540 to test the first genetic relationship and \$320 for each additional test.<sup>125</sup>

DHS does not currently track the time burden estimates for submitting DNA evidence at an AABB accredited lab or to a trained professional at a U.S. Government/DOS international facility. Therefore, DHS does not attempt to quantify these specific costs in the proposed rule. Similarly, DHS does not currently track the travel cost or time burden for traveling to an AABB lab. However, most AABB labs have affiliates throughout the country where applicants and petitioners can submit DNA evidence. There would be added travel/other costs involved, and DHS welcomes public comment on such costs.

Some petitioners and beneficiaries/qualifying family members who submit

DNA evidence to establish a genetic relationship in support of a benefit request would have to travel to an international USCIS or DOS U.S. Government office. Once again, DHS does not have specific information regarding the distance needed to travel to an approved international facility. Furthermore, DHS expects the travel distance to visit an overseas U.S. Government office to be higher due to a limited presence in most foreign countries.

In the first year this rule becomes effective, DHS estimates there would be a maximum of 336,650 principal applicants or petitioners filing on behalf of 468,843 beneficiaries/qualifying family members based upon a claimed genetic relationship. Because the DNA testing costs decline once the first genetic relationship has been tested, DHS estimates there are 336,650 DNA tests affiliated with the first DNA test and 132,193 DNA tests affiliated with additional family members.<sup>126</sup> Based on these possibilities the total DNA testing fees would be \$224,092,760, which comprise \$181,791,000 to test a first genetic relationship and \$42,301,760 to test additional family members with a claimed genetic relationship (Table 20).

**TABLE 20—DNA TESTS AND ASSOCIATED COSTS**

Population/fee	Principal petitioner/ applicant (genetic relationship)	Eligible beneficiaries/ qualifying family members (genetic relationship)	Total
<i>DNA Fees:</i>			
Population .....	336,650	132,193	468,843
Test Fees .....	\$540.00	\$320.00	
<b>Total Cost .....</b>	<b>\$181,791,000</b>	<b>\$42,301,760</b>	<b>\$224,092,760</b>

Source: USCIS Analysis using data from USCIS Office of Performance and Quality (OPQ) and Refugee, Asylum and International Operations.

Because DHS does not know with certainty how many individuals would be requested or required (or would elect to submit) DNA evidence to be used to verify a claimed genetic relationship, we

present the following sensitivity analysis in order to cover potential range of costs. Table 21 shows the range of values for the percentage of principal applicants or petitioners and the

percentage of beneficiaries/qualifying family members who would be eligible to submit DNA evidence in support of a benefit request under this proposed rule.

**TABLE 21—TOTAL RANGE OF COSTS FOR SUBMITTING DNA EVIDENCE**

Percent of principal petitioners/applicants and dependents submitting DNA evidence	Number of principal petitioners	Number of dependents	Total cost
10% .....	33,665	46,884	\$22,409,276
20% .....	67,330	93,769	44,818,552

<sup>122</sup> United States Department of State, P-3 Frequently Asked Questions: DNA, Bureau of Population, Refugees, and Migration, Bureau of Population, Refugees, and Migration.

<sup>123</sup> DHS expects most DNA tests for dependents to occur at an overseas facility. However, it is possible for a dependent to submit their DNA evidence at an AABB lab.

<sup>124</sup> USCIS International Operations Division (IO) in the Refugee, Asylum, and International Operations Directorate (RAIO) estimates \$100 for such costs.

<sup>125</sup> Calculation (total DNA Cost when 1st Beneficiary is Residing Overseas) = \$440 DNA Test + \$100 Swab Fee = \$540. Calculation (total DNA Cost for Each Additional Beneficiary Residing

Overseas) = \$220 DNA Test + \$100 Swab Fee = \$320.

<sup>126</sup> Calculation: 468,843 beneficiaries/qualifying family members with a claimed biological relationship—336,650 principal applicants or petitioners = 132,193 DNA tests for additional family members.

TABLE 21—TOTAL RANGE OF COSTS FOR SUBMITTING DNA EVIDENCE—Continued

Percent of principal petitioners/applicants and dependents submitting DNA evidence	Number of principal petitioners	Number of dependents	Total cost
30% .....	100,995	140,653	67,227,828
40% .....	134,660	187,537	89,637,104
50% .....	168,325	234,422	112,046,380
60% .....	201,990	281,306	134,455,656
70% .....	235,655	328,190	156,864,932
80% .....	269,320	375,074	179,274,208
90% .....	302,985	421,959	201,683,484
100% .....	336,650	468,843	224,092,760

DHS will not attempt to discount all of the range, above, and instead provides low, midrange, and high-end estimates. Since it is reasonable to assume that some collection will occur, but, that it will not be complete (100 percent), we set the range values at 10, 50, and 90 percent. In that order, the undiscounted ten-year costs in millions are \$224.1, \$1,120.5, and \$2,016.8. In order again, the ten-year discounted present values at a 3 percent rate of

discount, are, in millions, \$191.2, \$955.8, and \$1,720.4. In order again, the ten-year discounted present values at a 7 percent rate of discount, are, in millions, \$157.4, \$787.0, and \$1,416.5. The biometrics consist of a photograph, fingerprints, and signature to conduct identity, eligibility, national security, criminal history background checks, and in certain situations, biological average annualized equivalence costs are the same at either rate of discount

and correspond to the undiscounted figures in Table 21. Having parsed out the biometrics (which includes the service fees and NTA fees) costs and the DNA-related costs, the two bins can next be collated to estimate the total costs of the proposed rule. For this we present Table 22, which provides the undiscounted and discounted costs based on the three DNA data-range points suggested above.

TABLE 22—TOTAL MONETIZED COSTS OF THE PROPOSED BIOMETRICS RULE

[Millions]

	DNA-low (10%)	DNA-midrange (50%)	DNA-high (90%)
<i>10 year costs:</i>			
• Undiscounted .....	\$3,204.1	\$4,100.5	\$4,996.9
• 3% discount .....	2,733.2	3,497.8	4,262.4
• 7% discount .....	2,250.4	2,880.0	3,509.6
<i>Average Annual:</i>			
• Undiscounted .....	320.4	410.0	499.7
• 3% discount .....	320.4	410.0	499.7
• 7% discount .....	320.4	410.0	499.7

c. Costs to the Federal Government

Under the proposed rule, three cost modules could impact the Federal Government. The first cost module is attendant with the capacity of DHS to process biometrics for additional populations. As previously stated, the population that would submit biometrics at an ASC would increase due to elimination of the age restrictions and the expansion of collection across a broadened set of form types. In annual terms, the population that would submit biometrics would increase from a baseline volume of 3,900,561 to an estimated volume of 6,070,986. This

increase would represent an increase of 2.17 million annual biometric submissions and pull up the general collection rate across all USCIS forms above 70 percent.

The DHS ASC contract was designed to be flexible in order to process varying benefit request volumes. The pricing mechanism within this contract embodies such flexibility. Specifically, the ASC contract is aggregated by USCIS District and each District has five volume bands with its pricing mechanism. As a general principle, the pricing strategy takes advantage of economies of scale in that larger biometric processing volumes have

smaller corresponding biometric processing prices.<sup>127</sup> For example, Table 23 provides an illustrative example of the pricing mechanism for a USCIS District. This particular district has a monthly fixed cost of \$25,477.79, which would cover all biometric submissions under a volume of 8,564. However, the price per biometric submission decreases from an average cost of \$6.66 for volumes between a range of 8,565 and 20,524 to an average of \$5.19 once the total monthly volume exceeds 63,503. In other words, average cost is a decreasing function of the biometrics submissions volume.

<sup>127</sup> Economies of scale is a technical term that is used to describe the process whereby the greater the

quantity of output produced (in this case more

biometric service appointments) the lower the per-unit fixed cost or per-unit variable costs.

TABLE 23—ILLUSTRATIVE PRICING MECHANISM FOR A DISTRICT PROCESSING BIOMETRIC APPOINTMENTS

District X	Volume band	Min volume	Max volume	Costs
Baseline: Fixed price per month .....	AA .....	0	8,564	\$25,477.79
Fixed price per person processed .....	AB .....	8,565	20,524	6.66
Fixed price per person processed .....	AC .....	20,525	31,752	5.94
Fixed price per person processed .....	AD .....	31,753	63,504	5.53
Fixed price per person processed .....	AE .....	63,505	95,256	5.19

Source: USCIS, Immigration Records and Identity Services Directorate (IRIS).

In addition, the maximum monthly volume of biometric submissions allowed by the current ASC contract is 1,633,968 and the maximum annual volume is 19,607,616. It is important to note that these are theoretical volumes, as DHS has never processed this many applicants in a month or in a year. However, based on the current ASC contract, DHS expects that an additional 2.17 million biometric submissions per year would not impact DHS' ability to process these additional populations. In addition, DHS does not expect the Federal Government to incur additional costs as a result of the additional volumes that may submit biometrics under the proposed rule due to the diminishing cost structure presented in Table 23. Stated differently, even though volumes could vary from those estimated in this analyses, the upper bound on the maximum volume stipulated by the ASC contract is many times greater than the realistic volume increase due to the proposed rule (and is in fact greater than the total volume of USCIS filings). It is noted here that our claim against rising costs to ASCs is based on the total volume of the ASC contract and the total volume of expected biometric submissions; and, the example we provided showing decreasing unit costs (on average) was for a specific USCIS processing district. It is possible that for any individual district, the volume of new biometrics submissions might pull the totals to a level that would surpass the budget allocation for that district. If this occurs, costs could conceivably rise or budgets may need to be increased. While the above discussion centers on USCIS budgetary costs, it is possible that real resource costs to the economy could accrue to higher volumes.

The second cost module accrues to the ability to use and implement the proposed modalities, such as iris and facial images, palm print, and voice print, to collect biometrics in support of a benefit request. Although DHS is not currently able to quantify the aggregate cost for implementing the proposed modalities, it does calculate a unit cost estimate to provide an demonstrative

example of the costs that may be incurred by the Federal Government.

The camera that is currently used to collect an applicant, petitioner, beneficiary or sponsor's photograph has a unit cost of \$471.<sup>128</sup> Under the proposed rule, a camera that has the capacity to collect iris image or facial recognition would cost an average of \$650, representing an additional cost of \$179 per camera.<sup>129</sup> DHS does not know yet whether existing cameras could be upgraded to collect iris images and facial recognition, so it is possible that the rule would result in costs equal to the full costs of replacing cameras (\$650 plus any costs of removing old cameras and installing new ones). However, DHS believes that because the current cameras were purchased in 2016, USCIS likely would have refreshed these cameras before the implementation date of this rule, even in the absence of the rule.

Under the proposed rule, palm print may also be used for identity management in the immigration lifecycle. While DHS currently has the equipment that could collect the palm print of an individual, there may be some computing software updates that would need to be modified to accommodate the appropriate collection of this biometric evidence. Although DHS does not have cost estimates for such software or any associated information technology typology at this time, it has no reason to expect that such software updates would impose significant costs. Another modality that may be used to collect biometrics is related to an individual's voice print. It is possible to collect a voice print using standard electronic equipment such as microphones installed in cell phones, desk phones, computers, and laptops. However, USCIS, in collaboration with DHS Science and Technology, is searching for a cost-effective and ergonomic device that will ensure, among other things, the quality of the recording; provide consistency across

<sup>128</sup> Source: USCIS, IRIS.

<sup>129</sup> Calculation: \$650 - \$471 = \$179 additional cost to purchase a camera that can collect iris print or facial images.

different communication networks (e.g., network carriers such as AT&T and Verizon); and, ensure enough flexibility to accommodate individuals with various physical characteristics, but does not know yet how many such devices it may need to procure.<sup>130</sup> At this time, DHS is not planning to procure expensive or specialized equipment to collect an individual's voice print. DHS cannot predict the costs of such equipment at this time.

The third cost module involves the costs of facilitating DNA collection to establish or verify a claimed genetic relationship. As previously stated, individuals submitting DNA evidence in the United States would be responsible for paying the associated DNA testing fees. However, when the applicant, petitioner, or beneficiary/qualifying family member submits DNA evidence outside of the United States, DHS facilitates DNA collection at USCIS Government offices or, if USCIS does not have an office in that country, DOS has agreed to facilitate collection of DNA.

DHS does not currently charge a fee for facilitating the collection of DNA. At this time, DHS plans to incur all future costs for facilitating the collection of DNA evidence. As previously stated, DOS facilitates the collection of DNA and USCIS reimburses DOS on a per case basis. Table 24 provides a summary of costs associated with DNA collection facilitated by DOS. From FY 2015 to FY 2017, USCIS paid DOS an average of \$263.95 per DNA collection facilitated by DOS.<sup>131</sup> Of the average 11,383 DNA tests that were used to establish a genetic relationship annually between FY 2015 and FY 2017, DHS facilitated 53.7 percent<sup>132</sup> and DOS facilitated 46.3 percent.<sup>133</sup>

<sup>130</sup> The device would have similar features to a webcam and it would be able to adjust for a person's height.

<sup>131</sup> Calculation: \$1,390,595 Average Cost/5,268 average number of DNA tests = \$263.95 (rounded).

<sup>132</sup> Calculation: 6,115 USCIS-facilitated DNA tests/11,383 total DNA tests = 53.72 percent (rounded).

<sup>133</sup> Calculation: 5,268 DOS-facilitated DNA tests/11,383 total DNA tests = 46.28 percent (rounded).

DHS is unable to project how many new DNA tests facilitated by DOS will take place annually. DHS will not be conducting a DNA test for all the applications or petitions where a genetic relationship is relevant or claimed. Instead, DHS will only require or

request DNA when a claimed genetic relationship cannot be verified through other/documentary means. In addition, applicants can volunteer on their own to submit DNA, but DHS has no method to project the number of people who will submit it. Additionally, a percentage of

people will receive a request from USCIS to appear for DNA collection, but will fail to appear (resulting in no collection). For the reasons, projecting a number is difficult.

TABLE 24—USCIS COSTS PER OVERSEAS DNA COLLECTION FACILITATED BY DOS

[FY 2015–FY 2017]

Fiscal year	# of DNA collections (USCIS)	# of DNA collections (DOS)	Total DNA tests	Total cost for DOS facilitation	Avg. cost per DNA test facilitated by DOS
2015 .....	7,769	5,748	13,517	\$1,862,697	\$324.06
2016 .....	6,735	5,961	12,696	1,368,646	229.60
2017 .....	3,841	4,096	7,937	940,442	229.60
Total .....	18,345	15,805	34,150	4,171,785	
Average .....	6,115	5,268	11,383	1,390,595	263.95

Source: USCIS analysis using data from Refugee, Asylum and International Operations.

d. Benefits to the Federal Government, Applicants, Petitioners, Sponsors, Beneficiaries, Requestors, or Individuals Filing an Immigration Request

The proposed rule provides individuals requesting certain immigration and naturalization benefits with a more reliable system for verifying their identity when submitting a benefit request. This would limit the potential for identity theft and reduce the likelihood that DHS would not be able to verify an individual’s identity and consequently deny an otherwise approvable benefit. In addition, the proposed rule would allow individuals to use DNA testing as primary or secondary evidence to establish or verify a claimed genetic relationship.<sup>134</sup> According to AABB, DNA testing provides the most reliable scientific test currently available to establish a genetic relationship.<sup>135</sup> Therefore, DNA testing would give individuals the opportunity to demonstrate a genetic relationship using a more expedient, less intrusive, and more effective technology than the blood tests currently provided for in the regulations. See 8 CFR 204.2(d)(2)(vi)

The proposed rule would provide a benefit to the U.S. Government by enabling DHS to know with greater certainty the identity of individuals requesting certain immigration and naturalization benefits. The expanded use of biometrics would provide DHS

with the ability to limit identity fraud because biometrics are unique physical characteristics and more difficult to falsify. In addition, using biometrics for identity verification would reduce the administrative burden of manual paper review involved in verifying identities and performing criminal history checks.

The proposed rule would also enhance the U.S. Government’s capability to identify criminal activity and protect vulnerable populations. For example, the proposed provision to collect biometrics of U.S. citizen and lawful permanent resident petitioners of family-based immigrant and nonimmigrant fiancé(e) petitions would enable DHS to determine if a petitioner has been convicted of certain crimes under the AWA and IMBRA. The proposed rule would also improve the capability of the U.S. Government to combat human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling. Currently, individuals under the age of 14 do not routinely submit biometrics in support of a benefit request. As a result, DHS’ system for verifying the identity of vulnerable children is not as robust as it could be. For example, a vulnerable child with similar biographical characteristics to a child who has lawful immigration status in the United States may be moved across the border under the assumed identity of that other child, although DHS does not have specific data to identify the entire scope of this problem.<sup>136</sup> Under the proposed rule,

DHS would be able to use biometrics to verify a child’s identity, which would be particularly useful in instances where biometrics are used to verify the identities of UAC and AAC.

There could be some unquantified impacts related to privacy concerns for risks associated with the collection and retention of biometric information, as discussed in DHS’s Privacy Act compliance documentation. However, this rule would not create new impacts in this regard but would expand the population that could have privacy concerns.

Finally, the provisions proposed in this biometrics rule provide DHS with the flexibility needed to implement, and are conducive to and compatible with, the USCIS evolution toward a person-centric model for organizing and managing its records, enhanced and continuous vetting, and a reduced dependence on paper documents.

5. Other Impacts

DHS does not expect that the proposed rule would create impacts to the national labor force or that of individual states. In addition, DHS does not expect tax impacts or any distributional impacts from the proposed rule.

In the below supplemental section, information and data is provided concerning additional DHS component activity linked to this proposed rule.

*publications/20\_0115\_plcy\_human-trafficking-forced-labor-child-exploit-strategy.pdf*. See also, “ICE HSI El Paso, USBP identify more than 200 ‘fraudulent families’ in last 6 months,” ICE News Release, dated October 17, 2019. <https://www.ice.gov/news/releases/ice-hsi-el-paso-usbp-identify-more-200-fraudulent-families-last-6-months>.

<sup>134</sup> Currently, DNA evidence is only used as secondary evidence, after primary evidence (e.g., medical records; school records) have proved inconclusive.

<sup>135</sup> AABB, *Standards for Relationship Testing Laboratories*, App. 9—Immigration Testing, (13th ed. Jan. 1, 2018), available at <http://www.aabb.org/sa/Pages/Standards-Portal.aspx>.

<sup>136</sup> See generally, Department of Homeland Security Strategy to Combat Human Trafficking, the Importation of Goods Produced with Forced Labor, and Child Sexual Exploitation (January 2020). <https://www.dhs.gov/sites/default/files/>

Summary

Under this proposed rule DHS will authorize biometric collection from aliens regardless of age during enforcement actions requiring identity verification. In addition, DHS will be authorized to collect biometrics, such as DNA, to verify claimed genetic relationships in cases where we suspect fraud. The authority to collect biometrics without any age restrictions will aid in criminal investigations or to identify victims in human trafficking cases and child smuggling.

As a result of this proposed rule, DHS will be able to collect the biometrics of all minors during their initial immigration enforcement processing, which will require some operational changes for agents in the field. No new resources or system changes would be required as a result of this proposed rule. The current equipment, including the mobile biometrics units and the databases used to record the case files of aliens in custody, have the capabilities and capacity to include biometrics for the new population cohorts of under 14 years old and over 79 years old. The most significant

impact will be informing and retraining staff of the change.

Background

Currently, the use of DNA is almost exclusively used to support the investigation of criminal cases when ICE is prosecuting aliens. The removal of age limits for the collection of biometrics and simultaneously authorizing DNA testing in order to verify a claimed genetic relationship under the proposed rule will assist ICE in performing functions necessary for effectively administering and enforcing immigration and naturalization laws.

Currently, when ICE arrests an alien, fingerprints are collected as part of the process of building an A-file on the alien. A handheld mobile biometrics application called “EDDIE” is used to facilitate the collection and recordkeeping of aliens in ICE custody. This handheld application effectively and efficiently collects fingerprints and photographs in about 30 seconds, which are then transferred to IDENT. Collecting biometrics is essential to determining what action to take in an individual’s immigration case. ICE does this by sending a query to IDENT and

multiple databases managed by the FBI. The results from this query will reveal the individual’s immigration history, including past removal orders, criminal charges, or historical custodial information from CBP or ICE.

As part of current procedures, ICE collects fingerprints from aliens (between the ages of 14 years and 79 years) when they are first encountered and when they are being removed. In FY 2018, ICE made 158,581 administrative arrests, which includes the taking of fingerprints and, if it is the individual’s first encounter with DHS, creating a file. As part of the removal process, ICE will take a person’s fingerprints again to verify identity prior to departure; in FY 2018, 256,085 individuals were removed, including 2,711 family units (at least one adult and one child) and 5,571 UAC. Table S1 provides data on ICE arrests and removals, noting that ICE “Arrests” represent only arrests by ICE law enforcement personnel, are generally within the boards of the continental United States, and do not include the cases that CBP initially apprehends and refers to ICE for detention.

	FY 2016	FY 2017	FY 2018
<b>Table S1(A)—ICE Arrests<sup>137</sup></b>			
Administrative Arrests .....	110,104	143,470	158,581
<b>Table S1(B)—ICE Removals<sup>138</sup></b>			
Adult .....	240,255	226,119	256,085
Family Units .....	1,728	2,326	2,711
UAC .....	2,545	3,598	5,571

Currently, ICE collects DNA in two limited situations, first, on a case-by-case basis to identify instances of fraudulent claims of biological relationships at the border and, second, to support the investigation of criminal prosecutions. This NPRM relates to the first ICE purpose of DNA collection, specifically, to identify instances of fraudulent claims of biological relationships at the border. This fraud scheme generally involves adult non-U.S. persons and unrelated children posing as family units to DHS authorities. Family unit fraud can lead to, or stem from, other crimes, including immigration violations, identity and benefit fraud, alien smuggling, human

trafficking, foreign government corruption, and child exploitation. DHS initiated a pilot program in FY 2019 to combat fraudulent family claims using Rapid DNA testing kits provided through a contract with a vendor for \$5.28 million. The contract included an estimated 50,000 DNA testing kits, and equipment to enable the collection of DNA from an individual using a cheek swab, and running an analysis using a desktop unit. Results from this process takes approximately 90 minutes. The collection of Rapid DNA profiles for identification and comparison can only be applied for determining if a family unit exists. As such, any Rapid DNA profile match that is less than a parent-child match (*i.e.*, less than a 99.5 percent DNA profile match) will be

considered a negative match under ICE’s Rapid DNA testing.<sup>139</sup>

Population

As part of its enforcement actions, ICE encounters two types of minors, those accompanied by an adult purported family member and those not accompanied by an adult family member. All minors will go through ICE’s current initial book-in process, which includes collecting fingerprints and, when needed, a photograph. However, under the proposed rule minors, regardless of age, will also have their biometrics collected and enrolled in IDENT. Table S2 breaks out ICE UACs Taken into custody by certain age groups.

<sup>137</sup> Fiscal Year 2018 ICE Enforcement and Removal Operations Report, available at: <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf>.

<sup>138</sup> *Id.*

<sup>139</sup> Privacy Impact Assessment for the Rapid DNA Operational Use [https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-rapiddna-june-2019\\_1.pdf](https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-rapiddna-june-2019_1.pdf).

TABLE S2—UACs TAKEN INTO ICE CUSTODY

Age groups	FY 2015	FY 2016	FY 2017	FY 2018 YTD (4/21/2018)
0–4 years .....	674	1,176	853	549
5 years–14 years .....	9,466	17,096	11,300	5,310

The removal of age restrictions associated with biometrics collection, specifically those found at 8 CFR 215.8 and 8 CFR 235.1, will also impact CBP operations. CBP currently has the

authority to collect biometrics for individuals applying for admission to the United States at points of entry (POEs) only if they are age 14 and above and under the age of 79. See 8 CFR

235.1. CBP has the same authority, and restrictions, for those departing the United States at POEs. See 8 CFR 215.8. CBP data on applicants for admission are included below at Table S3.

TABLE S3—CBP GENERAL ADMISSIONS DATA

Passenger volume (arrivals)	FY 2018	FY 2019
Alien/Non-Immigrant .....	185,593,344	187,851,637
<14 .....	13,756,960	13,460,997
>79 .....	1,788,112	1,825,199

The new populations for purpose of this rule are the “under 14” and “over 79” only. Additionally, it should be noted that CBP biometric collection at the POEs is fundamentally different than USCIS biometric collection at the ASCs. Unlike collection at the ASCs, there is no appointment made, no time to travel to a collection site, no biometrics services fee, and CBP is not charged a fee by the FBI for criminal history information (where necessary). Furthermore, CBP does not currently track all departures from the United States POEs. For purposes of this economic analysis, DHS assumes that every individual who enters subsequently departs, so CBP would have the authority to collect biometrics for the departing populations under 14 and over 79 as well.

Costs and Benefits

The costs of the proposed rule to DHS will stem from new guidance that will

inform the staff of the change in operational procedures for booking in minors. DHS’ equipment used for collecting biometrics and the systems that house the information will not be impacted. DHS has enough mobile biometric devices to meet the needs of ICE as a result of this rule.

ERO guidance on biometric collection will announce via a broadcast message, and in the training academy where agents are instructed in the proper procedures for biometric collection. Lastly, the annual refresher training required of all ERO staff will also need to be updated to reflect the elimination of age restrictions for biometrics. After the first year there will only be the reoccurring cost of the annual refresher training and the instructions given at the training academy.

The new guidance and training required as a result of removing the age restrictions for biometrics collection will take on average one hour of each

employee’s time. All ERO staff at headquarters, in the field, and at the academy will be required to take the training which will cost approximately \$288,373 in the first year. In September 2019, there were 6,814 ERO staff nationally across 24 field offices, the average Federal Government General Schedule (GS) pay scale for staff in the field was a GS 10. In September 2019, there were 1,001 ERO staff, the average GS at headquarters was a GS 12. During FY 2018, there were 326 new agents at the academy who would spend an estimated one hour on the correct procedures for biometrics collection. The cost of informing all of ERO would occur within the first year, and no new additional training would be required after the first year. The current refresher training on biometrics collection would be updated to no longer include the age restrictions for biometrics, but would not require retraining of current procedures.

TABLE S3—EXPECTED TRAINING COSTS

	Headquarters	Field offices	Academy	Total
Size of ERO Staff .....	1,001 .....	6,814 .....	326 .....	8,141
Average GS level .....	GS–12 step 07	GS–10 step 07	GS–8 step 01.	
Total cost for per hour of training .....	\$47,998 .....	\$233,099 .....	\$7,276 .....	\$288,373

The proposed changes will result in numerous operational benefits, such as improving the identification of all minors throughout the duration of their immigration cases, and will help DHS better protect vulnerable populations from human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling. By removing the

age restrictions to allow the biometrics collection for minors, DHS can identify situations where a minor was trafficked multiple times or smuggled by transnational organized crime groups to the U.S. border. Using DNA to verify claimed genetic relationships is the most effective tool to deter fraud and trafficking. Further, by allowing DHS

components to identify previously encountered aliens quickly and accurately, the rule efforts helps to preserve DHS resources and improve records management.

This rule generally does not propose to authorize CBP or ICE to expand biometrics collections beyond either agency’s current, independent



authorities. However, this rule does propose to authorize CBP and ICE to expand their current biometrics collections for immigration benefit requests to individuals under the age of 14 and authorizes collection of additional biometrics modalities. DHS proposes to collect biometrics, without regard to age, upon apprehension, arrest, or repatriation for purposes of processing, care, and custody of aliens. DHS anticipates that this rule will assist ICE and CBP in identifying fraudulent familial relation claims at the border and upon apprehension. Collecting DNA to verify a claimed genetic relationship with an accompanying adult would aid DHS with the identification and care of UACs. In FY 2017 ICE had 12,153 minors under the age of 14 in custody, and in FY 2018 (year to date 4/21/2018) there were a total of 5,859 minors under the age of 14 in ICE custody.

DHS recognizes that some individuals who submit biometrics/DNA could possibly be apprehensive about doing so and may have concerns germane to privacy, intrusiveness, and security. Data security can be considered a cost. For example, companies insure against data breaches, as the insurance payment can be a valuation proxy for security. In terms of this proposed rule, data security is an intangible cost, and we do not rule out the possibility that there are costs that cannot be monetized that accrue to aspects of privacy and data security. Finally, DHS notes that based on the discussion above, a salient estimate of future ICE and CBP biometrics collections cannot be determined. Furthermore, the logistics associated with such collections are not expected to impose costs to CBP or ICE. However, DHS cannot rule out the possibility that there could be costs that cannot be presently identified. DHS welcomes public comment on this and related topics.

#### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires federal agencies to consider the potential impact of regulations on small entities during the development of their rules. The term “small entities” comprises small businesses, not-for-profit organizations that are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

DHS has reviewed this regulation in accordance with the RFA and believes that the vast majority of the population

impacted will not involve small entities. DHS estimates that about 2.17 million individuals and entities could be impacted by this proposed rule annually in terms of incurring monetized costs. Almost all of this total involves individuals who would submit biometrics in support of individual benefit requests which are not covered by the RFA. However, the population accruing to regional centers, which are the regional center principals, could be considered entities in terms of the RFA. Therefore, DHS has prepared an initial regulatory flexibility analysis (IRFA). In addition, DHS will discuss one hypothetical scenario that could involve small entities.

#### *1. Initial Regulatory Flexibility Analysis*

Under the Regional Center Program, foreign nationals base their EB–5 petitions on investments in new commercial enterprises (NCEs) located within “regional centers.” DHS regulations define a regional center as an economic unit, public or private, that promotes economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The small entity status of regional centers is difficult to assess because there is a lack of official data on employment, income, and industry classification for these entities, primarily because these centers generally are not actual businesses. Such a determination is also difficult because regional centers can be structured in a variety of different ways, and can involve multiple business and financial activities, some of which may play a direct or indirect role in linking investor funds to new commercial enterprises and job-creating projects or entities. DHS was not able to identify most of the entities in any of the public or private databases. For purposes of the small entity analysis, DHS did not focus on the bundled capital investment amounts (either \$1 million or \$500,000 minimum per investor) that currently are invested into an NCE. Such investments amounts are not indicative of whether the regional center is appropriately characterized as a small entity for purposes of the RFA. Due to the lack of regional center revenue data, DHS assumes regional centers collect revenue primarily through the administrative fees charged to investors. DHS was able, despite data constraints, to obtain some information under some specific assumptions to develop a methodology to analyze the small entity status of regional centers, as will be explained in detail under section D. In summary, DHS was able to determine

that a significant number of regional centers may be small entities. However, DHS cannot conclusively determine the impact of this proposed rule on those small entities.

#### *a. Description of the Reasons Why the Action by the Agency Is Being Considered*

While DHS has the authority to collect biometrics from any applicant, petitioner, sponsor, beneficiary, or requestor, or individual filing a benefit request, biometrics are only mandatory for certain benefit requests. For all others, USCIS must decide if the request justifies collection of biometrics and, if so, notify the individual of where they will be collected. DHS has decided that this focus on background checks and document production is outdated because immigration benefit request adjudication includes verifying identity and determining whether or not the individual poses a risk to national security or public safety, in those instances where these factors may impact eligibility for an immigration benefit. DHS has decided that it is necessary to increase the use of biometrics from determining when biometrics may or should be collected in a case, to requiring routine biometric collections from individuals associated with certain immigration benefits. Therefore, DHS proposes in this rule that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with a benefit or other request, including U.S. citizens and without regard to age, must appear for biometrics collection, unless USCIS waives or exempts the requirement.

#### *b. Succinct Statement of the Objectives and Legal Basis the Proposed Rule*

The changes proposed in this rule would provide DHS with the flexibility to change its biometrics collection practices and policies to ensure that DHS can make adjustments necessary to meet emerging needs, such as national security, public safety, or fraud concerns; enhance the use of biometrics beyond national security and criminal history background checks and document production, to include identity management in the immigration lifecycle and enhanced vetting, to lessen the dependence on paper documents to prove identity and familial relationships and preclude imposters; and improve the consistency in biometrics terminology within DHS.

USCIS has broad general and specific authority to collect or require submission of biometrics from applicants, petitioners, and beneficiaries for immigration benefits. Section 103(a)

of the INA, 8 U.S.C. 1103(a), provides general authority to DHS to administer and enforce immigration laws, including issuing forms, regulations, instructions, other papers, and such other acts the Secretary deems necessary to carry out the INA. The INA also provides specific authority for DHS to collect or require submission of biometrics in several sections, as is described more fully in the preamble.

c. Description and Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

To perform the small entity analysis, DHS reviewed data from Form I-924 submissions. Specifically, DHS reviewed certain data for 574 regional centers with approved Forms I-924 in FY 2017, that actually had Form I-526 investment petitions submitted under their purview that year, such as the administrative fee that the regional center may charge to investors as well as plans and projections concerning investors. DHS assumes that these administrative fees contribute to the revenues of regional centers.<sup>140</sup> Thus, to approximate regional center revenue, DHS multiplied the administrative fees by the number of associated EB-5 investors who filed a Form I-526 per regional center.

DHS obtained the number of investors per regional center and proceeded to refine the regional center cohort by removing regional centers that did not have relevant data, that have been terminated, and that had no affiliated Form I-526 petitions associated with them (as those would present no information that could be used in the analysis). For the purposes of this analysis, DHS assumes that each Form I-526 associated with a regional center represents an instance in which the regional center will receive an administrative fee that will contribute to the regional center's revenue. Although DHS cannot assume that administrative fees are paid when the forms are filed, this analysis assumes the fees will be paid eventually.

For the approved regional centers that had data available for analysis, we obtained a cohort of 95 regional centers that were associated with 6,308 individual investors. Analysis reveals that the number of investors per regional center varies substantially, with a range of 2,272. The distribution is highly right-skewed, with a mean of 85, a median of 39, and a skewness value

of 8. These results indicate that the median is a proper measure for central location. Next, DHS analyzed the administrative fees in the cohort. The distribution is tight (or clustered closely together) with both the mean and median at \$50,000. Next DHS estimated revenues for each regional center in the analytical cohort by multiplying the total number of investors who filed a Form I-526 per regional center by its administrative fee, which yielded a median revenue amount of \$1,250,000 over the period considered. To determine the appropriate size standard for the regional centers, DHS extensively reviewed various NAICS codes. DHS determined that NAICS code 522310, Mortgage and Nonmortgage Loan Brokers defined as an "industry [that] comprises establishments primarily engaged in arranging loans by bringing borrowers and lenders together on a commission or fee basis," may be an appropriate NAICS industry in which regional centers might be found given the typical activities undertaken by regional center-associated NCEs (loaning EB-5 capital to the job-creating entities) and the role typically undertaken by regional centers in facilitating those activities. The SBA size standard for the NAICS category chosen is based on a revenue of \$7.5 million. DHS compared the revenues of the 95 regional centers against this size standard and concludes that approximately 89 percent of regional centers may be small entities for the purposes of this IRFA.

While DHS believes the methodology described in this section can lead to reasonable assumptions on the number of small entities that may be regional centers, DHS still cannot determine the exact impact of this rule on those small entities from the proposal. For example, if the costs related to biometrics and the service fee are incurred to regional centers via the principal, it is possible that the costs could be passed on to investors. Furthermore, we have identified the population related to Form I-924 and Form I-924A based on investor submissions in 2018. The entire cohort of 884 currently approved regional centers could also be considered small entities since they could, in any future year, also have submissions under their purview.

In addition to the discussion of regional centers, DHS also highlights a possible scenario that could involve small entities. In some cases, a U.S. citizen or lawful permanent resident sole proprietor could petition for family members using an employment based form. However, in such a case the biometrics would apply to identity

management in the immigration lifecycle and vetting of both the petitioner and the beneficiary, but for the petitioner it would be on a case-by-case basis, not a routine biometrics collection. For such an instance, USCIS may need to verify identity or screen for fraud, but the likelihood of such a scenario is remote. Hence DHS expects minimal to no impact to small entities under this possible scenario. DHS welcomes public comment on the small entity status and any potential impacts to such small entities involving EB-5 regional centers or other entities.

c. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

This rule would not directly impose any reporting, recordkeeping, or other compliance requirements on small entities. Additionally, this rule would not require any additional professional skills.

d. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

DHS is unaware of any relevant federal rule that may duplicate, overlap, or conflict with the proposed rule.

e. Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

DHS is not aware of any alternatives to the proposed rule that accomplish the stated objectives and that would minimize the economic impact of the proposed rule on small entities as this rule imposes no direct costs on small entities. If there are costs incurred to small entities, the costs would be indirect since they accrue to the regional center principal rather than directly to the regional center. Biometrics are a unique system for identity vetting and management and DHS does not believe there are alternatives in the context of the needs outlined for the proposed rule. DHS requests comments and seeks alternatives from the public that will accomplish the same objectives.

<sup>140</sup> The administrative fees charged to the investor may cover various charges related to the economic impact analysis, legal fees, business plan development, and immigration services fees.

f. Description of Combating Family Unit Fraud at the Southern Border and the Impact of Immigration and Customs Enforcement Use of Rapid DNA on Small Entities

To combat family unit fraud in the immigration system, following a competitive solicitation process, ICE contracted with a vendor to provide personnel and equipment to conduct Rapid DNA analysis at the southern border. Rapid DNA, or Rapid DNA analysis, is a term used to describe the streamlined process of developing a DNA profile from a reference sample buccal (cheek) swab and permitting a trained human technician to analyze any inconclusive DNA results. The entire Rapid DNA testing process takes approximately 90 minutes. ICE’s Rapid DNA testing contract cost \$5.28 million and covered a 5-month period between June and November of 2019. This fixed-cost contract included up to 50,000 testing kits and 14 DNA processing instruments.

The entity that received this contract with ICE is not a small business according to the Small Business Administration size standard for testing laboratories which is set at a maximum revenue of \$16.5 million. Rather, it is part of the testing laboratories industry and in 2018 it had a total revenue of \$18.16 million, with a total of 126 employees.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This proposed rule would result in an annual effect on the economy of \$100 million or more. As small businesses may be impacted under this proposed regulation, DHS has prepared a Regulatory Flexibility Act (RFA) analysis.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandate Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded federal mandates on State, local, and tribal governments, in the aggregate, or by the private sector. Title II of UMRA requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any 1 year by state, local, and tribal governments, in the aggregate, or by the private sector. The value equivalent of \$100 million in 1995 adjusted for inflation to 2018 levels by the Consumer Price Index for All Urban Consumer (CPI-U) is \$165 million.

Although this proposed rule does exceed the \$100 million expenditure threshold in an annual year when adjusted for inflation (\$165 million in 2018 dollars), this rulemaking does not contain such a mandate. Requiring

individuals to provide biometrics information would not result in any expenditures by the State, local, and tribal governments, or by the private sector. The requirements of Title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

E. Executive Order 13132 (Federalism)

This rule 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 E.O. 13132 (Federalism), it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988, 61 FR 4729 (Feb. 5, 1996).

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. Table 24 identifies the PRA action being taken on the listed information collections as a result of this rulemaking.

TABLE 24—IMPACTS TO USCIS FORMS

Form No.	Form title	PRA action
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.	No material/non-substantive change to a currently approved collection.
I-129	Petition for Nonimmigrant Worker	No material/non-substantive change to a currently approved collection.
I-129CW	Petition for CNMI-Only Nonimmigrant Transition Worker	Revision of a currently approved collection.
I-129F	Petition for Alien Fiancée	Revision of a currently approved collection.
I-129S	Nonimmigrant Petition Based on Blanket L Petition	No material/non-substantive change to a currently approved collection.
I-130 (I-130A)	Petition for Alien Relative	Revision of a currently approved collection.
I-131	Application for Travel Document—Reentry Permit, Refugee Travel Document, Advance Parole Document.	Revision of a currently approved collection.
I-131A	Application for Travel Document (Carrier Documentation)	Revision of a currently approved collection.
I-134	Affidavit of Support	Revision of a currently approved collection.
I-140	Immigrant Petition for Alien Workers	Revision of a currently approved collection.
I-191	Application for Relief Under Former Section 212(c) of the INA.	Revision of a currently approved collection.
I-192	Application for Advance Permission to Enter as Non-immigrant Pursuant to Section 212(d)(3)(A)(ii) of the INA, Section 212(d)(13) of the INA, or Section 212(d)(14) of the INA.	Revision of a currently approved collection.
I-212	Application for Permission to Reapply for Admission into the United States after Deportation or Removal.	Revision of a currently approved collection.
I-290B	Notice of Appeal or Motion	No material/non-substantive change to a currently approved collection.
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	Revision of a currently approved collection.

TABLE 24—IMPACTS TO USCIS FORMS—Continued

Form No.	Form title	PRA action
I-485	Application to Register Permanent Residence or Adjust Status.	Revision of a currently approved collection.
I-485 Sup A	Supplement A to Form I-485, Adjustment of Status Under Section 245(i).	Revision of a currently approved collection.
I-485J	Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j).	Revision of a currently approved collection.
I-526	Immigrant Petition by Alien Entrepreneur	Revision of a currently approved collection.
I-539	Application to Extend/Change Nonimmigrant Status	Revision of a currently approved collection.
I-539A	Supplemental Information for Application to Extend/Change Nonimmigrant Status.	Revision of a currently approved collection.
I-566	Inter-Agency Record of Request—A, G or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, NATO Status.	Revision of a currently approved collection.
I-589	Application for Asylum and for Withholding of Removal	Revision of a currently approved collection.
I-590	Registration for Classification as a Refugee	Revision of a currently approved collection.
I-600	Petition to Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition.	Revision of a currently approved collection.
I-600A	Application for Advance Processing of an Orphan Petition	Revision of a currently approved collection.
I-601	Application for Waiver of Ground of Inadmissibility	Revision of a currently approved collection.
I-601A	Application for Provisional Unlawful Presence Waiver	Revision of a currently approved collection.
I-602	Application by Refugee for Waiver of Grounds of Excludability.	No material/non-substantive change to a currently approved collection.
I-612	Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act.	No material/non-substantive change to a currently approved collection.
I-690	Application for Waiver of Grounds of Inadmissibility	No material/non-substantive change to a currently approved collection.
I-698	Application to Adjust Status from Temporary to Permanent Resident.	Revision of a currently approved collection.
I-730	Refugee/Asylee Relative Petition	Revision of a currently approved collection.
I-751	Petition to Remove the Conditions on Residence	Revision of a currently approved collection.
I-765	Application for Employment Authorization	Revision of a currently approved collection.
I-765V	Application for Employment Authorization for Abused Non-immigrant Spouse.	Revision of a currently approved collection.
I-817	Application for Benefits Under the Family Unity Program	Revision of a currently approved collection.
I-821	Application for Temporary Protected Status	Revision of a currently approved collection.
I-821D	Request for Deferred Action for Childhood Arrival	No material/non-substantive change to a currently approved collection.
I-824	Application for Action on an Approved Application	No material/non-substantive change to a currently approved collection.
I-829	Petition by Entrepreneur to Remove Conditions	Revision of a currently approved collection.
I-864	Affidavit of Support Under Section 213A of the Act	Revision of a currently approved collection.
I-864A	Contract Between Sponsor and Household Member	Revision of a currently approved collection.
I-864EZ	Affidavit of Support Under Section 213A of the Act	Revision.
I-864W	Request for Exemption for Intending Immigrant's Affidavit of Support.	Revision.
I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Sec. 203 of Pub. L. 105-100).	Revision of a currently approved collection.
I-90	Application to Replace Permanent Resident Card	No material/non-substantive change to a currently approved collection.
I-907	Request for Premium Processing Service	Revision of a currently approved collection.
I-914	Application for T Nonimmigrant Status; Application for Immediate Family Member of T-1 Recipient; & Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.	Revision of a currently approved collection.
I-914A	Supplement A to Form I-914, Application for Family Member of T-1 Recipient.	Revision of a currently approved collection.
I-914B	Supplement B to Form I-914, Declaration of Law Enforcement Office for Victim of Trafficking in Persons.	Revision of a currently approved collection.
I-918	Petition for U Nonimmigrant Status	Revision of a currently approved collection.
I-918A	Form I-918, Supplement A, Petition for Qualifying Family Member of U-1 Recipient.	Revision of a currently approved collection.
I-918B	Form I-918, Supplement B, U Nonimmigrant Status Certification.	Revision of a currently approved collection.
I-924	Application for Regional Center Under the Immigrant Investor Pilot Program.	Revision of a currently approved collection.
I-924A	Annual Certification of Regional Center	Revision of a currently approved collection.
I-929	Petition for Qualifying Family Member of a U-1 Non-immigrant.	Revision of a currently approved collection.
N-300	Application to File Declaration of Intention	Revision of a currently approved collection.
N-336	Request for Hearing on a Decision in Naturalization Proceedings Under Section 336.	Revision of a currently approved collection.

TABLE 24—IMPACTS TO USCIS FORMS—Continued

Form No.	Form title	PRA action
N-400 .....	Application for Naturalization .....	Revision of a currently approved collection.
N-470 .....	Application to Preserve Residence for Naturalization .....	Revision of a currently approved collection.
N-565 .....	Application for Replacement Naturalization/Citizenship Document.	Revision of a currently approved collection.
N-600 .....	Application for Certificate of Citizenship .....	Revision of a currently approved collection.
N-600K .....	Application for Citizenship and Issuance of Certificate Under Section 322.	Revision of a currently approved collection.

### 1. Various USCIS Forms

Under the PRA, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. This rule will require non-substantive edits to the forms identified in the table above as “No material/non-substantive change to a currently approved collection.” These edits include: Updates to the Biometric Services Appointment language; removal of a biometric services fee paragraph; and removal of references to specific biometrics modalities, such as fingerprints. In accordance with the PRA, USCIS has submitted a PRA Change Worksheet, Form OMB 83-C, and amended information collection instruments for each of these forms to OMB for review and approval.

#### *USCIS Form I-129CW*

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0111 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### **Overview of Information Collection**

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

(2) *Title of the Form/Collection:* Petition for CNMI-Only Nonimmigrant Transition Worker.

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

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. An employer uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant into the CNMI to perform services or labor as a CNMI-Only Transitional Worker (CW-1). An employer also uses this form to request an extension of stay or change of status on behalf of the alien worker.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-129CW is 3,749 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection biometrics is 7,498 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 38,765 hours.

(7) *An estimate of the total public burden (in cost) associated with the*

*collection:* The estimated total annual cost burden associated with this collection of information is \$459,253.

#### *USCIS Form I-129F*

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0001 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### **Overview of Information Collection**

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

(2) *Title of the Form/Collection:* Petition for Alien Fiancé(e).

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

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. To date, through the filing of this form a U.S. citizen may facilitate the entry of his/her spouse or fiancé(e) into the United States so that a marriage may be concluded within 90 days of entry between the U.S. citizen and the beneficiary of the petition. This form must be used to cover the provisions of section 1103 of the Legal Immigration Family Equity Act of 2000 which allows the spouse or child of a U.S. citizen to enter the United States as a nonimmigrant. The Form I-129F is the only existing form which collects the requisite information so that an adjudicator can make the appropriate decisions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-129F is 52,135 and the estimated hour burden per response is 3.25 hours; the estimated total number of respondents for the information collection biometrics is 52,135 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 360,774 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$8,941,153.

*USCIS Form I-130 (I-130A)*

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0012 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this

information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Petition for Alien Relative.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-130; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected on this form is used to establish the existence of a relationship between the U.S. citizen or lawful permanent resident petitioner and certain alien relative beneficiaries who wish to immigrate to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-130 is 978,500 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection Form I-130A is 45,614 and the estimated hour burden per response is 0.8333 hours; the estimated total number of respondents for the information collection biometrics is 1,024,114 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 5,753,495 hours.

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

cost burden associated with this collection of information is \$391,400,000.

*USCIS Form I-131*

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

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

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Travel Document.

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

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Certain aliens, principally permanent or conditional residents, refugees or asylees, applicants for adjustment of status, aliens in TPS, and aliens abroad seeking humanitarian parole must apply for a travel document to lawfully enter or reenter the United



States. Eligible recipients of deferred action under childhood arrivals (DACA) may now request an advance parole documents based on humanitarian, educational and employment reasons. Lawful permanent residents may now file requests for travel permits (transportation letter or boarding foil).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-131 is 483,920 and the estimated hour burden per response is 1.9 hours; the estimated total number of respondents for the information collection biometrics is 84,000 and the estimated hour burden per response is 3.67 hours; the estimated total number of respondents for the information collection Form I-131 passport-style photos is 380,000 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 1,417,728 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$146,072,480.

#### USCIS Form I-131A

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0135 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the

validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Travel Document (Carrier Documentation).

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

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses the information provided on Form I-131A to verify the status of permanent or conditional residents, and determine whether the applicant is eligible for the requested travel document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-131A is 4,110 and the estimated hour burden per response is 0.92 hours; the estimated total number of respondents for the information collection biometrics is 4,110 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 15,084 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$704,620.

#### USCIS Form I-134

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0014 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Affidavit of Support.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-134; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS and DOS consular officers use this form to determine whether an applicant for a visa, adjustment of status, or entry to the United States may possibly be excludable on the ground that he or she is likely to become a public charge.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-134 is 2,500 and the estimated hour burden per response is 1.75 hours; the estimated total number of respondents for the information collection biometrics is 2,500 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the*

*collection*: The total estimated annual hour burden associated with this collection of information is 13,550 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection*: The estimated total annual cost burden associated with this collection of information is \$10,625.

#### USCIS Form I-140

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0015 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection*: Immigrant Petition for Alien Workers.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection*: Form I-140; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract*: Primary: Business or other for-

profit U.S. employers may file this petition for certain alien beneficiaries to receive an employment-based immigrant visa.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond*: The estimated total number of respondents for the information collection Form I-140 is 225,637 and the estimated hour burden per response is 1.08 hours; the estimated total number of respondents for the collection biometrics is 225,637 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection*: The total estimated annual hour burden associated with this collection of information is 1,071,776 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection*: The estimated total annual cost burden associated with this collection of information is \$93,977,810.

#### USCIS Form I-191

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0016 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection*: Application for Relief under Former Section 212(c) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection*: I-191; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract*: Primary: Individuals or households. USCIS and EOIR use the information on the form to properly assess and determine whether the applicant is eligible for a waiver under former section 212(c) of INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond*: The estimated total number of respondents for the information collection Form I-191 is 240 and the estimated hour burden per response is 1.50 hours; the estimated total number of respondents for the information collection biometrics is 240 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection*: The total estimated annual hour burden associated with this collection of information is 1,241 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection*: The estimated total annual cost burden associated with this collection of information is \$30,300.

#### USCIS Form I-192

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0017 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this

information collection should address one or more of the following four points:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Advance Permission to Enter as Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-192; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The data collected will be used by CBP and USCIS to determine whether the applicant is eligible to enter the United States temporarily under the provisions of section 212(d)(3), 212(d)(13), and 212(d)(14) of the INA. The respondents for this information collection are certain inadmissible nonimmigrant aliens who wish to apply for permission to enter the United States and applicants for T or petitioners for U nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-192 is 68,050 and the estimated hour burden per response is 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 102,075 hours.

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

collection of information is \$16,672,250.00.

#### USCIS Form I-212

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0018 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Permission to Reapply for Admission into the United States After Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-212; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Sections 212(a)(9)(A) and 212(a)(9)(C) of the INA render an alien inadmissible to the United States unless he or she obtains the consent to reapply (also known as permission to reapply) for admission to the United States. An

alien who is inadmissible under these provisions has either been removed (deported, or excluded) from the United States, or illegally reentered after having been removed (deported, or excluded), or illegally reentered after having accrued more than one year of unlawful presence in the United States. The information collection required on Form I-212, is necessary for USCIS to determine whether the applicant is eligible to file the waiver. If the application is approved, the alien will be permitted to apply for admission to the United States, after being granted a visa with DOS as either an immigrant or a nonimmigrant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-212 is 4,183 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection I-212, CBP e-SAFE Filing is 700 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection biometrics is 4,183 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 25,118 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$613,854.

#### USCIS Form I-360

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0020 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Petition for Amerasian, Widow(er), or Special Immigrant.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-360; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form I-360 may be used by an Amerasian; a widow or widower of a U.S. citizen; a battered or abused spouse or child of a U.S. citizen or lawful permanent resident; a battered or abused parent of a U.S. citizen son or daughter; or a special immigrant (religious worker, Panama Canal company employee, Canal Zone government employee, U.S. Government employee in the Canal Zone; physician, international organization employee or family member, juvenile court dependent; armed forces member; Afghanistan or Iraq national who supported the U.S. Armed Forces as a translator; Iraq national who worked for the or on behalf of the U.S. Government in Iraq; or Afghan national who worked for or on behalf of the U.S. Government or the International Security Assistance Force in Afghanistan) who intend to establish their eligibility to immigrate to the United States. The data collected on this form is reviewed by USCIS to determine if the petitioner may be qualified to obtain the benefit. The data collected on this form will also be used to issue an EAD upon approval of the petition for battered or abused spouses, children, and parents, if requested.

(5) *An estimate of the total number of respondents and the amount of time*

*estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-360 (Iraqi & Afghan Petitioners) is 2,874 and the estimated hour burden per response is 3.1 hours; the estimated total number of respondents for the information collection Form I-360 (Religious Worker) is 2,393 and the estimated hour burden per response is 2.35 hours; the estimated total number of respondents for the information collection Form I-360 (All Others) is 14,362 and the estimated hour burden per response is 2.1 hours; and the estimated total number of respondents for the information collection biometrics for VAWA and Special Immigrant Juvenile self-petitioners is 32,240 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 154,105 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$2,404,430. *USCIS Form I-485*

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0023 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-485; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information on Form I-485 will be used to request and determine eligibility for adjustment of permanent residence status.

Supplement A is used to adjust status under section 245(i) of the INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-485 is 382,264 and the estimated hour burden per response is 6.42 hours; the estimated total number of respondents for the information collection Form I-485A is 36,000 and the estimated hour burden per response is 1.25 hours; the estimated total number of respondents for the information collection Form I-485 Supplement J is 28,039 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection biometrics is 382,264 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 3,930,353 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$131,116,552.

#### USCIS Form I-526

DHS and USCIS invite the general public and other federal agencies to

comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0026 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Immigrant Petition by Alien Entrepreneur.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–526; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The form is used to petition for classification as an alien entrepreneur as provided by sections 121(b) and 162(b) of the Immigration Act of 1990. The data collected on this form will be used by USCIS to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information

collection Form I–526 is 15,799 and the estimated hour burden per response is 1.83 hours; the estimated total number of respondents for the information collection of biometrics is 15,799 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 86,895 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$17,378,900.

#### USCIS Form I–539

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0003 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–539; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form will be used for nonimmigrants to apply for an extension of stay, for a change to another nonimmigrant classification, or for obtaining V nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–539 (paper) is 174,289 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection Form I–539 (e-file) is 74,696 and the estimated hour burden per response is 1.083 hours; the estimated total number of respondents for the information collection Supplement A is 54,375 and the estimated hour burden per response is .50 hours; the estimated total number of respondents for biometrics processing is 373,477 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 1,827,323 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$42,700,928.

#### USCIS Form I–566

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0027 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this

information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Interagency Record of Request A, G, or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, or NATO Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-566; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The data on this form is used by DOS to certify to USCIS the eligibility of dependents of A or G principals requesting employment authorization, as well as for NATO/Headquarters, Supreme Allied Commander Transformation (NATO/HQ SACT) to certify to USCIS similar eligibility for dependents of NATO principals. DOS also uses this form to certify to USCIS that certain A, G or NATO nonimmigrants may change their status to another nonimmigrant status. USCIS uses data collected on this form in the adjudication of change or adjustment of status applications from aliens in A, G, or NATO classifications. USCIS also uses Form I-566 to notify DOS of the results of these adjudications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-566 is 5,800 and the estimated hour burden per response is 1.42 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 8,236 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$746,750.00.

#### USCIS Form I-589

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0067 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Asylum and for Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-589; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief*

*abstract:* Primary: Individuals or households. Form I-589 is necessary to determine whether an alien applying for asylum and/or withholding of removal in the United States is classified as refugee, and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-589 is approximately 114,000 and the estimated hour burden per response is 12 hours per response; and the estimated number of respondents providing biometrics is 110,000 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,771,700 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$46,968,000.

#### USCIS Form I-590

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0068 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the



use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Registration for Classification as a Refugee.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-590; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The Form I-590 is the primary document in all refugee case files and becomes part of the applicant's A-file. It is the application form by which a person seeks refugee classification and resettlement in the United States. It documents an applicant's legal testimony (under oath) as to his or her identity and claim to refugee status, as well as other pertinent information including marital status, number of children, military service, organizational memberships, and violations of law. In addition to being the application form submitted by a person seeking refugee classification, Form I-590 is used to document that an applicant was interviewed by USCIS and record the decision by the USCIS officer to approve or deny the applicant for classification as a refugee. Regardless of age, each person included in the case must have his or her own Form I-590. Refugees applying to CBP for admission must have a stamped I-590 in their travel packet in order to gain admission as a refugee. They do not have refugee status until they are admitted by CBP.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-590 is 50,000 and the estimated hour burden per response is 3.25 hours; the estimated total number of respondents for the information collection I-590 Request for Review is 1,500 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I-590 DNA evidence is 100 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection biometrics is 51,600 and the estimated hour burden per response is 0.33 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 181,228 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$12,000.

### USCIS Form I-600, I-600A

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0028 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-600; I-

600A; Supplement 1; Supplement 2; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households; A U.S. adoptive parent may file a petition to classify an orphan as an immediate relative through Form I-600 under section 101(b)(1)(F) of the INA. A U.S. prospective adoptive parent may file Form I-600A in advance of the Form I-600 filing and USCIS will make a determination regarding the prospective adoptive parent's eligibility to file Form I-600A and their suitability and eligibility to properly parent an orphan. A U.S. adoptive parent may file a petition to classify an orphan as an immediate relative through Form I-600 under section 101(b)(1)(F) of the INA. If a U.S. prospective/adoptive parent has an adult member of his or her household, as defined at 8 CFR 204.301, the prospective/adoptive parent must include the Supplement 1 when filing both Form I-600A and Form I-600. Form I-600/I-600A Supplement 2, Consent to Disclose Information, is an optional form that may be filed to authorize USCIS to disclose case-related information that would otherwise be protected under the Privacy Act, 5 U.S.C. 552a to adoption service providers or other individuals. Authorized disclosures will assist USCIS in the adjudication of Forms I-600A and I-600.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-600 is 1,200 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I-600A is 2,000 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I-600A Supplement 1 is 301 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I-600A Supplement 2 is 1,260 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the home study information collection is 2,500 and the estimated hour burden per response is 25 hours; the estimated total number of respondents for the biometrics information collection is 2,520 and the estimated hour burden per response is 3.67 hours; and the estimated total number of respondents for the biometrics-DNA information collection



is 2 and the estimated hour burden per response is 6 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 75,576 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$7,679,232.

#### USCIS Form I-601

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0029 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-601; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form I-601 is necessary for USCIS to determine whether the applicant is eligible for a waiver of inadmissibility under section 212 of the INA. Furthermore, this information collection is used by individuals who are seeking TPS.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-601 is 20,194 and the estimated hour burden per response is 1.75 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 35,340 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$7,497,023.

#### USCIS Form I-601A

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0123 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Provisional Unlawful Presence Waiver of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-601A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households: Individuals who are immediate relatives of U.S. citizens and who are applying from within the United States for a waiver of inadmissibility under INA section 212(a)(9)(B)(v) prior to obtaining an immigrant visa abroad.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-601A is 63,000 and the estimated hour burden per response is 1.5 hours; the estimated total number of respondents to the information collection biometrics is 63,000 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 325,710 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$3,413,812.

#### USCIS Form I-698

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0035 in the body of the letter and the agency name. To avoid duplicate submissions,

please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application to Adjust Status from Temporary to Permanent Resident.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-698; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. The data collected on Form I-698 is used by USCIS to determine the eligibility to adjust an applicant's residence status. The form serves the purpose of standardizing requests for the benefit, and ensuring that basic information required to assess eligibility is provided by applicants. A person who has been granted temporary residence under Section 245A of the INA is eligible to apply to USCIS to adjust to permanent resident status no later than 43 months after their approval for temporary residence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-698 is 100 and the estimated hour burden per response is 1.25 hours; and the estimated total number of respondents for the information collection biometrics is 100 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 492 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$49,000.

#### USCIS Form I-730

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0037 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-730; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or

households. Form I-730 is used by a refugee or asylee to file on behalf of his or her spouse and/or children for follow-to-join benefits provided that the relationship to the refugee/asylee existed prior to their admission to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-730 is 6,039 and the estimated hour burden per response is 0.677 hours; the estimated total number of respondents for the information collection biometrics is 6,039 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 26,191 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$1,592,500.

#### USCIS Form I-751

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0038 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Petition to Remove the Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-751; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected on Form I-751 is used by USCIS to verify the alien's status and determine whether he or she is eligible to have the conditions on his or her status removed. Form I-751 serves the purpose of standardizing requests for benefits and ensuring that basic information required to assess eligibility is provided by petitioners. USCIS also collects biometric information from the alien to verify their identity and check or update their background information.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-751 is 159,119 and the estimated hour burden per response is 3.75 hours; the estimated total number of respondents for the information collection biometrics is 160,076 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,771,654 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$19,492,078.

#### USCIS Form I-765

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

Comments are encouraged and will be accepted for 60 days from the

publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0040 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-765; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses Form I-765 to collect the information that is necessary to determine if an alien is eligible for an initial EAD, a new replacement EAD, or a subsequent EAD upon the expiration of a previous EAD under the same eligibility category. Aliens in many immigration statuses are required to possess an EAD as evidence of work authorization. To be authorized for employment, an alien must be lawfully admitted for permanent residence or authorized to be so employed by the INA or under regulations issued by DHS. Pursuant to statutory or regulatory authorization, certain classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. USCIS may determine

the validity period assigned to any document issued evidencing an alien's authorization to work in the United States. These classes are listed in 8 CFR 274a.12.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-765 is 2,096,000 and the estimated hour burden per response is 4.5 hours; the estimated total number of respondents for the information collection biometrics is 2,096,000 and the estimated hour burden per response is 3.67 hours; the estimated total number of respondents for the information collection Form I-765WS is 266,148 and the estimated hour burden per response is .50 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 17,145,276 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$346,615,520.

#### USCIS Form I-765V

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0137 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Employment Authorization for Abused Nonimmigrant Spouse.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-765V; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS will use Form I-765V to collect the information that is necessary to determine if the applicant is eligible for an initial EAD or renewal EAD as a qualifying abused nonimmigrant spouse. Aliens are required to possess an EAD as evidence of work authorization. To be authorized for employment, an alien must be lawfully admitted for permanent residence or authorized to be so employed by the INA or under regulations issued by DHS. Pursuant to statutory or regulatory authorization, certain classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. USCIS may determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-765V is 1,000 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection biometrics is 1,000 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 6,670 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$265,000.

#### USCIS Form I-817

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0005 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Family Unity Benefits.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-817; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households: This information collected will be used to determine whether the applicant meets the eligibility requirements for benefits under 8 CFR 236.14 and 245a.33. Per 8 CFR

236.15(d), an alien under Family Unity Program is authorized to be employed in the United States and will receive an EAD after USCIS granted the benefits. Therefore, USCIS will issue an EAD and approval notice to the applicant. The respondents for this information collection are foreign nationals who apply for Family Unity Benefits in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-817 is 1,358 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection biometrics is 1,358 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 7,700 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$166,355.

#### USCIS Form I-821

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0043 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Temporary Protected Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-821; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information provided will be used by the USCIS to determine whether an applicant for TPS meets eligibility requirements.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-821 is 4,000 and the estimated hour burden per response is 2.41 hours; the estimated total number of respondents for the information collection biometrics is 4,000 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 24,320 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$490,000.

#### USCIS Form I-821D

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0124 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods

under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Consideration of Deferred Action for Childhood Arrivals.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-821D; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. As part of the administration of its programs, USCIS exercises its prosecutorial discretion on a case by case basis to defer action on instituting removal proceedings against individuals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-821D initial requests is 40,819 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection Form I-821D renewal requests is 418,775 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection biometrics is 459,594 and the estimated hour burden per response is 3.67 hours.

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

collection of information is 3,065,492 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$50,555,340.

#### USCIS Form I-824

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule.

All submissions received must include the OMB Control Number 1615-0044 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods

under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Action on an Approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-824; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information collection is used to request a duplicate approval

notice, as well as to notify and to verify the U.S. consulate that a petition has been approved or that a person has been adjusted to permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-824 is 11,500 and the estimated hour burden per response is 0.42 hours; the estimated total number of respondents for the information collection biometrics is 11,500 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 47,035 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$1,480,625.

#### USCIS Form I-829

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0045 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Petition by Entrepreneur to Remove Conditions on Permanent Resident Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-829; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by a conditional resident alien entrepreneur who obtained such status through a qualifying investment, to apply to remove conditions on his or her conditional residence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-829 is 3,500 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection biometrics is 3,500 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 26,845 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$428,750.

#### USCIS Form I-864, I-864A, I-864EZ

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0075 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to

submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Affidavit of Support under Section 213A of the INA and Notification of Reimbursement of Means-Tested Benefits.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-864; I-864EZ; I-864A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses the data collected on Form I-864 to determine whether the sponsor has the ability to support the sponsored alien under section 213A of the INA. This form standardizes evaluation of a sponsor's ability to support the sponsored alien and ensures that basic information required to assess eligibility is provided by petitioners. Form I-864A is a contract between the sponsor and the sponsor's household members. It is only required if the sponsor used the income of his or her household members to reach the required 125 percent of the federal poverty guidelines. The contract holds these household members jointly and severally liable for the support of the sponsored immigrant. The information collection required on Form I-864A is necessary for public benefit agencies to enforce the Affidavit of Support in the event the sponsor used income of his or her household members to reach the required income level and the public benefit agencies are



requesting reimbursement from the sponsor.

USCIS uses Form I-864EZ in exactly the same way as Form I-864; however, less information is collected from the sponsors as less information is needed from those who qualify in order to make a thorough adjudication.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for Form I-864 is 453,345 and the estimated hour burden per response is 6 hours; the estimated total number of respondents for Form I-864A is 215,800 and the estimated hour burden per response is 1.75 hours; the estimated total number of respondents for Form I-864EZ is 100,000 and the estimated hour burden per response is 2.5 hours; the information collection biometrics is 2,822,762 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this information collection of information is 6,170,482 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this information collection is \$135,569,525.

#### USCIS Form I-881

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0072 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the

validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-881; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form I-881 is used by USCIS asylum officers, EOIR immigration judges, and BIA board members to determine eligibility for suspension of deportation or special rule cancellation of removal under Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-881 is 520 and the estimated hour burden per response is 12 hours; the estimated total number of respondents for the information collection biometrics is 858 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 9,389 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$258,505.

#### USCIS Form I-907

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

regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0048 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Premium Processing Service.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-907; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses the information provided on Form I-907 to provide petitioners the opportunity to request faster processing of certain employment-based petitions and applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection form I-907 is 319,301 and the estimated hour burden per response is 0.58 hours.

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



collection of information is 185,195 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$78,228,500.

#### *USCIS Form I-914, I-914A*

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0099 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### **Overview of Information Collection**

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

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-914; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information on all three parts of the form will be used to determine whether applicants meet the

eligibility requirements for benefits.

This application incorporates information pertinent to eligibility under the Victims of Trafficking and Violence Protection Act (VTVPA), Public Law 106-386, and a request for employment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-914 is 980 and the estimated hour burden per response is 2.25 hours; the estimated total number of respondents for the information collection Form I-914A is 1,024 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I-914B law enforcement officer completion activity is 245 and the estimated hour burden per response is 3.5 hours; the estimated total number of respondents for the information collection Form I-914B contact by respondent to law enforcement is 245 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the information collection biometrics is 1,759 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 11,502 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$1,986,400.

#### *USCIS Form I-918, I-918A*

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0104 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### **Overview of Information Collection**

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

(2) *Title of the Form/Collection:* Petition For U Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-918 Supplements A and B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households; Federal, State, and local governments. This petition permits victims of certain qualifying criminal activity and their immediate family members to apply for temporary nonimmigrant classification. This nonimmigrant classification provides temporary immigration benefits, potentially leading to permanent resident status, to certain victims of criminal activity who: Suffered substantial mental or physical abuse as a result of having been a victim of criminal activity; have information regarding the criminal activity; and assist government officials in investigating and prosecuting such criminal activity.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-918 is 36,000 and the estimated hour burden per response is 5 hours; the estimated total number of respondents for the information collection Form I-918A is 25,000 and the estimated hour burden per response is 1.5 hours; the estimated total number of respondents for the information collection Form I-918B is 36,000 and the estimated hour burden per response

is 1 hour; the estimated total number of respondents for the information collection biometrics is 61,000 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 477,370 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$259,250.

#### *USCIS Form I-924, I-924A*

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0061 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### **Overview of Information Collection**

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

(2) *Title of the Form/Collection:* Application for Regional Center Under the Immigrant Investor Program.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-924; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The data collected on Form I-924 and Form I-924A is used by USCIS to determine eligibility for an entity to be designated as a regional center, under the Immigrant Investor Pilot Program created by section 610 of Public Law 102-395 (October 6, 1992). A regional center is defined as any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation, and increased domestic capital investment. Alien entrepreneurs (EB-5 alien investors) admitted to the United States under section 203(b)(5) of the INA may meet the job creation requirements under INA section 203(b)(5)(A)(ii) through the creation of indirect jobs through capital investments made in commercial enterprises that are affiliated with regional centers that are designated for participation in the pilot program. The requirements for obtaining and terminating the regional center designation for participation in the pilot program are in 8 CFR 204.6(m)(3).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection of Form I-924 is 400 and the estimated hour burden per response is 51 hours; the estimated total number of respondents for the information collection of Form I-924A Instructions is 882 and the estimated hour burden per response is 14 hours; the estimated total number of respondents for the information collection of Form I-924A Compliant Review is 40 and the estimated hour burden per response is 24 hours; the estimated total number of respondents for the information collection of Form I-924A Site Visit is 40 and the estimated hour burden per response is 16 hours; biometrics is 400 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 34,216 hours.

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

cost burden associated with this collection of information is \$1,410,200.

#### *USCIS Form I-929*

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0106 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### **Overview of Information Collection**

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

(2) *Title of the Form/Collection:* Petition for Qualifying Family Member of a U-1 Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-929; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Section 245(m) of the INA allows certain qualifying family members who have never held U nonimmigrant status to seek lawful permanent residence or apply for immigrant visas. Before such family members may apply for adjustment of

status or seek immigrant visas, the U-1 nonimmigrant who has been granted adjustment of status must file an immigrant petition on behalf of the qualifying family member using Form I-929. Form I-929 is necessary for USCIS to make a determination that the eligibility requirements and conditions are met regarding the qualifying family member.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-929 is 1,500 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection biometrics is 1,500 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 7,005 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$183,750.

#### USCIS Form N-336

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0050 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Request for Hearing on a Decision in Naturalization Proceedings under Section 336.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N-336; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form provides a method for applicants, whose applications for naturalization are denied, to request a new hearing by an Immigration Officer of the same or higher rank as the denying officer, within 30 days of the original decision.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form N-336 (paper) is 4,500 and the estimated hour burden per response is 2.75 hours; the estimated total number of respondents for the information collection Form N-336 (e-filing) is 500 and the estimated hour burden per response is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 13,625 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$2,317,500.

#### USCIS Form N-400

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule.

All submissions received must include the OMB Control Number 1615-0052 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Naturalization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N-400; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form N-400 allows USCIS to fulfill its mission of fairly adjudicating naturalization applications and only naturalizing statutorily eligible individuals. Naturalization is the process by which U.S. citizenship is granted to a foreign citizen or national after he or she fulfills the requirements established by Congress in the INA. USCIS uses Form N-400 to verify that the applicant has met the requirements for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form N-400 (paper) is 567,314 and the estimated hour burden per response is 9.17 hours; the estimated total number of respondents for the information collection Form N-400 (e-filing) is 214,186 and the

estimated hour burden per response is 3.5 hours; the estimated total number of respondents for the information collection biometrics is 778,000 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 8,807,180 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$346,768,928.

#### USCIS Form N-470

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0056 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application to Preserve Residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N-470; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected on Form N-470 will be used to determine whether an alien who intends to be absent from the United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form N-470 is 330 and the estimated hour burden per response is 0.6 hours; the estimated total number of respondents for the information collection biometrics processing is 330 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 561 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$40,425.

#### USCIS Form N-565

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-009 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of Information Collection

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

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N-565; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The form is provided by USCIS to determine the applicant's eligibility for a replacement document. An applicant may file for a replacement if he or she was issued one of the documents described above and it was lost, mutilated, or destroyed, or if the applicant's name was changed by a marriage or by court order after the document was issued and now seeks a document in the new name. If the applicant is a naturalized citizen who desires to obtain recognition as a citizen of the United States by a foreign country, he or she may apply for a special certificate for that purpose.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form N-565 (paper filing) is 18,552 and the estimated hour burden per response is 1.33 hours; the estimated total number of respondents for the information collection Form N-565 (online filing) is 9,138 and the estimated hour burden per response is 0.917 hours; the estimated total number of respondents for the information collection biometrics is 27,690 and the estimated hour burden per response is 3.67 hours.

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

collection of information is 138,450 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$3,392,025.

#### *USCIS Form N-600*

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0057 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### **Overview of Information Collection**

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

(2) *Title of the Form/Collection:* Application for Certificate of Citizenship.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N-600; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form N-600 collects

information from respondents who are requesting a Certificate of Citizenship because they acquired U.S. citizenship either by birth abroad to a U.S. citizen parent(s), adoption by a U. S. citizen parent(s), or after meeting eligibility requirements after the naturalization of a foreign born parent. This form is also used by applicants requesting a Certificate of Citizenship because they automatically became a citizen of the United States after meeting eligibility requirements for acquisition of citizenship by foreign-born children. USCIS uses the information collected on Form N-600 to determine if a Certificate of Citizenship can be issued to the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form N-600 (paper) is 33,000 and the estimated hour burden per response is 1.58 hours; the estimated total number of respondents for the information collection Form N-600 (e-filing) is 34,000 and the estimated hour burden per response is .75 hours; the estimated total number of respondents for the information collection biometrics is 67,000 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 323,530 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$8,331,250.

#### *USCIS Form N-600K*

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

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0087 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### **Overview of Information Collection**

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

(2) *Title of the Form/Collection:* Application for Citizenship and Issuance of Certificate Under Section 322.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N-600K; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form N-600K is used by children who regularly reside in a foreign country to claim U.S. citizenship based on eligibility criteria met by their U.S. citizen parent(s) or grandparent(s). The form may be used by both biological and adopted children under age 18. USCIS uses information collected on this form to determine that the child has met all of the eligibility requirements for naturalization under section 322 of the INA. If determined eligible, USCIS will naturalize and issue the child a Certificate of Citizenship before the child reaches age 18.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form N-600K (paper) is 1,300 and the estimated hour burden per response is 2.08 hours; the estimated total number of respondents for the information collection Form N-600K (e-filing) is 1,700 and the estimated hour burden per response is 1.5 hours; the estimated total number of respondents for the information collection biometrics is 3,000 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 16,264 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$372,375.

#### H. Family Assessment

This regulation may affect family well-being as that term is defined in section 654 of the Treasury General Appropriations Act, 1999, Public Law 105-277, Div. A, 112 Stat. 2681-528 (Oct. 21, 1998), as amended, 5 U.S.C. 601 note. This action has been assessed in accordance with the criteria specified by section 654(c). This regulation will enhance family well-being by helping DHS adjudicate immigration benefit requests, address national security, public safety, fraud concerns, and preclude imposters.

#### I. National Environmental Policy Act

DHS Directive (Dir) 023-01 Rev. 01 establishes the procedures that DHS and its components use to comply with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations for implementing NEPA. 40 CFR parts 1500-1508. The CEQ regulations allow federal agencies to establish, with CEQ review and concurrence, categories of actions (“categorical exclusions”) which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement. 40 CFR 1507.3(b)(2)(ii) and 1508.4. Dir. 023-01 Rev. 01 establishes categorical exclusions that DHS has found to have no such effect. Dir. 023-01 Rev. 01 Appendix A Table 1. For an action to be categorically excluded from further NEPA review, Dir. 023-01 Rev. 01 requires the action to satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Dir. 023-01 Rev. 01 section V.B (1)-(3).

DHS analyzed this action and does not consider it to significantly affect the quality of the human environment. This proposed rule would only change USCIS biometrics collection and a few

immigration benefit request requirements. DHS has determined that this rule does not individually or cumulatively have a significant effect on the human environment because it 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. This rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. This rule is categorically excluded from further NEPA review.

#### J. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) requires rules to be submitted to Congress before taking effect. If implemented as proposed, we will submit to Congress and the Comptroller General of the United States a report regarding the issuance of the final rule before its effective date, as required by 5 U.S.C. 801.

#### K. Executive Order 13175

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

#### L. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. 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 standard bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### M. Executive Order 12630

This rule would not cause the taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

#### N. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 requires agencies to consider the impacts of environmental health risk or safety risk that may disproportionately affect children. DHS has reviewed this rule and determined that this rule is not a covered regulatory action under Executive Order 13045. Although the rule is economically significant, it 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 executive order.

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

Executive Order 13211 requires agencies to consider the impact of rules that significantly impact the supply, distribution, and use of energy. DHS has reviewed this rule and determined that this rule would not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, this rule does not require a Statement of Energy Effects under Executive Order 13211.

#### P. Signature

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

#### List of Subjects

##### 8 CFR Part 1

Administrative practice and procedure, Immigration.

##### 8 CFR Part 103

Administrative practice and procedure, Powers and Duties; Availability of Records; Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

##### 8 CFR Part 204

Administrative practice and procedure, Aliens, Immigration, Employment, Petitions, Reporting, Passports and visas, and recordkeeping requirements.



*8 CFR Part 207*

Immigration, Refugees, Reporting and recordkeeping requirements.

*8 CFR Part 208*

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

*8 CFR Part 209*

Aliens, Immigration, Refugees.

*8 CFR Part 210*

Aliens, Migrant labor, Reporting and recordkeeping requirements.

*8 CFR Part 212*

Documentary requirements: Nonimmigrants; Waivers; Admission of certain inadmissible aliens; Parole.

*8 CFR Part 214*

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

*8 CFR Part 215*

Controls of Aliens Departing from the United States; Electronic Visa Update System.

*8 CFR Part 216*

Conditional Basis of Lawful Permanent Residence Status.

*8 CFR Part 235*

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

*8 CFR Part 236*

Administrative practice and procedure, Aliens, Immigration.

*8 CFR Part 240*

Administrative practice and procedure, Immigration.

*8 CFR Part 244*

Aliens, Reporting and recordkeeping requirements.

*8 CFR Part 245*

Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 245a*

Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 264*

Reporting and recordkeeping requirements.

*8 CFR Part 287*

Immigration, Law enforcement officers.

*8 CFR Part 316*

Citizenship and naturalization, Reporting and recordkeeping requirements.

*8 CFR Part 333*

Photographs.

*8 CFR Part 335*

Examination on application for naturalization.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 1—DEFINITIONS**

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

**Authority:** 8 U.S.C. 1101; 8 U.S.C. 1103; 5 U.S.C. 301; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

■ 2. Section 1.2 is amended by adding definitions for “Biometrics” and “DNA” in alphabetical order to read as follows:

**§ 1.2 Definitions.**

\* \* \* \* \*

*Biometrics* means the measurable biological (anatomical and physiological) or behavioral characteristics of an individual, including an individual’s fingerprints, palm prints, photograph (facial image), signature, iris (iris image), voice (voice print), and/or DNA (partial DNA profile) (subject to the limitations in 8 CFR 103.16(d)(2).

\* \* \* \* \*

*DNA* means deoxyribonucleic acid, which carries the genetic instructions used in the growth, development, functioning, and reproduction of all known living organisms.

\* \* \* \* \*

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

■ 3. 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; Pub. L. 112–54.

■ 4. Section 103.2 is amended by revising paragraphs (b)(2)(i), (b)(9), and (b)(13) to read as follows:

**§ 103.2 Submission and adjudication of benefit requests.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) *General.* The non-existence or other unavailability of required

evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant, petitioner, or requestor must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant, petitioner, or requestor must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence. If DHS requires submission of specific biometrics, under 8 CFR part 103.16, neither secondary evidence nor affidavits will overcome the unavailability of the requested biometrics.

\* \* \* \* \*

(9) *Appearance for interview.* (i) DHS may require any applicant, petitioner, sponsor, beneficiary, or individual filing a benefit or other request, or any group or class of such individuals submitting requests, to appear for an interview at any time. Such appearance may also be required by law, regulation, form instructions, or **Federal Register** notice applicable to the request type.

(ii) An interview may be waived by DHS, for an entire population or on a case-by-case basis, solely at its discretion.

(iii) Each individual required to appear under this paragraph will be provided notice of the date, time, and location of an interview.

(iv) Failure to appear for a scheduled interview without prior authorization from USCIS may result in denial, administrative closure, dismissal of the applicable immigration benefit request or other request, waiver of the right to an interview, or termination of status, if applicable. USCIS may reschedule the interview at its discretion.

(v) Any individual required to appear under this paragraph or any individual authorized to file an application, petition, or benefit request on behalf of an individual who may be required to appear under this paragraph may, before the scheduled date and time of the appearance, either:

(A) For good cause, request that the interview be rescheduled; or

(B) If applicable, withdraw the application, petition, benefit request, or



any other request as provided in 8 CFR 103.2(b)(6).

(vi) For an asylum application or asylum-related benefit, see 8 CFR 208.10.

\* \* \* \* \*

(13) *Effect of failure to respond to a request for evidence or failure to submit evidence or respond to a notice of intent to deny.* If the petitioner, applicant, or requestor fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons. If other requested material necessary to the processing and approval of a case are not submitted by the required date, the application, petition, benefit request, or any other request may be summarily denied as abandoned.

■ 5. Revise § 103.16 to read as follows:

**§ 103.16 Biometrics services.**

(a) *Collection*—(1) *Required unless waived.* Any applicant, petitioner, sponsor, derivative, dependent, beneficiary, or individual filing or associated with benefit requests as defined in this chapter, or any other request or form of relief, must submit biometrics to DHS unless the request is exempted or the requirement is waived by DHS. DHS may waive the requirement in accordance with paragraph (a)(5) of this section, a **Federal Register** notice, or as otherwise provided by law or regulation. This section applies only to individuals submitting applications, petitions, or requests to USCIS, including United States citizens, without regard to age.

(2) *Frequency of submission.* DHS may collect biometrics for an individual more than once or, at its discretion, reuse previously collected biometrics, as necessary.

(3) *Method of submission.* When not exempted or waived, DHS will prescribe the manner in which biometric collection is to be conducted in a notice to the individual. Each individual will be provided notice of the date, time, and location of his or her appointment for biometrics collection. DHS will schedule the biometric collection at the nearest appropriate location to the individual, unless there is good cause to schedule at another location.

(4) *Removal of exemption.* DHS may change its decision to exempt biometrics for a form, program, or group at a later date and will provide public notification of the change.

(5) *Waiver of biometrics.* DHS may waive the biometrics collection requirement for an individual or grant

an exemption thereof for an entire group as follows:

(i) For an individual waiver, initiated by DHS at DHS's discretion, or based on a request for a reasonable accommodation because of age, disability, or other reasons making it impossible or unreasonable to appear for biometrics or provide a prescribed biometric. In such instances, when photographs are required as part of the biometrics collection, USCIS will provide an alternative mechanism to meet the requirement.

(ii) For exemption of an entire group, if the Secretary (or Secretary's designee) determines that biometrics, or certain biometric modalities, for that form, program, or group are not required and that an exemption would be in the Government's interest and consistent with other applicable law, DHS will provide notice in the applicable form instructions, a **Federal Register** notice, by posting notification on the USCIS website, or any combination thereof.

(iii) As otherwise provided by law or regulation.

(iv) Aliens who request a benefit that results in a secure identity document must submit a photograph in accordance with the requirements prescribed by DHS regardless of any exemption or waiver on the submission of biometrics that he or she may be provided.

(6) *Intercountry adoption biometrics.* For intercountry adoption-related applications and petitions under 8 CFR 204.3, or 8 CFR 204.301 to 204.314, in addition to the individuals identified in paragraph (a)(1), USCIS will collect biometrics for the applicant or petitioner's spouse and each additional adult member of the prospective adoptive parents' household, regardless of citizenship, as defined at 8 CFR 204.301. The particular intercountry adoption-related application or petition will state this requirement, where it applies, in the form instructions.

(7) *Reschedule submission.* DHS or its designee may reschedule the biometrics collection at its discretion, or where, before issuing the biometrics notice, DHS received a valid change of address request but the biometrics notice was not sent to the updated address.

(8) *Reschedule timing.* An individual may reschedule their biometrics collection appointment prior to the appointment, for any cause, one time.

(b) *Failure to appear for biometrics collection.* If an individual fails to appear without good cause when DHS or its designee scheduled a biometrics appointment:

(1) *Waiver of rights.* DHS will, as appropriate, deem any right to an

interview waived, deny, reopen, refer to the Executive Office for Immigration Review, dismiss, and/or take any other administrative action on any associated pending immigration benefit or other request; or

(2) *Revocation.* DHS may terminate, rescind, or revoke the individual's immigration status, petition, benefit, or relief, where authorized by law.

(3) *Asylum applicants.* For an asylum application or asylum-related benefit, "good cause" requires a showing of exceptional circumstances see 8 CFR 208.10.

(c) *Updates to biometrics*—(1) *During adjudication.* Unless waived or exempted, any applicant, petitioner, sponsor, beneficiary, or individual filing or certain individuals associated with a benefit or other request as described in this chapter, including U.S. citizens and lawful permanent residents, must appear as requested to submit biometrics to DHS upon notice while the benefit or other request is pending with DHS.

(2) *After approval.* Any individual alien may be required to submit biometrics again for purposes of continuous vetting, unless and until he or she is granted U.S. citizenship. A lawful permanent resident or United States citizen may be required to submit biometrics if he or she filed an application, petition, or request in the past and it was either reopened or the previous approval is relevant to an application, petition, or benefit request currently pending with DHS. Regional center principals and, if the principal is a legal entity or organization, persons having ownership, control, or a beneficial interest in the principal legal entity or organization, including U.S. citizens, may also be required to submit biometrics again for purposes of continuous vetting.

(d) *Use and retention*—(1) *Biometrics other than DNA.* DHS may store biometrics, other than raw DNA, submitted by an individual as required by this section and use or reuse these biometrics to conduct background and security checks, verify identity, produce documents, determine eligibility for immigration and naturalization benefits, or as necessary for administering and enforcing immigration and naturalization laws. Biometrics collected, other than DNA, may be shared with appropriate federal, state, and local law enforcement; or intelligence community entities; foreign governments, as authorized by law and/or international agreements.

(2) *DNA evidence as proof of a genetic relationship.* (i) DHS may require, request, or accept the submission of

DNA or DNA test results to verify a claimed genetic relationship or determine whether a genetic relationship exists. DHS may use and store DNA test results, which include a partial DNA profile, as evidence of a claimed genetic relationship:

(A) To determine eligibility for immigration and naturalization benefits; or,

(B) To perform any other functions necessary for administering and enforcing immigration and naturalization laws.

(ii) DHS may at its discretion consider DNA test results, which include a partial DNA profile, as primary or secondary evidence of the claimed genetic relationships for any benefit or request.

(iii) DHS will only use and handle raw DNA as long as necessary to obtain DNA test results, which include a partial DNA profile. DHS will destroy raw DNA once these test results are obtained, and DHS will not share DNA test results unless required by law. The DNA test results, which include a partial DNA profile, on any individual obtained as part of the benefit request will remain a part of the file and record of proceeding, DHS will store and may share DNA test results, which include a partial DNA profile, for immigration adjudication purposes or for law enforcement purposes to the extent permitted by law.

**PART 204—IMMIGRANT PETITIONS**

■ 6. 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, 1324a, 1641; 8 CFR part 2.

■ 7. Section 204.2 is amended by:

■ a. Revising paragraphs (a)(2), (c)(2)(v), (d)(2)(iv);

■ b. Removing paragraph (d)(2)(vi);

■ c. Redesignating paragraph (d)(2)(vii) as (d)(2)(vi); and

■ d. Revising (e)(2)(v);

The revisions read as follows:

**§ 204.2 Petitions for relatives, widows and widowers, and abused spouses, children, and parents.**

\* \* \* \* \*

(a) \* \* \*

(2) *Evidence for petition for a spouse.*

In addition to evidence of United States citizenship or lawful permanent resident status, the petitioner must also provide evidence of the claimed relationship. A petition submitted on behalf of a spouse must be accompanied by:

(i) Photograph(s) of the petitioner as described in the relevant form instructions,

(ii) Photograph(s) of the beneficiary as described in the relevant form instructions,

(iii) A certificate of marriage issued by civil authorities; and,

(iv) Proof of the legal termination of all previous marriages of both the petitioner and the beneficiary.

(v) Photographs that do not comply with form instructions may be accepted by USCIS when the petitioner or beneficiary reside(s) in a region where such photographs are unavailable.

(c) \* \* \*

(2) \* \* \*

(v) *Good moral character.* The self-petitioner's good moral character is determined upon review of any credible and relevant evidence, which includes, but is not limited to, evidence submitted by the self-petitioner and criminal history information obtained through the self-petitioner's biometrics. USCIS will assess the good moral character of the self-petitioner for a three year period immediately preceding the filing of the self-petition. USCIS may consider the self-petitioner's conduct beyond the three years preceding the petition filing, if the earlier conduct and acts appear relevant to a determination of the self-petitioner's present moral character, and the conduct of the self-petitioner during the three-year period does not reflect that there has been a reform of character from an earlier period. Self-petitioners who lived outside the United States during the three year period immediately preceding the filing of the self-petition must submit a law enforcement clearance, criminal background check, or similar report issued by an appropriate authority from any jurisdiction in which the self-petitioner resided for six or more months during the three year period immediately preceding the filing of the self-petition.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(vii) *Primary evidence for an adopted child or son or daughter.* A petition may be submitted on behalf of an adopted child or son or daughter by a U.S. citizen or lawful permanent resident if the adoption took place before the beneficiary's sixteenth birthday (or eighteenth birthday if the sibling exception at INA 101(b)(1)(E)(ii) applies), and if the child has been in the legal custody of the adopting parent or parents and has resided with the adopting parent or parents for at least two years. A copy of the beneficiary's birth certificate issued by the appropriate civil authority, establishing the beneficiary's identity, age, and birth

parentage, and a certified copy of the adoption decree, issued by the appropriate civil authority, must accompany the petition.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(v) *Good moral character.* The self-petitioner's good moral character is determined upon review of any credible and relevant evidence, which includes, but is not limited to, evidence submitted by the self-petitioner and criminal history information obtained through the self-petitioner's biometrics. USCIS will assess the good moral character of the self-petitioner for a three year period immediately preceding the filing of the self-petition. USCIS may consider the self-petitioner's conduct beyond the three years preceding the petition filing, if the earlier conduct and acts appear relevant to a determination of the self-petitioner's present moral character, and the conduct of the self-petitioner during the three-year period does not reflect that there has been a reform of character from an earlier period. Self-petitioners who lived outside the United States during the three year period immediately preceding the filing of the self-petition must submit a law enforcement clearance, criminal background check, or similar report issued by an appropriate authority from any jurisdiction in which the self-petitioner resided for six or more months during the three year period immediately preceding the filing of the self-petition. All self-petitioners age 14 and over are required to submit evidence of good moral character as initial evidence with their application. For self-petitioners under the age of 14, USCIS may request evidence of good moral character at any time, in its discretion.

\* \* \* \* \*

**§ 204.3 [Amended]**

■ 8. Section 204.3 is amended by removing paragraph (c)(3).

■ 9. Section 204.4 is amended by revising paragraphs (d)(1) and (g)(2)(ii) to read as follows:

**§ 204.4 Amerasian child of a United States citizen.**

\* \* \* \* \*

(d) \* \* \*

(1) *Preliminary processing.* Upon initial submission of a petition with the preliminary processing documentary evidence required in paragraph (f)(1) of this section, USCIS will adjudicate the petition to determine whether there is reason to believe the beneficiary was fathered by a United States citizen, and if so request that the petitioner submit

the evidence required by paragraph (f)(1) of this section and any additional evidence required. The petitioner must submit all required documents within the deadline provided in the request or the petition will be considered to have been abandoned. To reactivate an abandoned petition, the petitioner must submit a new Petition for Amerasian, Widow(er), or Special Immigrant without the previously submitted documentation to USCIS.

\* \* \* \* \*

(g) \* \* \*  
(2) \* \* \*

(ii) Failure to meet the sponsorship requirements, including the completed background check, if USCIS finds that the sponsor is not of good moral character.

■ 10. Section 204.5 is amended by revising paragraph (p)(4) to read as follows:

**§ 204.5 Petitions for employment-based immigrants.**

\* \* \* \* \*

(p) \* \* \*

(4) *Application for employment authorization.* To request employment authorization, an eligible applicant described in paragraph (p)(1), (2), or (3) of this section must properly file an application for employment authorization, with USCIS, with the appropriate fee, in accordance with 8 CFR 274a.13(a) and the form instructions. Employment authorization under this paragraph may be granted solely in 1-year increments.

**§ 204.310 [Amended]**

■ 11. Section 204.310 is amended by removing and reserving paragraph (b).

**PART 207—ADMISSION OF REFUGEES**

■ 12. The authority citation for part 207 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1151, 1157, 1159, 1182; 8 CFR part 2.

■ 13. Section 207.1 is amended by revising paragraph (a) to read as follows:

**§ 207.1 Eligibility.**

(a) *Filing.* Any alien who believes he or she is a refugee as defined in section 101(a)(42) of the Act, and is included in a refugee group identified in section 207(a) of the Act, may apply for admission to the United States by submitting an application and the required evidence, in accordance with the form instructions. The application will be considered filed when it is completed and signed before a USCIS officer.

\* \* \* \* \*

■ 14. Section 207.7 is amended by revising paragraphs (d), (e), and (f)(2) to read as follows:

**§ 207.7 Derivatives of refugees.**

\* \* \* \* \*

(d) *Filing.* A principal refugee admitted under section 207(c)(1) of the Act may request following-to-join benefits for his or her spouse and unmarried, minor child(ren) (whether the spouse and children are inside or outside the United States) by filing a separate Request for Refugee/Asylee Relative petition in accordance with the form instructions for each qualifying family member. The request may only be filed by the principal refugee. Family members who derived their refugee status are not eligible to request derivative benefits on behalf of their spouse and child(ren). A separate Request for Refugee/Asylee Relative petition must be filed for each qualifying family member within two years of the refugee's admission to the United States unless USCIS determines that the filing period should be extended for humanitarian reasons. There is no time limit imposed on a family member's travel to the United States once the Request for Refugee/Asylee Relative petition has been approved, provided that the relationship of spouse or child continues to exist and approval of the Request for Refugee/Asylee Relative petition has not been subsequently reopened and denied. There is no fee for this benefit request.

(e) *Evidence.* (1) Evidence must be provided as required by form instructions for the Registration for Classification as Refugee and/or Request for Refugee/Asylee Relative, as applicable, which establishes that:

(i) The principal refugee applicant has the claimed relationship to the derivative where the derivative is accompanying the principal, or

(ii) The petitioner was previously admitted as a principal refugee and that the petitioner has the claimed relationship to the following to join derivative.

(2) The derivative refugee applicant or beneficiary may be required to provide additional evidence to establish eligibility.

(3) The burden of proof is on the petitioner to establish by a preponderance of the evidence that he or she is an eligible petitioner and the following to join beneficiary is an eligible spouse or child.

(f) \* \* \*

(2) *Spouse or child outside the United States.* When a spouse or child of a refugee is outside the United States and the Request for Refugee/Asylee Relative

is approved, USCIS will notify the refugee of such approval.

\* \* \* \* \*

**PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL**

■ 15. The authority citation for part 208 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110–229; 8 CFR part 2.

■ 16. Section 208.21 is amended by revising paragraph (d) and (f) to read as follows:

**§ 208.21 Admission of the asylee's spouse and children.**

\* \* \* \* \*

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the asylee may request accompanying or following-to-join benefits for his or her spouse or child(ren) by filing a separate Request for Refugee/Asylee Relative for each qualifying family member in accordance with the form instructions. A separate Request for Refugee/Asylee Relative for each qualifying family member must be filed within two years of the date in which the asylee was granted asylum, unless USCIS determines that the filing period should be extended for humanitarian reasons. When the Request for Refugee/Asylee Relative is approved, USCIS will notify the asylee of such approval. The approval of the Request for Refugee/Asylee Relative will remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Request for Refugee/Asylee Relative will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

\* \* \* \* \*

(f) *Burden of proof.* (1) The burden of proof is on the principal alien or petitioner to establish by a preponderance of the evidence that he or she is eligible to file for this benefit and that the individual on whose behalf he/she is making a request under this section is an eligible spouse or child.

(2) Evidence must be provided as required by form instructions for the Application for Asylum and for Withholding of Removal or Request for Refugee/Asylee Relative, as applicable, which establishes that:

(i) The principal alien or petitioner has the claimed relationship to the

derivative where the derivative is accompanying the principal, or

(ii) the petitioner was previously granted status as a principal asylee and that the petitioner has the claimed relationship to the following to join derivative.

(3) The derivative asylum applicant or beneficiary may be required to provide additional evidence to establish eligibility.

\* \* \* \* \*

**PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM**

■ 17. The authority citation for part 209 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; Title VII of Public Law 110–229; 8 CFR part 2.

■ 18. Section 209.1 is amended by revising paragraph (b) to read as follows:

**§ 209.1 Adjustment of status of refugees.**

\* \* \* \* \*

(b) *Application.* Upon admission to the United States, every refugee entrant will be notified of the requirement to submit an adjustment of status application one year after entry.

\* \* \* \* \*

■ 19. Section 209.2 is amended by revising paragraph (c) to read as follows:

**§ 209.2 Adjustment of status of alien granted asylum.**

\* \* \* \* \*

(c) *Application.* An application for the benefits of section 209(b) of the Act may be filed on an Application to Register Permanent Residence or Adjust Status, with the correct fee, and in accordance with the form instructions. If an alien has been placed in removal proceedings, the application can be filed and considered only in proceedings under section 240 of the Act.

\* \* \* \* \*

**PART 210—SPECIAL AGRICULTURAL WORKERS**

■ 20. The authority citation for part 210 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1160, 8 CFR part 2.

**§ 210.1 [Amended]**

■ 21. Section 210.1 is amended by removing and reserving paragraph (b).

■ 22. Section 210.2 is amended by revising paragraphs (c)(2)(i), (iv), (c)(3)(iv), and (c)(4)(iii) to read as follows:

**§ 210.2 Application for temporary resident status.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) An Application for Temporary Resident Status as a Special Agricultural Worker must be filed with the required fee.

\* \* \* \* \*

(iv) Each applicant, regardless of age, must appear at the appropriate USCIS office and submit biometrics, unless USCIS waives or exempts biometrics pursuant to 8 CFR 103.16. Each applicant will be interviewed by an immigration officer, except that the interview may be waived on a case-by-case basis at its discretion.

(3) \* \* \*

(iv) An applicant at an overseas processing office whose application is recommended for approval will be provided with an entry document attached to the applicant’s file. Upon admission to the United States, the applicant must contact USCIS for biometric collection, examination of the applicant’s file, and issuance of employment authorization.

(4) \* \* \*

(iii) *Conditions of admission.* Aliens who present a preliminary application will be admitted to the United States for a period of ninety (90) days with authorization to accept employment, if they are determined by an immigration officer to be admissible to the United States. Such aliens are required, within that ninety-day period, to submit evidence of eligibility which meets the provisions of § 210.3; appear for biometric collection; obtain a report of medical examination in accordance with paragraph (d) of this section; and submit to USCIS a complete application as defined in § 210.1(c). USCIS may, for good cause, extend the ninety-day period and grant further authorization to accept employment in the United States if an alien demonstrates he or she was unable to perfect an application within the initial period. If an alien described in this paragraph fails to submit a complete application to USCIS within ninety days or within such additional period as may have been authorized, his or her application may be denied for lack of prosecution, without prejudice.

\* \* \* \* \*

■ 23. Section 210.5 is amended by revising paragraph (b) to read as follows:

**§ 210.5 Adjustment to permanent resident status.**

\* \* \* \* \*

(b) *Biometrics collection.* To obtain proof of permanent resident status an alien described in paragraph (a) of this section must follow USCIS instructions for obtaining a Permanent Resident Card, including verifying identity and

submitting biometrics. The alien may appear before the date of adjustment if requested to do so by USCIS. The Permanent Resident Card will be issued after the date of adjustment.

\* \* \* \* \*

**PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE**

■ 24. The authority citation for part 212 continues to read as follows:

**Authority:** 6 U.S.C. 111, 202, 236 and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1185, 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); 8 CFR part 2.

■ 25. Section 212.7 is amended by removing paragraph (e)(6) and redesignating paragraphs (e)(7) through (e)(14) as paragraphs (e)(6) through (e)(13).

**PART 214—NONIMMIGRANT CLASSES**

■ 26. The authority citation for part 214 continues to read as follows:

**Authority:** 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Public Law 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

■ 27. Section 214.2 is amended by revising paragraphs (e)(23)(viii) and (k)(1) and removing and reserving paragraph (w)(15) to read as follows:

**§ 214.2 Special requirements for admission, extension, and maintenance of status.**

\* \* \* \* \*

(e) \* \* \*

(23) \* \* \*

(viii) *Information for background checks.* An applicant for E–2 CNMI Investor status or any applicant for derivative status as a spouse or child of an E–2 CNMI Investor, must submit biometrics as required under 8 CFR 103.16.

\* \* \* \* \*

(k) \* \* \*

(1) *Petition and supporting documents.* To be classified as a fiancé or fiancée as defined in section 101(a)(15)(K)(i) of the Act, an alien must be the beneficiary of an approved visa petition filed on a Petition for Alien Fiancé(e).

\* \* \* \* \*

**§ 214.11 [Amended]**

■ 28. Section 214.11 is amended by removing the term “fingerprint” from the definition “Bona fide determination” and adding the term “biometrics” in its place.

■ 29. Section 214.15 is amended by revising paragraph (f)(1) to read as follows:

**§ 214.15 Certain spouses and children of lawful permanent residents.**

\* \* \* \* \*

(f) \* \* \*

(1) *Contents of application.* To apply for V nonimmigrant status, an eligible alien must:

(i) Submit an Application to Extend/Change Nonimmigrant Status, in accordance with the form instructions and with the appropriate fee;

(ii) Appear for biometric collection;

(iii) Submit a Medical Examination of Aliens Seeking Adjustment of Status, without the vaccination supplement; and

(iv) Submit Evidence of eligibility as described by Application to Extend/Change Nonimmigrant Status Supplement A and in paragraph (f)(2) of this section.

\* \* \* \* \*

**PART 215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES; ELECTRONIC VISA UPDATE SYSTEM**

■ 30. The authority citation for part 215 continues to read as follows:

**Authority:** 6 U.S.C. 202(4), 236; 8 U.S.C. 1101, 1103, 1104, 1184, 1185 (pursuant to Executive Order 13323 (Dec. 30, 2003)), 1365a note, 1379, 1731–32; and 8 CFR part 2.

■ 31. Section 215.8 is amended by revising the section heading and removing and reserving paragraph (a)(2)(i) to read as follows:

**§ 215.8 Requirements for biometrics from aliens on departure from the United States.**

(a) \* \* \*

(2) \* \* \*

(i) [Reserved]

\* \* \* \* \*

■ 32. Section 215.9 is revised to read as follows:

**§ 215.9 Temporary Worker Visa Exit Program.**

An alien admitted on certain temporary worker visas at a port of entry participating in the Temporary Worker Visa Exit Program must also depart at the end of his or her authorized period of stay through a port of entry participating in the program and must present designated biographic and/or

biometrics upon departure. U.S. Customs and Border Protection will publish a Notice in the **Federal Register** designating which temporary workers must participate in the Temporary Worker Visa Exit Program, which ports of entry are participating in the program, which biographic and/or biometrics would be required, and the format for submission of that information by the departing designated temporary workers.

**PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS**

■ 33. The authority for part 216 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

**§ 216.4 [Amended]**

■ 34. Section 216.4 is amended by removing paragraphs (b) introductory text, (b)(1) and (2) and redesignating paragraph (b)(3) as (b).

**§ 216.6 [Amended]**

■ 35. Section 216.6 is amended by removing paragraphs (b) introductory text, (b)(1) and (2) and redesignating paragraph (b)(3) as (b).

**PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION**

■ 36. The authority for part 235 continues to read as follows:

**Authority:** 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2004 Comp., p. 278) 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731–32; Title VII of Public Law 110–229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); Pub. L. 112–54.

■ 37. Section 235.1 is amended by:

■ A. In paragraph (f)(1)(iv), removing the words “paragraph (d)(1)(ii)” and adding in its place “paragraph (f)(1)(ii)” and

■ B. Removing and reserving paragraph (f)(1)(iv)(A).

■ 38. Section 235.7 is amended by revising the last sentence of paragraph (a)(3) and revising paragraph (a)(4)(vi) to read as follows:

**§ 235.7 Automated inspection services.**

(a) \* \* \*

(3) \* \* \* Notwithstanding the provisions of 8 CFR part 264, biometric collection in the manner prescribed by DHS may be required to participate in the PORTPASS program.

(4) \* \* \*

(vi) If biometrics are required to assist in a determination of eligibility at that POE, the applicant will be so advised by DHS, before submitting his or her

application. The applicant will also be informed at that time of any biometric fee for conducting the biometric collection and any identity verification and national security and criminal history background checks.

\* \* \* \* \*

**PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED**

■ 39. The authority citation for part 236 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

■ 40. Section 236.5 is revised as follows:

**§ 236.5 Biometrics.**

Every alien against whom proceedings based on inadmissibility under section 212(a) of the INA or deportability under section 237 of the INA are initiated, including proceedings under sections 235, 238(b), and 240 of the INA, must submit biometrics at a time and place determined by DHS. DHS may also require submission of biometrics for any alien who is subject to INA section 241(a)(5) or 8 CFR 217.4(b) or (c).

**PART 240—VOLUNTARY DEPARTURE, SUSPENSION OF DEPORTATION AND SPECIAL RULE CANCELLATION OF REMOVAL**

■ 41. The authority citation for part 240 continues to read as follows:

**Authority:** 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

■ 42. Section 240.21 is amended by revising (b)(2)(ii)(D) to read as follows:

**§ 240.21 Suspension of deportation and adjustment of status under section 244(a) of the Act (as in effect before April 1, 1997) and cancellation of removal and adjustment of status under section 240A(b) of the Act for certain nonpermanent residents.**

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(D) Two photograph(s) meeting the requirements in the instructions to the relevant form.

■ 43. Section 240.63 is amended by revising the third and fourth sentences of paragraph (a) to read as follows:

**§ 240.63 Application process.**

(a) \* \* \* Each application must be filed with the filing fee as provided in 8 CFR 103.7 and the form instructions,

or a request for a fee waiver must be filed. The fact that an applicant has also applied for asylum does not exempt the applicant from any fee for other benefit requests.

\* \* \* \* \*

■ 44. Section 240.67 is amended by revising paragraph (a) as follows:

**§ 240.67 Procedure for interview before an asylum officer.**

(a) *Interview and biometric collection.* USCIS will notify each applicant to appear for an interview only after USCIS has scheduled the applicant for biometric collection in accordance with 8 CFR 103.16 and initiated national security and criminal history background checks.

\* \* \* \* \*

■ 45. Section 240.68 is revised to read as follows:

**§ 240.68 Failure to appear at an interview before an asylum officer or failure to follow requirements for biometrics.**

Failure to appear for a scheduled interview or biometrics will be handled in accordance with 8 CFR 103.2(b)(9) and 103.16, respectively.

■ 46. Section 240.70 is amended by revising paragraph (d)(4) to read as follows:

**§ 240.70 Decision by the Service.**

\* \* \* \* \*

(d) \* \* \*

(4) The applicant failed to appear for a scheduled interview with an asylum officer or failed to comply with biometrics requirements and such failure was not excused by USCIS, unless the application is dismissed.

\* \* \* \* \*

**PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED FOREIGN STATES AND PERSONS WITHOUT NATIONALITY WHO LAST HABITUALLY RESIDED IN A TPS DESIGNATED STATE**

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

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

■ 48. Section 244.6(a) is revised to read as follows:

**§ 244.6 Application.**

(a) An application for Temporary Protected Status must be submitted in accordance with the form instructions, the applicable country-specific **Federal Register** notice that announces the procedures for TPS registration or re-registration and, except as otherwise provided in this section, with the

appropriate fees as described in 8 CFR 103.7(b)(1).

\* \* \* \* \*

■ 49. Section 244.17 is amended by revising paragraph (a) to read as follows:

**§ 244.17 Periodic registration.**

(a) Aliens granted Temporary Protected Status must re-register periodically in accordance with USCIS instructions. Such registration applies to nationals of those foreign states designated for more than one year by DHS or where a designation has been extended for a year or more. Applicants for re-registration must apply during the period provided by USCIS. Applicants re-registering do not need to pay the fee that was required for initial registration except the biometric services fee and if requesting employment authorization, the application fee for employment authorization. By completing the application, applicants attest to their continuing eligibility. Such applicants do not need to submit additional supporting documents unless USCIS requests them to do so.

\* \* \* \* \*

**PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE**

■ 50. The authority citation for part 245 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105–100, section 202, 111 Stat. 2160, 2193; Pub. L. 105–277, section 902, 112 Stat. 2681; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

■ 51. Section 245.15 is amended by revising paragraph (h) to read as follows:

**§ 245.15 Adjustment of status of certain Haitian nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).**

\* \* \* \* \*

(h) *Application and supporting documents.* Each applicant for adjustment of status must file an application on the form prescribed by USCIS with the appropriate fee. Each application must be accompanied by:  
(1) A copy of the applicant's birth certificate or other record of birth;  
(2) A report of medical examination, as specified in § 245.5;  
(3) Two photographs unless waived by USCIS;  
(4) A copy of the Arrival-Departure Record, issued at the time of the applicant's arrival in the United States, if the alien was inspected and admitted or paroled;

\* \* \* \* \*

■ 52. Section 245.21 is amended by revising paragraph (b) to read as follows:

**§ 245.21 Adjustment of status of certain nationals of Vietnam, Cambodia, and Laos (section 586 of Pub. L. 106–429).**

\* \* \* \* \*

(b) *Application.* An applicant must submit an application on the form designated by USCIS with the fee specified in 8 CFR 103.7(b)(1) and in accordance with the form instructions. Applicants must also appear for biometrics collection as described in 8 CFR 103.16.

\* \* \* \* \*

■ 53. Section 245.23 is amended by revising paragraph (g) to read as follows:

**§ 245.23 Adjustment of aliens in T nonimmigrant classification.**

\* \* \* \* \*

(g) *Good moral character.* A T–1 nonimmigrant applicant for adjustment of status under this section must demonstrate that he or she has been a person of good moral character since first being lawfully admitted as a T–1 nonimmigrant and until USCIS completes the adjudication of their application for adjustment of status. Claims of good moral character will be evaluated on a case-by-case basis, taking into account section 101(f) of the Act and the standards of the community. USCIS will assess the good moral character of the applicant for the requisite continuous period as described in section 245(l)(1)(A) of the Act. USCIS will determine an applicant's good moral character as follows:

(1) Reviewing any credible and relevant evidence, which includes, but is not limited to, criminal history information obtained through the applicant's biometrics and evidence submitted by the applicant.

(2) USCIS may consider the applicant's conduct beyond the requisite period, if the earlier conduct and acts appear relevant to a determination of the applicant's present moral character, and the conduct of the applicant during the requisite period does not reflect that there has been a reform of character from an earlier period.

(3) Applicants who lived outside the United States during the requisite period must submit a law enforcement clearance, criminal background check, or similar report issued by an appropriate authority from any jurisdiction in which the applicant resided during the requisite period.

(4) All T nonimmigrant applicants for adjustment of status age 14 and over are required to submit evidence of good moral character as initial evidence with their application. For T nonimmigrant applicants for adjustment of status under the age of 14, USCIS may request

evidence of good moral character at any time, in its discretion.

**PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT**

■ 54. The authority citation for part 245a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1255a and 1255a note.

■ 55. Section 245a.2 is amended by revising paragraphs (d) introductory text, (d)(2)(ii), the last sentence of paragraph (e)(1) and paragraph (j) to read as follows:

**§ 245a.2 Application for temporary residence.**

(d) *Documentation.* Evidence to support an alien’s eligibility for the Legalization Program must include documents establishing proof of identity, proof of residence, and proof of financial responsibility, as well as biometrics and a completed medical report of examination. All documentation submitted will be subject to verification. USCIS may deny applications submitted with unverifiable documentation. Failure by an applicant to authorize release to USCIS of information protected by the Privacy Act and/or related laws in order for USCIS to adjudicate a claim may result in denial of the benefit sought. Acceptable supporting documents for these three categories are discussed below.

\* \* \* \* \*

(2) \* \* \*

(i) *Proof of common identity.* The most persuasive evidence is a document issued in the assumed name which identifies the applicant by biometrics. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant’s relationship to the applicant and the basis of the affiant’s knowledge of the applicant’s use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to affiant under the assumed name in question will carry greater weight.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \* The applicant must appear for a personal interview and for biometric collection as scheduled.

\* \* \* \* \*

(j) *Interview.* Each applicant will be interviewed by an immigration officer; USCIS may waive the interview on a case-by-case basis, at its discretion.

\* \* \* \* \*

■ 56. Section 245a.3 is amended by removing “(ADIT processing)” from the last sentence of paragraph (b)(1) and revising paragraph (e) to read as follows:

**§ 245a.3 Application for adjustment from temporary to permanent resident status.**

\* \* \* \* \*

(e) *Interview.* Each applicant will be interviewed by an immigration officer, except that the adjudicative interview may be waived by DHS on a case-by-case basis at its discretion. An applicant failing to appear for a scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for more than one scheduled interview, his or her application will be held in abeyance until the end of 43 months from the date of the application for temporary residence was approved and adjudicated on the basis of the existing record.

\* \* \* \* \*

■ 57. Section 245a.4 is amended by revising paragraph (b)(4) introductory text, (b)(4)(ii)(D), (b)(5)(i), and (b)(10) to read as follows:

**§ 245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.**

\* \* \* \* \*

(b) \* \* \*

(4) *Documentation.* Evidence to support an alien’s eligibility for temporary residence status must include documents establishing proof of identity, proof of nationality, proof of residence, and proof of financial responsibility, as well as biometrics, and a completed medical report of examination. USCIS may deny any applications submitted with unverifiable documentation. USCIS may deny the benefit sought where an applicant fails to authorize release to USCIS of information protected by the Privacy Act or related laws in order for USCIS to adjudicate a benefit request. Acceptable supporting documents for the four categories of documentation are discussed as follows:

\* \* \* \* \*

(ii) \* \* \*

(D) Other credible documents, including those created by, or in the possession of USCIS, or any other documents (excluding affidavits) that, when taken singly, or together as a whole, establish the alien’s nationality.

\* \* \* \* \*

(5) *Filing of application.* (i) An Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act must be filed with USCIS as provided in the form instructions. The applicant must appear for a personal interview and biometrics collection as scheduled. USCIS may, at its discretion:

(A) Require the applicant to file the application in person; or

(B) Require the applicant to file the application by mail; or

(C) Permit the filing of applications whether by mail or in person.

\* \* \* \* \*

(10) *Interview.* Each applicant, regardless of age, must appear at the appropriate USCIS office to be interviewed by an immigration officer, except that the interview may be waived on a case-by-case basis at USCIS’ discretion.

\* \* \* \* \*

■ 58. Section 245a.12 is amended by revising paragraphs (b) and (d) to read as follows:

**§ 245a.12 Filing and applications.**

\* \* \* \* \*

(b) *Filing of applications in the United States.* USCIS has jurisdiction over all applications for the benefits of LIFE legalization under this Subpart B. All applications filed with USCIS for the benefits of LIFE Legalization must be submitted in accordance with application form instructions. After proper filing of the application, USCIS will notify the applicant to appear for an interview and biometric collection.

\* \* \* \* \*

(d) *Application and supporting documentation.* Each applicant for LIFE Legalization adjustment of status must properly file an Application to Register Permanent Residence or Adjust Status, in accordance with the form instructions and with the appropriate fee(s). An applicant should complete Part 2 of the Application to Register Permanent Residence or Adjust Status by checking box “h—other” and writing “LIFE Legalization” next to that block. Each application must be properly filed in accordance with the form instructions and with the appropriate fee, and accompanied by:

(1) A report of medical examination, as specified in 8 CFR 245.5.

(2) Two photographs, as described in the instructions to the Application to Register Permanent Residence or Adjust Status.

(3) Proof of application for class membership in CSS, LULAC, or Zambrano class action lawsuits as described in § 245a.14.



(4) Proof of continuous residence in an unlawful status since before January 1, 1982 through May 4, 1988, as described in § 245a.15.

(5) Proof of continuous physical presence from November 6, 1986, through May 4, 1988, as described in § 245a.16.

(6) Proof of citizenship skills as described in § 245a.17. This proof may be submitted either at the time of filing the application, subsequent to filing the application but before the interview, or at the time of the interview.

\* \* \* \* \*

**PART 264—REGISTRATION, BIOMETRIC COLLECTION, AND VETTING**

■ 59. The authority citation for part 264 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1201, 1303–1305; 8 CFR part 2.

■ 60. The heading for part 264 is revised as set forth above.

■ 61. Section 264.1 is amended by revising the section heading, and paragraphs (e) and (g) to read as follows:

**§ 264.1 Registration and biometric collection.**

\* \* \* \* \*

(e) *Biometrics exemption.* (1) For purposes of this chapter, DHS will not collect biometrics under this section from nonimmigrant aliens who are:

(i) Admitted as foreign government officials, employees, and their immediate family members; international organization representatives, officers, employees, and their immediate family members; NATO representatives, officers, employees, and their immediate family members; and holders of diplomatic visas while they maintain such nonimmigrant status.

(ii) Nationals of countries which do not require biometrics collection of United States citizens temporarily residing therein.

(iii) Aliens exempted under this provision may be required to appear for DHS to collect a photograph that can be used to create a secure identity document.

(2) Every nonimmigrant alien not included in paragraph (e)(1) of this section who departs from the United States within one year of his or her

admission may be exempted from biometrics collection, provided he or she maintains his or her nonimmigrant status during that time; each such alien who has not previously provided biometrics will apply at once if he or she remains in the United States in excess of one year.

(3) Every nonimmigrant alien that has not previously had biometrics collected will apply at once upon his or her failure to maintain his or her nonimmigrant status.

\* \* \* \* \*

(g) *Registration and biometrics of children.* Within 30 days after reaching the age of 14, any alien in the United States not exempt from alien registration under the INA and this chapter must apply for registration and submit biometrics, unless biometrics collection is waived by USCIS. This requirement does not preclude DHS from requiring any alien under the age of 14 who is not exempt from alien registration to submit biometrics.

(1) *Permanent residents.* If an alien who is a lawful permanent resident of the United States is temporarily absent from the United States when he or she reaches age 14, he or she must apply for registration and submit biometrics within 30 days of his or her return to the United States in accordance with applicable form instructions. Furthermore the alien must surrender any prior evidence of alien registration and USCIS will issue the alien new evidence of alien registration.

(2) *Others.* In the case of an alien who is not a lawful permanent resident, the alien’s previously issued registration document will be noted to show that he or she has been re-registered and the date of re-registration.

\* \* \* \* \*

**§ 264.2 [Amended]**

■ 62. Section 264.2 is amended by removing and reserving paragraph (d);

**§ 264.5 [Amended]**

■ 63. Section 264.5(i) is removed.

**PART 287—FIELD OFFICERS; POWERS AND DUTIES**

■ 64. The authority citation for part 287 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; Homeland Security

Act of 2002, Pub. L. 107–296 (6 U.S.C. 1, *et. seq.*); 8 CFR part 2.

■ 65. Section 287.11(b)(3) is amended by revising the last sentence to read as follows:

**§ 287.11 Pre-enrolled Access Lane.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \* DHS may require applicants to submit to biometrics collection, and DHS may provide that biometric data to Federal, State, and local government agencies for the purpose of determining eligibility to participate in the PAL program.

\* \* \* \* \*

**PART 333—PHOTOGRAPHS**

■ 66. The authority citation for part 333 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1443.

■ 67. Section 333.1 is revised to read as follows:

**§ 333.1 Required photographs.**

Every applicant under section 333 of the Act must provide photographs as prescribed by USCIS in the applicable form instructions.

**PART 335—EXAMINATION ON APPLICATION FOR NATURALIZATION**

■ 68. The authority citation for part 335 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1443, 1447.

■ 69. Section 335.2 is amended by revising paragraph (b)(3) to read as follows:

**§ 335.2 Examination of applicant.**

\* \* \* \* \*

(b) \* \* \*

(3) Confirmation from the Federal Bureau of Investigation that the biometrics or biometric data submitted for the criminal background check has been rejected.

\* \* \* \* \*

**Chad R. Mizelle,**

*Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.*

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