1356, 1365b, 1372, 1801–1815; 31 U.S.C. 9701; 48 U.S.C. 1806; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112–45, 125 Stat. 550; 31 CFR part 223.

■ 2. In § 103.6:

■ a. Revise paragraphs (a)(1), (a)(2)(i), and (c)(1);

■ b. In paragraph (d)(1), remove the text ''Forms I–352'' and add in its place the text ''a form designated by DHS'';

■ c. In paragraph (d)(2), remove the text ''district directors'' and add in its place the text ''designated officials''; and

■ d. Revise paragraph (e).

The revisions read as follows:

§ 103.6 Immigration bonds.

(a) *Posting of surety bonds*—(1) *Extension agreements; consent of surety; collateral security.* All surety bonds posted in immigration cases shall be executed on a form designated by DHS, a copy of which, and any rider attached thereto, shall be furnished to the obligor. A designated official is authorized to approve a bond, a formal agreement to extension of liability of surety, a request for delivery of collateral security to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor, and a power of attorney executed on a form designated by DHS. All other matters relating to bonds, including the power of attorney form designated by DHS and a request for delivery of collateral security to other than the depositor or his or her approved attorney in fact, shall be forwarded for designated official approval.

(2) *Bond riders*—(i) *General.* Bond riders shall be prepared on a form designated by DHS and attached to the bond contract form designated by DHS. If a condition to be included in a bond is not on the appropriate bond rider form designated by DHS, a rider containing the condition shall be executed.

* * * * *

(c) *Cancellation and breach*—(1) *Public charge bonds.* A public charge bond posted for an alien will be cancelled when the alien dies, departs permanently from the United States, or is naturalized, provided the alien did not breach such bond by receiving either public cash assistance for income maintenance or long-term institutionalization at government expense prior to death, permanent departure, or naturalization. USCIS may cancel a public charge bond at any time after determining that the alien is not likely at any time to become a public charge. A bond may also be cancelled to allow substitution of another bond. A public charge bond will be cancelled by USCIS upon review following the fifth anniversary of the admission or adjustment of status of the alien, provided that the alien has requested cancellation on a form designated by DHS and USCIS finds that the alien did not receive either public cash assistance for income maintenance or long-term institutionalization at government expense prior to the fifth anniversary. If the form designated by DHS to request cancellation is not filed, the public charge bond will remain in effect until the form is filed and USCIS reviews the evidence supporting the form and renders a decision regarding the breach of the bond, or a decision to cancel the bond.

* * * * *

(e) *Breach of bond.* A bond is breached when there has been a substantial violation of the stipulated conditions. A final determination that a bond has been breached creates a claim in favor of the United States which may not be released or discharged by an immigration officer. The designated official having custody of the file containing the immigration bond executed on a form designated by DHS shall determine whether the bond shall be declared breached or cancelled, and shall notify the obligor on DHS-designated cancelled or breached immigration bonds forms of the decision, and, if declared breached, of the reasons therefor, and of the right to appeal in accordance with the provisions of this part.

* * * * *

Markwayne Mullin,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2026–16252 Filed 8–6–26; 4:15 pm]

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 106

[Docket No. USCBP–2024–0009; CBP Dec. No. 26–11]

RIN 1651–AB48

9–11 Response and Biometric Entry-Exit Fee for H–1B and L–1 Visas

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is amending the regulations concerning the 9–11 Response and Biometric Entry-Exit Fee for certain H–1B and L–1 Visas (9–11 Biometric Fee). The regulatory changes correct DHS's interpretation of statutory language to require that covered employers submit the 9–11 Biometric Fee for all extension of status petitions, regardless of whether the related fraud prevention and detection fee applies, which includes extension of status petitions that do not involve a change of employer. The 9–11 Biometric Fee continues to apply unchanged to petitions seeking an initial grant of status. The changes also help DHS comply with its congressional mandate to implement a biometric entry-exit system.

DATES: This rule is effective on September 9, 2026.

FOR FURTHER INFORMATION CONTACT: Larry Panetta, Office of Field Operations, U.S. Customs and Border Protection, by phone at 202–344–1253 or email at *LARRY.A.PANETTA@CBP.DHS.GOV*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Notice of Proposed Rulemaking

On June 6, 2024, the Department of Homeland Security (DHS) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (89 FR 48339) proposing to amend DHS regulations regarding the 9–11 Biometric Fee for certain H–1B and L–1 petitions. DHS received a total of 146 comments on the NPRM. Comments included support, suggestions for changes, and concerns. After review of the comments, through this final rule, DHS is adopting the proposed changes to its regulations to align with Congress's intent for the 9–11 Biometric Fee.

B. Statutory Authorization and History

1. Initial Supplemental H–1B and L–1 Fee

H–1B and L–1 visa classifications are temporary nonimmigrant worker visa classifications. H–1B and L–1 classifications [1] are authorized under sections 101(a)(15)(H)(i)(b) and (L), respectively, of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1101(a)(15)(H)(i)(b), (L)). H–1B status is a nonimmigrant classification for aliens to perform services in a specialty occupation. L–1 status allows companies to seek a temporary intracompany transfer of certain alien

[1] Visa classifications are often referred to using shorthand such as simply ''classification'' or ''status.'' E.g. ''H–1B classification'' or ''H–1B status.'' This shorthand is used throughout this document.

employees who perform in an executive or managerial capacity or have specialized knowledge.[2]

In 2010, Congress established a supplemental fee for certain employers petitioning for beneficiaries to obtain H–1B or L–1 status (2010 Supplemental Fee). *See* section 402 of the Act of August 13, 2010, Public Law 111–230, 124 Stat. 2485, 2487 (hereinafter Pub. L. 111–230) (8 U.S.C. 1101 note). The 2010 Supplemental Fee applied to employers that employ 50 or more total employees in the United States with more than 50 percent of the employees in the United States in H–1B or L–1 nonimmigrant status (covered employers). Sec. 402, Public Law 111–230. For these covered employers, the statute stated ''the filing fee and fraud prevention and detection fee [. . .] shall be increased by $2,000 [or $2,250]'' for H–1B or L–1 petitions, respectively. Sec. 402, Public Law 111–230.

The statutory language in Public Law 111–230 required covered employers to pay the 2010 Supplemental Fee at the time that a fraud detection and prevention fee (Fraud Fee) is collected. Sec. 402, Public Law 111–230. The Fraud Fee was established and set to $500 under separate statutory authority. *See* sec. 426(a) of the H–1B Visa Reform Act of 2004, Public Law 108–447, 118 Stat. 2809, 3357 (the 2004 H–1B Visa Reform Act); INA 214(c)(12)(A) (8 U.S.C. 1184(c)(12)(A)). Pursuant to section 426(b) of the 2004 H–1B Visa Reform Act, the Department of State, in collaboration with DHS and the Department of Labor, uses Fraud Fee collections to combat fraud in immigration processes. *See* INA 214(c)(12)(A) (8 U.S.C. 1184(c)(12)(A), *see also* INA 286(v)(2) (8 U.S.C. 1356(v)(2)). With limited exceptions, the statute requires employers to pay the Fraud Fee when petitioning for an initial grant of H–1B or L–1 nonimmigrant status or for change of employer petitions for beneficiaries already in H–1B or L–1 status. *See* INA 214(c)(12)(A) (8 U.S.C. 1184(c)(12)(A)).

DHS interpreted the statutory language of Public Law 111–230 to mean that the 2010 Supplemental Fee only applied to the filing fee and only to petitions where the Fraud Fee also applied, namely petitions for an initial grant of status or requesting a change of employer but not to extension petitions filed by the same employer on behalf of the same employee. Accordingly, DHS implemented regulations applying the 2010 Supplemental Fee to petitions subject to the Fraud Fee seeking initial grants of H–1B or L–1 status and change of employer petitions for beneficiaries already in H–1B or L–1 status. *See* Immigration Benefits Business Transformation, Increment I, 76 FR 53764, 53768, 53781 (August 29, 2011). The 2010 Supplemental Fee sunset on September 30, 2015, after an extension by Congress.[3]

2. 9–11 Response and Biometric Entry-Exit Fee

On December 18, 2015, Congress established the 9–11 Biometric Fee. *See* Consolidated Appropriations Act, 2016, Div. O, sec. 402(g), Public Law 114–113, 129 Stat. 2242, 3006 (hereinafter Pub. L. 114–113) (49 U.S.C. 40101 note).[4] Public Law 114–113 established the 9–11 Biometric Fee after the 2010 Supplemental Fee expired. The 9–11 Biometric Fee doubled the amount of the 2010 Supplemental Fee, providing ''the combined filing fee and fraud prevention and detection fee [. . .] shall be increased by $4,500 [or $4,000]''. *Id.*

The statutory language in Public Law 114–113 establishing the 9–11 Biometric Fee is similar to that of Public Law 111–230.[5] However, Public Law 114–113 has two important distinctions, beyond the increased fee amounts. First, Congress added the word ''combined,'' clarifying that the fee increase served as a single fee increase to the filing fee. Sec. 402(g), Public Law 114–113. Second, with respect to the types of petitions for which the fees must be submitted, Congress inserted the phrase ''including an application[6] for an extension of such status.'' *Id.* This addition clarified that the 9–11 Biometric Fee is required for both petitions seeking an initial grant of status and extension of status petitions.

At the time that the 9–11 Biometric Fee was established in 2015, DHS interpreted the new language in Public Law 114–113 consistent with its prior interpretation; that is, the 9–11 Biometric Fee only applies when the Fraud Fee also applies (namely, petitions seeking initial grants of H–1B or L–1 status, or petitions involving a change of employer for a beneficiary already in H–1B or L–1 status, including a change of employer petition that requests an extension of such status). Accordingly, DHS implemented regulations in a final rule published on October 24, 2016, that set forth its interpretation, as explained below. *See* U.S. Citizenship and Immigration Services Fee Schedule, 81 FR 73292 (Oct. 24, 2016) (hereinafter 2016 Fee Rule). *See* 81 FR 73292, 73331.

At the same time, Congress also established the 9–11 Response and Biometric Exit Account (9–11 Biometric Account), into which 50 percent of the funds from the 9–11 Biometric Fee collections are deposited, up to $1 billion. The other 50 percent of the 9–11 Biometric Fees are deposited into the general fund of the Treasury. *Id.* The funds in the 9–11 Biometric Account are available to the Secretary of DHS for implementing the congressionally mandated biometric entry-exit system to confirm the identity of aliens entering and exiting the United States.[7] As the

[2] For more information on H–1B nonimmigrant classification, see U.S. Citizenship and Immigration Services (USCIS), H–1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models, *https://www.uscis.gov/working-in-the-united-states/h-1b-specialty-occupations.* For more information on L–1 nonimmigrant classification, see USCIS, L–1A Intracompany Transferee Executive or Manager, *https://www.uscis.gov/working-in-the-united-states/temporary-workers/l-1a-intracompany-transferee-executive-or-manager;* and USCIS, L–1B Intracompany Transferee Specialized Knowledge, *https://www.uscis.gov/working-in-the-united-states/temporary-workers/l-1b-intracompany-transferee-specialized-knowledge.*

[3] *See* sec. 402, Public Law 111–230 (establishing the initial sunset date for the 2010 Supplemental Fee as September 30, 2014), as amended by sec. 302 of the James Zadroga 9/11 Health and Compensation Act of 2010, Public Law 111–347, 124 Stat. 3623, 3667 (extending the sunset date to September 30, 2015).

[4] The 9–11 Biometric Fee is a fee related to petitions for H–1B and L–1 classification and is discussed in those terms in this rulemaking. Although not all those seeking H–1B and L–1 classification are required to obtain a visa, the headings in the statute refer to temporary fee increases for H–1B and L–1 visas, and consequently the headings in the implementing regulations refer to fees for H–1B and L–1 visas. Accordingly, the subject heading of this document and the regulatory headings also refer to fees for H–1B and L–1 visas.

[5] *Compare* Public Law 111–230 (''the combined filing fee and fraud prevention and detection fee required to be submitted with an application for admission as a nonimmigrant . . . including an application for an extension of such status, shall be increased by $4,500 . . .'') *with* Public Law 114–113 (''the filing fee and fraud prevention and detection fee required to be submitted with an application for admission as a nonimmigrant . . . shall be increased by 2,250 . . .'').

[6] Section 402(g), Public Law 114–113 uses the terms ''application'' and ''applicant.'' DHS regulations in 8 CFR 106.2 use the terms ''petition'' and ''petitioner.'' As these terms have the same meaning for the purposes of this rulemaking, in this document we use these terms interchangeably.

[7] Numerous federal statutes require DHS to create an integrated, automated biometric entry and exit system that records the arrival and departure of aliens, compares the biometric data of aliens to verify their identity, and authenticates travel documents presented by such aliens through the comparison of biometrics. These include: section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–828, 110 Stat. 3009–546, 3009–558; section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106–215, 114 Stat. 337, 338; section 205 of the Visa Waiver Permanent Program Act of 2000, Public Law 106–396, 114 Stat. 1637, 1641; section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001

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DHS component responsible for controlling the border and monitoring the arrival and departure of U.S. citizens and aliens, U.S. Customs and Border Protection (CBP) implements biometric operations in the land, sea, and air environments.[8] Pursuant to congressional extension, the 9–11 Biometric Fee is currently set to expire on September 30, 2027.[9]

C. Prior DHS Rulemaking Addressing the 9–11 Biometric Fee

In the years following the 2016 Fee Rule, DHS monitored the collection of the 9–11 Biometric Fee and evaluated whether its interpretation of the language in Public Law 114–113 was correct. After careful consideration, on November 14, 2019, DHS proposed an interpretation expanding the circumstances in which the 9–11 Biometric Fee would apply, as well as proposing numerous other changes related to fees collected by DHS. U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 FR 62280, 62363 (Nov. 14, 2019) (hereinafter 2019 Fee NPRM). DHS received several comments on the 2019 Fee NPRM opposing the proposed 9–11 Biometric Fee.[10] After considering the comments, on August 3, 2020, DHS adopted the 9–11 Biometric Fee interpretation in a Final Rule that, among other changes, would require the additional fee for all H–1B or L–1 extension of status petitions filed by covered employers. *See* U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 FR 46788 (Aug. 3, 2020) (hereinafter 2020 Fee Rule). However, before the 2020 Fee Rule could go into effect, it was enjoined in its entirety during the course of litigation unrelated to the 9–11 Biometric Fee.[11]

II. Purpose of 9–11 Biometric Fee and Need for Rulemaking

A. Purpose of the 9–11 Biometric Fee for Critical Biometric Program Operations

In Public Law 114–113, Congress expressly intended for the 9–11 Biometric Fee to fund the biometric entry and exit programs it mandated earlier to improve security, combat visa and travel document fraud, and protect our country against terrorism. As noted above, numerous statutes require DHS to implement a biometric entry and exit program for all aliens entering and leaving the country. The biometric entry-exit program is ''an essential investment in efforts to protect the United States by preventing the entry of terrorists.'' Sec. 7208(a) of the IRTPA (8 U.S.C. 1365b(a)). DHS published a final rule on October 27, 2025, to fully implement facial recognition for biometric entry and exit of all aliens to and from the United States. *See* Collection of Biometric Data From Aliens Upon Entry to and Departure From the United States, 90 FR 48604 (Oct. 27, 2025) (hereinafter the Biometrics Final Rule). For more information on the need for a biometric entry-exit system, see the Biometrics Final Rule.

In 2015, Congress established the 9–11 Biometric Account for the purpose of funding the biometric entry-exit system mandated by Congress. Congress also implemented the 9–11 Biometric Fee, which replaced and doubled the expired 2010 Supplemental Fee, in order to fund the 9–11 Biometric Account, which is used to fund DHS's biometric entry-exit data system. DHS believes the interpretation of Public Law 114–113 adopted in this rulemaking is the correct interpretation of the statute to align the regulations with legislative intent and enable DHS to meet its congressional mandates.

CBP is the primary DHS component responsible for implementing an integrated, automated entry-exit system that matches the biographic data and biometric information of aliens entering and departing the United States at land, sea, and air points of entry. *See* sec. 411(c)(10) of the HSA (6 U.S.C. 211(c)(10)); sec. 7208 of the IRTPA (8 U.S.C. 1365b). Pursuant to CBP's mission to control the border and regulate the arrival and departure of both U.S. citizens and aliens, CBP has the authority to confirm the identity of all travelers and verify that the travelers are the authorized bearers of their travel documents. *See* sec. 411 of the HSA (6 U.S.C. 211); and 8 CFR 235.1. An integrated biometric entry-exit system has provided the most accurate way to verify an individual's identity. By using a biometric entry-exit system, CBP can improve security and more effectively combat various threats, including attempts by terrorists who use false travel documents to enter or exit the United States. Further, biometrically verifying that a person who presents a travel document is the true bearer of that document helps to prevent visa and immigration fraud, fraudulent use of legitimate travel documentation, and identify and prevent aliens attempting to remain in the United States beyond their authorized stay (overstays).

The funding that DHS receives from the 9–11 Biometric Account supports critical biometric entry-exit operations in the land, sea, and air entry environments.[12] Specifically, the 9–11 Biometric Account buttresses the development, operations, and maintenance of the Traveler Verification

(USA PATRIOT Act), Public Law 107–56, 115 Stat. 272, 353; section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act), Public Law 107–173, 116 Stat. 543, 552; section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, 118 Stat. 3638, 3817; section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Implementing Recommendations of the 9/11 Commission Act), Public Law 110–53, 121 Stat. 266, 338; and section 802 of the Trade Facilitation and Trade Enforcement Act of 2015, Public Law 114–125, 130 Stat. 122, 199 (6 U.S.C. 211(c)(10)).

[8] *See* sec. 411 of the Homeland Security Act of 2002, as amended by sec. 802 of the Trade Facilitation and Trade Enforcement Act of 2015, Public Law 114–125, 130 Stat. 122, 199 (HSA) (6 U.S.C. 211); secs. 215.8 and 235.1 of title 8 of the Code of Federal Regulations (8 CFR 215.8 and 235.1). *See also* INA 214, 215(a), 235(a), 262(a), 263(a), 264(c), 287(b) (8 U.S.C. 1184, 1185(a), 1225(a), 1302(a), 1303(a), 1304(c)), 1357(b)).

[9] *See* sec. 402(g), Public Law 114–113 (establishing the initial sunset date for the 9–11 Biometric Fee as September 30, 2025), as amended by sec. 30203(b) of the Bipartisan Budget Act of 2018, Public Law 115–123, 132 Stat. 64, 126 (extending this date to September 30, 2027).

[10] The comments were similar to the comments received on the NPRM that this rule finalizes. For additional information on the comments and DHS's responses, see the rule finalizing the 2019 Fee NPRM at 85 FR 46788.

[11] *See Immigrant Legal Res. Ctr.* v. *Wolf,* 491 F. Supp. 3d 520 (N.D. Cal. Sept. 29, 2020) (granting plaintiffs' motion to enjoin the 2020 Fee Rule in its entirety by finding plaintiffs met initial burden to show then-Acting Secretary of DHS Chad Wolf lacked authority to approve the 2020 Fee Rule and further that the 2020 Fee Rule violated procedural and substantive requirements under the Administrative Procedure Act in adopting certain asylum- and naturalization-related new fees, fee increases, and fee waiver reductions); *see also Nw. Immigrant Rts. Project* v. *U.S. Citizenship and Immigr. Servs.,* 496 F. Supp. 3d 31 (D.D.C. Oct. 8, 2020) (granting plaintiffs' motion for preliminary injunction challenging the fee increases, new fees, and fee waiver reductions adopted in the 2020 Fee Rule on similar grounds). Although the 2020 Fee Rule was enjoined and therefore DHS never changed its collection practices for the 9–11 Biometric Fee, the language in 8 CFR 106.2 was revised to reflect the changes adopted in the 2020 Fee Rule. Subsequently, DHS issued a final rule in 2024 reverting the language back to the pre-2020 Fee Rule language and noted that changes to the 9–11 Biometric Fee would be addressed in a separate rulemaking. *See* U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 89 FR 6194 (Jan. 31, 2024). 89 FR 6194.

[12] Section 402(g) of Public Law 114–113 provides that DHS may draw from the 9–11 Biometric Account to implement the biometric entry-exit data system as required by Congress. DHS directs these funds to CBP because CBP is the agency ultimately responsible for implementing the biometric entry-exit data system. *See* secs. 411(c)(10), (g)(3) of the HSA (6 U.S.C. 211(c)(10), (g)(3)); sec. 7208 of the IRTPA (8 U.S.C. 1365b).

Service (TVS).[13] TVS is the facial comparison matching service that serves as the backbone of CBP's biometric entry-exit program.[14] TVS effectively and efficiently matches passengers to the travel documents they present to CBP.[15] Maintaining TVS enables CBP to continue preserving the United States' crucial health, operational, and national security interests.[16]

DHS's biometric entry-exit data system also directly and positively affects the travel industry by enhancing consumer confidence in travel safety. Using biometric technology, air and sea partners can facilitate check-in, security, and boarding processes that historically involved long lines, heavy personal interaction, and frequent handling of travel documents. The implementation of biometric technology, namely facial comparison, in all travel environments encourages contactless travel that involves minimal physical contact, which is more efficient and increases the safety of travelers, CBP officers, and port personnel.

In addition to streamlining travel and enhancing consumer confidence, the use of facial biometric matching has also proven to be an effective tool in combatting the use of stolen and fraudulent travel and identity documents. Since the program's inception in 2018, CBP officers have successfully intercepted 87 impostors at U.S. airports and 2,158 imposters on arrival in the land pedestrian environment. Further, since June 2017 through October 28, 2025, DHS has confirmed over 516,601 overstays through the use of facial biometric matching at exit.[17]

DHS's current biometric entry-exit operations have proven successful in enhancing national security and public safety.[18] A lack of adequate funding poses a dire threat to DHS's mission, CBP officers, and public safety. Without the regulatory changes adopted here to the collection of the 9–11 Biometric Fee, DHS cannot maintain its current biometric entry operations or continue implementing other essential entry and exit programs. Failure to maintain or continue implementing DHS's biometric entry and exit operations increases risks to security vulnerabilities, interoperability and data management issues, cyber resilience in the event of a cyberattack from criminal hackers, system availability and reliability, and system scalability to meet the demands of travel partners. The 9–11 Biometric Fee is essential to funding these biometric entry-exit programs, and the regulations adopted in this rule directly support DHS's fulfilment of its congressional mandates.

B. Need for Rulemaking

DHS must implement the responsibilities that Congress has assigned to the agency. This rule corrects DHS' interpretation of the language in Public Law 114–113 to be consistent with the statutory text and congressional intent. Pursuant to the Supreme Court's holding in *Loper Bright Enters.* v. *Raimondo,* there is always a best reading of a statute, namely, '' 'the reading the court would have reached' if no agency were involved.'' 603 U.S. 369 (2024). Here, the best reading of the statute requires that the 9–11 Biometric Fee be paid for all extension of status petitions regardless of whether the Fraud Fee is applicable.

As discussed above, Public Law 114–113 established the 9–11 Biometric Fee by replacing the 2010 Supplemental Fee and doubling the amount to $4,000 for H–1B petitions and $4,500 for L–1 petitions. Congress also added new phrasing in two pertinent places: ''. . . the *combined* filing fee and [Fraud Fee] required to be submitted with an application for admission [as an H–1B or L–1 nonimmigrant], *including an application for an extension of such status,* shall be increased.'' Sec. 402(g), Public Law 114–113 (emphasis added).

In 2016, DHS interpreted the 9–11 Biometric Fee to apply only when the Fraud Fee also applied instead of to all extension of status petitions. 81 FR 73292. The construction of the statutory language in Public Law 114–113 that DHS adopted in 2016 was not the best one.

The best interpretation of that statute is that the 9–11 Biometric Fee applies to all extension of status petitions even when the Fraud Fee is not applicable. Under this interpretation of Public Law 114–113, the language ''including an application for an extension of such status'' is a substantive amendment, and the insertion of the word ''combined'' is a clarifying one. It is clear that Congress added the reference to extension of status so that the 9–11 Biometric Fee would be collected for all extension of status petitions, not just those where a change of employer is also requested. Under this interpretation, the insertion of the word ''combined'' can be viewed as a clarifying edit that the increase to the fee is applied only once per petition, not once for the filing fee and once for the Fraud Fee such that it might apply twice to some petitions. When the Fraud Fee does not apply (*i.e.* an extension of status petition filed by the same employer for the same employee), the ''combined filing fee and [Fraud Fee]'' provided in Public Law 114–113 is simply the filing fee plus $0, such that covered employers would pay the filing fee + $0 for the Fraud Fee + the applicable 9–11 Biometric Fee (*i.e.* either $4,000 or $4,500). This interpretation gives meaning to all of Congress's alterations to the earlier statute.

DHS initially decided to maintain the interpretation it had applied to the 2010 Supplemental Fees to the 9–11 Biometric Fee, 81 FR 73282. However, after due consideration, DHS, through this rule, is interpreting Public Law 114–113 consistent with the best reading of the statute. In other words, the 9–11 Biometric Fee should apply to all H–1B or L–1 petitions filed by covered employers seeking initial classification of a beneficiary as an H–1B or L–1 nonimmigrant or an extension of status for those already in such status, irrespective of whether the extension of status request is for a change of covered employers or for the purpose of remaining employed with the original covered employer.

This interpretation of Public Law 114–113 aligns with Congress's objective to require an additional fee for covered employers, who rely on H–1B and L–1 nonimmigrants for 50 percent or more of their workforce. Without this change, covered employers could avoid paying the 9–11 Biometric Fee while employing a substantial number of H–1B and L–1 nonimmigrants as long as the beneficiary remains employed by the same covered employer.[19] The

[13] *See* CBP, DHS/CBP/PIA–056, Privacy Impact Assessment for the Traveler Verification Service 1 (Nov. 14, 2018), *https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp056-tvs-february2021.pdf.*

[14] *See id.* at 4.

[15] *See id.* at 6; CBP, Traveler Verification Service for Simplified Travel (2018), *https://www.cbp.gov/sites/default/files/assets/documents/2018-Aug/Traveler_Verification_Service_For_Simplified_Travel3.pdf.*

[16] *See* CBP, DHS/CBP/PIA–056, Privacy Impact Assessment for the Traveler Verification Service 16 (Nov. 14, 2018), *https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp056-tvs-february2021.pdf.*

[17] Imposter and overstay numbers are tracked internally by CBP and not published publicly. This information is based on information provided by CBP's Office of Field Operations. Partial overstay numbers are reported in DHS's Entry/Exit Overstay Reports, available at *https://www.dhs.gov/publication/entryexit-overstay-report.*

[18] For more information on CBP's biometrics program, please visit CBP's website at *https://biometrics.cbp.gov.*

[19] Individual L–1 petitions (Form I–129S) filed on the basis of a previously approved ''blanket L'' petition are currently subject to the Fraud Fee and, by extension, the 9–11 Biometric Fee. U.S. Citizenship and Immigration Services (USCIS) already considers this a change of employer, even if the petitioner is covered under the same ''blanket L'' approval as the previous petitioner. Therefore,

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ability of these petitioners to avoid paying the 9–11 Biometric Fee entirely in some cases is against the congressional intent in establishing these fees. From fiscal year 2018 to fiscal year 2025, 27 percent of all H–1B petitions from covered employers (those with 50 or more employees in the United States and 50 percent of employees in H–1B or L–1 status) were subject to the 9–11 Biometric Fee.[20] Had this rule and the interpretation adopted therein been in effect for that same time period, the percentage of these H–1B petitions that would have been subject to the 9–11 Biometric Fee would have been 75 percent of these H–1B petitions.[21]

Significantly, a delay in this additional funding would continue to jeopardize CBP's ability to meet its congressional mandate to enhance national security by deploying a fully integrated biometric entry-exit data system. Without additional funding, CBP would be unable to maintain its current biometric entry-exit operations, as well as ensure that TVS continues to be available to CBP and external stakeholders. CBP would also be unable to expand biometric confirmation to additional sea and land modalities at points of entry to the United States and fully implement a comprehensive biometric exit system at all land, sea, and air exits.[22] Such a result would be contrary to the statutory scheme established by Congress, further strengthening CBP's determination that the interpretation adopted by this rule is the best statutory interpretation. *See Davis* v. *Michigan Dept. of Treasury,* 489 U.S.C. 803 (1989) (''It is a fundamental canon of statutory construction that the words of a statute must be read in their context with a view to their place in the overall statutory scheme.'').

Indeed, actual collections have fallen short of both anticipated collections and what is necessary to maintain and expand biometric operations. In December 2015, the Congressional Budget Office (CBO) published a report on the fee provisions in Public Law 114–113 and estimated annual revenues of $420 million per year (except for $380 million in the first year of FY 2016) from the 9–11 Biometric Fee through its lifespan.[23] Pursuant to the statute, 50 percent of those annual total collections—or an estimated $210 million per year—would be deposited into the 9–11 Biometric Account and made available to DHS and CBP, up to $1 billion. Section 402(g), Public Law 114–113. However, actual collections pre-COVID–19 (and beyond) repeatedly fell well below CBO's estimates: $158 million in FY 2016, $125 million in FY 2017, $119.1 million in FY 2018, $118.3 million in FY 2019, $71.9 million in FY 2020, $56.7 million in FY 2021, $52 million in FY 2022, $26 million in FY 2023, $35.1 million in FY 2024, and $25.6 million in FY 2025.[24] Notwithstanding the effect of COVID–19 on collections during FYs 2020–21,[25] DHS believes that collections have fallen short of CBO projections primarily because the previous statutory interpretation fails to correctly apply the 9–11 Biometric Fee to all extension petitions regardless of whether there is a change of employer. Therefore, DHS is now amending the regulations to align those regulations with the best reading of the statutory language and congressional intent for the 9–11 Biometric Fee and the biometrics program operations.

III. Discussion of Comments Submitted in Response to the NPRM Proposing Changes to Regulations Regarding the 9–11 Response and Biometric Entry-Exit Fee for H–1B and L–1 Visas

A. Overview

In response to the NPRM, DHS received 146 comments during the 30-day public comment period. Commenters consisted of members of the public, including H–1B and L–1 nonimmigrants, as well as policy interest groups. DHS reviewed all of the public comments received in response to the rulemaking and is addressing responsive comments in this final rule. DHS's responses are grouped by subject area, with a focus on the most common issues and suggestions raised by commenters. Some commenters expressed support for the rule with some supporters offering suggestions for improvement. The majority of commenters expressed general opposition to the rule, most frequently mentioning that the rule will discourage companies from hiring H–1B and L–1 nonimmigrants. Commenters stated that companies' reduced willingness to hire H–1B and L–1 nonimmigrants is unfair to the nonimmigrant workers and will also negatively affect the United States' ability to attract talent from abroad and negatively affect the U.S. economy as a result. Many commenters made reference to ''immigrants'' affected by this rule, but the H–1B and L–1 visa classifications are nonimmigrant classifications. *See* INA 101(a)(15), 8 U.S.C. 1101(a)(15). DHS has addressed these comments with regard to H–1B and L–1 nonimmigrants despite the inaccurate descriptions using the word ''immigrants.''

B. Discussion of Comments

1. Comments Expressing General Support

Several commenters generally supported the proposed rule, providing various rationales or supporting data.

Comments: One commenter stated this rule will increase the quality of the non-immigrant workers needed to aid the economy and create entrepreneurial and employment opportunities in the United States. The commenter stated that this rule will restrict the supply of labor to the available labor market. This commenter compared the elevated fee to a quota-based system for permanent residency saying this would restrict the inflow of low-skilled and low-quality labor workforce, which the commenter supports.

Response: DHS appreciates the support for this rule. In general, an H–1B employer is not required to recruit a U.S. worker[26] for a position before the employer can hire an H–1B worker for that position, unless it is H–1B dependent or a previous willful violator

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the changes do not alter current USCIS practice in this regard.

[20] Data provided by USCIS subject matter experts on Aug. 21, 2025.

[21] Calculations based on data provided by USCIS subject matter experts on Aug. 21, 2025. Due to limitations in available data, similar calculations are not available for L–1 petitions.

[22] Since 2004, DHS has worked to develop and implement a comprehensive biometric entry and exit data system as required by section 7208 of the IRTPA. *See, e.g.,* Implementation of the United States Visitor and Immigrant Status Indicator Technology Program (''US–VISIT''); Biometric Requirements, 69 FR 468 (Jan. 5, 2004). Additional resources discussing DHS's plans to enhance biometric operations are DHS's annual Entry/Exit Overstay Reports, available at *https://www.dhs.gov/publication/entryexit-overstay-report,* and DHS's rule published on October 23, 2025, regarding biometric collection from aliens upon entry and exit to and from the United States (90 FR 48604).

[23] *See* Congressional Budget Office, Cost Estimate on H.R. 2029, Amendment #1 (2016 Omnibus) Table 3 (Dec. 16, 2015), *https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr2029amendment1divisionsa.pdf.*

[24] FY 2018–2021 data is based on data provided by USCIS via email between 11/30/2021 and 12/21/2021. For additional information, see tables 1 and 3 below.

[25] FY 2018–2021 data is based on data provided by USCIS via email between 11/30/2021 and 12/21/2021. The collection totals for FYs 2020 and 2021 were $72 million and $57 million, respectively. DHS recognizes the effect COVID–19 had on collection totals during this time frame but emphasizes that collection totals fell short of estimated collections prior to the COVID–19 pandemic.

[26] A U.S. worker means a U.S. citizen or national or an alien who is lawfully admitted for permanent residence in the United States, is admitted as a refugee under section 207 of the INA, is granted asylum under section 208 of the INA, or is an immigrant otherwise authorized (by the INA or by DHS) to be employed in the United States. 20 CFR 355.715.

of H–1B requirements and the alien beneficiary is not an exempt H–1B worker. Further information can be found on the Department of Labor's website at *https://www.dol.gov/agencies/whd/fact-sheets/62o-h1b-recruitment.* In addition, U.S. Citizenship and Immigration Services (USCIS) reviews, evaluates, and determines eligibility for the H–1B and L–1 visa classifications based on petitions and accompanying documents received. The commenter mentions the F–1 student population as well as permanent residency numerical limitations, which are both outside the scope of this rule.

Comments: One commenter stated that this regulation is the best decision that DHS/CBP could make; that big companies should pay their fair share; if an H–1B employee is talented, a company would be willing to pay; the U.S. government needs to take care of its citizens first that are getting replaced by cheap H–1B labor and fraud.

Response: DHS appreciates the support for this rule. Employers seeking to hire H–1B nonimmigrants as workers in specialty occupations need to submit a Labor Condition Application (LCA) to the Department of Labor (DOL). By completing and submitting the LCA, and by signing the LCA, the employer makes certain representations and agrees to several attestations regarding its responsibilities, including the wages, working conditions, and benefits to be provided to the H–1B nonimmigrants. These attestations are specifically identified and incorporated by reference in the LCA. While there is no general requirement that H–1B employers recruit U.S. workers, the LCA contains additional attestations for a subset of H–1B employers, namely H–1B-dependent employers and employers found to have willfully violated the H–1B program requirements. These additional attestations impose certain obligations to recruit U.S. workers, to offer the job to U.S. applicants who are equally or better qualified than the H–1B nonimmigrant(s) sought for the job, and to avoid the displacement of U.S. workers (either in the employer's workforce, or in the workforce of a second employer with whom the H–1B nonimmigrant(s) is placed, where there are indicia of employment with a second employer). These additional attestations are specifically identified and incorporated by reference in the LCA. *See* 20 CFR 655.705(c)(1). The certified LCA gets submitted to USCIS with the H–1B petition, along with documentation establishing the petitioner and beneficiary's eligibility. USCIS reviews, evaluates, and determines eligibility under the H–1B and L–1 visa classifications based on petitions and accompanying documents received.

Comments: Some commenters stated that an increase of the fee would go a long way towards curbing fraud and would help reduce 'missteps' currently taken by agencies for petitions. Some commenters expressed their belief that the fee increase may reduce overall visa fraud within the visa system and may be a positive step for employers to consider hiring U.S. citizens for the job opportunities. One commenter stated the increased fee may reduce large company visa abuse and increase American talent pool.

Response: DHS appreciates the support for this rule. With respect to commenters concerns of fraud in the visa system, a U.S. employer intending to hire an H–1B nonimmigrant temporary worker, has to complete a Labor Condition Application (LCA) to the Department of Labor (DOL). As indicated in the prior response, the LCA requires an employer to attest to meeting certain obligations related to wages, working conditions, and benefits to be provided to H–1B workers, and in certain circumstances includes additional attestations for H–1B dependent employers related to the recruitment, hiring, and non-displacement of U.S. workers. The L–1 nonimmigrant visa classification enables a U.S. employer that is part of an international organization to temporarily transfer certain employees from one of its related foreign offices to locations in the United States. The employee has to meet certain employment criteria within the company and can only be transferred based on their managerial or executive experience or specialized knowledge. The comments were not specific on how this rule might reduce fraud or visa abuse, so DHS cannot respond specifically to those claims here. Additionally, fraud reduction is outside the scope of this rulemaking. However, as DHS notes in other comment responses, DHS agrees that certain additional positive effects may result from this rulemaking.

Comments: One commenter agreed with the fee increase as it will help deter unscrupulous businesses, namely information technology (IT) outsourcing firms, from ''unfairly stockpiling'' H–1B workers. The commenter stated that more than half of the top 30 H–1B employers are IT outsourcing firms that have made a business out of 'leasing' their H–1B workers as contract workers to Fortune 500 American companies and then profiting on the wage arbitrage. The commenter stated that Fortune 500 American companies financially benefit from contracting contingent workers who displace the jobs of existing American IT professionals.

Response: DHS appreciates the support for this rule and agrees that the rule will enhance the employment petition process. Effects such as reducing fraud, including 'leasing' H–1B employees to other companies as well as 'unfairly stockpiling H–1B workers' are outside the scope of this rulemaking, however, DHS agrees that other positive effects may result from this rulemaking. More information on USCIS's work to combat fraud and abuse can be found at: *https://www.uscis.gov/scams-fraud-and-misconduct/report-fraud/combating-fraud-and-abuse-in-the-h-1b-visa-program.*

2. Comments Expressing General Support With Recommendations (Specific Recommendations Associated With These Comments Are Broken out in Below Sections)

Comment: One commenter stated that additional fees should be imposed on visas to enable credits for Americans and said the fee increase is a welcome change to reduce the substitution of American workers by the overseas immigrant population. Some commenters recommended charging even higher fees, with one commenter specifying that the fee should be ''$400K/$4M/$10M'' for H–1B and L–1 visa applicants so that all such applicants would ''get the message that they can't survive and will go back to their country.''

Response: The 9–11 Biometric Fees are set by Congress through Public Law 114–113, as discussed in section I.B. of this final rule. The commenters' suggestions to impose higher or additional fees are beyond the scope of this rulemaking. The regulatory changes in this rule correct DHS' prior interpretation of statutory language in Public Law 114–113, to require that covered employers submit the 9–11 Biometric Fee for all extension of status petitions, regardless of whether a Fraud Fee applies, so as to include extension of status petitions that do not involve a change of employer. The 9–11 Biometric Fee continues to apply unchanged to petitions seeking an initial grant of status. The changes also help DHS comply with its congressional mandate to implement a biometric entry-exit data system.

Comments: Some commenters stated that the extension fees should be increased to the limit. The commenters also suggested that mandatory site visits four times a year should be implemented with a $5,000 up front fee. One commenter stated that other countries/locations such as Canada, the UK, Australia, New Zealand and Europe are ''shut down'' for ''temp and asylum visas for fake people'' and asked why the United States is not doing anything to ''protect its own citizens.'' One commenter stated the proposed increase is low and insulting for skilled workers and should be increased to 10% of the base salary. Some commenters suggested a moderate fee increase to attract and retain qualified aliens. Additionally, one commenter stated that only U.S. citizens should be permitted to comment on rulemaking such as this one.

Response: DHS appreciates the support for this rule. The 9–11 Biometric fees are set by statute and therefore DHS cannot raise the fees higher than the statutorily set fees. (*See* Public Law 114–113.) Site visits are outside the scope of this rulemaking. However, USCIS does perform some site visits, and more information can be found at *https://www.uscis.gov/scams-fraud-and-misconduct/report-fraud/combating-fraud-and-abuse-in-the-h-1b-visa-program.* The NPRM is a federal rulemaking governed by the Administrative Procedure Act (APA) (5 U.S.C. 551–559). As such, commenting on the NPRM is open to the public and not limited by residency. Comments on NPRMs are open to the public and anyone can submit a comment.

Comment: Several commenters stated this rule should be passed with some changes. These commenters suggested charging $6,000 for each new H–1B extension as well as $4,000 biometric fees for every H–1B extension. Likewise, the commenters suggested $8,000 for each new L–1 visa extension and $4,000 biometric fees for every L–1 extension. One commenter said that with increased fees the ''cheap labor problem will be rectified.'' Several commenters suggested that a minimum salary for H–1B and L–1 visas be set at $150,000. One commenter said that there is no threat of jobs being outsourced since what can be outsourced is already being outsourced. This commenter also said there should not be the 50 person minimum employees per company before this rule applies.

Response: DHS appreciates the support for this rule. The fees and the other criteria for charging these fees in this rule were set by Congress in Public Law 114–113. The fee amounts and company size are clearly stated in the statute. Minimum salary requirements for H–1B and L–1 visas, as well as comments about outsourcing, are beyond the scope of this rulemaking.

3. Comments Expressing Opposition by Category

a. Comments Expressing Opposition Due to Effect on Employers

Comments: Some commenters stated that this proposal exacerbates the financial strain on employers and employees. The commenters stated that the potential negative effects include employer reluctance to hire H–1B and L–1 individuals. Some commenters stated this rule will further burden taxpaying companies. Some commenters stated that the proposed fee will affect employers sponsoring H–1B and L–1 petitions; the extension filing is tedious for lawyers and paying more will not make the United States more competitive.

Response: DHS understands that this rule will affect certain employers in certain situations. Specifically, this rule will require covered employers to submit the 9–11 Biometric Fee for all extension of status petitions, regardless of whether the related Fraud Fee applies, which includes extension of status petitions that do not involve a change of employer. However, as discussed in section III.A. of the NPRM and section I.B. of this rule, Congress established the 9–11 Biometric Fee to fund the biometrics entry and exit programs Congress mandated in the IRTPA. Sec. 402(g), Public Law 114–113. The interpretation of Public Law 114–113 established in this rulemaking aligns the regulations with the statutory text, legislative intent, and enables DHS to meet its congressional mandate for a biometrics entry and exit program.

Comments: One commenter stated that the broadened scope of the fee application adds layers of complexity and uncertainty for employers as well as additional compliance costs due to administrative and legal costs to ensure proper submission for all fees.

Response: DHS understands that employers may need to reconfirm whether payment of the 9–11 Biometric Fee is necessary for their petition. However, DHS believes this will take a negligible amount of time as fee requirements are readily available on the USCIS website at *https://www.uscis.gov/forms/all-forms/h-and-l-filing-fees-for-form-i-129-petition-for-a-nonimmigrant-worker* or *https://www.uscis.gov/g-1055.* Furthermore, DHS notes that this rule is necessary in order for DHS to comply with its congressionally mandated biometric entry and exit program.

Comment: One commenter stated that the rule is self-defeating and burdensome for American entrepreneurs. The fee increase would require an additional average of $20,000 per employee for an applicant who is already a beneficiary of an immigrant petition due to the 5–15 years priority date wait. The commenter stated that a business cannot easily replace that employee even if a more talented candidate is found: the employee has many years of experience and works efficiently in a team that a new candidate will not have. According to the commenter, the increase would deter many billion/trillion-dollar corporations from hiring H–1B employees which will then decrease the revenue generated by USCIS and CBP. Consequently, H–1B and L–1 programs would slowly shrink, as would the agencies processing the petitions, resulting in a reduction in workforce in CBP, DHS, and USCIS.

Response: DHS disagrees with the commenter's assertion that the rule will deter many billion/trillion-dollar corporations from hiring H–1B employees. The 9–11 Biometric Fee is only charged to covered employers, which by statute are those employers that employ 50 or more total employees in the United States with more than 50 percent of the employees in the United States in H–1B or L–1 nonimmigrant status. A petitioner is not required to pay the 9–11 Biometric Fee if they are not a covered employer. Those companies that are covered employers, as the petitioners, will determine for whom they will file a petition for nonimmigrant classification based on internal company policies and priorities. DHS does not agree that this rule will deter companies from hiring H–1B employees as the demand for H–1B visas has exceeded the annual availability of such visas for more than a decade.[27] H–1B is a nonimmigrant classification that applies to aliens who seek to perform services in a specialty occupation and is subject to an annual numerical limit (cap). *See* INA 101(a)(H)(i)(b) (8 U.S.C. 1101(a)(H)(i)(b)) and 214(g)(1)(A) (8 U.S.C. 1184(g)(1)(A)). Information regarding the H–1B petition process and cap is available *https://www.uscis.gov/working-in-the-united-states/h-1b-specialty-occupations.* DHS also does not agree that this rule will have reduce revenues generated by USCIS and CBP, nor create a reduction in the workforce within DHS.

The 9–11 Biometric Fee provides funding for the biometric entry-exit

[27] *See* Table 1, *Fiscal Year 2025: H–1B Petitions, Annual Report to Congress, https://www.uscis.gov/sites/default/files/document/legal-docs/fy25_h1b_petitions_021126_v1.0.pdf,* showing that on average USCIS receives approximately 400,000 H–1B petitions annually.

program. The 9–11 Biometric Fee was instituted by Congress to financially support and improve the biometric entry-exit data systems to increase and enhance national security. Enhanced national security is a vital part of promoting legal immigration. The biometric entry-exit program verifies the identity of individuals applying for admission to the United States.

Priority dates for immigrant petitions are outside the scope of this rulemaking. CBP notes that this rule does not change either the number of people waiting or the time they would wait for an immigrant visa, including extension requests for nonimmigrant visas, are expected to remain the same. The costs for extension of status requests are discussed fully in section IV of this rulemaking.[28] For reference, priority dates are updated by USCIS on its public facing website *https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin.*

Comments: Some commenters stated that an increased filing fee is not good for H–1B workers and will hurt businesses (especially small and medium sized) and jobs in the United States. One commenter stated that the rule will have an adverse effect on the beneficiary because small businesses would not be financially strong enough to sponsor high fees; employers might look for alternate employees who are citizens or Green Card holders. One commenter stated this rule is targeting immigrants who are just as skilled as any American, and said jobs should go to the most talented qualified people.

Some commenters stated that the increase is burdensome, the fee is disproportionately applied on employers and beneficiaries already contributing substantially to the U.S. economy, will negatively affect how immigrants stay in the country and get jobs and will further harm many students that are supported. The commenters stated that companies will have no other option than to outsource to other countries. One commenter stated the fee adversely affects small and midsize companies seeking to hire skilled H–1B holders and recommended amending the rule to encompass large cap companies and exclude start up and midsize companies.

Response: DHS understands the concern for businesses and nonimmigrant workers. As noted in section V.B. of the NPRM and section V.B of this final rule, this rule may affect only a maximum of 16 percent of small entities in the United States that file H–1B or L–1 petitions will be affected by this rule. DHS also disagrees with the commenters' assertions that the final rule will have broadly applicable adverse effects on U.S. employers or their employees. The 9–11 Biometric Fee is only charged to covered employers, which by statute are those employers that employ 50 or more total employees in the United States with more than 50 percent of the employees in the United States in H–1B or L–1 nonimmigrant status. A petitioner is not required to pay the 9–11 Biometric Fee if they are not a covered employer. Therefore, DHS believes the effects on nonimmigrants who work for or wish to work for small businesses are minimal. While DHS recognizes that covered employers will be affected by the final rule because they might be required to pay the 9–11 Biometric Fee more often than under the prior rules, such impacts are consistent with the best interpretation of the statute and congressional intent. Further, DHS does not believe U.S. companies will outsource their business based on this rule.

Further, regarding some comments suggesting that jobs should go to the most qualified applicant regardless of citizenship, as noted above, H–1B dependent employers have certain obligations to recruit U.S. workers, to offer the job to U.S. applicants who are equally or better qualified than the H–1B nonimmigrant(s) sought for the job, and to avoid the displacement of U.S. workers (either in the employer's workforce, or in the workforce of a second employer with whom the H–1B nonimmigrant(s) is placed, where there are indicia of employment with a second employer).

The L–1 nonimmigrant classification enables a U.S. employer to transfer a professional employee from one of its affiliated foreign offices to one of its offices in the United States for a maximum initial stay of three years. The L–1 classification also enables a foreign company that does not yet have an affiliated U.S. office to send a specialized knowledge employee or executive/manager to the United States to help establish a U.S. office. Qualified employees entering the United States to establish a new office will be allowed a maximum initial stay of one year.

b. Comments Expressing Opposition Due to Effect on Visa Holders

Comments: One commenter stated that this proposal exacerbates financial strain on employees through employee displacement when employers opt not to bear the additional cost to hire them. Some commenters stated that this fee increase is unfair to H–1B visa holders, and the fee is too high. One commenter stated that the fee is too high which may compel employers to lay off or hesitate hiring visa-holding employees and if USCIS is going to increase this fee then longer visa terms and significant improvements to streamline the process must be considered. One commenter stated that if USCIS is charging these fees then, they may have to approve the visa for a long term such as three years or more and approval timelines will have to drastically improve.

Response: DHS does not agree with these comments. This rule does include an additional category of petitions subject to the 9–11 Biometric Fee (namely, extensions filed by the H–1B worker's current employer), however, DHS does not agree that the overall fee is too high as it is the fee amount mandated by statute. (*See* Pub. L. 114–113.) Additionally, while some employers will have to pay additional fees, DHS does not agree that the additional cost to certain employers can outweigh the congressional mandate to fund a biometric entry and exit program. Regarding the suggestion that USCIS should approve visa petitions for a long term such as three years or more, DHS notes that creating longer petition validity periods or otherwise streamlining the visa petition process is outside the scope of this rulemaking.

Comments: Some commenters stated the fee is to fund the biometric entry-exit program until 2027 and questioned why this visa category must pay for the biometrics program.

Response: Congress determined the nonimmigrant visa classifications that are mandated to pay the 9–11 Biometric Fee, therefore DHS does not have authority to alter the nonimmigrant classifications subject to the fees. The 9–11 Biometric Fee was instituted by Congress to financially support and improve the biometric entry-exit data systems to increase and enhance national security.[29] Enhanced national security is a vital part of promoting legal immigration. Biometrically verifying that a person who presents a travel document is the true bearer of that document helps prevent visa and immigration fraud and the fraudulent use of legitimate travel documentation.

[28] For additional information, please see tables 2 and 3 below.

[29] There are other sources of funding for biometrics programs. The 9–11 Biometric Fee at issue here is only one source of such funding. Any other sources of funding for biometrics programs are outside the scope of this rulemaking, which concerns only the 9–11 Biometric Fee.

Comments: Some commenters stated that companies are already laying off workers and not hiring H–1B visa holders, and this rule will add more burden to companies making companies even more likely to lay off visa holders and less likely to hire H–1B visa holders. Some commenters stated that this would force people on visas to move out of the United States and cause fewer people to apply for visas. Some commenters suggested DHS fix other immigration processes and then try to increase fees. Some commenters stated this law gives employers more power and freedom to discriminate against immigrants. Some commenters stated that H–1B work visa holders are the lifeline to the U.S. economy and increasing the fee is unnecessary and does not help to solve America's pressing issues.

Response: DHS disagrees with the commenters' assertions that companies will be less likely to hire H–1B nonimmigrants or to lay off H–1B nonimmigrants as a result of this final rule. The 9–11 Biometric Fee is only charged to covered employers, which by statute are those employers that employ 50 or more total employees in the United States with more than 50 percent of the employees in the United States in H–1B or L–1 nonimmigrant status. A petitioner is not required to pay the 9–11 Biometric Fee if they are not a covered employer. While DHS recognizes that covered employers will be affected by the final rule because they might be required to pay the 9–11 Biometric Fee more often than under the prior rules, such impacts are consistent with the best interpretation of the statute and congressional intent.

Additionally, the cost added to the H–1B petition is small in comparison to the wages, relocation costs, and other required fees associated with H–1B petitions. The demand for new H–1B visas exceeds the number available each year. This indicates that there remains a shortage of H–1B workers, so the total number of aliens hired with H–1B status annually is likely to remain unchanged by this rule due to the excess demand.

DHS also does not agree that this rule will give employers freedom to discriminate against immigrants since H–1B dependent employers must look for a U.S. worker before hiring an H–1B visa holder anyway. The H–1B visa is a nonimmigrant classification and applies to people who wish to perform services in a specialty occupation. It has an annual numerical limit (cap) and generally cannot go beyond six (6) years. USCIS reviews, evaluates, and determines eligibility under the H–1B nonimmigrant classification based on petitions and supporting documents received. One of the requirements for the employer petitioning for a foreign worker is a certified Labor Condition Application (LCA) that has to be approved by the Department of Labor (DOL). More information can be found under *https://flag.dol.gov/programs/LCA.*

Comment: One commenter stated that this law is hurting taxpayers who have lived in the states for over a decade. One commenter stated this rule is against the free spirit of America, and ''corner[s] immigrants and limit[s] their rights.''

Response: DHS is not sure which taxpayers the commenter was referencing that would be hurt by this rule, though DHS assumes the commenter meant H–1B and L–1 taxpaying individuals. DHS does not believe this rule hurts any taxpaying individuals. Some taxpaying companies will be affected by the fees pursuant to this rule, but these fees were implemented by Congress to fund the biometric entry-exit program and therefore DHS believes the benefits of the rule far outweigh the costs. DHS is also unsure what the commenter meant in stating that the rule is ''against the free spirit of America'' or that the rule ''corners immigrants and limits their rights.'' This rule, as noted throughout this document, addresses fees paid by certain companies that hire H–1B and L–1 nonimmigrants. This rule does not limit the rights of those nonimmigrants.

Comments: Some commenters stated that these fees could be forced onto the employees themselves instead of employers paying these fees because employers may offset the increased cost by reducing compensation packages.

Response: Regarding commenters' claims that employers may offset the costs of this rulemaking by reducing compensation packages, individual compensation packages are outside the scope of this rulemaking. However, H–1B employers are required to pay each H–1B worker the greater of the prevailing wage for the occupational classification in the area of intended employment or the actual wage paid by the employer to other employees with similar experience and qualifications for the specific position. In addition, H–1B employers are generally prohibited from reducing an H–1B worker's wages or compensation package to recoup business expenses, such as any required petition-related filing fees.

Comment: One commenter stated that this is a great way to ''kill legal immigration'' and run out of social security benefits faster.

Response: DHS disagrees that this rule will have a negative effect on legal immigration and social security benefits. The biometric fees for H–1B and L–1 nonimmigrant classifications are part of the 9–11 Response and Biometric Entry-Exit Fee which was established by Public Law 114–113 after the 2010 Supplemental Fee expired. This fee allows the continued success of the congressionally mandated biometric program and ensures national security. Enhanced national security is a vital part of promoting legal immigration. These biometric fees are paid when filing certain H–1B and L–1 petitions and do not impact any social security payroll taxes employers are required to withhold.

Comments comparing presidential administrations are outside the scope of this rulemaking.

Comments: Some commenters stated that it is unfair to students who get better job opportunities in the United States compared to other countries; companies will be biased against F–1 students and may refuse to hire them which will create a hostile environment in a strained economy. Some commenters noted it would restrict movement of H–1B holders and keep them from moving to a better job.

Response: As discussed in other comment responses, DHS disagrees with the commenters' assertions that the final rule will have broadly applicable adverse effects on U.S. employers, H–1B nonimmigrants, or F–1 nonimmigrants. Compensation packages are outside the scope of this rulemaking. However, DHS notes again that H–1B employers are required to pay each H–1B worker the greater of the prevailing wage for the occupational classification in the area of intended employment or the actual wage paid by the employer to other employees with similar experience and qualifications for the specific position. The H–1B nonimmigrant classification applies to people who wish to perform services in a specialty occupation and has an annual numerical limit (cap). USCIS reviews, evaluates, and determines eligibility under the H–1B nonimmigrant classification based on petitions and supporting documents received. The F–1 nonimmigrant visa classification applies to foreign citizens wanting to study full-time in the United States; the F–1 visa category requires certain criteria to be met in order to be eligible. Further information of the F–1 nonimmigrant classification can be found at *https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/students-and-employment.* DHS does not think that this rule will affect F–1 status and the employability of persons with F–1 status.

Comment: One commenter said that the ''extension fees'' already ''exceed $10,000'' and that adding another $4,000 exacerbates the financial strain on legal immigrants, many of whom have been waiting for decades in the Green Card queue. This hinders immigrants' ability to contribute to society. The commenter added that [the U.S. government] should address broader issues within the immigration system and that comprehensive reform is needed to streamline processes, reduce wait times, and create a fairer system.

Response: DHS does not agree with the mentioned extension fees exceeding $10,000 per petitioner. An updated fee schedule can be found under the USCIS public-facing website at *https://www.uscis.gov/forms/all-forms/h-and-l-filing-fees-for-form-i-129-petition-for-a-nonimmigrant-worker.* Other issues with the immigration system, including wait times and streamlining the visa process, are outside the scope of this rulemaking.

Comments: One commenter stated that the U.S. government should not ''loot'' the hardworking people of third world countries, who ''have big dreams and less income [and] look for opportunities in the United States.'' Another stated that a fee increase will make life harder for H visa workers to find new opportunities with H visas. Another commenter stated that there are already other avenues where everyone is already paying the 9/11 security fee.

Response: DHS does not agree that a fee increase would make life harder for H–1B nonimmigrants or cause those nonimmigrants to be unable to find new opportunities. The H–1B program allows employers in the United States to temporarily employ foreign workers in occupations that require the theoretical and practical application of a body of highly specialized knowledge and a bachelor's degree or higher in the specific specialty or its equivalent. Additionally, certain prospective H–1B-dependent petitioners must first attempt to recruit a U.S. worker for a position before seeking to hire an H–1B worker for that role. The H–1B classification is a nonimmigrant classification and a backlog for Green Cards is out of scope for this rule.

Regarding commenter's claim that ''there are already other avenues where everyone is already paying the 9–11 security fee,'' DHS does not know what other avenues commenter may be referring to. The 9–11 Biometric Fee is paid by covered employers for extension of status petitions, as required by statute and discussed throughout this final rule.

Further, H–1B employers are required to pay each H–1B worker the greater of the prevailing wage for the occupational classification in the area of intended employment or the actual wage paid by the employer to other employees with similar experience and qualifications for the specific position. In addition, H–1B employers are generally prohibited from reducing an H–1B worker's wages or compensation package to recoup business expenses, such as any required petition-related filing fees.

Comment: Some commenters stated that the fee should only be charged for the initial petition and not for an extension as the applicant is the same person. A fee increase should not be charged until the Green Card backlog relief is provided to H–1B workers.

Response: The 9–11 Biometric Fee was established by Public Law 114–113 after the 2010 Supplemental Fee expired and charging the fee for extensions is provided for in that statute. The 9–11 Biometric Fee was already being charged for extension of status petitions with a new employer. This rule interprets the statute to include extensions without change of employer. This fee allows the continued success of the congressionally mandated biometric program and ensures national security. Enhanced national security is a vital part of promoting legal immigration.

The fee is unrelated to green cards and the back log is outside the scope of this rulemaking.

Comments: Some commenters stated that the fees in this rule would be unfair to the H–1B visa holders. Some commenters stated simply that this rule is ''not good'', is unfair and also a bit inaccurate. One commenter questioned why only H–1B and L–1 employers pay the fees to maintain the biometric system, stated fees have steadily increased over the years which increases the cost to do business and recommended this fee be applied to employers hiring permanent residents.

Response: The biometric fees for H–1B and L–1 nonimmigrant classifications are part of the 9–11 Response and Biometric Entry-Exit Fee which was established by Public Law 114–113 after the 2010 Supplemental Fee expired. This fee allows the continued success of the congressionally mandated biometric program and enhances national security. Congress determined which petitioners are mandated to pay the 9–11 Biometric Fee. DHS does not have authority to alter the nonimmigrant classifications subject to the fees.

Comment: One commenter stated that a fee increase for all H–1 and L–1 petitions discriminates against certain H–1B applicants with long pending Green Card applications due to the country cap and that the 9–11 Biometric Fee is a way to extract money from a disadvantaged group of people.

Response: The biometric fees for H–1B and L–1 nonimmigrant classifications are part of the 9–11 Response and Biometric Entry-Exit Fee which was established by Public Law 114–113 after the 2010 Supplemental Fee expired. This fee allows the continued success of the congressionally mandated biometric program and enhances national security. Congress determined which petitioners are mandated to pay the 9–11 Biometric Fee, therefore DHS does not have authority to alter the nonimmigrant classifications subject to the fees. Pending Green Card applications are outside the scope of this rulemaking.

c. Comments Expressing Opposition Due to Effect on Specific Communities of Nonimmigrants

Comments: Several commenters stated that although they understand the need to fund the biometric program, targeting H–1B and L–1 visa categories for the fee requires reconsideration. Some commenters stated that this rule disproportionately affects people from India, with one stating they form ''the majority of H–1B and L–1 visa holders due to the protracted green card backlog.'' This commenter continued that the rule ''places an undue financial burden on a specific demographic, which is unfair and counterproductive.'' Some commenters noted that the Green Card backlog for Indians will require renewal [of the H–1B visas] at least every three years. The commenters said the fee increase can be a reason that H–1B/L–1 status employees lose their jobs and end up with a narrow opportunity of finding another job with a 60-day grace period and it will make it difficult for them to focus on work. The backlog on employment-based Green Cards for Indians and Chinese will force them to relocate back to their home countries while waiting as employers will not choose to extend their status. One commenter stated it is becoming mathematically impossible for Indians to immigrate to the United States.

One commenter recommended going to Congress for fee increases to fund CBP and stated that the rule is unfair and discriminatory against Indian-born applicants. One commenter suggested collecting additional fees from people after ten or more years in the Green Card/Employment Authorization Document backlog. Another commenter also stated that many H–1B visa holders, especially from China and India, face prolonged waiting periods for I–485 (Green Card) filing and, therefore, have to renew their H–1B status numerous times. H–1B applicants from other countries only have to renew two or three times. The commenter suggested that the fee be avoided or lowered if an applicant has been on H–1B visa for more than six years after I–140 approval in order to avoid disproportionate burden on H–1B applicants. Allocating a portion of the funds to address the entry-exit system is commendable but ensuring relief for deserving candidates should also be a priority.

Response: The H–1B and L–1 classifications are nonimmigrant classifications and have a maximum period of admission per visa category. Congress determined which petitioners are mandated to pay the biometric fees.

The H–1B classification allows an employer in the United States to temporarily employ foreign workers in occupations that require the theoretical and practical application of a body of highly specialized knowledge. The L–1 nonimmigrant classification enables a U.S. employer to either transfer a professional employee from one of its affiliated foreign offices to one of its offices in the United States, or enables a foreign company that does not yet have an affiliated U.S. office to send a specialized knowledge employee or executive/manager to the United States to help establish one.

Some commenters stated that this especially affects ‘‘Indian and Chinese’’ visa holders. The Immigration and Nationality Act (INA) limits the number of visas for quota-restricted immigrants. The limit is divided among three preference categories: family-sponsored, employment-based, and diversity immigrants. These limits have caused backlogs, especially for countries with a large number of people wishing to immigrate to the United States. While this limitation may more directly impact citizens from certain countries, this rule does not target any specific citizens. Furthermore, Green Card (including I–140) applications and any associated backlogs are outside the scope of this rulemaking.

Comments: One commenter stated that increasing the H–1B renewal fee can have wide-ranging economic, social, and political implications, affecting employers, visa holders, qualified talent pool of individuals, and broader industry sectors. Another commenter stated that it will affect hundreds of skilled engineers and doctors that would add billions of dollars in revenue in the United States and that they are the ones paying higher taxes.

Response: DHS does not agree with these comments. The H–1B visa is a nonimmigrant classification and allows employers in the United States to temporarily employ foreign workers in occupations that require the theoretical and practical application of a body of highly specialized knowledge and a bachelor’s degree or higher in the specific specialty or its equivalent. DHS does not foresee a decrease in petitions in the H–1B and L–1 nonimmigrant classifications due to this rule.

The federal government may penalize employers who discriminate against employees. USCIS makes clear on its website: ‘‘federal law prohibits employers from discriminating against people based on several factors, including their citizenship or immigration status, or their national origin. . . . Employers with 15 or more workers also are prohibited from discriminating against applicants or employees in any term, condition, or privilege of employment on the bases of race, color, national origin, religion, sex (including pregnancy), age, disability, or genetic information.’’ (*https://www.uscis.gov/i-9-central/employee-rights-and-resources/preventing-discrimination*). Federal policy requires all individuals to be treated in a non-discriminatory manner.

d. Comments Expressing Opposition Due to the Effect on Attraction of Skilled Labor to the United States

Comments: Several commenters stated that the additional fees in this rule will deter the highly skilled visa holders, which will negatively affect the economy by reducing availability of skilled labor. One commenter stated that the increased cost of transitioning from F–1 to H–1B status may discourage international students from studying in the United States, affecting university revenues and diversity, and especially affecting graduate programs in STEM fields. The commenters claim that increased costs for employers will result in costs being shifted to consumers which leads to visa holders not investing in housing markets and international students going to other countries instead of the United States. Some commenters stated the fees would deter skilled immigrants from seeking employment in the United States and adversely affect industries that rely heavily on skilled workers, such as technology and engineering. Some commenters raised concerns that this fee increase could disrupt the F–1 to H–1B visa transition involving international students at U.S. institutions who aspire to join the U.S. workforce post-graduation. One commenter said the fee increase could deter employers from sponsoring H–1B visas leading to a decline in international student enrollment and reduction in the available skilled workforce needed to maintain U.S. competitiveness in the global market. Some commenters said that this policy appears to be at odds with the broader goals of attracting and retaining top talent from around the world to the United States. The commenters noted that H–1B visa holders contribute as active consumers, taxpayers and community members in the U.S. economy. The additional fee could create a disparity when compared to other immigration pathways that do not face similar financial barriers.

Response: DHS does not agree that this rule will deter skilled employees from seeking employment in the United States and disrupt the F–1 to H–1B visa transition involving international students. DHS also does not agree that this rule will negatively affect the economy. The visa classifications of F–1, H–1B and L–1 are all nonimmigrant classifications. The H–1B and L–1 classifications require an employer petition whereas the F–1 category is for foreign students pursuing academic studies and/or language training programs. U.S. Immigration and Customs Enforcement (ICE) released its Student and Exchange Visitor Program (SEVP) annual report for calendar year 2024: over 1.5 million international students attended schools in the United States, a 5.3% increase from the year prior.[30] F–1 visas are outside the scope of this rulemaking. For more information on immigrant categories and eligibility, please see *https://www.uscis.gov/green-card/green-card-eligibility-categories.* Additionally, regarding commenters’ concerns that the 9–11 Biometric Fee may create disparity compared to other immigration pathways, as noted throughout this final rule, the 9–11 Biometric Fee and the covered employers subject to the fee are set by statute.

Comments: Some commenters stated that this group [of visa classifications] already faced increased fees earlier in 2024 and additional costs discourage talented people from choosing the United States for their careers, undermining innovation and economic growth.

Response: DHS does not agree that this rule will discourage talented people from choosing the United States for their careers, and undermine innovation and economic growth due to additional costs as the number of petitions for H–

[30] *See,* 2024 SEVIS by the Numbers Report, available at *https://www.ice.gov/doclib/sevis/btn/25_0605_2024-sevis-btn.pdf.* (Last visited October 8, 2025.)

1B visas has exceeded the cap for many years. The H–1B visa is a nonimmigrant classification and includes aliens who will perform services in a specialty occupation. An updated fee schedule can be found under the USCIS public-facing website at *https://www.uscis.gov/forms/all-forms/h-and-l-filing-fees-for-form-i-129-petition-for-a-nonimmigrant-worker.*

The fee increase mentioned is a USCIS fee increase that is not part of this rule. On January 31, 2024, USCIS published a final rule that, for the first time since 2016, adjusted certain immigration and naturalization benefit request fees. With the final rule, USCIS can recover its operating costs more fully and support timely processing of new applications. Unlike many other federal agencies, USCIS is almost entirely fee funded. About 96% of USCIS funding is from filing fees, and only about 4% is from congressional appropriations. This final rule went into effect on April 1, 2024.

Comments: Some commenters stated that the fee is too high, and employers will be reluctant to hire people on visas, people on visas will be forced to move out of the United States and the U.S. job market will open up but there will not be any candidates to fill the positions.

Response: DHS does not agree that this rule will cause the U.S. job market to not have any candidates to fill positions. As noted elsewhere in this document, the number of H–1B applications each year exceeds the cap on the number of H–1B visas available. Therefore, DHS does not anticipate the demand for H–1B visas to be reduced to the point where it would adversely impact the labor pool.

The comment that people on visas will be forced to move out of the United States will not apply to the L–1 nonimmigrant classification as it enables a U.S. employer to either transfer a professional employee from one of its affiliated foreign offices to one of its offices in the United States, or enables a foreign company that does not yet have an affiliated U.S. office to send a specialized knowledge employee or executive/manager to the United States to help establish one. Qualified employees entering the United States to establish a new office will be allowed a maximum initial stay of one year. All other qualified employees will be allowed a maximum initial stay of three years.

Comments: Some commenters stated that the fee increase will affect the legal immigration in the country and discourage retaining talent. Some commenters stated that this would disproportionately affect smaller employers who are drivers of innovation and economic growth. Additional costs could force them to reduce hiring or even lay off valuable employees. One commenter stated that the United States has been ‘‘unfriendly with legal immigration’’ and that this rule ‘‘fuels’’ the unfriendly position. The commenter noted problems with a site ‘‘for visa booking’’ as well.

Response: DHS does not agree that this rule will negatively affect legal immigration to the United States. Regarding the claim that the United States has been unfriendly with legal immigration, it is unclear to which policies the commenter may be referring. However, this rulemaking concerns nonimmigrant visa classifications. Both H–1B and L–1 visas are nonimmigrant visa classifications and allow U.S. employers to temporarily employ foreign workers in highly specialized occupations. These occupations have very strict eligibility guidelines and the term of employment under these classifications is limited. Regarding the effect on small businesses, this rule is expected to affect, at a maximum, only approximately 16 percent of small entities in the United States that file H–1B or L–1 petitions. Therefore, the effect on nonimmigrants who work for or wish to work for small businesses is minimal. DHS does not know if companies would choose to outsource some work in response to this rulemaking.

With respect to potential problems with DHS websites, DHS notes it is outside the scope of this rule. Moreover, DHS is unable to address these alleged problems because the commenter did not specify the problems or sites.

Comments: Some commenters stated that the regulation can especially affect areas reliant on specialized knowledge and talent from abroad, making the United States less attractive to global talent and driving skilled professionals to other countries. One commenter stated that the regulation would particularly affect artificial intelligence (AI), robotics, machine learning, and related employment opportunities, which could erode America’s competitive edge; other countries have implemented more lenient immigration policies designed to attract skilled professionals; consequently, the United States could lag behind in future technological advancements.

Response: DHS does not agree that this rule will make the United States less attractive to skilled professionals nor that the United States will lag behind in future technological advancements. As stated throughout this rule, the 9–11 Biometric Fee only applies to covered employers, which by statute are those employers that employ 50 or more total employees in the United States with more than 50 percent of the employees in the United States in H–1B or L–1 nonimmigrant status. Furthermore, Congress has mandated a cap of 65,000 H–1B visas per year maximum.[31] Typically, the United States has more applicants than available visas. Even if this rule caused a slight reduction in visa applications, DHS does not agree that the number of applicants for visas would fall below the cap. The L–1 nonimmigrant classification enables a U.S. employer to transfer an employee from one of its affiliated foreign offices to one of its offices in the United States for a limited time frame. L–1 visa applications have specific eligibility requirements. The L–1 category does not have a cap on how many visas can be issued each year, however, DHS does not believe the 9–11 Biometric Fee will have a substantial impact on the number of applicants for L–1 visas as this fee is minimal compared to other costs associated with the hiring of an L–1 employee (relocation, wages, other existing fees). Further details can be found under the following USCIS sites: L–1A information under *https://www.uscis.gov/working-in-the-united-states/temporary-workers/l-1a-intracompany-transferee-executive-or-manager.* L–1B information under *https://www.uscis.gov/working-in-the-united-states/temporary-workers/l-1b-intracompany-transferee-specialized-knowledge/.*

Comments: Some commenters stated this should not be applied retroactively for previous or current H–1B visa holders and recommended that the rule should only be applied to new H–1B petitioners.

Response: DHS understands the commenters’ concerns about retroactive application of these fees. This rule will only be applied to the relevant petitions as of the implementation date of the rule. These fees will not retroactively apply to past or to pending petitions.

Comments: One commenter said that DHS notes the collections of these fees have been lower than expected and the increased fees aim to rectify the shortfall, but this approach places burden on employers and employees instead of finding more balanced solutions.

Response: This rulemaking concerns the 9–11 Response and Biometric Entry-

[31] An additional 20,000 nonimmigrants who have earned a master’s or higher degree from a U.S. institution of higher education are exempt from the 65,000 cap. *See* INA 214(g)(5)(C) (8 U.S.C. 1184(g)(5)(C)).

Exit Fee which was established by Congress through Public Law 114–113 after the 2010 Supplemental Fee expired. This fee allows the continued success of the congressionally mandated biometric program which enhances national security. This rule interprets Public Law 114–113 to include all extension of status requests as subject to the 9–11 Biometric Fee. As noted elsewhere, only 16 percent, at maximum, of small businesses that file H–1B or L–1 petitions are expected to be affected by this rulemaking.

Comments: Some commenters stated the rule may deter skilled professionals from seeking H–1B extensions, leading to talent drain. One commenter stated that this fee hike could exacerbate existing skills gap in industries like technology, engineering, and healthcare, where there is already a shortage. This could also slow down innovation and productivity, affecting the U.S. economy.

Response: DHS does not agree that this rule will deter skilled professionals from seeking H–1B nonimmigrant classification extensions as extensions have to be petitioned for by the U.S. employer. The H–1B program allows U.S. employers to temporarily employ foreign workers in occupations that require the theoretical and practical application of a body of highly specialized knowledge and a bachelor's degree or higher in the specific specialty, or its equivalent. DHS disagrees with the commenters' assertion that this rule will have broad adverse effects, such as a talent drain or decrease in innovation or productivity. As stated throughout this rule, the 9–11 Biometric Fee only applies to covered employers, which by statute are those employers that employ 50 or more total employees in the United States with more than 50 percent of the employees in the United States in H–1B or L–1 nonimmigrant status. As such, H–1B nonimmigrants who work for employers that are not covered employer for purpose of the 9–11 Biometric Fee would be unaffected by this rulemaking.

e. Comments Expressing Opposition Due to Fee Being too High Generally

Comments: Some commenters stated that CBP will see less petitions which will further cause a shortage of funds.

Response: As stated elsewhere, this rulemaking pertains to the 9–11 Response and Biometric Entry-Exit Fee which was established by Public Law 114–113, after the 2010 Supplemental Fee expired, and must be submitted by covered employers filing certain H–1B or L–1 petitions. This fee allows the continued success of the congressionally mandated biometric program and enhances national security.

Comments: One commenter stated this rule goes against the plain intent of the American Competitiveness in the Twenty-First Century Act of 2000 (commonly referred to as ''AC21'') which, in part, added INA 204(j). Public Law 106–313, 114 Stat. 1251, 1254 (8 U.S.C. 1153 note). If employers are hampered with additional fees, they may not retain the employees.

Response: DHS does not have any insight regarding whether this rule has an effect on employee retention. Company policies and employee performance play a vital role in employee retention. Application of AC21 is outside the scope of this rule.

Comments: One commenter stated that they strongly disagree and would not recommend any increase. Another commenter suggested reducing all fees instead of increasing fees to increase economic growth in the United States of America.

Response: The 9–11 Response and Biometric Entry-Exit Fee was established by Congress through Public Law 114–113 after the 2010 Supplemental Fee expired. This fee allows the continued success of the congressionally mandated biometric program and enhances national security. The fee amounts are set by the statute.

f. Comments Expressing Opposition Due to Rule Being Unlawful or Outside CBP's Authority

Comments: Some commenters stated the proposal is unlawful, not in line with CBP's authority, immoral, counterproductive to high-skilled immigrants, and the fee is too high. One commenter urged DHS to withdraw its proposed change to the scope of applications subject to the 9–11 Biometric Fee. The commenter stated that this is more than just a ''clarification'' of existing statutory language, and the rule is contrary to the law, the governing statute, as well as the agency's long-standing interpretation of that statute and is not justifiable based on the unpersuasive policy considerations proffered by DHS.

Response: DHS notes that H–1B and L–1 visas are nonimmigrant visa classifications. DHS does not know which law the commenter believes this rulemaking runs contrary to, however, the 9–11 Biometric Entry-Exit Fee was established by Congress through Public Law 114–113 after the 2010 Supplemental Fee expired. This fee allows the continued success of the congressionally mandated biometric program and enhances national security. DHS has the statutory authority to collect fees related to immigration benefits. INA 281 (8 U.S.C. 1351). The fee amounts and company size are clearly stated in the statute. The interpretation of the statute in this final rule aligns the regulations with the statutory text and congressional intent.

g. Comments Expressing Opposition With Specific Recommendations

Comments: One commenter suggested that DHS increase the renewal fee only for the first renewal, not for subsequent renewals. Once individuals can file for Adjustment of Status, the need for nonimmigrant visa renewals diminishes.

Response: DHS appreciates the feedback; however, the 9–11 Response and Biometric Entry-Exit Fee was established by Congress through Public Law 114–113 after the 2010 Supplemental Fee expired. The statute states that the fee is for ''extension of status'' requests, not just the first extension of status request. The H–1B and L–1 classifications are nonimmigrant classifications and, therefore, fees for Adjustment of Status are outside the scope of this rule.

Comments: Some commenters recommended allowing employees to pay the fee if employers are unwilling to do so. According to commenters, this provides a critical option for visa holders to maintain their status and continue contributing to their employers and the economy.

Response: The statutes and existing regulations specify that the fee is required to be paid by the employer. Sec. 402(g), Public Law 114–113; 8 CFR 106.2(c)(8) and (9). DHS has no insight into how the 9–11 Biometric Fee may affect employment packages.

Comments: Some commenters recommended reviewing and streamlining operations to reduce overhead costs. These commenters stated that savings can then be redirected to fund essential services without needing to increase fees.

Response: DHS does not have authority to change the funding source for the 9–11 Biometric Fees. The 9–11 Biometric Entry-Exit Fee was congressionally mandated and established by Public Law 114–113 after the 2010 Supplemental Fee expired. This fee allows the continued success of the congressionally mandated biometric program and enhances national security. However, CBP is also always working to use resources as efficiently as possible.

Comments: Some commenters recommended investing in technology to automate and improve efficiency, ultimately leading to long-term cost savings that can fund other areas.

Response: Technology investments are out of scope for this rulemaking. However, DHS notes that it continuously explores technological advances that create efficiencies in processes. The 9–11 Biometric Fees were established by Congress to fund the biometric entry-exit program and DHS does not have the authority to change the funding source.

Comments: Several commenters urged CBP to consider alternative funding for the biometrics program. These commenters offered numerous alternative suggestions for ways to address funding challenges that they averred provided a balanced manner ensure sustainability of immigration services while being mindful of the effect on individuals and businesses. The specific recommendations and their putative benefits from commenters regarding funding sources are as follows:

1. *Incremental Fee Increases:* Instead of a steep one-time fee hike, consider gradual increases over a set period. This allows all stakeholders to adjust financially and plan accordingly.
2. *Service-Specific Fees:* Implement fees for specific services or expedited processing options. Those who wish to avail themselves of faster services can opt to pay more, contributing additional funds.
3. *Public-Private Partnerships:* Engage with private sector entities that benefit from the immigration system. Partnerships can lead to shared funding for programs that enhance border security and immigration services.
4. *Voluntary Contributions:* Create a system where individuals and corporations can make voluntary contributions to support immigration services, potentially offering tax incentives for such donations.
5. *Usage-Based Fees:* Similar to toll roads, consider fees based on the frequency of use or the level of access required by individuals or businesses to immigration services.
6. *Government Grants and Subsidies:* Seek additional funding through government grants aimed at enhancing national security and immigration infrastructure.
7. *Diversified Funding Sources:* Explore a mix of funding sources, including fees, government allocations, and private investments, to create a robust financial model.
8. *Legislative Action:* Work with lawmakers to secure dedicated funding through legislation, ensuring a stable and predictable source of income for immigration services.
9. Exploring other funding sources, such as a modest surcharge on all U.S.-bound international flights, to distribute costs more equitably.
10. Considering a sliding scale fee structure based on company size or visa holder salary to minimize effect on smaller businesses.
11. *Broaden the Fee Distribution:* Distribute the fee increase across all visa classes, including H–1B, H–2, T–1, L–1, O–1, and F–1 visas. This approach ensures that no single visa category bears the entire financial burden, promoting fairness and equity.

Response: DHS does not have authority to change the funding source for the 9–11 Biometric Fees. The 9–11 Biometric Entry-Exit Fee was congressionally mandated and established by Public Law 114–113 after the 2010 Supplemental Fee expired. Congress specified which petitioners would pay this fee and the specific circumstances when it is to be paid. This fee allows the continued success of the congressionally mandated biometric program and enhances national security. DHS appreciates the suggestions for alternative funding and retains the discretion to consider them in other settings, as appropriate.

4. Comments That Are Out of Scope

Numerous commenters submitted comments that fall outside the scope of this rulemaking, including comments regarding the immigration process, government support of immigrants generally, suggestions for other, unrelated, fee increases, process for nonimmigrants gaining permanent residency status, proposals to eliminate the H–1B and similar programs, proposals for longer H–1B and L–1 visa stays, and various other unrelated topics. DHS is not responding to most comments which fall outside the scope of the 9–11 Biometric Fee rulemaking here. Below, DHS provides additional information in response to certain out of scope comments for informational purposes only.

Comments: Some commenters stated that the entire knowledge industry in the United States is run like a cartel; Indian managers hire people of their own ethnicity with credentials and education being fake. Commenters said Americans are advised that they are not qualified for a job (also locals and permanent residents) as Indian managers accept underhand bribes in the form of payments in India or elsewhere. Commenters said corporations exploit statistical data to advance their narrative that H–1B and L–1 visas aid with employment growth.

Response: Comments concerning the administration of the United States' visa programs are outside the scope of this rulemaking. However, more information on USCIS's efforts to combat fraud and abuse is available at *https://www.uscis.gov/scams-fraud-and-misconduct/report-fraud/combating-fraud-and-abuse-in-the-h-1b-visa-program.*

Comments: One commenter suggested implementing the $4,000 fee for Family and Diversity Visa Lottery cases as well, stating that the Family and Diversity visas do not incur costs associated with renewals and are granted Green Cards immediately, allowing them unrestricted work opportunities in the United States.

Response: The Diversity visas are outside the scope of this rulemaking. However, DHS notes that H–1B and L–1 visas are nonimmigrant visa classifications, while the Diversity visa is an immigrant visa classification. Additionally, there is no ''family visa lottery.'' Diversity visas are controlled and reviewed by the Department of State (DOS). Each year, DOS puts out a list of eligible and ineligible countries. The list of countries may change each year. More information on the diversity visa can be found at *https://travel.state.gov/content/travel/en/us-visas/immigrate/diversity-visa-program-entry/diversity-visa-instructions.html.*

Comment: One commenter stated that USCIS and CBP are only interested in increasing fee structure but not in addressing Green Card backlogs. The commenter said legal immigrants, like the author of the comment, abide by laws and pay taxes but end up crushed by unempathetic rules making them fear losing their job, money, and assets. The commenter said that the United States should give them Green Cards so they can start businesses and increase employment in the United States.

Response: Eligibility for Lawful Permanent Resident (LPR) status (commonly referred to as a Green card) is outside the scope of this rulemaking. For more information on Green cards, please see *https://www.uscis.gov/green-card.*

IV. Changes to Regulations

DHS is amending the regulations at 8 CFR 106.2(c)(8) and (9) to specify that the 9–11 Biometric Fee will apply to all H–1B and L–1 extension of status petitions filed by a covered employer, in addition to all previously covered H–1B and L–1 petitions. Accordingly, DHS is replacing the phrase ''certain petitioners'' with ''all petitioners'' in the subparagraphs concerning both H–1B and L–1 petitioners. All petitioners who employ 50 or more employees in the United States, if more than 50 percent of the petitioner's employees in the aggregate are in H–1B, L–1A, or L–1B nonimmigrant status, will be considered as covered employers for purpose of the 9–11 Biometric Fee. This change will allow DHS to charge all covered petitioners the 9–11 Biometric Fee, including those filing extension petitions that do not involve a change of employer, as opposed to only those petitioners whose petitions are also subject to the Fraud Fee.

DHS is also making clarifying amendments. First, DHS is inserting the phrase ''[p]etitioners filing an amended petition that do not seek an extension of the alien's currently authorized H–1B status are exempt from this fee'' '' in both provisions. Amended petitions are filed to notify USCIS of a material change in the terms or conditions of employment or the beneficiary's eligibility as specified in the original approved petition. *See* USCIS, Form I–129, Instructions for Petition for Nonimmigrant Worker, *https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf.* Under the revised regulations, covered petitioners filing an H–1B or L–1 amended petition that does not include an extension of status request would not be required to submit the 9–11 Biometric Fee.

DHS is further clarifying the method by which it determines whether a petitioner is a covered employer. Prior to this rulemaking, DHS counted all full-time and part-time employees who held H–1B or L–1 status in order to determine whether an employer met the definition of ''covered employer'' by reaching the 50 percent threshold. DHS required the 9–11 Biometric Fee once the threshold to be considered a covered employer was met. DHS is adding the words ''in the aggregate'' to both provisions in 8 CFR 106.2(c)(8) and (9) to clarify this practice.

V. Statutory and Regulatory Reviews

A. Executive Orders 12866, 13563, and 14192

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

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this rule.

This rule is not an Executive Order 14192 regulatory action because it is being issued with respect to an immigration-related function of the United States. The rule's primary direct purpose is to implement or interpret the immigration laws of the United States or any other function performed by the U.S. Federal Government with respect to aliens. See OMB Memorandum M–25–20, ''Guidance Implementing Section 3 of Executive Order 14192, titled 'Unleashing Prosperity Through Deregulation''' (Mar. 26, 2025).

As a result of this rule, DHS expects H–1B and L–1 transfer payments from fee payers to the U.S. Government to increase by a total of $37.9 million in fiscal year 2026 and $40.0 million in fiscal year 2027.[32] This will ensure that covered employers would have to pay the 9–11 Biometric Fee as well as increase funds to implement and maintain CBP's biometrics programs. Public Law 114–113 exempts employers that do not employ 50 or more employees with more than 50 percent of employees under H–1B and/or L–1 status from the 9–11 Biometric Fee.

1. Purpose of the Rule

In 2020, after evaluating alternative interpretations of Public Law 114–113, DHS adopted the 2020 Fee Rule, which made the 9–11 Biometric Fee applicable to all petitions by covered employers, except for amended petitions without an extension of status request, regardless of whether the Fraud Fee also applies. DHS believes that Congress's intent with the 9–11 Biometric Fee was twofold: first, to ensure that covered employers would generally have to pay an additional fee of $4,000 or $4,500 for H–1B or L–1 petitions, respectively, and second, to fund congressionally mandated biometric entry and exit programs that protect against terrorism. However, the interpretation that DHS adopted in the 2020 Fee Rule never went into effect because the 2020 Fee Rule was enjoined in its entirety during litigation unrelated to the 9–11 Biometric Fee. DHS maintains that the interpretation adopted in the 2020 Fee Rule is most consistent with the statute's goals. Therefore, DHS is adopting regulations that align with Congress's intent for Public Law 114–113, as proposed in the NPRM published on June 6, 2024. The change expands the instances in which the 9–11 Biometric Fee applies by applying the 9–11 Biometric Fee to all H–1B or L–1 petitions filed by covered employers seeking initial grants of status or an extension of status, regardless of whether the Fraud Fee applies. By implementing the best interpretation of Public Law 114–113, DHS is effectuating congressional intent because the increased collections will provide necessary funds for the implementation and maintenance of biometric entry and exit data systems as required by Congress under section 7208 of the IRTPA.

CBP is responsible for implementing an integrated and automated entry-exit system that matches biographic data and biometrics of aliens entering and departing the United States. CBP currently relies on the 9–11 Biometric Fee to fund several processes and programs such as TVS, which benefit the public by increasing consumer confidence in travel safety and speeding up the boarding process while encouraging contactless travel. CBP's use of biometrics has also proven to be effective in combatting the use of stolen and fraudulently presented travel and identity documents. The 9–11 Biometric Fee funds biometric programs that also benefit other government agencies by providing assurance that the travelers arriving match their travel documents.

Currently, of the H–1B and L–1 petitions submitted by covered employers, only those requesting new employment or a change of employer are required to pay the 9–11 Biometric Fee. This rule will increase transfer payments from H–1B and L–1 petitioners by also applying the 9–11 Biometric Fee to H–1B and L–1 extension of status petitions without a change of employer filed by covered employers.

2. Transfer Payments From Rule

Fees paid to government agencies for goods and services provided by the agency are considered transfer payments because they are monetary payments from payers to the government and do not affect the total resources available to society. Therefore, in this regulatory impact analysis, DHS discusses the

[32] Figures are based on the rule being in effect for the full fiscal year. Transfers will be reduced proportionally to the percentage of the year for which the rule is not in effect (*e.g.* FY 2026 transfers would be approximately $9.5 million if the rule is in effect for a quarter of the year).

additional transfer payments that H–1B and L–1 petitioners will experience as a result of this rule in qualitative, and when possible, quantitative, and monetized terms. This analysis evaluates the impact on transfer payments for H–1B petitions and L–1 petitions separately due to the differences in fee amounts and the data available. The period of analysis is for fiscal years (FY) 2026–2027.[33] DHS bases its estimates on data from FY 2018–2025.

Currently, of the H–1B and L–1 petitions submitted by covered employers, only those requesting new employment or a change of employer are required to pay the 9–11 Biometric Fee. This rule will increase transfer payments from H–1B and L–1 petitioners by also applying the 9–11 Biometric Fee to H–1B and L–1 extension of status petitions without a change of employer filed by covered employers.

The H–1B submissions subject to the 9–11 Biometric Fee and the resulting transfer payments under the baseline are shown in Table 1.[34] For FY 2026 projected annual submissions, USCIS anticipates an 11.7 percent reduction in H–1B submissions from the 3-year average of submissions from FY 2023 to FY 2025 to account for the continuing downward historical trend. For FY 2027 projected annual submissions, USCIS takes the 3-year average of FY 2024 to FY 2026 submissions. Multiplying the projected submissions by the fee amount of $4,000 provides the projected annual transfer payments in the baseline. Transfer payments shown in Table 1 are not a result of this rule and are not added to those in Table 2 when totaling the additional transfer payments as a result of this rule; these fee payments are already occurring in the baseline. The values of Table 1 and Table 2 can be added together for an estimate of the total petitions subject to the 9–11 Biometric Fee and the transfer payments for covered H–1B employers under this rule.

On September 19, 2025, the President issued proclamations that may result in a reduction in the number of future H–1B visas and may affect other employment-based visas, including L–1 submissions.[35] While the Presidential proclamations may result in an overall reduction in employment-based nonimmigrant visas due to an increased demand for the hiring of U.S. citizens and/or others in the United States who do not need a visa for purposes of employment, there is no data presently available to assess the effects of the Presidential proclamations on other visas such as the L–1. Therefore, DHS notes that this analysis is based on historic averages of H–1B and L–1 submissions. To the degree that future H–1B and L–1 submissions differ from the projections used in this analysis, transfers will be higher or lower.

TABLE 1—BASELINE ANNUAL H–1B SUBMISSIONS AND TRANSFER PAYMENTS

Fiscal year	A—new employment [1]	E—change of employer [1]	Total submissions	Fee amount	Total actual & projected transfer payments
2018	16,511	7,016	23,527	$4,000	$93,907,000
2019	17,669	5,878	23,547	4,000	93,924,000
2020	10,149	4,616	14,765	4,000	58,692,000
2021	8,583	4,431	13,014	4,000	51,860,500
2022	6,715	3,925	10,640	4,000	43,664,000
2023	2,915	2,318	5,233	4,000	20,948,000
2024	5,384	2,173	7,557	4,000	30,460,000
2025	3,120	2,240	5,360	4,000	21,776,000
2026	3,361	1,981	5,342	4,000	21,368,000
2027	3,955	2,131	6,086	4,000	24,344,000

[1] Fee requirements are not changing for this category under this rule.
[2] FY 2026 is equal to the 3-year receipt average from FY 2023–2025 with an adjustment of −11.7% to the H–1B group to account for the continuing downward trend.
[3] Projection for FY 2027 is a 3-year average from the 3 most recent years.
[4] Total Actual Transfer Payments differ from expected values based on calculations due to differences in the timing of filings and when collections take place.

Table 2 shows the number of additional annual H–1B submissions to which the 9–11 Biometric Fee would apply upon the implementation of this rule. As done in Table 1, multiplying the projected submissions by the $4,000 fee provides the projected annual transfer payments resulting from this rule.

TABLE 2—ANNUAL H–1B SUBMISSIONS NEWLY SUBJECT TO FEE

Fiscal year	B—continuation of previously approved employment without change	C—change in previously approved employment	D—new concurrent employment	F—amended petition	Total submissions	Fee amount	Total actual & projected transfer payments
2018	20,925	7,403	9	16,705	45,042	$0	$0
2019	27,127	7,362	24	9,127	43,640	0	0
2020	21,337	7,373	27	13,708	42,445	0	0

[33] *See* sec. 402(g), Public Law 114–113 (establishing the initial sunset date for the 9–11 Biometric Fee as September 30, 2025), as amended by sec. 30203(b) of the Bipartisan Budget Act of 2018, Public Law 115–123, 132 Stat. 64, 126 (extending this date to September 30, 2027).

[34] FY 2018–2022 data is based on data and projections provided by USCIS subject matter experts on August 21, 2025. FY 2023–2027 data is based on data and projections provided by USCIS subject matter experts on November 3, 2025.

[35] While the Presidential proclamation only specifically mentions H–1B visas, it is possible that there could be downstream effects on other visas, including L–1 visas.

TABLE 2—ANNUAL H–1B SUBMISSIONS NEWLY SUBJECT TO FEE—Continued

Fiscal year	B—continuation of previously approved employment without change	C—change in previously approved employment	D—new concurrent employment	F—amended petition	Total submissions	Fee amount	Total actual & projected transfer payments
2021	7,826	2,667	105	8,727	19,325	0	0
2022	4,440	2,479	144	4,314	11,377	0	0
2023	3,423	1,355	60	4,437	9,275	0	0
2024	3,188	991	37	4,158	8,374	0	0
2025	3,269	960	36	4,135	8,400	0	0
2026	2,908	973	39	3,747	7,667	4,000	30,668,000
2027	3,122	975	37	4,013	8,147	4,000	32,588,000

[1] The 9–11 Biometric Fee was not required for submissions in this table for 2018–2025.
[2] Data is applicable to petitions subject to the 9–11 Biometric Fee only and does not include data on all petitions received.
[3] FY 2026 is equal to the 3-year receipt average from FY 2023–2025 with an adjustment of −11.7% to the H–1B group to account for the continuing downward trend.
[4] Projection for FY 2027 is a 3-year running average from the 3 most recent years.

The numbers of H–1B petitions shown in Table 1 are based on petitioners' responses to Form I–129 Part 2, Questions 2 and 4, indicating the purpose of the request was New Employment or a Change of Employer. DHS does not believe that petitioners newly required to pay the 9–11 Biometric Fee as a result of this rule will change their rate of participation in the H–1B and L–1 programs because of this rule since the need for specialized workers is prominent in the number of petitions received yearly. The number of petitions received has exceeded the cap numbers of visas granted by far for the past several years. Similar information on the number of L–1 petitions is not preserved in USCIS's administrative data. Consequently, DHS estimates the number of L–1 petitions with 50 or more employees and more than 50 percent of employees in H–1B/L–1 status that are currently subject to the fee by dividing the L–1 collections deposited in the CBP and Treasury accounts by the $4,500 fee amount, as shown in Table 3. DHS estimated the projected submissions that will be subject to the fee as a result of this rulemaking by calculating the ratio of H–1B submissions newly subject to the fee to the H–1B submissions currently subject to the fee for FY 2018–2025. This multiplier (1.8127) was then applied to the number of projected L–1 submissions subject to the fee to find the projected L–1 submissions newly subject to the fee as a result of this rule and is shown in Table 3. This methodology assumes that the ratio of new fee payers to baseline fee payers is the same for L–1 and H–1B. To the extent it differs, the transfers will be higher or lower than projected. DHS requested comments on this assumption in the NPRM and did not receive any comments that disagreed with this assumption.

TABLE 3—ANNUAL L–1 SUBMISSIONS SUBJECT TO FEE
[Current and new]

Fiscal year	Calculated & projected submissions currently subject to fee	Projected submissions newly subject to fee	Total submissions	Fee amount	Actual & projected transfer payments	Projected transfer payments resulting from rule	Total actual & projected transfer payments
2018	5,592	0	5,592	$4,500	$25,162,629	$0	$25,162,629
2019	5,409	0	5,409	4,500	24,342,327	0	24,342,327
2020	2,937	0	2,937	4,500	13,216,689	0	13,216,689
2021	1,082	0	1,082	4,500	4,869,499	0	4,869,499
2022	1,854	0	1,854	4,500	8,343,035	0	8,343,035
2023	1,120	0	1,120	4,500	5,040,095	0	5,040,095
2024	1,029	0	1,029	4,500	4,628,655	0	4,628,655
2025	844	0	844	4,500	3,799,215	0	3,799,215
2026	883	1,600	2,483	4,500	3,973,050	7,201,843	11,174,892
2027	919	1,665	2,584	4,500	4,133,640	7,492,940	11,626,580

[1] L–1 submissions were calculated by dividing the actual transfer payments by the fee amount for FY 2018–2025.
[2] Data is applicable to supplemental fee provisions only and does not include data on all applications received.
[3] FY 2026 is equal to the 3-year receipt average from FY 2023–2025 with an adjustment of −11.5% to the L group to account for the continuing downward trend.
[4] Projection for FY 2027 is a 3-year running average from the 3 most recent years.
[5] Projected L–1 submissions newly subject to fee are calculated using the ratio of H–1B submissions newly subject to fee to H–1B submissions currently subject to fee from 2018–2025 (a multiplier of 1.8127).

In undiscounted 2025 dollars, DHS estimates this rule will result in a combined total increase of H–1B and L–1 transfer payments of $37.9 million in FY 2026 and $40.0 million in FY 2027. Table 4 provides estimates of the undiscounted transfer payments and Table 5 provides estimates of the discounted transfer payments of this rule for fiscal years 2026 and 2027. From FY 2026 to 2027, H–1B and L–1 petitioners will experience a total in transfer payments of $74.5 million if discounted at three percent and $70.4 million if discounted at seven percent. Petitioners will experience total annualized transfer payments of $38.9 million under both three and seven percent discount rates.

TABLE 4—UNDISCOUNTED PROJECTED TRANSFER PAYMENTS FROM THE RULE

Year	H–1B projected undiscounted transfer payments	L–1 projected undiscounted transfer payments	Total projected undiscounted transfer payments
2026	$30,668,000	$7,201,843	$37,869,843
2027	32,588,000	7,492,940	40,080,940
Total	63,256,000	14,694,783	77,950,783

Note: Estimates may not sum to total due to rounding.

TABLE 5–TOTAL MONETIZED PRESENT VALUE AND ANNUALIZED ADDITIONAL TRANSFER PAYMENTS FROM THE RULE

Fiscal year	3% discount rate	7% discount rate
2026	$36,766,837	$35,392,376
2027	37,780,130	35,008,245
Total	74,546,968	70,400,622
Net Present Value	74,546,968	70,400,622
Annualized Transfer Payments	38,959,053	38,938,006

With this additional funding CBP will be able to meet its congressional mandate to enhance national security by deploying a fully integrated biometric entry-exit data system. CBP will be able to maintain its current biometric entry and exit operations, as well as ensure that TVS continues to be available to CBP and external stakeholders. CBP will also be able to continue its expansion to all ports of entry in order to fully implement a comprehensive biometric exit system at all land, sea, and air exits.[36]

As noted above, DHS acknowledges that there may be negligible costs for employers to check whether their applications require the payment of a fee. DHS anticipates this check will take only a short amount of time as the information will remain available on the USCIS website at *https://www.uscis.gov/forms/all-forms/h-and-l-filing-fees-for-form-i-129-petition-for-a-nonimmigrant-worker.*

Further, DHS acknowledges that, in theory, the increase in cost for H–1B and L–1 applications could reduce the number of businesses deciding to hire H–1B and L–1 employees. However, DHS believes that few, if any, businesses would reduce their number of H–1B and L–1 employees due to the cost increase caused by this rule. Compared to the other costs associated with the hiring of an H–1B or L–1 employee (relocation, wages, other existing fees), DHS believes this would be considered a minimal added expense for employers. Additionally, any reduction in the number of H–1B or L–1 employees by an employer would only reduce the number of applications in excess of the H–1B and L–1 caps and the unhired employees would remain hirable by another employer.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

As discussed above, this rule will result in transfer payments to the U.S. Government from employers with 50 or more employees in the United States if more than 50 percent of their employees are in H–1B and/or L–1 nonimmigrant status (covered employers). DHS used a random sample of 399 H–1B/L–1 petitioners provided by USCIS to positively identify 264 small entities based on the size standards of the Small Business Administration. Only 41 of these small entities have more than 50 employees and could be subject to the 9–11 Biometric Fee, provided more than 50 percent of their employees are in H–1B or L–1 status. DHS does not have enough information to determine how many employers fit this description. Therefore, DHS is unable to determine whether this rule affects a substantial number of small businesses. However, DHS can estimate that an approximate maximum of 16 percent of small businesses that file H–1B or L–1 petitions will be affected by this rule.[37] The minimum percentage is zero if none of the small businesses (with more than 50 employees) has more than 50 percent of its employees with H–1B or L–1 status.

Employers with 50 or more employees in the United States and more than 50 percent of employees in H–1B or L–1 status will pay the 9–11 Biometric Fee (unless filing an amended petition without an extension of status request). The fee for H–1B and L–1 petitions under Public Law 114–113 is $4,000 and $4,500, respectively. DHS does not have enough information on the number of times an employer would pay the 9–11 Biometric Fee due to the rule change to determine whether this rule has a significant impact on small businesses.

Although DHS was able to estimate effects of the rule and create a rough estimate of the number of small businesses that could be affected by the rule, DHS was unable to determine how many employers have more than 50 percent of their employees in the United

[36] Since 2004, DHS has worked to develop and implement a comprehensive biometric entry and exit data system as required by section 7208 of the IRTPA. *See, e.g.,* Implementation of the United States Visitor and Immigrant Status Indicator Technology Program (''US–VISIT''); Biometric Requirements, 69 FR 468 (Jan. 5, 2004). Additional resources discussing DHS's plans to enhance biometric operations are in DHS's annual Entry/Exit Overstay Reports, available at *https://www.dhs.gov/publication/entryexit-overstay-report.*

[37] 41 out of 264 confirmed small entities sampled (41/264 = .1553 or 15.53%).

States in H–1B or L–1 nonimmigrant status, or the number of times that an individual employer would be subject to the 9–11 Biometric Fee, due to a lack of detailed petition data available on filings. Therefore, DHS requested public comment on the number of small companies that would be subject to this fee and how often small companies would pay the 9–11 Biometric Fee. Public comments are summarized and addressed in section two below. DHS has conducted the following Final Regulatory Flexibility Analysis.

1. A Statement of the Need for, and Objectives of, the rule

DHS is amending regulations to implement an interpretation of the statutory language in Public Law 114–113 to align the regulations with congressional intent by expanding the instances in which the 9–11 Biometric Fee would apply. DHS believes this interpretation and the consequent increased collections align with congressional intent in providing DHS the ability to comply with its congressional mandate under section 7208 of the IRTPA to implement and maintain biometric entry and exit data.

2. A Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Statement of the Assessment of the Agency of Such Issues, and a Statement of any Changes Made in the Proposed Rule as a Result of Such Comments

DHS requested public comment on the number of small companies that would be subject to the 9–11 Biometric Fee and how often small companies would pay the 9–11 Biometric Fee. These comments are also addressed generally above in section III.B., but we discuss them here for clarity as well.

One commenter stated that it was axiomatic that the burden of this rule would fall heavily on smaller sized businesses because few larger or mid-sized companies would come close to having L–1 and H–1B workers comprise 50% of their employees.

DHS agrees with the commenter that some burden is likely to fall on small businesses, but it is not clear how much. As the commenter states, only a few larger or mid-sized businesses are made up of more than 50% L–1 and H–1B workers. However, because these businesses employ so many workers relative to small businesses, the small number of large and mid-size businesses could still bear the majority of the burden of this rule. Most small businesses would not be subject to the fee at all. For a business to be required to pay the fee as implemented by this rule, the business must have at least 50 employees in the United States in addition to the requirement that more than 50% of its employees in H–1B or L–1 status. Based on a random sample, a maximum of 16% of small businesses that hire L–1 and/or H–1B workers would satisfy these requirements and be subject to the 9–11 Biometric Fee. DHS considers this the maximum because, without data to show otherwise, DHS assumed that all small businesses that hired L–1 and/or H–1B workers also had a workforce that was at least 50% L–1 and/or H–1B workers. In all likelihood, some percentage, possibly the majority, of these small businesses would be exempt from the fee because their workforce did not meet the 50% threshold. Even if a substantial portion of the burden falls on small businesses, CBP believes this rule is necessary because without additional funding, CBP will be unable to maintain its current biometric entry operations or expand biometric confirmation to fully implement a comprehensive biometric exit system as required by section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004. Biometric entry and exit programs benefit the public by providing additional security for travelers and commerce crossing the U.S. border. DHS did not make any changes to the rule in response to this comment.

3. The Response of the Agency to any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in Response to the Proposed Rule, and a Detailed Statement of any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments

DHS did not receive any comments from the Chief Counsel for Advocacy of the SBA in response to the proposed rule.

4. A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate is Available

The rulemaking could potentially affect small, covered employers across a wide range of industries. CBP used a random sample of 399 H–1B and L–1 petitioners in 2020 to estimate the number of small entities affected by this rule. Table 6 shows the distribution of entities across the sample provided by USCIS. From this sample, six entities listed an invalid North American Industry Classification System (NAICS) code and 68 did not report a NAICS code, so CBP cannot make a determination on the size of the entity or the impact this rule will have on them. Of the remaining 325 entities in the sample, CBP was able to positively identify 264 as small entities based on size standards of the Small Business Administration. Table 6 shows the distribution of small entities across industries.

TABLE 6–NAICS CODES, DESCRIPTIONS, NUMBER, AND PERCENT OF INDUSTRY IN SAMPLE ARE SMALL

Primary NAICS code	Industry description	Number of small entities in sample	Number of entities in sample	Percent of industry in sample are small
511210	Software Publishers	18	19	95
541511	Custom Computer Programming Services	17	17	100
561439	Other Business Service Centers (including Copy Shops)	14	15	93
541618	Other Management Consulting Services	11	13	85
541330	Engineering Services	9	9	100
621111	Offices of Physicians (except Mental Health Specialists)	9	9	100
611110	Elementary and Secondary Schools	7	7	100
541211	Offices of Certified Public Accountants	7	7	100
621493	Freestanding Ambulatory Surgical and Emergency Centers	6	6	100
561110	Office Administrative Services	5	5	100
541512	Computer Systems Design Services	4	4	100
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers.	4	4	100
541110	Offices of Lawyers	4	6	67

TABLE 6–NAICS CODES, DESCRIPTIONS, NUMBER, AND PERCENT OF INDUSTRY IN SAMPLE ARE SMALL—Continued

Primary NAICS code	Industry description	Number of small entities in sample	Number of entities in sample	Percent of industry in sample are small
446110	Pharmacies and Drug Stores	4	4	100
523930	Investment Advice	4	4	100
621210	Offices of Dentists	4	4	100
611310	Colleges, Universities, and Professional Schools	3	4	75
541714	Research and Technology in Biotechnology (except Nanobiotechnology).	3	3	100
541611	Administrative Management and General Management Consulting Services.	3	4	75
518210	Data Processing, Hosting, and Related Services	3	3	100
541690	Other Scientific and Technical Consulting Services	3	6	50
621399	Offices of All Other Miscellaneous Health Practitioners	3	3	100
541720	Research and Development in the Social Sciences and Humanities	3	3	100
238210	Electrical Contractors and Other Wiring Installation Contractors	3	3	100
488390	Other Support Activities for Water Transportation	3	3	100
541519	Other Computer Related Services	3	3	100
921120	Legislative Bodies	3	3	100
Other	Various *	104	154	68
Total		264	325	81

* Two or fewer small entities in NAICS category.

Of the 264 confirmed small entities, 223 had fewer than 50 employees and would be statutorily exempt from paying the 9–11 Biometric Fee and 40 small entities had 50 or more employees. CBP did not have an employee count for one employer and cannot determine whether it is affected by this rule.

Based on the sample and the threshold for employers to be subject to the requirements of the 9–11 Biometric Fee (50 or more employees in the United States and more than 50 percent of employees in H–1B or L–1 status), CBP estimates that an approximate maximum of 16 percent of small entities that hire H–1B or L–1 employees will be affected by this rule.[38] The minimum percentage is zero if none of the covered employers has more than 50 percent of its employees with H–1B or L–1 status.

5. A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the 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

The regulation does not change any required reporting or recordkeeping. As discussed above, this rule could affect any small entity that employs 50 or more people in the United States with more than 50 percent of employees in H–1B or L–1 nonimmigrant status.

The rule has compliance requirements for affected small businesses since it amends the regulations at 8 CFR 106.2(c)(8) and (9) to specify that the 9–11 Biometric Fee will apply to all H–1B and L–1 extension of status petitions filed by covered employers in addition to all previously covered H–1B and L–1 petitions. As a result, petitioning small businesses with 50 or more employees in the United States and more than 50 percent of employees in H–1B or L–1 status are subject to the 9–11 Biometric Fee. The fee for H–1B and L–1 petitions under Public Law 114–113 is $4,000 and $4,500, respectively.

6. A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

DHS is implementing a statutory interpretation of Public Law 114–113 that minimizes the impact on small businesses because only entities with 50 or more employees in the United States and more than 50 percent of employees in H–1B or L–1 status must pay the 9–11 Biometric Fee while still allowing DHS to receive enough funds for the continued implementation and required maintenance of biometric entry and exit data systems already in place.

The alternative to this rule would be to take no regulatory action and, while this would have a smaller impact on small businesses, it would leave DHS unable to accomplish the best interpretation of, and stated objectives, of the applicable statutes. This would require DHS to reallocate funds that DHS has marked for other purposes in order to maintain and finish implementing current biometric entry operations and implement biometric exit operations that are required by section 7208 of the IRTPA.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3512, DHS must submit to the Office of Management and Budget (OMB) for review and approval, any reporting requirements inherent in a final rule, unless they are exempt. Although this final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act, this final rule will require non-substantive modifications to USCIS Form I–129, Petition for a Nonimmigrant Worker, covered under OMB Control Number 1615–0009. These edits include instructional updates for H–1B and L–1 petitions regarding which petitions are subject to the fee mandated by Public Law 114–113 to comply with the changes made by this final rule. Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet to OMB for review and approval in accordance with the PRA.

[38] 41 out of 264 confirmed small entities sampled (41/264 = .1553 or 15.53%).

D. Privacy

The Privacy Act of 1974 (5 U.S.C. 552a) (Privacy Act) prescribes how federal agencies store and use personal information. DHS will ensure that all Privacy Act requirements and applicable DHS privacy policies are adhered to as a result of this regulation. DHS has issued a Privacy Impact Assessment (PIA) which covers H–1B and L–1 petitions, DHS/USCIS/PIA–016a Computer Linked Application Information Management System and Associated Systems and DHS/CBP/PIA–009 TECS System: CBP Primary and Secondary Processing, which is available at *www.dhs.gov/privacy.*

The Privacy Act requires that federal agencies issue a System of Record Notice (SORN) to provide the public notice regarding personally identifiable information (PII) collected in a system of records. SORNs explain how the information is used, retained, and may be accessed or corrected, and whether certain portions of the system are subject to Privacy Act exemptions for law enforcement, national security, or other reasons. DHS follows approved routine uses described in the associated published system of records notices, DHS/USCIS–001—Alien File, Index, and National File Tracking System, DHS/USCIS–007—Benefits Information System, and DHS/CBP–011 U.S. Customs and Border Protection TEC. DHS may also share this information, as appropriate, for law enforcement purposes or in the interest of national security.

E. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Congressional Review Act

Before a rule can take effect, 5 U.S.C. 801, the Congressional Review Act (CRA), requires agencies to submit the rule and a report indicating whether it is a major rule, to Congress and the Comptroller General. If a rule is deemed a ''major rule'' by OMB, the CRA generally provides that the rule may not take effect until at least 60 days following its publication. 5 U.S.C. 801(a)(3). The Administrator of the Office of Information and Regulatory Affairs of OMB has determined that this rule does not meet the criteria for a ''major rule'' in 5 U.S.C. 804(2). This rule will take effect 30 days after publication. A report about the issuance of this final rule has been submitted to Congress and the Comptroller General of the United States.

G. National Environmental Policy Act

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

NEPA allows Federal agencies to establish categories of actions (''categorical exclusions'') that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment (EA) or environmental impact statement (EIS). *See* 42 U.S.C. 4336(a)(2), 4336e(1). The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. *See* Instruction Manual 023–01 at V.B(2)(a)–(c).

DHS has analyzed this action under Directive 023–01 and Instruction Manual 023–01–001–01. DHS has made a determination that this rulemaking action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. First, this rule clearly fits within the Categorical Exclusion A3(d) of DHS's Instruction Manual 023–01–001–01, Appendix A, for rules that ''interpret or amend an existing regulation without changing its environmental effect.'' Second, this rule is not part of a larger action. Third, this rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, a more detailed NEPA review is not necessary.

List of Subjects in 8 CFR 106

Citizenship and naturalization, Fees, Immigration.

Regulatory Amendments

For the reasons stated in the preamble, DHS is amending part 106 of title 8, Code of Federal Regulations (8 CFR part 106), as set forth below:

PART 106—USCIS FEE SCHEDULE

■ 1. The authority citation for part 106 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1254a, 1254b, 1304, 1356, 1801–1815; 48 U.S.C. 1806; Pub. L. 107–609; 115 Stat 1012; Pub L. 107–296, 116 Stat. 2135 (6 U.S.C. 101 note); Pub. L. 114–113, 129 Stat. 2242 (49 U.S.C. 40101 note); Pub. L. 115–123, 132 Stat. 64.

■ 2. Amend § 106.2 by revising paragraphs (c)(8) and (c)(9) to read as follows:

§ 106.2 Fees.

* * * * *

(c) * * *

(8) *9–11 Response and Biometric Entry-Exit Fee for H–1B Visa.* For all petitioners filing an H–1B petition who employ 50 or more employees in the United States, if more than 50 percent of the petitioner's employees in the aggregate are in H–1B, L–1A, or L–1B nonimmigrant status: $4,000. Petitioners filing an amended petition that do not seek an extension of the alien's currently authorized H–1B status are exempt from this fee. This fee will apply to petitions filed on or before September 30, 2027.

(9) *9–11 Response and Biometric Entry-Exit Fee for L–1 Visa.* For all petitioners filing an L–1 petition who employ 50 or more employees in the United States, if more than 50 percent of the petitioner's employees in the aggregate are in H–1B, L–1A, or L–1B nonimmigrant status: $4,500. Petitioners filing an amended petition that do not seek an extension of the alien's currently authorized L–1 status are exempt from this fee. This fee will apply to petitions filed on or before September 30, 2027.

* * * * *

Markwayne Mullin,

Secretary of Homeland Security.

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