



DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2766-24; DHS Docket No. USCIS-2023-0005]

RIN 1615-AC70

Improving the H-1B Registration Selection Process and Program Integrity

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

ACTION: Final rulemaking.

SUMMARY: The U.S. Department of Homeland Security (DHS) is amending its regulations to implement the proposed beneficiary centric selection process for H-1B registrations, provide start date flexibility for certain H-1B cap-subject petitions, and implement additional integrity measures related to H-1B registration.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone (240) 721-3000.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Executive Summary
 - A. Purpose and Summary of the Regulatory Action
 - B. Summary of Costs and Benefits
 - C. Summary of Changes from the Notice of Proposed Rulemaking
- II. Background
 - A. Legal Authority
 - B. Background on H-1B Registration
 - C. The Need for Regulatory Action
 - D. Final Rule and Implementation
- III. Public Comments on the Proposed Rule
 - A. Summary of Public Comments

- B. Statutory and Legal Issues Related to Registration and Background
 - 1. DHS/USCIS Legal Authority Related to Registration
 - 2. Background and Data on the Current Registration System
- C. Beneficiary Centric Selection
 - 1. General Support
 - 2. General Opposition
 - 3. Identifying Information and Passport Requirement
 - 4. Implementation and Effective Date
 - 5. Other Comments on the Beneficiary Centric Selection Process
- D. Start Date Flexibility for Certain H-1B Cap-Subject Petitions
- E. Registration Related Integrity Measures
 - 1. Bar on Multiple Registrations Submitted by Related Entities
 - 2. Registrations with False Information or that are Otherwise Invalid
 - 3. Other Comments and Alternatives to Anti-fraud Measures Related to Registration
- F. Other Comments Related to the Proposed Registration System
 - 1. Electronic Registration v. Paper-Based Filing
 - 2. Comments on Fees Related to Registration
 - 3. Other Comments and Alternatives Related to Registration
- IV. Severability
- V. Statutory and Regulatory Requirements
 - A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)
 - B. Regulatory Flexibility Act (RFA)
 - C. Unfunded Mandates Reform Act of 1995 (UMRA)
 - D. Congressional Review Act
 - E. Executive Order 13132 (Federalism)
 - F. Executive Order 12988 (Civil Justice Reform)
 - G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
 - H. National Environmental Policy Act (NEPA)
 - I. Paperwork Reduction Act (PRA)

Table of Abbreviations

CFR – Code of Federal Regulations
 CPI-U – Consumer Price Index for All Urban Consumers
 DHS – U.S. Department of Homeland Security
 DOL – U.S. Department of Labor
 FR – *Federal Register*
 FY – Fiscal Year
 HR – Human Resources
 HSA – Homeland Security Act of 2002
 IMMACT 90 – Immigration Act of 1990
 INA – Immigration and Nationality Act
 LCA – Labor Condition Application
 NEPA – National Environmental Policy Act
 NPRM – Notice of Proposed Rulemaking
 OMB – Office of Management and Budget
 PRA – Paperwork Reduction Act
 PRD – Policy Research Division
 Pub. L. – Public Law

RFA – Regulatory Flexibility Act of 1980
RIA – Regulatory Impact Analysis
Stat. – U.S. Statutes at Large
TLC – Temporary Labor Certification
UMRA – Unfunded Mandates Reform Act
U.S.C. – United States Code
USCIS – U.S. Citizenship and Immigration Services

I. Executive Summary

DHS is amending its regulations relating to the H-1B registration selection process. This final rule implements a beneficiary centric selection process for H-1B registrations, start date flexibility for certain H-1B cap-subject petitions, and integrity measures related to H-1B registration. These provisions are being codified at new 8 CFR 214.2(h)(8)(iii)(A), (h)(8)(iii)(D), (h)(8)(iii)(E), (h)(10)(ii), (h)(10)(iii), and (h)(11)(iii)(A). At this time, DHS is not finalizing other provisions of the “Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers,” Notice of Proposed Rulemaking (NPRM), published in the *Federal Register* on October 23, 2023 (October 23 NPRM).

A. Purpose and Summary of the Regulatory Action

The purpose of this rulemaking is to improve the H-1B registration selection process. Through this rule, DHS is implementing a beneficiary centric selection process for H-1B registrations. Instead of selecting by registration, U.S. Citizenship and Immigration Services (USCIS) will select registrations by unique beneficiary. Each unique beneficiary who has a registration submitted on their behalf will be entered into the selection process once, regardless of how many registrations are submitted on their behalf. If a beneficiary is selected, each registrant that submitted a registration on that beneficiary’s behalf will be notified of the beneficiary’s selection and will be eligible to file a petition on that beneficiary’s behalf during the applicable petition filing period. *See* new 8 CFR 214.2(h)(8)(iii)(A)(1) and (4). DHS anticipates that changing to a beneficiary

centric selection process for H-1B registrations will reduce the potential for gaming the process to increase chances for selection and help ensure that each beneficiary has the same chance of being selected, regardless of how many registrations are submitted on their behalf.

DHS will also provide start date flexibility for certain H-1B cap-subject petitions. DHS is clarifying the requirements regarding the requested employment start date on H-1B cap-subject petitions to permit filing with requested start dates that are after October 1 of the relevant fiscal year, consistent with current USCIS policy, by removing the current regulatory text at 8 CFR 214.2(h)(8)(iii)(A)(4).

Additionally, DHS is implementing integrity measures related to the H-1B registration process, including requiring registrations to include the beneficiary's valid passport information or valid travel document information, and prohibiting a beneficiary from being registered under more than one passport or travel document. *See* new 8 CFR 214.2(h)(8)(iii)(A)(4). DHS is also codifying USCIS' ability to deny H-1B petitions or revoke an approved H-1B petition where: there is a change in the beneficiary's identifying information from the identifying information as stated in the registration to the information as stated in the petition; the underlying registration contained a false attestation or was otherwise invalid; the registration fee was invalid; or where the H-1B cap-subject petition was not based on a valid registration. *See* new 8 CFR 214.2(h)(8)(iii)(A) and (D). In addition, DHS is also further codifying USCIS' authority to deny an H petition where the statements on the petition, H-1B registration, labor condition application (LCA), or temporary labor certification (TLC), as applicable, were inaccurate, fraudulent, or misrepresented a material fact, including if the attestations on the H-1B registration are determined to be false. *See* new 8 CFR 214.2(h)(10)(ii)–(iii). Finally, DHS is codifying USCIS' ability to revoke an approved H petition where the statements on the petition, H-1B registration, TLC, or the LCA, as applicable, were

inaccurate, fraudulent, or misrepresented a material fact, including if the attestations on the H-1B registration are determined to be false. *See* new 8 CFR 214.2(h)(11)(iii)(A).

B. Summary of Costs and Benefits

The purpose of this rulemaking is to improve the H-1B registration selection process. For the 10-year period of analysis of the final rule, DHS estimates the annualized net cost savings of this rulemaking will be \$2,199,374 annualized at 3 percent and 7 percent. Table 1 provides a more detailed summary of the final rule provisions and their impacts.

C. Summary of Changes from the Notice of Proposed Rulemaking

Following careful consideration of public comments received, this final rule adopts some of the provisions proposed in the October 23 NPRM, with some changes as described below.

Passport or Travel Document Requirement

DHS will make a modification to the proposed passport requirement to specify that registrations must include the beneficiary's valid passport or valid travel document. *See* new 8 CFR 214.2(h)(8)(iii)(A)(4)(ii) and (D)(I). As proposed in the NPRM, 8 CFR 214.2(h)(8)(iii)(A)(4)(ii) would have required the registration to include the beneficiary's valid passport information and would not have provided an exception to the passport requirement. However, after considering public comments expressing concern for stateless individuals, refugees, and others who are unable to obtain valid passports, DHS has decided to modify new 8 CFR 214.2(h)(8)(iii)(A)(4)(ii) so that the registration must include the beneficiary's valid passport information or valid travel document information. Requiring the beneficiary's valid passport information or valid travel document information at the registration stage would align with the current Form I-129 which asks for the beneficiary's "passport or travel document." This modification to allow for a valid travel document is intended to narrowly accommodate stateless individuals, refugees, and

others who are unable to obtain valid passports, and is directly in response to public comments expressing concerns for these populations. The travel document must be the travel document that the beneficiary, if or when abroad, intends to use to enter the United States if issued an H-1B visa. *See* new 8 CFR 214.2(h)(8)(iii)(A)(4)(ii). Therefore, the travel document must be valid for the entry of the bearer into the United States. An example of a valid travel document includes one of the travel documents listed in the Department of State's reciprocity schedule.¹ DHS is also modifying this provision by adding "or when" to the phrase "if abroad." This modification is intended to clarify that the passport or travel document must be the same passport or travel document that the beneficiary intends to use to enter the United States, whether the beneficiary is abroad at time of registration or in the United States at the time of registration and will subsequently depart to obtain an H-1B visa and return to the United States to request admission as an H-1B nonimmigrant.

Under new 8 CFR 214.2(h)(8)(iii)(A)(4)(ii), each beneficiary may only be registered under one passport or travel document. Under new 8 CFR 214.2(h)(8)(iii)(A)(2), if USCIS determines that registrations are submitted by either the same or different prospective petitioners for the same beneficiary, but using different identifying information, USCIS may find those registrations invalid and deny or revoke the approval of any H-1B petition filed based on those registrations. Additionally, any H-1B petition filed on behalf of a beneficiary must contain and be supported by the same identifying information provided in the selected registration, and petitioners must submit evidence of the passport or travel document used at the time of registration to identify the beneficiary under new 8 CFR 214.2(h)(8)(iii)(D)(I). Such evidence may include a copy

¹ The Department of State website shows visa reciprocity by country. To view the Reciprocity Page for a country of nationality, select the country/area of authority from the list of countries on the left side menu. On the country's Reciprocity Page, select "Passports & Other Travel Documents." Department of State, U.S. Visa: Reciprocity and Civil Documents by Country, <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html>.

of the passport or travel document, consistent with current practice. In its discretion, USCIS may find that a change in identifying information in some circumstances would be permissible. Such circumstances could include, but are not limited to, a legal name change due to marriage, change in gender identity, or a change in passport number or expiration date due to renewal or replacement of a stolen passport, in between the time of registration and filing the petition. USCIS may deny or revoke an H-1B petition that does not meet these requirements. *See* new 8 CFR 214.2(h)(8)(iii)(D)(I).

Multiple Registrations by Related Entities

DHS will not finalize the proposed change at 8 CFR 214.2(h)(2)(i)(G) to prohibit related entities from submitting multiple registrations for the same individual at this time. DHS will address and may finalize this proposed provision in a subsequent final rule. However, the submission of multiple registrations for the same individual by related entities should not increase the chances of selection given the finalization of the proposal to have USCIS select registrations by unique beneficiary. *See* new 8 CFR 214.2(h)(8)(iii)(A)(I) and (4).

Severability

DHS is adding new regulatory text on severability at 8 CFR 214.2(h)(8)(v)(B) and redesignating the severability clause at paragraph (h)(8)(v) as new paragraph (h)(8)(v)(A). While severability was discussed in the NPRM, it was only discussed in the preamble and there was no proposed regulatory text.

Other Changes from the NPRM

DHS is also amending the proposed regulatory text at 8 CFR 214.2(h)(8)(iii)(A)(4) to state, “A petitioner may file an H-1B cap-subject petition on behalf of a registered beneficiary only after their properly submitted registration for that beneficiary has been selected for that fiscal year.” The only change from the NPRM is changing “a” to “their” before “properly submitted registration.” DHS is making this

change to eliminate any confusion that the petitioner listed on the H-1B petition must be the same as, or a successor in interest to, the prospective petitioner listed on the registration that was selected.

II. Background

A. Legal Authority

The Secretary of Homeland Security's authority for these regulatory amendments is found in various sections of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1101 et seq., and the Homeland Security Act of 2002 (HSA), Pub. L. 107-296, 116 Stat. 2135, 6 U.S.C. 101 et seq. General authority for issuing this rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws and establish such regulations as the Secretary deems necessary for carrying out such authority, as well as section 102 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations.² Further authority for these regulatory amendments is found in:

- Section 101(a)(15) of the INA, 8 U.S.C. 1101(a)(15), which establishes classifications for noncitizens who are coming temporarily to the United States as nonimmigrants, including the H-1B classification, *see* INA sec. 101(a)(15)(H)(i)(b), 8 U.S.C. 1101(a)(15)(H)(i)(b);
- Section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), which authorizes the Secretary to prescribe, by regulation, the time and conditions of the admission of nonimmigrants;
- Section 214(c) of the INA, 8 U.S.C. 1184(c), which, *inter alia*, authorizes the Secretary to prescribe how an importing employer may petition for nonimmigrant

² Although several provisions of the INA discussed in this NPRM refer exclusively to the "Attorney General," such provisions are now to be read as referring to the Secretary of Homeland Security by operation of the HSA. *See* 6 U.S.C. 202(3), 251, 271(b), 542 note, 557; 8 U.S.C. 1103(a)(1), (g), 1551 note; *Nielsen v. Preap*, 139 S. Ct. 954, 959 n.2 (2019).

- workers, including certain nonimmigrants described at sections 101(a)(15)(H), (L), (O), and (P), 8 U.S.C. 1101(a)(15)(H), (L), (O), and (P); the information that an importing employer must provide in the petition; and certain fees that are required for certain nonimmigrant petitions;
- Section 214(g) of the INA, 8 U.S.C. 1184(g), which, *inter alia*, prescribes the H-1B numerical limitations, various exceptions to those limitations, and the period of authorized admission for H-1B nonimmigrants;
 - Section 235(d)(3) of the INA, 8 U.S.C. 1225(d)(3), which authorizes “any immigration officer” “to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of [the INA] and the administration of [DHS]”;
 - Section 287(b) of the INA, 8 U.S.C. 1357(b), which authorizes the taking and consideration of evidence “concerning any matter which is material or relevant to the enforcement of the [INA] and the administration of [DHS]”;
 - Section 402 of the HSA, 6 U.S.C. 202, which charges the Secretary with “[e]stablishing and administering rules . . . governing the granting of visas or other forms of permission . . . to enter the United States” and “[e]stablishing national immigration enforcement policies and priorities”; *see also* HSA sec. 428, 6 U.S.C. 236; and
 - Section 451(a)(3) and (b) of the HSA, 6 U.S.C. 271(a)(3) and (b), transferring to USCIS the authority to adjudicate petitions for nonimmigrant status, establish policies for performing that function, and set national immigration services policies and priorities.

B. Background on H-1B Registration

The H-1B nonimmigrant visa program allows U.S. employers to temporarily employ foreign workers in specialty occupations, defined by statute as occupations that require the theoretical and practical application of a body of highly specialized knowledge and a bachelor's or higher degree in the specific specialty, or its equivalent. *See* INA secs. 101(a)(15)(H)(i)(b) and 214(i), 8 U.S.C. 1101(a)(15)(H)(i)(b) and 1184(i). Through the Immigration Act of 1990 (Pub. L. 101-649), Congress set the current annual cap for the H-1B visa category at 65,000,³ which limited the number of beneficiaries who may be issued an initial H-1B visa or otherwise provided initial H-1B status each fiscal year.⁴ Congress provided an exemption from the numerical limits in INA sec. 214(g)(1)(A), 8 U.S.C. 1184(g)(1)(A), for 20,000 initial H-1B visas, or grants of initial H-1B status, each fiscal year for foreign nationals who have earned a master's or higher degree from a U.S. institution of higher education ("advanced degree exemption").⁵

To manage the annual cap, USCIS used a random selection process in years of high demand to determine which petitions were selected toward the projected number of petitions needed to reach the annual H-1B numerical allocations. In order to better manage the selection process, DHS created a registration requirement for H-1B cap-subject petitions, which was first implemented in 2020 for the FY 2021 cap season. Through issuance of a final rule in 2019, "Registration Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Cap-Subject Aliens," DHS developed a new way to administer the H-1B cap selection process to streamline processing and provide

³ Up to 6,800 visas are set aside from the 65,000 each fiscal year for the H-1B1 visa program under terms of the legislation implementing the U.S.-Chile and U.S.-Singapore free trade agreements. *See* INA secs. 101(a)(15)(H)(i)(b1), 214(g)(8), 8 U.S.C. 1101(a)(15)(H)(i)(b1), 1184(g)(8).

⁴ The 65,000 annual H-1B numerical limitation was increased for FYs 1999–2003. *See* INA sec. 214(g)(1)(A), 8 U.S.C. 1184(g)(1)(A), as amended by section 411 of the ACWIA, Public Law 105-277, div. C, tit. IV, 112 Stat. 2681, and the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), Public Law 106-313, 114 Stat. 1251, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107-273, 116 Stat. 1758 (2002). Subsequent to IMMACT 90, Congress also created several exemptions from the 65,000 numerical limitation. *See* INA sec. 214(g)(5), 8 U.S.C. 1184(g)(5).

⁵ *See* INA sec. 214(g)(5)(C), 8 U.S.C. 1184(g)(5)(C). This rule also may refer to the 20,000 exemptions under section 214(g)(5)(C) from the H-1B regular cap as the "advanced degree exemption allocation," or "advanced degree exemption numerical limitation."

overall cost savings to employers seeking to file H-1B cap-subject petitions. *See* 84 FR 888 (Jan. 31, 2019). Under this process, prospective petitioners (also known as registrants) that seek to employ H-1B cap-subject workers must complete a registration process that requires only basic information about the prospective petitioner and each requested worker. The H-1B selection process is then run on properly submitted electronic registrations. Only those with valid selected registrations are eligible to file H-1B cap-subject petitions. 8 CFR 214.2(h)(8)(iii)(A)(I).

C. The Need for Regulatory Action

DHS has seen an increase in the number of beneficiaries with multiple registrations submitted on their behalf, as well as an increase in the number and percentage of registrations submitted for beneficiaries with multiple registrations. Under current regulations, there is no limit on the number of registrations that may be submitted on behalf of one unique individual by different registrants. DHS has a strong interest in ensuring that the annual numerical allocations are going to petitioners that truly intend to employ an H-1B worker, rather than prospective petitioners using the registration system as a placeholder for the possibility that they may want to employ an H-1B worker or as a way to game the selection process. *See* 88 FR 72870, 72897 (Oct. 23, 2023). As a result, DHS has determined that structurally limiting the ability to game the system through beneficiary centric selection will promote the purpose of fair and orderly administration of the annual H-1B numerical allocations.

D. Final Rule and Implementation

On October 23, 2023, DHS published an NPRM, “Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers,” 88 FR 72870. In the October 23 NPRM, DHS stated that it may publish one or more final rules to codify the proposed provisions after carefully considering public comments, and that it may do so in time for the FY 2025 cap

season. DHS received 1,315 comments on the NPRM, most of which are substantive. Based on recent program experience and careful review of public comments expressing the urgent need to reform the registration system and support for the proposed beneficiary centric selection process, DHS has decided to first finalize changes to the H-1B registration selection process and other related changes discussed below, to urgently address the potential for abuse of the H-1B registration process, including for the upcoming FY2025 cap season. DHS continues to consider the suggestions made in public comments received on the other proposed changes included in the October 23 NPRM and plans to issue a separate final rule to codify or otherwise address those proposed changes.

III. Public Comments on the Proposed Rule

A. Summary of Public Comments

In response to the proposed rule, DHS received 1,315 comments during the 60-day public comment period. Of these, 510 comments were related to H-1B registration and the related topics that DHS is finalizing through this rulemaking. Of these, 25 comments were duplicate submissions and approximately 78 were letters submitted through mass mailing campaigns. DHS considered all of these comment submissions. Commenters included individuals (including U.S. workers), companies, law firms, a federation of labor organizations, professional organizations, advocacy groups, nonprofit organizations, representatives from Congress and local governments, universities, and trade and business associations. Most commenters expressed support for the rule or offered suggestions for improvement. Of the commenters opposing the rule, many commenters expressed opposition to a part of or all of the proposed rule. Some just expressed general opposition to the rule without suggestions for improvement. For many of the public comments, DHS could not ascertain whether the commenter supported or opposed the proposed rule.

DHS has reviewed all of the public comments received in response to the

proposed rule. In this final rule, DHS is only responding to public comments that are related to H-1B registration and the related topics that DHS is finalizing through this final rule. DHS's responses are grouped by subject area, with a focus on the most common issues and suggestions raised by commenters.

B. Statutory and Legal Issues Related to Registration and Background

1. DHS/USCIS Legal Authority Related to Registration

Comment: While providing feedback on the proposed changes to the H-1B selection process, a couple of commenters wrote that centering the selection process around beneficiaries is a proper exercise of DHS's authority under the INA. Citing INA sec. 214(g)(3) and *Walker Macy LLC v. USCIS*, 243 F. Supp. 3d 1156 (D. Or. 2017), the commenters wrote that the statutory ambiguity around how to allocate H-1B numbers when the Department receives hundreds of thousands of petitions or registrations requires DHS to establish "a reasonable H-1B allocation process for such situations." Another commenter generally stated that the proposed rule is within the legal framework established by Congress.

Response: DHS agrees with the commenters that it has the statutory authority to implement the beneficiary centric registration selection process, consistent with its authority under section 102 of the HSA, 6 U.S.C. 112, and INA secs. 103(a), 214(a) and 214(c), 8 U.S.C. 1103(a), 1184(a) and 1184(c). These are the same authorities that DHS relied upon to create the registration requirement. *See* 84 FR 888, 894 (Jan. 31, 2019); *see also Liu v. Mayorkas*, 588 F.Supp.3d 43, 55 (D.D.C. 2022) (finding that the registration requirement does not violate the INA and is not ultra vires). DHS also agrees that the beneficiary centric registration selection process is a reasonable process for administering the H-1B numerical allocations because it better ensures an equal chance of selection for each unique beneficiary registered for the H-1B cap by a prospective petitioner and

systematically reduces the potential for prospective petitioners to have a higher chance of selection by abusing the system and working with others to submit multiple registrations for the same beneficiary.

Comment: An individual commenter stated that it is unclear whether DHS has the statutory authority to implement the proposed beneficiary centric selection process. The commenter remarked that the system would potentially contradict INA sec. 214(g)(3), 8 U.S.C. 1184(g)(3), which states that H-1B visas shall be issued “in the order in which petitions are filed.” The commenter asserted that the random selection system was justifiable because it was used to determine which petitions were considered to be filed earlier than others, but that the proposed system would not be consistent with this framework. The commenter contended that the proposed system seems to contradict INA sec. 214(g)(3), 8 U.S.C. 1184(g)(3), because the commenter believes that the law requires that multiple petitions submitted on behalf of a beneficiary would give them multiple chances to have their petition considered as one of the 65,000 earliest filed.

Response: DHS disagrees with the suggestion that it lacks statutory authority to implement the beneficiary centric registration selection process or that this process would be inconsistent with INA sec. 214(g)(3), 8 U.S.C. 1184(g)(3), which states that initial H-1B visas or grants of status shall be issued in the order in which petitions are filed. “A registration is not a petition.” *Liu v. Mayorkas*, 588 F.Supp.3d 43, 54 (D.D.C. 2022). Registration is merely “an antecedent procedural step to be eligible to file an H-1B cap[-subject] petition.” *Id.* at 55. Furthermore, INA sec. 214(g)(3), 8 U.S.C. 1184(g)(3), is silent with regard to how to handle simultaneous submissions of H-1B cap-subject petitions. *See Walker Macy LLC v. USCIS*, 243 F. Supp. 3d 1156, 1167 (D. Or. 2017). Contrary to the commenter’s assertion, the INA does not require USCIS to provide multiple chances for selection for beneficiaries of multiple H-1B cap-subject petitions. Rather, consistent with INA sec. 214(g)(7), 8 U.S.C. 1184(g)(7) (“Where multiple

petitions are approved for 1 alien, that alien shall be counted only once”), if multiple employers properly file H-1B cap-subject petitions for a beneficiary selected during the beneficiary centric registration selection process, and if multiple H-1B cap-subject petitions are approved for that beneficiary, the beneficiary will only be counted once toward the numerical allocations.⁶ DHS, therefore, believes that the beneficiary centric registration selection process, similar to the registration-based selection process, is not inconsistent with INA sec. 214(g)(3), 8 U.S.C. 1184(g)(3), and is a permissible exercise of DHS’s authority under section 102 of the HSA, 6 U.S.C. 112, and INA secs. 103(a), 214(a) and 214(c), 8 U.S.C. 1103(a), 1184(a) and 1184(c).

Comment: A comment from multiple members of Congress stated that, while it is legal for beneficiaries to have multiple employers submit registrations on their behalf, the current registration system is “unfair to [beneficiaries] and scrupulous employers, detrimental to the H-1B system, and inconsistent with statutory intent, as individuals with multiple selections may be counted as multiple cap slots.” These commenters strongly recommended that DHS implement the beneficiary centric system in time for the FY 2025 registration period.

Response: DHS agrees that the beneficiary centric selection approach will improve the fairness and integrity of the H-1B registration process and reduce the possibility for abuse. However, DHS disagrees with the commenters’ suggestion that the current registration system is inconsistent with the statute or congressional intent.⁷ As

⁶ See *Liu v. Mayorkas*, 588 F.Supp.3d 43, 55 (D.D.C. 2022) (“Consider also that if an alien could have only one employer file a registration on his behalf, that would conflict with § 1184(g)(7). Such a rule would effectively bar any scenario where an alien could have more than one petition approved for him. Section 1184(g)(7) would become meaningless. That is why the Registration Rule allows for multiple registrations. And it adheres to the INA, because ‘one alien, one registration’ is not in the statutory language.”).

⁷ The U.S. District Court for the District of Columbia found that the current registration process is not inconsistent with the INA and is therefore not ultra vires. See *Liu v. Mayorkas*, 588 F.Supp.3d 43, 55 (D. D.C. 2022) (“The Rule does not allow more than 65,000 visas (85,000 with the exempt visas included), so it complies with sec. 1184(g)(1). The Applicants do not argue that the Rule allows USCIS to issue visas in any order other than the order in which it receives petitions. Nor could they, because all the Registration Rule does is require prospective employers to file a registration as a first step in the process. A registration is not a petition. The Registration Rule is simply an antecedent procedural step to be eligible to file an H-

stated in previous responses above, DHS has the statutory authority to implement the beneficiary centric registration selection process, consistent with its authority under section 112 of the HSA, 6 U.S.C. 112, and INA secs. 103(a), 214(a) and 214(c), 8 U.S.C. 1103(a), 1184(a) and 1184(c). DHS also agrees that implementing these improvements as soon as possible, and in time for the FY 2025 cap season, will be advantageous to the regulated public and DHS.

2. Background and Data on the Current Registration System

Comment: While citing research published in Forbes on May 1, 2023,⁸ a couple of commenters offered general background on selection in the H-1B registration process, stating that the chances of selection have decreased from FY 2021 to FY 2024. A commenter expressed support for the rule, while inaccurately stating that there were “7.81 million registrations received during the 2024 fiscal year.” Another commenter conveyed support for the proposed rule by referencing the unprecedented number of registrations received during FY 2024. While referencing the increase in registrations for beneficiaries with multiple registrations, a joint submission expressed a vision of the H-1B registration system in which employers with genuine job opportunities are not disadvantaged by those who manipulate the registration process. Citing the increase in the number of “applications” within the past 3 years, a commenter stated that this increase was because of businesses sponsoring multiple applications for the same person.

Response: In FY 2024, there were many more registrations than in previous years. As USCIS stated on its “H-1B Electronic Registration Process” website, there were 780,884 total registrations received during the registration period for the FY 2024 H-1B

1B cap petition. So the Rule does not violate sec. 1184(g)(3). And the Rule does not violate sec. 1184(g)(7) because it makes no provision for USCIS to count an alien more than once against the H-1B cap. . . . Because the INA is clear, the Court need not move to *Chevron* step two. And because the Registration Rule does not violate the INA, it is not ultra vires.”) (citations omitted).

⁸ Anderson, Stuart, “Immigration Service Likely to Change H-1B Visa Lottery,” Forbes (May 1, 2023), <https://www.forbes.com/sites/stuartanderson/2023/05/01/immigration-service-likely-to-change-h-1b-visa-lottery/?sh=5253047d2868>.

cap.⁹ This was a significant increase over prior years. USCIS also stated on its website that, generally, there was an increase in the number of registrations submitted, the number of registrations submitted on behalf of beneficiaries with multiple registrations, and the number of registrations submitted on behalf of unique beneficiaries with only one registration.¹⁰ USCIS further noted on its website that the large number of eligible registrations for beneficiaries with multiple eligible registrations had raised serious concerns that some may have tried to gain an unfair advantage by working together to submit multiple registrations on behalf of the same beneficiary.¹¹ As DHS noted in the proposed rule, beneficiaries who have multiple registrations submitted on their behalf have a significantly higher chance of selection, while an individual's chance of selection with a single registration is greatly reduced, as the number of beneficiaries with multiple registrations increases under the current system, increasing the number of registrations overall. Through this rule, DHS intends to remedy this situation by implementing the beneficiary centric selection process, where each beneficiary is expected to have the same chance of selection, regardless of the number of registrations submitted on their behalf.

Comment: Referencing Tables 3 and 4 of the NPRM, a commenter remarked that this data was evidence of an increasing trend that undermined the registration system's fairness and efficiency. The commenter added that attention and action are needed to maintain the integrity of the registration system. Another commenter said that the information presented in Tables 2, 3, and 4 of the NPRM shows instances where individuals exploit the current registration system to enhance their chances of selection, thus diminishing the chance of selection for those with only one registration.

⁹ USCIS, "H-1B Electronic Registration Process," <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process> (last updated July 31, 2023).

¹⁰ *Id.*

¹¹ *Id.*

Response: DHS agrees that tables 2, 3, and 4 in the NPRM show a concerning trend. As noted in the proposed rule, the data show that multiple registrations on behalf of the same individual are increasing, and this trend negatively affects the integrity of the registration system and selection process.

C. Beneficiary Centric Selection

1. General support

Comment: Several commenters expressed broad support for the changes to the registration system and implementation of a beneficiary centric selection process without providing additional rationale. Several other commenters expressed support for a system where individuals would only have one chance in the lottery and noted that the proposed measures would reduce multiple “entries” without providing additional rationale.

Response: The commenters’ reference to multiple “entries” is not entirely clear. DHS notes, however, that this rule does not prohibit multiple registrations for the same beneficiary and will not necessarily reduce the number of registrations for the same beneficiary. The rule is intended to reduce the incentives for submitting multiple non-meritorious registrations on behalf of the same beneficiary. Changing how USCIS conducts the selection process to select by unique beneficiaries instead of registrations will significantly reduce or eliminate the advantage of submitting multiple registrations for the same beneficiary solely to increase the chances of selection and should give all beneficiaries an equal chance at selection.

Comment: Many commenters expressed support for the proposed beneficiary centric selection process on the basis that the revisions are needed or overdue, and some said that making the selection process fair should be a high priority.

Response: DHS agrees that revisions to the current selection process are needed to better ensure that the registration system continues to serve its purpose of efficiently and fairly administering the annual H-1B numerical allocations. DHS believes that a

beneficiary centric selection process will likely provide each beneficiary with the same chance for selection without regard to the number of registrations submitted for each beneficiary and will structurally limit the potential for bad actors to game the system because working with others to submit multiple registrations for the same beneficiary will not increase their chance of selection under the beneficiary centric selection process. The final rule also provides that if USCIS determines that registrations were submitted for the same beneficiary by the same or different registrants, but using different identifying information, USCIS may find those registrations invalid and deny or revoke the approval of any H-1B petition filed based on those registrations. DHS believes that these changes are likely to provide an equal chance of selection for each beneficiary and significantly limit the potential for abuse of the registration process.

Comment: Numerous commenters expressed support for the proposed beneficiary centric selection process on the basis that it would have positive impacts on the H-1B program overall, including increasing fairness. These commenters reason that:

- The proposed rule would enhance the fairness and integrity of the selection process overall and one individual should have one entry to the selection process, as it is unfair for individuals to have more than one chance;
- Providing all prospective beneficiaries with an equal opportunity in the selection system would promote social justice and ethical behaviors;
- Concerns with the current uncertainties in the selection process would be alleviated with the changes, which would enhance transparency and predictability in the selection process and help achieve the H-1B program's original objectives;
- The current process harms workers, such as graduates who submit a single entry due to dedication to their prospective employer; and
- Questions on the validity and efficiency of the U.S. immigration system were addressed and that the changes would help restore trust in the system.

Response: DHS agrees with these commenters that the beneficiary centric selection process will likely increase fairness in the selection process, as well as enhance the integrity of the selection process overall. DHS anticipates that this change will also enhance transparency and predictability in the selection process by structurally limiting the potential for bad actors to game the system. As noted in the NPRM, DHS is aware that, under the registration-based selection process, an individual's chance of selection with a single registration is lower compared to beneficiaries who have multiple registrations submitted on their behalf and is optimistic that the new beneficiary centric selection system will increase fairness and help restore trust in the system.

Comment: Many commenters supported the proposed registration selection process because it would reduce abuse in the system, reasoning that:

- The current system is abused by some companies and individuals, who submit multiple registrations on potential beneficiaries' behalf, unfairly strengthening their own chances, and reducing the chances of other applicants being selected;
- The revised process would curb fraud, misuse, and manipulation in the registration system, with some commenters additionally providing anecdotal accounts of fraud and abuse under the current system; and
- Changes to the current system are needed to address loopholes that allow fraudulent submissions.

Response: DHS agrees that changes to the current system are needed to address misuse of the system and better ensure that the registration system continues to serve its purpose of efficiently and fairly administering the annual H-1B numerical allocations. DHS agrees that some registrants have attempted to abuse the registration process to improve the chance of selection for some beneficiaries while reducing the chances of selection of other potential beneficiaries. The beneficiary centric selection process in this final rule is designed to provide each beneficiary with the same chance for selection

without regard to the number of registrations submitted for each beneficiary and will structurally limit the potential for bad actors to game the system because working with others to submit multiple registrations for the same beneficiary will not increase their chance of selection under the beneficiary centric selection process. Under the beneficiary centric process, USCIS will select by each unique beneficiary such that each beneficiary should have the same chance for selection, whether they are the beneficiary of one registration or one hundred registrations. DHS has a strong interest in ensuring that the annual numerical allocations are going to petitioners that truly intend to employ H-1B workers and anticipates that the revised selection process will reduce fraud, misuse, and manipulation in the registration system.

Comment: Multiple commenters expressed support for the changes based on programmatic improvements with respect to reducing administrative burdens and the number of times the lottery must be run. These commenters remarked that the proposed changes would enhance efficiency and reduce the probability of needing to perform additional selection rounds. Commenters noted that duplicate registrations under the current selection method wasted limited cap H-1B numbers and created a time and cost burden for USCIS since the agency had to run the lottery multiple times. A few commenters also noted that running the lottery multiple times could negatively affect potential beneficiaries who cannot stay in the United States to wait for additional lottery rounds to be run.

A couple of commenters discussed how losses for U.S. employers under the current system result in additional costs, administrative burdens, and instability. Some commenters noted that the proposed rule would reduce the administrative burden for companies aiming to register potential beneficiaries under the current registration system, streamlining the process for both registrants and government agencies. Additionally, a

couple of commenters wrote that the proposed selection process would reduce administrative and financial burdens on U.S. companies and employers.

Response: DHS appreciates commenters for their feedback supporting the change to a beneficiary centric selection process and their assertions that this change will reduce administrative burdens for companies and enhance efficiency. Additionally, DHS appreciates the comments that some companies face hiring instability under the current registration-based selection process because the chance of selection is low; and, they may have been required to wait through multiple selection rounds to find out if their registration for a beneficiary had been selected. With respect to agency administrative burdens, even under the beneficiary centric selection process, it is possible that USCIS may be required to conduct more than one round of selections depending on how many petitions are filed based on valid registration selections following the initial or subsequent selection round. Therefore, DHS cannot forecast with certainty a reduction in administrative burdens resulting from fewer selection rounds. However, the beneficiary centric selection process may reduce the likelihood that USCIS will need to run the selection process more than once in a fiscal year and may achieve the multiple benefits discussed by the commenters. DHS also acknowledges the comments that running multiple selection rounds can negatively affect beneficiaries who are already in the United States and may not be able to stay through multiple selection rounds, and notes that the beneficiary centric registration process may help potential beneficiaries in this manner as well.

Comment: Numerous commenters discussed the negative impact of the current selection process on fairness, stating that prospective beneficiaries with one registration or those who comply with H-1B policies struggle to be selected for an H-1B number due to ongoing abuse and decreasing selection rates. Some commenters noted that those who comply with registration requirements are unfairly disadvantaged or effectively penalized

for their decision not to engage in fraud, which results in inverse selection bias and moral hazard and causes stress for beneficiaries. Many commenters expressed support for the proposed beneficiary centric selection and said that the proposed selection process would promote equity and fairness among prospective H-1B beneficiaries, and provide prospective beneficiaries with an equal opportunity for selection. Several commenters stated that the proposed process would improve opportunities for selection for individuals with one offer or registration and discourage “unnecessary competition” among beneficiaries.

Response: DHS agrees with these commenters that the chances of selection in the current registration-based cap selection process are lower for beneficiaries with only one job offer and that this may be due, in part, to some registrants trying to game the system by working with others to submit multiple registrations for a single beneficiary. DHS agrees with these commenters that the new beneficiary centric selection process will increase fairness for registrants and beneficiaries and anticipates that changing the selection process will discourage organizations and beneficiaries from trying to game the system.

Comment: A commenter stated that ethical and integrity-driven individuals are naturally disinclined to engage in fraudulent activities. The commenter indicated that the beneficiary centric selection process would, therefore, not only combat fraud but also foster an environment that prioritizes ethics and honesty. The commenter stated that preventing H-1B program abuse will safeguard the country’s values and bolster the nation’s economic and national security, among other benefits.

Response: DHS appreciates the commenter’s feedback on the various benefits of the beneficiary centric selection process and agrees that the new beneficiary centric selection process will increase fairness for all prospective beneficiaries.

Comment: Some commenters expressed support for the proposed registration selection process on the basis of improved flexibility, greater autonomy, and more agency for beneficiaries. A few commenters wrote that the proposed process would empower candidates to select the employer for whom they ultimately work. Additionally, a commenter said that beneficiary centric selection would provide beneficiaries with better bargaining power, ensuring that employers do not undercut wages. Another commenter wrote that the proposed rule would allow beneficiaries to negotiate with companies for higher salaries upon selection, which the commenter said would create an “imbalance in salaries.”

Response: DHS generally agrees with these commenters. As noted in the NPRM, the new beneficiary centric selection process may benefit beneficiaries by giving them greater autonomy to choose the employer for whom they ultimately work without decreasing their chances of selection. 88 FR 72870, 72899 (Oct. 23, 2023). If multiple unrelated companies submit registrations for a beneficiary and the beneficiary is selected, then the beneficiary could have flexibility to determine which company or companies could submit an H-1B petition for the beneficiary, because all of the companies that submitted a registration for that unique beneficiary would be notified that their registration was selected and they are eligible to file a petition on behalf of that beneficiary. 88 FR 72870, 72899 (Oct. 23, 2023). While DHS cannot predict whether or how the beneficiary centric system would affect salaries, H-1B beneficiaries already possess and may exercise autonomy to change to another H-1B employer offering a higher salary or preferred work conditions.¹²

Comment: Commenters discussed benefits and impacts on specific populations of prospective beneficiaries. For example, some commenters wrote that the proposed changes would ensure fairer opportunities for international students, particularly those on

¹² See INA section 214(n), 8 U.S.C. 1184(n).

F-1 student visas. In addition, a commenter said that the proposed rule would make the process fairer for highly skilled workers, as the current system favors low-skilled workers who “take the majority of the quota,” through multiple registrations.

Response: DHS’s goal is to set a level playing field for all potential beneficiaries so that all beneficiaries may have a fair chance of selection through the revised beneficiary centric selection process.

Comment: Several commenters expressed support for the proposed selection process, opining that it would benefit U.S. employers and companies. Multiple commenters, including a company, discussed challenges for employers to meet workforce needs under the current registration selection system, including: the inability to retain talent due to falling selection rates, the loss of talent as a result of prospective employees leaving their U.S. employers or the United States, hesitation among employers to hire foreign workers, disadvantages for small to medium enterprises that do not have the means to outsource their workforce, and hampering company efforts to expand, such as the inability to expand semiconductor design and manufacturing efforts.

Many commenters remarked on how the proposed selection process would benefit employers or remediate the above challenges, stating that the revisions would: generally align with or protect the interests of U.S. companies; allow U.S. companies to attract, increase, or retain foreign talent and a skilled workforce; promise a targeted or more precise allocation of visas to cater to the needs of U.S. employers; boost the confidence of U.S. employers to hire international workers; decrease disruption in the hiring and talent management process; increase the productivity and competitiveness of U.S. businesses; and benefit underserved businesses.

Response: DHS appreciates the feedback that the beneficiary centric selection process will improve employers’ ability to attract and retain foreign talent and lessen their administrative burden in managing a competitive workforce. DHS anticipates that

this approach will create a more level playing field so that all beneficiaries may have a fair chance of selection. While DHS cannot gauge all of the impacts of this selection process, DHS appreciates the commenters' assessments that it may improve employee retention, increase productivity, and boost confidence in hiring international workers.

Comment: Numerous commenters endorsed the beneficiary centric selection process based on potential outcomes for the U.S. economy overall. Many of these commenters expressed concern with the current selection process and its associated outcomes on the U.S. economy and workforce, including: preventing the United States from retaining skilled foreign workers; the loss of global competitiveness, particularly in the technology sector; stifled innovation and growth; job market distortion and unpredictable workforce availability, as a result of individuals accepting more offers than they can take; discrimination against industries that restrict the number of offers one can accept; harms to the education industry and universities through the loss of international students; and increased reliance on outsourcing, which negatively impacts tax revenue and the local job market.

Commenters stated that the proposed selection process would positively impact the U.S. economy by: encouraging innovation and economic growth and fostering technological advancements, research breakthroughs, and entrepreneurship, which stimulate economic growth and job opportunities; bolstering the United States' competitive position in the global economy; benefitting U.S. and international workers who contribute to the U.S. economy; minimizing labor shortages; ensuring that the United States can attract highly skilled foreign professionals; ensuring a more stable and reliable immigration system that benefits the strength and resilience of the U.S. economy; and promoting diversity in the U.S. workforce.

Multiple commenters endorsed the proposed selection process on the basis that it would give prospective beneficiaries the opportunity to remain in the United States and contribute to the U.S. economy, stating that:

- Difficulties with H-1B selection have caused prospective workers to leave the United States, with some commenters providing anecdotal remarks to support this view;
- By rewarding “volume over veracity,” the current system diminishes the ability of prospective beneficiaries to apply their skills in the U.S. job market; and
- Current abuse within the selection system deters companies from extending offers to international workers.

In light of the above concerns, several commenters said that the proposed revisions to the selection process would instead encourage international talent to work in the United States and benefit foreign professionals who already contribute—or aspire to contribute—to the U.S. economy.

Response: DHS appreciates these commenters’ assessments that the new selection process will positively impact the U.S. economy and that the U.S. economy may benefit from foreign talent through a revised H-1B selection process. DHS anticipates that the beneficiary centric selection process will benefit U.S. companies and prospective beneficiaries who will contribute to the U.S. economy by creating a fairer selection process.

2. General Opposition

Comment: An individual commenter opposed the beneficiary centric process on the grounds that it will decrease the chances of highly talented or highly qualified beneficiaries to be selected. The commenter explained that an extraordinary candidate should have a higher chance of selection compared to a less qualified candidate, and that it is unfair to give these different candidates the same chance of selection. The

commenter stated that USCIS should act against fraudulent companies rather than decrease the chance of selection for highly talented or qualified individuals with multiple job offers.

Response: Under the current registration-based selection process, beneficiaries with multiple legitimate job offers and registrations are potentially being crowded out by multiple registrations for beneficiaries with frivolous job offers. Therefore, an individual's chance of selection based on one or two registrations is much less than the chance of selection based on, for example, 80 plus registrations as was seen in FY 2023. The new beneficiary centric selection process is designed to provide all individuals, even those with legitimate multiple registrations, with an equal chance of selection as opposed to the diminished chances under the current process. DHS recognizes that the change to the beneficiary centric selection process could potentially decrease the chance of selection for some beneficiaries with multiple job offers. It, however, is not clear from the comment whether or how the population of beneficiaries with multiple job offers overlaps with the population of "extraordinary candidates," as the selection process does not take into account the beneficiary's qualifications. Even if there is such an overlap, DHS believes the benefits of leveling the playing field for all beneficiaries outweigh the possible negative consequences to some individuals. Moreover, extraordinary or highly qualified candidates may have options outside of cap-subject H-1B employment and could obtain employment in the United States through alternate paths, such as employment with a cap-exempt H-1B petitioner or an O-1 nonimmigrant visa. Additionally, DHS appreciates other commenters' feedback that certain industries or companies have ethics rules that prevent individuals from accepting job offers from more than one company at a time, and by extension, prevent them from having multiple H-1B registrations submitted on their behalf. As these commenters have indicated, the number

of registrations an individual has is not always an accurate proxy of their talent or desirability as a candidate for employment.

Finally, because the H-1B registration process is merely an antecedent procedural step before the H-1B petition may be properly filed and adjudicated, and is not itself an adjudication, DHS does not believe that it could implement a selection process based on a relative comparison of various beneficiaries' qualifications and still retain the original aim for creating the registration process in the first place – an efficient process based on minimum information necessary to administer the annual statutory H-1B numerical allocations.

Comment: A commenter stated it opposes the rule because, as an organization, it relies on students who are not selected in the H-1B lottery for its profits.

Response: DHS disagrees with this comment. The purpose of the registration system is to provide for the fair and orderly administration of the annual H-1B numerical allocations, not to provide profits for certain companies. DHS strongly supports fairness in the selection process and believes that the beneficiary centric selection process in this final rule will provide each beneficiary with the same chance for selection.

3. Identifying Information and Passport Requirement

Comment: Several commenters stated that the use of passport numbers as identifying information would help mitigate fraud and promote fairness in the registration system by providing everyone with an equal chance in the beneficiary centric selection process. In addition to promoting fairness, a commenter remarked that the use of a unique passport number adds an additional layer of transparency and traceability to the selection process, which minimizes the potential for manipulation or bias. A commenter expressed support for the requirement, reasoning that citizens from countries where visas are mandatory to enter the United States already submit passport information.

Response: DHS agrees with these commenters that the requirement of a passport number at the time of registration under the beneficiary centric selection process will help mitigate fraud and abuse of the registration selection process. In response to other public comments discussed in this preamble, DHS has decided to modify this proposed requirement in this final rule by expanding the types of acceptable documents so that the registration must include either the beneficiary's valid passport information or valid travel document information. DHS is making this modification in order to narrowly accommodate stateless individuals, refugees, and other individuals who are unable to obtain valid passports. DHS believes that this modified requirement of a passport or travel document will still help to mitigate fraud by allowing USCIS to accurately identify each unique beneficiary, which is integral to the integrity of the beneficiary centric selection process and the goal of creating a fairer registration system.

Comment: Some commenters stated that the proposed rule does not indicate how USCIS will review petitions that have explainable discrepancies. The commenters suggested that DHS clarify in the regulations that a petition with explainable discrepancies will be receipted by USCIS and that the petitioner will be provided an opportunity to explain the discrepancy.

Response: As proposed, new 8 CFR 214.2(h)(8)(iii)(D)(I) provides that USCIS may deny an H-1B petition or revoke an approved H-1B petition if there is a change in the beneficiary's identifying information from registration to petition filing. The regulatory text does not state that USCIS will reject an H-1B petition if there is a change in the beneficiary's identifying information. As further explained in the NPRM, USCIS will typically afford the petitioner the opportunity to respond when identifying information provided on the registration does not match the information provided on the petition, and petitioners would need to be prepared to explain and document the reason for any change in identifying information. 88 FR 72870, 72898 (Oct. 23, 2023). DHS

believes that the regulatory text, combined with the preamble explanation in the NPRM and this explanation, is sufficiently clear to explain that USCIS will receive these petitions and that the petitioner will have the opportunity to explain the discrepancies prior to denial or revocation.

Comment: Several commenters expressed appreciation for USCIS' effort to reduce fraud in the H-1B selection process but at the same time expressed concern over potential impacts on stateless individuals, refugees, and other persons who are unable to obtain valid passports. For instance, an individual commenter stated that USCIS should also accept registrations for beneficiaries who are refugees and cannot obtain a passport from their country of origin. The commenter suggested that USCIS use other travel documents from countries of refugees instead of only passports. The commenter added that these documents contain identification numbers similar to passport numbers, and that existing Department of State practices permit visas to be issued on these documents. An individual commenter expressed their belief that it is unfair to bar stateless individuals from obtaining a cap-subject H-1B visa, which would severely restrict the ability of U.S. employers to hire these individuals. A joint comment from two advocacy groups commended USCIS' "demonstrated concern for stateless individuals" and stated that USCIS should allow individuals to provide a unique identifier other than a passport, accompanied by an explanation of why they cannot obtain a valid passport. Another commenter expressed concern that the requirement to submit valid passport information would prevent employers from submitting registrations for stateless individuals, those unable to extend or renew passports, refugees, people who have fled their countries, and individuals with lost or expired passports. The commenter suggested that the registration process should have an option for registrants to attest that beneficiaries are stateless, with additional data requirements verifying identity for this group such as asking for an A-number or an employment authorization document (EAD) card number that could serve

as an acceptable identification substitute for the passport number. A different commenter suggested USCIS accept “alternative identity documentation, provided by a national, State, or local government or an international organization,” out of concern for stateless individuals, refugees, other individuals who were forced to flee their country without passports, and other individuals who are unable to obtain valid passports. Another commenter similarly suggested that DHS accept alternative documents “including other federal or State issued identification documents that provide similar security integrity safeguards” as passports. Other commenters suggested adding a disclaimer on the registration that falsely claiming to be a stateless individual will result in the denial of a subsequently filed H-1B cap petition and revocation of the registration selection notice. A comment from multiple members of Congress recommended that DHS “create an exception to the passport requirement for stateless individuals and those who are unable to obtain a valid passport due to extraordinary circumstances outside their control.”

Response: In light of these comments - and consistent with the Administration’s dedication to promoting access for refugees and stateless individuals - DHS is allowing either the beneficiary’s valid passport information or valid travel document information to be submitted for H-1B registration purposes. *See* new 8 CFR 214.2(h)(8)(iii)(A)(4)(ii) and 214.2(h)(8)(iii)(D)(I). As stated above, this modification is intended to narrowly accommodate stateless individuals, refugees, and other individuals who are unable to obtain valid passports. DHS believes that it is important to accommodate especially vulnerable populations, such as stateless individuals and refugees. At the same time, this narrow accommodation is not expected to significantly increase the risk that a beneficiary would be registered under more than one identity document, as a valid travel document that the beneficiary intends to use to enter the United States is inherently limited to a single document.

DHS declines to allow additional types of identifying documentation for H-1B registration purposes. While a narrow accommodation to the passport requirement is not expected to significantly increase the risk that a beneficiary would be registered under more than one identity document, DHS believes that allowing additional identifying documentation would make the registration system more susceptible to abuse. Adding more types of acceptable documentation will heighten the likelihood that beneficiaries would have more than one document that could be used for registration to game the system and give them more than one chance in the selection. For example, a beneficiary could have multiple EAD card numbers or have both an EAD card number and a passport number. However, DHS does not believe that an individual would likely have both a valid passport and a valid travel document that they intend to use to enter the United States in H-1B status; it is unclear what legitimate reason an individual would have to use both a valid passport and another valid travel document when seeking to enter the United States in H-1B status. Further, “alternative identity documentation provided by a national, State, or local government or an international organization” or “other federal or state issued identification documents” could encompass a broad range of documents of varying credibility which increases the potential for abuse. For instance, an “alternative identity document” could include a state or provincial identity card, driver’s license, cedula, matricula consular, or other civil identity or vital statistics document which is not considered a travel document and is not valid for entry to or departure from the United States by air.¹³ It is not clear what advantage would be gained by expanding the universe of acceptable documents to an EAD card or another alternative identity document that

¹³ CBP, “Carrier Information Guide: United States Document Requirements for Travel,” <https://www.cbp.gov/sites/default/files/assets/documents/2023-Nov/Carrier%20Information%20Guide%20ENGLISH.pdf> (stating that “National identity cards, cedula, matriculas consular, certificates of citizenship, certificates of naturalization and other civil identity or vital statistics documents are NOT considered travel documents and are NOT valid for departure from the U.S. by air,” and listing a driver’s license, birth certificate, matricula consular, cedula, and national identification card as among the examples of documents that are “not acceptable for entry to or departure from the United States.”).

cannot be used to enter the United States in H-1B status, in line with the purpose of submitting a registration for the prospective beneficiary in the first place, compared to the increased risk for fraud that broadening the universe of acceptable documents would pose.

DHS also declines to add a new attestation on the registration that falsely claiming to be a stateless individual will result in the denial or revocation of the H-1B petition, or finding the registration invalid. As stated above, DHS has modified the passport requirement to also allow for a valid travel document. While this modification is intended to narrowly accommodate stateless individuals, refugees, and others who are unable to obtain valid passports, it is not limited to such individuals; thus, it is not necessary to add a new attestation regarding false claims of statelessness or other claims regarding why an individual does not have a valid passport. In addition, the registration tool continues to ask for the beneficiary's country of citizenship and provides an option for the registrant to list the beneficiary as "stateless." The registration tool also continues to require the registrant to certify, under penalty of perjury, that they have reviewed the registration(s) and that all of the information contained in the submission is complete, true, and correct.

Comment: A commenter stated that, while passport information is helpful, "there are legitimate reasons why a registrant may be unable to provide valid passport information, and excluding those registrants is antithetical to ensuring they can petition for the best and brightest." The commenter noted that it is reasonable to assume that some individuals may not have valid passports at the time of registration but would be able to obtain them by the time of filing a petition, and suggested DHS retain the option to allow beneficiaries to register if they certify that they do not have a valid passport.

Response: As noted above, DHS will retain the passport requirement in the final rule but has modified the proposed passport requirement to also allow for a valid travel

document. Requiring valid passport or travel document information, combined with the other collected biographical information, will allow USCIS to identify unique individuals more reliably, increasing the likelihood that each individual would have the same opportunity to be selected, if random selection were required. While DHS recognizes that some individuals may not possess a valid passport or travel document, DHS has a strong interest in requiring passport or travel document information for each beneficiary, regardless of nationality, to better identify unique beneficiaries and enhance the integrity of the H-1B registration system. Further, and consistent with what DHS stated in the NPRM, DHS believes that requiring passport or travel document information is reasonable because each registration should represent a legitimate job offer. In the absence of a valid passport or travel document, it is not clear how most beneficiaries could enter the United States in H-1B status pursuant to that job offer. Therefore, this rule will only accelerate the time by which the beneficiary needs to obtain a passport or travel document if the beneficiary does not already have one of those documents. *See* 88 FR 72870, 72898 (Oct. 23, 2023).

Comment: Several commenters expressed concerns with fraud related to the passport requirement. These commenters indicated that a passport number alone is insufficient to identify a unique beneficiary because individuals are able to obtain multiple passports or fraudulent passports. For example, a commenter said that people with dual citizenship or citizenship in multiple countries could potentially exploit the registration system by filing with different passport numbers and country of issuance. One commenter mentioned the potential exploitation of the system from individuals using multiple identities or passports from different countries, while a couple of other commenters expressed concern that individuals might abuse or circumvent the proposed passport requirement and discussed the importance of using additional identifiers to avoid potential fraud.

Several commenters provided alternatives related to identifying information, suggesting that USCIS:

- Link a registration or the definition of “unique” to an individual’s Social Security number (SSN) or Individual Taxpayer Identification Number (ITIN);
- Require a history of passports;
- Include a declaration of authenticity or an affirmation of truth;
- Require additional information, including the name, date of birth, place of birth, and similar information in addition to passport information;
- Verify passport information provided on registrations and petitions are correct and legitimate;
- Require a photograph (and use face recognition technology) at registration, or require both a photo and passport number to be submitted on the visa petition and with any lottery registration application to ensure the beneficiary is the same person at every step;
- Use an alternative process where a prospective beneficiary submits a registration with their personal information (including passport information) to USCIS, and USCIS will send that prospective beneficiary a confirmation PDF containing a unique confirmation number employers can then use to identify and register the beneficiary; and
- Require prospective beneficiaries to “provide biometric information during the application process.”

Response: DHS has considered the concern of potential exploitation through using fraudulent passports or multiple passports. DHS believes that using a passport number as a unique identifier is a reasonable approach that appropriately balances the interests of integrity in the selection process with access to the registration system. DHS also believes its expansion to allow for a valid travel document in lieu of a valid passport does not

significantly increase the risk of exploitation through using fraudulent or multiple travel documents, particularly since a valid travel document that the beneficiary intends to use to enter the United States is inherently limited in scope. Further, the regulations clearly state that a beneficiary may only be registered under one passport or travel document. *See* new 8 CFR 214.2(h)(8)(iii)(A)(4).

The final rule also contains other safeguards that are sufficient to address potential exploitation. The regulations at new 8 CFR 214.2(h)(8)(iii)(A)(2), make clear that a beneficiary having multiple registrations filed on their behalf using different identifying information is grounds for finding the registrations invalid and denying, or revoking the approval of, any H-1B petition filed on their behalf. Thus, if USCIS determines that registrations were submitted for the same beneficiary but using different passport information, USCIS would have the authority to invalidate such registrations and deny or revoke the approval of any H-1B petition filed based on those registrations under new 8 CFR 214.2(h)(8)(iii)(A)(2). USCIS may do so even if the beneficiary had more than one valid passport or travel document, such as a beneficiary with dual citizenship who has passports issued by different countries.¹⁴

USCIS will also continue to require information on a beneficiary's legal name, date of birth, and country of birth as part of the registration process. USCIS will use this information to analyze registration information and identify instances where beneficiaries are registered with different identifying information. When USCIS identifies such instances, any H-1B petition filed for that beneficiary may be subject to denial or revocation.

With respect to comments that suggested USCIS use a Social Security number or individual taxpayer identification number as a unique identifier, DHS believes requiring a

¹⁴ *See* “Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers,” 88 FR 72870, 72898 (Oct. 23, 2023) (“Even if a beneficiary had more than one valid passport, such as a beneficiary with dual citizenship, a beneficiary would only be able to be registered under one of those passports.”).

Social Security number or individual taxpayer identification number would not be feasible as individuals who have never held H-1B status or another nonimmigrant status or employment authorization in the United States likely would not have such numbers. In regard to the suggestion to collect biometrics, including photos, for beneficiaries prior to the registration process, DHS notes that collecting biometrics for all beneficiaries prior to registration would be operationally infeasible for USCIS and would add additional burdens for beneficiaries, especially those overseas. In regard to the suggestion to collect a history of passports, DHS believes this would be overly burdensome for USCIS, registrants, and beneficiaries. DHS will collect sufficient information to enable USCIS to identify the beneficiary of the registration, check for duplicate registrations submitted by the same prospective petitioner, and match selected registrations with subsequently filed H-1B petitions, without overly burdening the employer or collecting unnecessary information, in compliance with the Paperwork Reduction Act (PRA). Requiring a valid passport or valid travel document strikes the balance between protecting the integrity of the registration system and maintaining accessibility to the registration system and the H-1B program.

With respect to the suggestion that USCIS include an affirmation of truth on the registration, in completing the H-1B registration, the registrant must already certify, under penalty of perjury, that the information contained in the registration is complete, true and correct. The registrant must also certify that the registration reflects a legitimate job offer, and that the registrant intends to file an H-1B petition on behalf of the individual named in the registration. DHS believes the existing attestations are sufficient.

DHS also considered the suggestion that USCIS use an alternative process where a prospective beneficiary receives a unique confirmation number from USCIS after submitting their passport number, which the beneficiary would then give to potential employers to enter in the registration system. This alternative process, however, would

not be any more effective than identifying a prospective beneficiary by their valid passport or travel document information as provided by a prospective petitioner or its representative because DHS would continue to rely on the beneficiary to provide accurate information to both DHS and the prospective petitioner or its representative. This two-step process would add additional time to the overall registration period with no explanation provided of how it would enhance identity verification more than the proposed beneficiary centric process.

4. Implementation and Effective Date

Comment: Numerous commenters requested that USCIS implement the rule for the FY 2025 cap season (the H-1B registration period and related selection process beginning in March 2024). Many commenters requested the proposed rule be implemented as soon as possible. A couple of commenters similarly requested swift implementation of the proposed rule with no specified timeframe, while a few commenters remarked that they hope the proposed rule could take effect “right now”. One commenter stated it is likely that multiple registrations will “skyrocket” this upcoming H-1B cap season without immediate implementation of the beneficiary centric provision. Additionally, a commenter asked DHS to consider whether this portion of the NPRM should proceed separately and be promulgated as an interim final rule as soon as possible in order to ensure that it is in effect in advance of the 2024 cap registration cycle.

Multiple commenters stated that quick implementation of the proposed rule would increase fairness, equity, and integrity in the registration process. A commenter said that the planned implementation for the FY 2025 H-1B cap season demonstrated the government’s commitment to improving the immigration system. Another commenter stressed the need for implementation “before next year’s selection process,” reasoning that potential beneficiaries have time constraints for getting the H-1B visa when they work with F-1 OPT or STEM OPT.

Response: DHS agrees with the need for prompt implementation of this rule. This rule will be effective in time for the FY 2025 H-1B cap season (the H-1B registration period and related selection process beginning in March 2024).

Comment: Some commenters encouraged DHS to separate and move forward with the proposed H-1B registration changes for the upcoming cap season, but to refrain from finalizing any of the other provisions until it has sufficiently considered stakeholder feedback. Another commenter requested DHS to consider implementing these changes in phases so that stakeholders will be aware of what is coming.

Response: As stated above, DHS will finalize the proposed H-1B registration changes and other registration-related provisions in time for the FY 2025 H-1B cap season. DHS continues to consider public comments received on the other proposed changes included in the October 23 NPRM and plans to issue a separate final rule to finalize or otherwise address those proposed changes.

5. Other Comments on the Beneficiary Centric Selection Process

Comment: A few commenters requested clarification on the process for registrants after a beneficiary is selected. A commenter asked whether USCIS would adjudicate all petitions filed for a beneficiary or whether the Department would randomly select an employer. Another commenter encouraged DHS to clarify whether it permits all selected registrants to file an H-1B petition or if it will only allow one of the selected registrants to proceed. Additionally, a commenter asked DHS to include a clearly defined systemic mechanism that allows employers to know how to submit the sponsoring petition if a beneficiary has had multiple employers submit a registration on their behalf thereby eliminating the need for employers to solely rely on their beneficiaries to share this information.

Response: Where a selected beneficiary has multiple H-1B petitions that are properly filed on their behalf based on valid registrations, USCIS will adjudicate each

petition. DHS did not propose to, nor will it, randomly select an employer whose petition it will adjudicate. As the NPRM states, if a beneficiary were selected, each registrant that submitted a registration on that beneficiary's behalf would be notified by USCIS of selection and would be eligible to file a petition on that beneficiary's behalf.¹⁵ This is not a change from the current registration system, under which more than one registrant can register for the same beneficiary and any selected registrant is eligible to file an H-1B petition on behalf of that beneficiary if the petition is based on a valid registration selection notice. More than one registrant can file a petition on behalf of a single selected beneficiary and USCIS will adjudicate all properly filed petitions. DHS has no role in deciding which registrants ultimately choose to file a petition based on their selected beneficiary. It is expected that registrants will communicate with the selected beneficiary to make informed decisions regarding whether to file an H-1B petition.

Comment: Several commenters noted concerns with allowing multiple registration entries for an individual, and suggested changes to the registration system to prohibit or reject multiple registrations for a single beneficiary. One commenter suggested that only the submission for a beneficiary from the "most current employer" should be valid and all others voided. Another commenter specified that DHS should not only eliminate the ability for related entities to submit a single registrant multiple times, but also prevent unrelated registrants from submitting multiple registrations for a beneficiary. Some of these commenters stated generally that multiple registrations should not increase the chance a beneficiary is selected, as submitting multiple entries for one individual is unfair to other individuals. Additionally, a commenter remarked that duplicate entries for beneficiaries by consultancies undermines the fairness of the selection process. Another

¹⁵ "Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers," 88 FR 72870, 72898 (Oct. 23, 2023) ("If a beneficiary were selected, each registrant that submitted a registration on that beneficiary's behalf would be notified of selection and would be eligible to file a petition on that beneficiary's behalf. See proposed 8 CFR 214.2(h)(8)(iii)(A)(1) and (4).").

commenter, expressing support for the proposed registration process, remarked on other negative impacts of current abuse on the H-1B program stating that since H-1B holders can legally work for only one employer at a time, there is no rationale for selecting multiple entries for a potential beneficiary in the lottery system and wasting USCIS resources.

Response: Like the commenters, DHS is concerned with the integrity of the registration system and attempts to circumvent the selection process under the current registration system. As such, the focus of this rule is to ensure that each individual beneficiary has an equal chance of selection and to remove the advantage of submitting multiple registrations for the same beneficiary to increase the chances of selection. However, DHS declines to restrict the registration process to one total registration per beneficiary. DHS acknowledges that there could be legitimate reasons for an individual to have more than one registration submitted on their behalf. Moreover, the beneficiary centric selection process will essentially accomplish the goal these suggestions seek to achieve, which is to ensure that each individual beneficiary has an equal chance of selection and reduce fraud.

Comment: Some commenters expressed the need for DHS to allow registrants to view if multiple registrations have been submitted for a beneficiary. For instance, a commenter generally supported the proposed beneficiary centric system but expressed a need to “[ensure] fairness for employers who invest in foreign national talent” by providing employers with visibility into a beneficiary’s multiple registrations. The commenter recommended that USCIS include in the selection notification to employers an indication of either: (1) the number of employer registrations; or (2) whether the beneficiary has one or multiple employer registrations. The commenter stated that such information will help employers make more informed decisions when deciding to invest significant resources to file an H-1B petition and will also help reduce any legal

consequences that may arise from multiple petitions being approved for the same beneficiary. Other commenters similarly requested USCIS to institute a mechanism that informs a potential employer that a beneficiary has more than one registration. One commenter suggested it would be fair for the U.S. employer to see if the beneficiary has multiple registrations because the H-1B is employer-sponsored.

Response: While DHS agrees that the H-1B process is employer-sponsored, DHS declines to make these suggested changes. It is expected that prospective petitioners will communicate with their selected beneficiaries to make informed decisions regarding whether to file an H-1B petition. DHS also notes that the beneficiary centric selection process does not substantially differ from the current registration-based selection process in this regard and remains an employer-driven process given that registrations and petitions will continue to be submitted by sponsoring employers. A beneficiary in the current registration-based selection process may have multiple valid registrations selected that were submitted on their behalf by different companies, and thus have multiple petitions filed on their behalf by different companies based on those valid registration selection notices. Allowing for multiple cap petitions is consistent with INA section 214(g)(7), 8 U.S.C. 1184(g)(7), which states that when multiple cap petitions are filed and approved for a beneficiary, the beneficiary shall only be counted once toward the H-1B numerical allocations. DHS also believes that the commenter's suggestions regarding sharing information about registrations submitted by other prospective petitioners for a selected beneficiary goes beyond the intent of the narrow changes implemented in this final rule, which is to better ensure that each unique beneficiary has the same chance of selection in the H-1B registration selection process. As such, DHS declines to adopt the commenters' suggestions.

Comment: A commenter expressed support for allowing all companies that submitted a registration for a selected beneficiary to file an H-1B petition. The

commenter noted possible negative consequences of not limiting the number of H-1B petitions that can be submitted for a selected beneficiary but concluded that allowing all companies that submitted a registration for a selected beneficiary to file an H-1B petition is “a good solution.” For example, the commenter noted that requiring a beneficiary to choose only one employer upon which to proceed with H-1B filing will be detrimental to the beneficiary if that sole petition is not approved or if it is approved and the beneficiary loses the job after approval but before the effective date.

Response: DHS appreciates the commenter’s feedback and confirms that generally all prospective petitioners that properly submitted a registration for a selected beneficiary will be eligible to file an H-1B petition for the beneficiary named in their registration selection notice during the applicable filing period, provided that they are not related entities without a legitimate business need to file multiple cap petitions.

Comment: Some commenters requested clarity on how multiple H-1B petition approvals would affect a beneficiary’s status. A commenter urged DHS to “clarify and codify that each approved H-1B petition is valid, and that neither the date of filing, the date of adjudication (benefiting those filing with premium processing), or the requested start date (for those chosen in later selections) impact the validity of an approved H-1B petition, and that the beneficiary can commence work under any of the approved petitions even if another petition in the same H-1B filing period is subsequently approved.”

Another commenter asked for clarity regarding possible status issues that could result from the current NPRM, including clarifying that a petition is only “active” when the beneficiary begins to work for the petitioner. This commenter stated that such clarification will be particularly important if DHS finalizes its proposal regarding a flexible start date. A different commenter asked for clarification that “any filed and approved petitions will remain valid until withdrawal by the petitioner” and noted that

multiple petition approvals requesting change of status may cause confusion regarding the beneficiary's status.

Response: The filing of multiple petitions for the same beneficiary has always been a possibility, such as in concurrent employment situations. DHS confirms that an approved H-1B petition may remain valid notwithstanding the subsequent approval of an H-1B petition for the same beneficiary. DHS further confirms that upon approval of a cap-subject petition, including a request for change of status, the starting validity date will be the start date reflected on Form I-797, Notice of Action (Approval Notice), notwithstanding the date of filing, the date of adjudication, or the requested start date on the petition. DHS also confirms that a beneficiary may commence work under any of the approved petitions as long as they remain valid and the beneficiary is in H-1B nonimmigrant status, as is the case under current practice. Given that the regulation states that a petitioner shall immediately notify USCIS of any changes in the terms and conditions of employment of a beneficiary, DHS reminds petitioners of their obligation to file new or amended petitions where appropriate and their ability to withdraw petitions where appropriate. *See* 8 CFR 214.2(h)(11)(i)(A), (iii)(A)(I).

DHS would also like to clarify that providing start date flexibility does not impact the beneficiary's status when multiple petitions are filed but is a narrow revision codifying current practice that allows a later start date when there are multiple rounds of selection, and the petition filing window extends beyond October 1. As explained in the NPRM, other restrictions on the petition start date will remain in place, such as the requirement that a petition may not be filed earlier than 6 months before the date of actual need. *See* 8 CFR 214.2(h)(2)(i)(I).

Comment: A few commenters indicated that DHS should not allow more than one petition per beneficiary. A commenter requested that DHS provide, in regulation, a process that USCIS would allow only one petition per beneficiary to be filed at a time,

which would reduce the risk of multiple filings and prevent unnecessary use of USCIS resources. Under this process, if a petition is denied other than due to fraud or misrepresentation, a selected beneficiary could then pursue H-1B status through other employers that submitted registrations on their behalf. Another commenter noted that “allowing multiple petitions would result in unnecessary inefficiencies for both USCIS and petitioning employers.”

Response: With respect to the suggestion that DHS restrict the petition filing process to one total petition per beneficiary, DHS declines to make this change. Under current practice, the filing of multiple petitions for the same beneficiary has always been a possibility, and the beneficiary centric process is not designed to change this practice.

Section 214(g)(7) of the INA, 8 U.S.C. 1184(g)(7), specifically contemplates that more than one petition can be filed for a beneficiary (“Where multiple petitions are approved for 1 alien, that alien shall be counted only once”). Thus, such a limitation may not be consistent with that statute. DHS also acknowledges that there could be legitimate reasons for an individual to have more than one petition filed by different petitioners on their behalf.

D. Start Date Flexibility for Certain H-1B Cap-Subject Petitions

Comment: Multiple commenters expressed broad support for the proposal to permit start date flexibility for certain H-1B cap-subject petitions, with one stating that the change to permit requested start dates on or after October 1 of the relevant fiscal year will benefit F-1 students and universities and another stating that the change “codifies the elimination of a confusing “trap” for “visa lottery” H-1B visa petitioners.” One commenter asked the agency to explicitly provide start date flexibility in situations where a requested validity period ends before the petitioner receives the approval notice.

Response: DHS agrees with the comments that providing start date flexibility for certain H-1B cap-subject petitions will be beneficial in many ways. As stated in the

NPRM, this proposal will align the regulations related to H-1B cap-subject petitions with current USCIS practice, which is to permit a requested petition start date of October 1 or later, as long as the requested petition start date does not exceed 6 months beyond the filing date of the petition. 88 FR 72870, 72888, 72898 (Oct. 23, 2023). The request to provide start date flexibility in situations where a requested validity period ends before the petitioner receives the approval notice does not align with the changes that DHS proposed in the NPRM about the start date, which was to remove the language at 8 CFR 214.2(h)(8)(iii)(A)(4) that limited the requested start date when filing a cap-subject petition. Rather, this request aligns with the proposed “Validity Expires Before Adjudication” provision at 8 CFR 214.2(h)(9)(ii)(D)(1) of the NPRM. DHS is not finalizing that provision in this rule. The start date flexibility provision relates only to the flexibility in start date that petitioners may use on cap subject H-1B filings, as described in the NPRM, allowing start dates after October 1 of the applicable fiscal year.

E. Registration Related Integrity Measures

1. Bar on Multiple Registrations and Petitions Submitted by Related Entities Without a Legitimate Business Need

Comment: Some commenters expressed general support for the bar on multiple registrations submitted by related entities at proposed 8 CFR 214.2(h)(2)(i)(G). A few commenters wrote that the proposed bar would help reduce fraud and exploitation of the selection process. Additionally, a few commenters reasoned that the proposed provision would promote equity and fairness in the selection process, noting that the proposed provision mirrors the existing restrictions on filing multiple cap-subject petitions. Furthermore, a commenter remarked that the proposal would reinforce legitimate business needs as the basis for selection.

Response: DHS appreciates the commenters’ feedback but has decided not to finalize the proposed bar on multiple registrations submitted by related entities at this

time, although DHS intends to address and may finalize this proposed provision in a subsequent final rule. While the intention behind this provision is to reduce fraud in the selection process, changing the structure of the registration process to a beneficiary centric selection process will reduce fraud and abuse of the registration process and more time and data will help inform the utility of this proposed provision.

Comment: A commenter applauded the change to a beneficiary centric registration system but opined that this change “makes unnecessary any requirement that related entities prove a legitimate business need to file multiple petitions for the same beneficiary” under current 8 CFR 214.2(h)(2)(i)(G). The commenter “urge[d] USCIS to delete the portion of 8 CFR §214.2(h)(2)(i)(G) dealing with related entities in its entirety.” Other commenters similarly questioned the need to restrict multiple petitions by related entities under the beneficiary centric system, with one commenter stating that, in reality, some related entities are so large that they do not communicate and/or coordinate workforce issues with each other.

Response: DHS declines to make any changes to current 8 CFR 214.2(h)(2)(i)(G) at this time. DHS did not propose to eliminate or alter current 8 CFR 214.2(h)(2)(i)(G) with respect to multiple petitions by related entities without a legitimate business need. As stated in the NPRM, if registration were suspended, this bar on multiple petitions would remain relevant. 88 FR 72888, 72900 (Oct. 23, 2023). Even when registration is required, and even with the change to a beneficiary centric selection process, DHS believes that the bar on multiple H-1B cap petitions by related entities without a legitimate business need remains an integrity measure to guard against related entities filing multiple petitions without a legitimate business need simply to increase their chances of getting an approval and resulting cap number/exemption for the selected beneficiary. While unrelated entities would likely not be working together and would have no incentive to file multiple H-1B cap petitions for the same beneficiary without a

legitimate business need, related entities would have an incentive to work together to file multiple H-1B cap petitions for the same beneficiary simply to increase their chances of getting an approval for that beneficiary. While the new beneficiary centric selection process will likely eliminate the incentive for related entities to game the system to increase the odds of selection at the registration stage, DHS does not believe that the beneficiary centric selection process will eliminate or significantly impact the incentives to game the system to increase the odds of approval at the petition stage that currently exist and are mitigated by the existing regulation. Thus, DHS disagrees with the commenters that the beneficiary centric selection process will render the bar on multiple petitions by related entities at current 8 CFR 214.2(h)(2)(i)(G) unnecessary.

DHS acknowledges that the existing “related entities” and “legitimate business need” standards place some evidentiary burden on petitioners. However, removing those limitations would essentially allow all petitioners to file multiple H-1B cap petitions for the same beneficiary without any restrictions. DHS believes the existing burdens to petitioners are outweighed by the increased risk of gaming that removing all restrictions on multiple H-1B cap petitions by related entities, absent a legitimate business need, would pose.

Comment: A commenter stated that DHS should eliminate the portion of proposed 8 CFR 214.2(h)(2)(i)(G) which discusses “related entities” because, in part, the terms “related entities” and “legitimate business need” used in the provision are ambiguous, unworkable, and likely to contribute unnecessarily to agency backlogs.

Response: The existing prohibition on related entities filing multiple petitions for the same beneficiary at 8 CFR 214.2(h)(2)(i)(G) remains. DHS is not making any changes to existing 8 CFR 214.2(h)(2)(i)(G), noting that the terms “related entities” and “legitimate business need” in the provision are not new terms and that USCIS issued

policy guidance on these terms in *Matter of S- Inc.*, Adopted Decision 2018-02 (AAO Mar. 23, 2018).

2. Registrations with False Information or that are Otherwise Invalid

Comment: A couple of commenters expressed support for codifying the ability for USCIS to deny H-1B petitions or revoke approved petitions on the basis that it includes a false attestation. The commenters said this change showed the importance of accuracy and honesty in the registration system and would make the system more resilient and dependable in resisting fraudulent activity.

Response: DHS agrees with the commenters that codifying the ability for USCIS to deny or revoke H-1B petitions that provide untrue, incorrect, inaccurate, or fraudulent statements of fact, or misrepresent material facts, including providing false attestations on the registration, will improve the integrity of the registration system.

Comment: A few commenters expressed concern with extending regulations on denials and revocation of H-1B petitions for statements on petitions that are “inaccurate, fraudulent, or misrepresented a material fact” to information provided in the registration, particularly with respect to typographical errors. For instance, a commenter expressed concern with USCIS expanding the regulations at proposed 8 CFR 214.2(h)(10)(ii), (h)(11)(iii)(A)(2), stating that this expansion would allow “automatically denying or revoking H-1B petitions due to inaccurate information contained on a registration” and would not allow a petitioner an opportunity to correct an unintentional typographical error. The commenter recommended changes to the regulatory text at 8 CFR 214.2(h)(8)(iii)(D)(1) to codify that USCIS may excuse typographical errors on a registration in its discretion when “the H-1B petition [is] supported by relevant identity documents and where [the] petitioner satisfies USCIS that the inaccuracy was unintentional and did not create any advantage in the lottery selection.” A few commenters stated that the final rule should permit some ability to correct typographical,

non-substantive errors, with one commenter requesting DHS amend the regulatory text to specifically state that USCIS may excuse typographical errors on a registration in its discretion. One of these commenters also requested that DHS allow officer discretion regarding permissible changes to identifying information rather than an exhaustive list of scenarios in which the change will be acceptable. Another commenter stated that automatically denying or revoking H-1B petitions solely due to typographical errors in the registration is inconsistent with current USCIS policy. Another commenter stated that the regulatory provision does not clearly indicate how USCIS will review and accept petitions that have explainable discrepancies and said that the regulations should explicitly state that USCIS will issue a receipt for a petition with discrepancies, which would provide the petitioner with an opportunity to address and explain any disparities.

Response: DHS first notes that USCIS does not, and would not, automatically revoke a petition under 8 CFR 214.2(h)(11)(iii), as that paragraph pertains to revocation on notice. *See* 8 CFR 214.2(h)(11)(iii) (“Revocation on notice”). Thus, the proposed provision at 8 CFR 214.2(h)(11)(iii)(A)(2), as finalized by this rule, clearly provides for revocation upon notice. Regarding denials, the addition of the beneficiary centric selection process to the regulation at 8 CFR 214.2(h)(10)(ii) will not change the operation of that regulation or USCIS policy that generally provides for notice and an opportunity to respond prior to the denial of a petition.

DHS will not adopt the suggestions to expressly codify that a “typographical error” may be a permissible change in identifying information in some circumstances at 8 CFR 214.2(h)(8)(iii)(D)(1), nor will it adopt any of the other related changes suggested by the commenters. DHS believes these changes are unnecessary. USCIS has not changed its position that it will not automatically reject the Form I-129 petition for

typographical errors on the selected registration in comparison with the Form I-129.¹⁶ The burden remains on the registrant/petitioner to confirm that all registration and petition information is correct and to establish that the H-1B cap petition is based on a valid registration submitted for the beneficiary named in the petition and selected by USCIS.¹⁷ Also, USCIS adjudicators already have the ability to exercise discretion after allowing the petitioner to explain a mismatch in identifying information. The NPRM made clear that “USCIS would typically afford the petitioner the opportunity to respond when identifying information provided on the registration does not match the information provided on the petition, and petitioners would need to be prepared to explain and document the reason for any change in identifying information. In its discretion, USCIS could find that a change in identifying information is permissible.” 88 FR 72870, 72898 (Oct. 23, 2023). The phrase “could include, but would not be limited to” in new 8 CFR 214.2(h)(8)(iii)(D)(I) already makes clear that the listed circumstances are examples, not an exhaustive list.

Additionally, when entering submissions in the registration tool, registrants and their representatives are given the opportunity to review the data entered before submitting, giving them ample time to double-check what is entered. Furthermore, registrants and their representatives have until the close of the registration period to correct any errors they may have made on a registration. As stated in the final registration rule, “USCIS will allow petitioners to edit a registration up until the petitioner submits the registration. A petitioner may delete a registration and resubmit it prior to the close of the registration period.” 84 FR 888, 900 (Jan. 31, 2019). Thus, DHS believes registrants already have sufficient opportunities to identify and correct typographical errors.

¹⁶ USCIS, “H-1B Electronic Registration Process,” <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process> (last updated July 31, 2023).

¹⁷ *Id.*

Finally, codifying language in the regulation about typographical errors in a registration may invite false claims of “typographical error,” in an attempt to game the beneficiary centric registration process by trying to make one beneficiary appear as two different beneficiaries. DHS, therefore, will not adopt the commenter’s suggestion because codifying an exception for typographical errors could undermine the other changes being made in this final rule to limit the potential for abuse and gaming of the registration system and better ensure that each beneficiary has the same chance for selection.

Comment: A commenter suggested DHS “expressly add an intent requirement, or otherwise clarify the need for intentionality, before revocation is considered,” because there can be “several innocent reasons why a registration may be technically inaccurate.”

Response: DHS does not believe it is necessary to introduce a requirement of intent to this provision. DHS believes registrants already have sufficient opportunity to address inaccuracies in information submitted in the registration process. As stated above, new 8 CFR 214.2(h)(11)(iii)(A)(2) provides for revocation upon notice and the addition of registration to the regulation at 8 CFR 214.2(h)(10)(ii) does not change the operation of that regulation or USCIS policy that generally provides for notice and an opportunity to respond prior to the denial of a petition. USCIS adjudicators already have the ability to exercise discretion after allowing the petitioner to explain a mismatch in identifying information.

Further, introducing a requirement of intent may needlessly complicate and delay adjudication. DHS believes that the regulatory framework, as proposed and finalized by this rule, sufficiently affords the ability to explain inaccuracies in the registration process.

Comment: While discussing proposed 8 CFR 214.2(h)(8)(iii)(D)(2), a joint submission from a professional association and an advocacy group suggested that the proposed section be either removed or amended, reasoning there was potential for

“significant issues” with the payment mechanism during the registration process.

Referencing issues associated with the Department of Treasury’s “Pay.gov” site, the commenters expressed concern that H-1B registrations could be rejected in situations where payment issues resulted from system issues, rather than user error. The commenters urged USCIS to “make every reasonable effort” to communicate with petitioners upon a payment issue being discovered so that it could be resolved and proposed “specific changes” to the notification process associated with payment issues, including an email notification and a grace period following notification of a payment issue. A different commenter, while generally supportive of proposed 8 CFR 214.2(h)(8)(iii)(D)(2), similarly requested a “notice and response process prior to denial or revocation of a petition” for invalid fees in recognition that “simple banking or other administrative errors could lead to unreconciled fees that do not reflect fraud or abuse of the system.”

Response: DHS thanks the commenters for their feedback. However, DHS declines to adopt the commenters’ suggestions to allow a period of time to cure a deficient registration payment at the time of petition filing, or to provide in all cases a notice and response process prior to denying or revoking a petition. Proper submission of the registration is an antecedent procedural requirement to properly file the petition. Allowing a petition to be filed based on a registration with a deficient payment could create a framework in which there is little incentive to properly pay for any registration until it is selected, and a petition based on that registration is being filed. It would not be feasible to investigate in all cases whether a failed payment was truly in error or specifically done to delay paying the registration fee until that registration was selected and a petition filed. This would undermine the current fee structure that supports the registration system development, supporting services and maintenance.

Allowing a registration with a deficient payment to be cured after selection could lead to an avenue to abuse the registration system. Currently, registrations that are designated as having a failed payment are not included in the H-1B cap selection process. If the suggested regulatory language were adopted, USCIS would have to include those registrations with a failed payment in the selection process (in order to properly give registrants the suggested 10 days to cure any payment deficiencies). As indicated above, this could lead to opportunities to abuse the system by simply delaying payment for all registrations until after the selection process is completed and then only paying for those that are selected. It could also mean that those registrations that truly failed payment would still be included in selection. This could lead to the selection of more registrations that would not be followed by a petition filing, thus increasing the difficulty in administering the cap.

It is also operationally burdensome to collect the registration fee at the time of petition intake or in response to a request for evidence (RFE) or notice of intent to deny (NOID) on that petition. Requiring USCIS to manually process these payments upon petition intake via check or credit card payment (as opposed to the automated Pay.gov payment system in place at the time of registration) would not be operationally efficient and would require USCIS to incur additional expenses, as USCIS incurs a cost any time it must process additional payments or issue additional RFEs or NOIDs.

DHS also will not currently adopt the suggestions to modify the registration system itself to further notify registrants of the status of their payments due to current system limitations and requirements. The registration system will notify registrants that payment has been initially processed. The registration system will also show the status of the registration as “Invalidated-Failed Payment” once USCIS identifies that the payment has failed, and USCIS will send registrants an email or SMS text to log into their account and check for updates. Additionally, payees can proactively confirm the status of a

payment by contacting their bank, credit card company, or payment service, and confirm payment generally by the next business day, if not before.¹⁸ Thus, payees already have ways to confirm payment status at the registration stage and proactively take steps to remedy payment issues. Regardless, USCIS will consider options to display additional payment information within the registration system in the future.

Comment: A couple of commenters expressed support for the proposal to add invalid registration as a ground for revocation, reasoning it showed the importance of honesty and accuracy in the registration process. A commenter added that the proposal would help to ensure the dependability and resiliency of the selection process against fraudulent practices. Another commenter expressed general support for extending the grounds of denial or revocation to expressly include registrations with false information or that are otherwise invalid. This commenter also expressed general support for the beneficiary centric process and the bar on multiple registrations submitted by related entities, reasoning that limiting the number of “false” registrations would make the registration process more manageable and reduce USCIS’ workload.

Response: DHS agrees with these commenters and anticipates that this rule will enhance the fairness and integrity in the registration process. As explained in the NPRM, to allow companies to provide false information on the registration without consequence would allow them to potentially take a cap number for which they are ineligible.

3. Other Comments and Alternatives to Anti-fraud Measures Related to Registration

Comment: Numerous commenters provided general comments on fraud in the H-1B registration system and advocated for general improvements to mechanisms for identifying and preventing abuse. Multiple commenters generally discussed the need for

¹⁸ Pay.gov, “Frequently Asked Questions,” <https://www.pay.gov/WebHelp/HTML/faqs.html> (payments from bank accounts will be charged the next business day; credit and debit card payments are visible within 24 hours; payments through a payment service are charged according to the service’s schedule). (Last visited January 9, 2024.)

anti-fraud measures to address abuse in the registration system, stating that changes are needed to promote fairness and integrity of the H-1B visa program, preserve the reputation and transparency of the U.S. immigration system, protect U.S. workers, allow skilled foreign professionals to stay in the United States and contribute to the economy, and ensure the number of registrations aligns with available job openings and the needs of the country.

Response: DHS remains committed to deterring and preventing abuse of the registration process and to ensuring only those who follow the law are eligible to file an H-1B cap petition. To this end, USCIS has already undertaken extensive fraud investigations, denied and revoked petitions accordingly, and continues to make law enforcement referrals for criminal prosecution. USCIS has also increased messaging reminding the public that at the time each registration is submitted, each prospective petitioner is required to sign an attestation, under penalty of perjury, that: all of the information contained in the registration submission is complete, true, and correct; the registration(s) reflects a legitimate job offer; the registrant intends to file a petition if selected; and the registrant has not worked with others to unfairly increase the chance of selection.¹⁹ In finalizing the proposed regulatory text at 8 CFR 214.2(h)(10)(ii) and (11)(iii)(A)(2), DHS reiterates that submitting false or incorrect information on the registration, including false attestations, is grounds for denial or revocation of the approval of the petition.

Additionally, in changing to the beneficiary centric registration, multiple frivolous registrations that may not represent legitimate bona fide jobs will no longer increase an individual's chances of being selected. As such, the beneficiary centric selection will remove the incentive to have multiple registrations solely to increase selection chances.

¹⁹ USCIS, "H-1B Electronic Registration Process," <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process> (last updated July 31, 2023).

Comment: Many commenters voiced concern over frivolous registrations and fraud in the H-1B selection process, specifically the use of fraudulent companies to submit registrations and registrations from individuals without valid job offers. Many of these commenters stated that the proposed changes do not go far enough and urged USCIS to bar certain types of entities from submitting registrations and/or invalidate certain types of registrations prior to running the lottery. These commenters stated that USCIS should:

- Block speculative entries from being considered in the selection process;
- Stop individuals from using fake job offers to register by closing loopholes that allow companies to submit registrations for individuals without valid job offers;
- Require beneficiaries working for consulting companies or third-party contractors to have valid client job offers;
- Implement a verification process for registrants, beneficiaries, documents (such as passports), and/or job offers at registration;
- Increase the transparency, oversight, reporting, and auditing of the selection process;
- Ban beneficiary-owners from submitting registrations or limit registrations from beneficiary-owners to only those who can demonstrate legitimate work; and
- Screen potential registrants for certain labor and employment law violations and disputes and prohibit any employer with recent or ongoing labor violations or disputes from participating in the H-1B registration process.

Response: DHS is unable to invalidate or bar certain registrations, such as registrations that are deemed frivolous or submitted by certain types of companies, at the registration stage because that would require USCIS to adjudicate the underlying registration. USCIS does not adjudicate a registration. Further, the registration process is

not the stage at which USCIS assesses the veracity of documents, the bona fides of the job offer, or other aspects of the offered position. As previously stated in the NPRM, submission of the registration is merely an antecedent procedural requirement to properly file an H-1B cap-subject petition and is not intended to replace the petition adjudication process or assess the eligibility of the beneficiary for the offered position. 88 FR 72870, 72899 (Oct. 23, 2023). Additionally, as noted above, the beneficiary centric registration removes the incentive for a beneficiary to have multiple registrations solely to increase their chance of selection, which DHS anticipates will reduce the number of frivolous registrations.

Comment: To reduce frivolous registrations, a few commenters suggested requiring additional information on the registration, such as: requiring companies to submit job offer letters, job descriptions, and documentation during registration; asking employers to provide full LCAs at the time of initial registration; and requiring registrants to document that it has a non-speculative position in a specialty occupation for the beneficiary as of the start date of the validity period requested on the registration.

Response: Beyond requiring valid passport or travel document information for the beneficiary on the registration, DHS is not requiring additional new information on the registration at this time. DHS does not believe that requesting additional information about the beneficiary, the petitioner, or the underlying job offer or position, is necessary to effectively administer the registration system. Some of the additional information proposed by commenters (such as information about the job offer) is information that USCIS would require and review to determine eligibility in the adjudication of the H-1B petition. Establishing eligibility is not a requirement for submitting a registration. USCIS believes the change to require valid passport information or valid travel document information is sufficient to identify the beneficiary and reduce potential fraud and abuse of the registration system.

Comment: Several commenters noted continuing concerns with the registration process and advocated for increased penalties to prevent further fraud and abuse, including:

- Review and investigate companies and beneficiaries who abused the H-1B system in previous years;
- A ban, such as for 5 or 10 years, for companies and beneficiaries who engage in fraudulent activities;
- A 10-year ban for beneficiaries and companies that do not file a petition after being selected;
- Charge fines to employers found to have flooded the registration process with frivolous registrations and collect additional fees from registrants to pass a portion of these fines and additional fees directly to the Department of Labor to fund their investigation and enforcement activities in the H-1B program;
- At the registration stage, audit all registrants with more than ten registrations and debar registrants found to have engaged in registration fraud;
- Revoke H-1B visas for those who have previously exploited the system; and
- Implementing consequences for companies that abuse the registration process and impose stricter penalties for those found guilty of abuse.

Response: DHS has undertaken efforts to deter abuse of the registration system and to ensure that those who abuse the registration system are not eligible for H-1B cap petition approval. As noted previously, in finalizing the proposed regulatory text at 8 CFR 214.2(h)(10)(ii) and (11)(iii)(A)(2), DHS reiterates that submitting false or incorrect information on the registration, including false attestations, is grounds for denial or revocation of the approval of the petition. If USCIS has reason to believe that the attestations made during registration are not correct, it will investigate the parties in question, including examining evidence of collusion and patterns of non-filing of

petitions. Where appropriate, USCIS will deny or revoke the approval of petitions where the attestations made at the registration stage are found to be false, including making findings of fraud or willful material misrepresentation against petitioners, if the facts of the case support such findings.

Regarding the suggestions that USCIS audit companies with 10 or more registrations, fine or ban certain companies from participating in the registration process after being found to have engaged in registration fraud, and charge additional fees to support investigations and enforcement activities, DHS declines these suggestions. DHS does not think that companies that submit more than a certain number of registrations for different beneficiaries necessarily warrant investigation as many companies, and in particular large companies, may have a legitimate need to hire multiple H-1B beneficiaries. Requiring USCIS to audit companies that properly submit more than a certain number of registrations would be an ineffective use of resources and would take resources away from pursuing investigations that are more likely to uncover fraud and abuse. In addition, the H-1B registration process moves quickly and USCIS does not adjudicate a registration at the registration stage. Further, as explained in the NPRM,²⁰ USCIS has examined patterns in the registration process and has investigated companies based on evidence suggesting that they were attempting to game the system. However, blocking or fining employers from participating in the H-1B registration process goes beyond what DHS proposed in the NPRM. This suggested alternative would take significant time and agency resources and would be insufficient to address the issues with the current registration process that DHS anticipates the beneficiary centric selection process will successfully address. In addition, as DHS indicated in the 2019 registration final rule, there may be monetary fines/criminal penalties under 18 U.S.C. 1001(a)(3)

²⁰ 88 FR 72870, 72889 (Oct. 23, 2023) (“DHS continues to take steps against potential abuse and is in the process of investigating potential malfeasance and possible referrals to law enforcement agencies.”).

which apply generally to statements/representations made to the Federal Government, and registrants that engage in a pattern and practice of submitting registrations for which they do not file a petition following selection may be referred for investigation of potential abuse of the system.²¹ USCIS will continue to investigate and hold bad actors accountable to the extent of its authority, including making law enforcement referrals for criminal investigation.

Finally, with respect to the suggestion that DHS impose an additional registration fee to further fund investigations and enforcement in the H-1B program, DHS did not propose to increase the H-1B registration fee in the H-1B NPRM, and any such proposal would need to be subject to public notice and comment before being finalized. As discussed elsewhere in this rule, DHS did propose to increase the H-1B registration fee in the Fee Rule NPRM.²² Any fee increase resulting from the Fee Rule NPRM proposal would be addressed in a separate final rule that may be issued based on that separate regulatory proposal. In addition, DHS may address any subsequent registration fee increase in future rulemaking.

F. Other Comments Related to the Proposed Registration System

1. Electronic Registration vs. Paper-Based Filing

Comment: A few commenters recommended improving the current registration system and/or enhancing online filing capabilities instead of reverting to the paper-based filing system. An individual commenter stated that reverting to a paper-based system increases the risk of human error, makes it challenging to identify unique individuals, and increases vulnerabilities to manipulation and bribery.

²¹ 84 FR 888, 904 (Jan. 31, 2019).

²² 88 FR 402, 500-501 (Jan. 4, 2023).

Response: DHS does not intend to revert to a paper-based system and intends to conduct the electronic registration process for the FY 2025 cap season.²³ As noted in the NPRM, DHS considered the alternative of eliminating the electronic registration system and reverting to the paper-based filing system stakeholders used prior to implementing registration, but ultimately determined that the benefits of having an electronic registration system still outweigh the costs and any potential problems caused by frivolous filings. DHS proposed changes to the registration system to mitigate the potential for frivolous filings and is now finalizing those changes, with some modifications to the NPRM as discussed above.

Comment: A commenter stated that if the new beneficiary centric registration process cannot be implemented in time for the FY 2025 cap season, “USCIS must indeed go back to the old system of paper filings to preserve its credibility and the credibility of its H-1B program as a whole.”

Response: DHS does not intend to revert to a paper-based system and intends to conduct the electronic registration process, with beneficiary centric selection, for the FY 2025 cap season.

2. Comments on Fees Related to Registration

Comment: Multiple commenters discussed the current \$10 registration fee. Several commenters stated that USCIS’ decision to implement a \$10 registration fee has increased fraud in the registration system by incentivizing individuals to provide false employment information. Another commenter stated that the registration fee of \$10 renders the limited number of available visas insufficient to meet the demand at that price. Several commenters suggested that USCIS increase fees or change fee collection to discourage fraud, for example:

²³ But note that the current regulations provide USCIS with the discretion to suspend the H-1B registration process, and revert to a paper-based selection process, in the event it determines that the H-1B registration process is inoperable for any reason. 8 CFR 214.2(h)(8)(iv). DHS did not propose changes to this process, and this option remains available to USCIS.

- A fee increase of approximately \$500 to \$1,000 per registration;
- Implementing a requirement to pay the Fraud Prevention and Detection fee of \$500 along with a new filing fee of \$215;
- Increasing fee from ten dollars (\$10) to \$215, per the FY 2022/2023 fee rule;
- Require a “large” deposit that is refundable; and
- Increase registration fees to allow only “serious companies” to submit registrations.

Response: DHS did not propose to increase registration fees in the October 23 NPRM. Because DHS did not propose any changes to the H-1B registration fee in this rulemaking, these comments are outside the scope of this rulemaking. However, on January 4, 2023, DHS published an NPRM to adjust certain immigration and naturalization benefit request fees. 88 FR 402 (Jan. 4, 2023). In that NPRM, DHS proposed, among other things, to increase the H-1B registration fee from \$10 to \$215. The comment period for the proposed rule closed on March 13, 2023. DHS received nearly 8,000 comments in response to the NPRM, including comments relating to the proposed increase in the H-1B registration fee. Many of the comments received in response to the proposed fee rule relating to the proposed increase in the H-1B registration fee were similar to the comments submitted here. DHS will soon issue a rule to finalize its adjustment to immigration and naturalization benefit request fees, including the H-1B registration fee. Public comments on the increase in the H-1B registration fee can be found in the Fee rule NPRM rulemaking docket, and the responses to those comments will be in the Fee final rule.

Comment: A few commenters said that USCIS should collect upfront all filing fees for the Form I-129 petition to deter fraudulent registrations. USCIS would then refund the petition filing fees to those whose registrations were not selected.

Response: DHS declines to adopt the commenters' suggestions to collect petition filing fees at time of registration. Petition filing fees will be collected when the petition is filed, consistent with current practice. DHS does not view registration as the same as filing a petition because the submission of the registration is merely an antecedent procedural requirement to properly file an H-1B cap-subject petition. DHS also cannot adopt the suggestions to require petitioners to include petition filing fees at the time of registration due to current system limitations and requirements. Requiring USCIS to refund or hold funds would not be operationally efficient and would require USCIS to incur additional expenses, as USCIS incurs a cost any time it is required to refund a fee to an applicant or petitioner. 84 FR 888, 903-904 (Jan. 31, 2019).

3. Other Comments and Alternatives Related to Registration

Comment: A couple of commenters generally supported the beneficiary centric changes to the registration process but indicated that these changes do not adequately address the "increasing demand for talent in the U.S. economy" or the "ever growing need for more H-1B talent in the U.S." One of these commenters said that DHS should work with lawmakers to increase the annual cap. Another commenter indicated that the significant increase in registrations in the past few lotteries effectively resulted in those who did not submit multiple registrations being "penalized for not engaging in fraud." This commenter suggested that, in addition to the beneficiary-based selection, USCIS should consider temporarily increasing the number of registrations it selects to help compensate those who were unfairly disadvantaged during the last few lotteries.

Response: The change to a beneficiary centric selection process is intended to address issues related to fairness and integrity of the selection process, not issues related to labor demand or raising the statutory cap. Congress set the current annual regular H-1B cap at 65,000 and the annual H-1B advanced degree exemption at 20,000. DHS does

not have the statutory authority to increase – even temporarily – these congressionally mandated caps.

Regarding the suggestion to temporarily raise the number of selected registrations, USCIS already takes into account historical data related to approvals, denials, revocations, and other relevant factors when calculating the number of registrations projected as needed to meet the statutory numerical allocations; and, if necessary, USCIS may increase those numbers throughout the fiscal year. *See* 8 CFR 214.2(h)(8)(iii)(E). In fact, USCIS has generally increased the total number of registrations it has selected for each fiscal year since the implementation of the registration system.²⁴ Therefore, DHS declines to make any changes as a result of these comments but will continue to rely on data and all relevant information when projecting how many registrations to select toward the 65,000 statutory numerical limitation and the 20,000 advanced degree exemption.

Comment: A few commenters offered suggestions for alternative forms of relief for F-1 students or other prospective beneficiaries who were disadvantaged in prior lotteries. Without elaborating, a commenter stated that the NPRM failed to address the concerns of F-1 students impacted by fraudulent activities in the past 3 years and that DHS should provide “alternative relief options for genuine candidates facing uncertainties.” Another commenter suggested that DHS should offer an employment authorization document “as a form of compensation” for individuals who were not selected following H-1B registration periods in prior years. While not specific to F-1 students who were disadvantaged in prior lotteries, a commenter requested DHS to

²⁴ USCIS made a total selection of 124,415 in cap fiscal year 2021, 131,924 in cap fiscal year 2022, 127,600 in cap fiscal year 2021, and 188,400 in cap fiscal year 2024. USCIS, “H-1B Electronic Registration Process,” <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process> (last updated July 31, 2023).

consider extending cap-gap to all F-1 OPT or STEM OPT students registered in the H-1B lottery until USCIS concludes the lottery selection process for the fiscal year.

Response: As previously noted, changing the registration process to a beneficiary centric system is intended to address issues related to fairness and integrity of the selection process. DHS is not attempting to provide relief or compensate individuals who were not selected in previous registration periods through this regulatory action and declines to adopt these suggestions.

Comment: Multiple commenters suggested that DHS remove the random selection process altogether and instead suggested that the Department select registrations based on particular characteristics. These commenters suggested that the Department:

- Replace the random selection process with a merit-based system;
- Replace the random selection process with a “percentage auction” in which employers would bid for H-1B visas;
- Select registrations based on company needs and individual skills;
- Implement a points-based system in place of a random selection system;
- Implement a wage-level/wage or salary amount/income-based prioritization system, including:
 - Wage-based allocation process for employers paying the highest wages/salaries for non-speculative jobs or having terms and conditions of employment set through a collective bargaining agreement;
 - Select registrations based on the highest salaries;
 - Change the random selection process to an income-based system, and remove the lower income levels from the system to prevent outsourcing and displacement of U.S. talent;
 - Automatically select a registration for a job offer above a certain salary;

- Select registrations based on “virtuous employer behavior”, such as hiring graduates of U.S. universities, sponsoring H-1B workers for permanence, or having terms and conditions of employment set through a collective bargaining agreement;
- Introduce degree-based categorizations in the selection system, reasoning that such an approach would allow more advanced degrees, like PhDs, to have a unique category to align with the specialty-based nature of H-1B visas;
- Work with the Department of Labor (DOL) to identify industries with heavy demand for workers and give those industries priority;
- Provide priority status for U.S. master’s students, PhD graduates, and beneficiaries with greater than 10 years of work experience;
- Prioritize registrations based on the duration of the beneficiary’s work experience or active full-time employment;
- Increase the chances of selection for individuals residing in the United States relative to those who are outside the country, individuals residing in the United States legally, international students, or U.S. graduates in the United States; and
- Revise the registration system so that it rewards highly motivated individuals who will make “genuine contributions” and contribute to the U.S. economy.

Response: In the NPRM, DHS did not propose to prioritize or give preference to any registration based on skills, salaries/wages, education, experience, industry, or any other new criteria. Rather, the goal of this rule is to provide each unique beneficiary with an equal chance of selection. Selecting based on specific characteristics would not achieve this goal. DHS declines to implement any of these suggestions.

Comment: A commenter claimed that “the names of people who are not selected seems to be clustered,” the random selection process can be biased and can “screen out

people,” and that “numbers generated by computers are skewed and prefer specific numbers.”

Response: DHS disagrees with this comment. If USCIS determines it has received enough electronic registrations at the close of the initial registration period to reach the applicable numerical allocation(s), USCIS will randomly select from among the registrations properly submitted during the initial registration period the number of registrations deemed necessary to meet the applicable allocation. As the selection is done via a random selection algorithm, there is no bias or preference for certain registrants over others. The commenter did not provide evidence or cite to data to support their claim that the selection algorithm is biased. As noted above, DHS anticipates that the changes made with this rulemaking will reduce the potential for gaming the registration process and help ensure that each beneficiary has the same chance of being selected.

Comment: A few commenters suggested a “cap,” “quota,” or other restrictions on registrations for beneficiaries from certain countries, remarking that the current registration system has seen disproportionate representation from nationals of certain countries. A commenter remarked that the proposed changes would allow for fairer opportunities for beneficiaries of various nationalities, rather than beneficiaries from certain countries – the commenter cited USCIS H-1B petition data from 2019 indicating that 74.5 percent of H-1B petition beneficiaries were from India.²⁵

Response: DHS declines to adopt a cap, quota, or other restriction on registrations based on a beneficiary’s nationality. DHS disagrees with the assertion that a beneficiary’s nationality has any relevance to their chance of selection under the registration-based selection process or the beneficiary centric selection process.

²⁵ See USCIS, “H -1B Petitions by Gender and Country of Birth Fiscal Year; 2019,” <https://www.uscis.gov/sites/default/files/document/data/h-1b-petitions-by-gender-country-of-birth-fy2019.pdf> (Jan. 21, 2020).

Comment: A commenter requested DHS to allow cap-exempt H-1B holders to transition to cap-subject employers without participating in the registration selection process, stating that the current system imposes burdens on both the employee and the prospective employer but also opens the door to potential H-1B program abuses and fraudulent activities, especially by unscrupulous companies that exploit the system through multiple filings and manipulative practices.

Response: DHS declines to adopt this suggestion. The NPRM did not propose to address the issue of cap-exempt H-1B workers transitioning to cap-subject employers. Allowing a cap-exempt H-1B worker to transfer to a cap-subject employer without participating in the registration selection process would violate 8 CFR 214.2(h)(8)(iii)(F)(5) which the NPRM did not propose to change, as well as INA sec. 214(g)(6), 8 U.S.C. 1184(g)(6).

Comment: A commenter requested DHS to allow a beneficiary to view the case status of an H-1B registration filed by their employer, stating that this will allow a beneficiary to verify the information provided about them by a prospective employer. Another commenter suggested that registrations should be submitted by the beneficiaries rather than the employers, so that the beneficiaries can review the information first-hand, or alternatively that the beneficiaries co-file with the employer. Conversely, another commenter indicated that they appreciate that USCIS did not change the system to allow beneficiaries to submit their own registrations, noting that it could result in many offshore beneficiaries submitting registrations in hopes of obtaining a job offer after selection.

Response: DHS agrees with the commenter who supported DHS not changing who can submit a registration to include beneficiaries. DHS will not implement a change to allow beneficiaries to submit H-1B registrations. The registration process will continue to be employer-based to align with the petition process. In addition, while DHS incorporated a call for preliminary feedback on the beneficiary notification concept,

including the ability to access case status information, DHS is not yet in the position to implement the commenter's suggestions. However, these suggestions will be considered for future action.

Comment: A commenter encouraged DHS to work with the U.S. Department of the Treasury to increase the Pay.gov daily credit card transaction limit, stating that the current relatively low limit creates considerable challenges for companies submitting a large volume of registrations, and eliminating or significantly increasing the transaction limit would contribute to the NPRM goals of modernizing the program.

Response: Transaction limits in Pay.gov are established by the U.S. Department of the Treasury ("Treasury") and are outside DHS's regulatory authority. Therefore, DHS did not propose to amend these limits in the NPRM and will not make any changes in that regard in this final rule. However, in past years, USCIS actively worked with Treasury outside of this rulemaking to waive/increase transaction limits affecting the H-1B registration process and now intends to request an exemption under recently issued Treasury guidance so that it may process credit card transactions in excess of the current daily and monthly credit card transaction limits. USCIS is moving forward with requesting approval from Treasury to increase the transaction limits from \$24,999 to \$39,999, and every effort will be made to obtain approval for the increase in time for the initial registration period in March of 2024.

Comment: A commenter recommended changes to the myUSCIS portal so that when it sends the petitioner or an attorney a notification after one or more selections occur, the notification will identify the specific individuals who were selected.

Response: DHS understands that the commenter is asking USCIS to enhance automatic account update alerts to explicitly state what has changed in the online account, such as the specific registrant(s) and/or beneficiary(ies) impacted, when a selection has been made. The intent of these alerts is to prompt each online account holder to log into

their account to see the details of the case update and obtain specific information on the pending case. Because each matter is case specific, the details in the issued agency notices is important and carefully crafted to present actionable information as well as protect personally identifiable information. For H-1B registrations, the selection notices posted to the online account present the names of the selected beneficiary and of the prospective petitioner, dates of births, contact information, and tax identification numbers. In contrast, the automated messages sent to account holders' email or by SMS text, as selected by the account holder, are intentionally kept general to protect privacy and prevent any inadvertent disclosure of personal information. DHS, therefore, declines to adopt the commenter's suggestion.

Comment: As a way to improve accountability and program integrity, a commenter recommended DHS provide public disclosure of "employer and recruiter information at the initial registration stage" and create "an active mechanism for public objection and comment that will be taken into consideration by those ultimately certifying H-1B petitions." Another commenter stated DHS should disclose to the public the names of the companies and information about their use or misuse of the visa program.

Response: DHS will not implement these suggestions at this time. As stated above, submission of the registration is merely an antecedent procedural requirement to properly file an H-1B cap-subject petition and is not intended to replace the petition adjudication process or assess the eligibility of the beneficiary for the offered position. Therefore, because registration submission and selection is not an adjudication, USCIS would not have a mechanism or need to consider public objection and comment in the context of registration selection. The goal of this rule is to provide each unique beneficiary with an equal chance of selection. It is not clear from the comment how creating a system of public disclosure and mechanisms for public objection to

registrations would help to achieve this goal. Finally, with respect to the suggestion that DHS disclose to the public the names of the companies and information about how they are using the program, it is not clear from the comment whether this suggestion is limited to the H-1B registration process or the H-1B program more broadly. It is also not clear what the commenter meant by “how companies are using the visa program.” DHS notes that it already has an H-1B Data Hub²⁶ where members of the public can search H-1B program information, including employer names, NAICS codes, and geographic information to better understand how the H-1B program is being used, and that third parties may already report alleged fraud or abuse in the H-1B program through an online tip form.²⁷ As such, DHS will not adopt the suggestions at this time.

IV. Severability

The provisions of this rule are severable from each other such that if a court were to hold that any provision is invalid or unenforceable as to a particular person or circumstance, the rule would remain in effect as to any other person or circumstance. Specifically, DHS intends that the provisions governing the beneficiary centric selection process in paragraph (h)(8)(iii), the elimination of the requirement that the requested start date for the beneficiary be the first day for the applicable fiscal year in (h)(8)(iii)(A)(4), and the provisions governing the denial or revocation of H-1B petitions based on inaccurate, fraudulent, or misrepresented material facts in the H-1B petition, H-1B registration, or LCA, or in the case of H-2A and H-2B petitions, the TLC, in paragraphs (h)(10)(ii) and (iii), and (h)(11)(iii), respectively, published in this rule to be severable from one another. As explained throughout this preamble, the beneficiary centric

²⁶ See USCIS, “H-1B Employer Data Hub,” <https://www.uscis.gov/tools/reports-and-studies/h-1b-employer-data-hub> (last visited Jan. 2, 2024).

²⁷ See USCIS, “Combating Fraud and Abuse in the H-1B Visa Program,” <https://www.uscis.gov/scams-fraud-and-misconduct/report-fraud/combating-fraud-and-abuse-in-the-h-1b-visa-program#H-1B%20Fraud%20and%20Abuse%20Indicators>. Under the heading “Reporting Suspected H-1B Fraud or Abuse,” USCIS states: “Anyone (including American workers and H-1B workers who suspect they or others may be the victim of H-1B fraud or abuse) can send us tips, alleged violations, and other relevant information about potential fraud or abuse using our online tip form.” (Last visited Jan. 2, 2024.)

selection process is intended to ensure the fairness in the H-1B selection process by evening out the odds for the selection of H-1B beneficiaries by significantly reducing incentives for the submission of multiple non-meritorious registrations for the same beneficiary. Further the removal of the requirement that a requested start date for the beneficiary be the first day of the applicable fiscal year (i.e., October 1st) is also a stand-alone provision that can operate independently of the other provisions of this rule. Codifying the authority for USCIS to deny or revoke petitions based on false statements made on the H-1B registration will further ensure that the H-1B selection process is based on information that is true and correct.²⁸ While these provisions, taken together, will provide maximum benefit with respect to making the H-1B registration and cap selection process more equitable while ensuring the integrity of the H-1B registration process and H-1B program more broadly, the beneficiary centric selection process provisions are not interdependent with the provisions providing for denial and revocation of H-1B petitions, and are able to operate separately. Similarly, the expansion of the denial provision to cover false statements on the TLC relates to the integrity of the H-2A and H-2B programs and is independent from and severable from the H-1B program, and the H-1B beneficiary centric selection process.

V. Statutory and Regulatory Requirements

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

²⁸ As proposed, and made final in this rule, the denial provision in 8 CFR 214.2(h)(10)(ii) is also being expanded to cover false statements on the Department of Labor's TLC (applicable to H-2A and H-2B programs), and the LCA, and the revocation provision in 8 CFR 214.2(h)(11)(iii) is being expanded to include revocation based on false statements made in the LCA. As explained in the NPRM, this would codify DHS's current practices, as the LCA is incorporated into and considered part of the H-1B petition, just like the TLC is incorporated into and considered part of the H-2A or H-2B petition. *See* 88 FR 72870, 72903 (Oct. 23, 2023). These changes to 8 CFR 214.2(h)(10) and (h)(11) are independent from the other changes made in this final rule.

Review)

Executive Orders (E.O.) 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if a regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has designated this final rule a “significant regulatory action” as defined under section 3(f) of EO 12866, as amended by Executive Order 14094, but it is not significant under section 3(f)(1) because its annual effects on the economy do not exceed \$200 million in any year of the analysis. Accordingly, OMB has reviewed this final rule.

Summary

The purpose of this rulemaking is to amend the regulations relating to the H-1B registration selection process. Through this rule, DHS is implementing a beneficiary centric selection process. Instead of selecting by registration, USCIS will select registrations by unique beneficiary. Each unique beneficiary who has a registration submitted on their behalf will be entered into the selection process once, regardless of how many registrations are submitted on their behalf. If a beneficiary is selected, each registrant that submitted a registration on that beneficiary’s behalf will be notified of selection and will be eligible to file a petition on that beneficiary’s behalf during the applicable petition filing period.

For the 10-year period of analysis of the final rule DHS estimates the annualized net cost savings of this rulemaking will be \$2,199,374 annualized at 3 percent and 7

percent. Table 1 provides a more detailed summary of the final rule provisions and their impacts.

Table 1. Summary of Provisions and Impacts of the Final Rule			
Final Rule Provisions	Description of Final Change to Provisions	Estimated Costs/Transfers of Provisions	Estimated Benefits of Provisions
1. Start Date Flexibility for Certain Cap-Subject H-1B Petitions	<input type="checkbox"/> DHS is eliminating all the text currently at 8 CFR 214.2(h)(8)(iii)(A)(4), which relates to a limitation on the requested start date.	Quantitative: Petitioners - <input type="checkbox"/> None DHS/USCIS - <input type="checkbox"/> None Qualitative: Petitioners – <input type="checkbox"/> None DHS/USCIS – <input type="checkbox"/> None	Quantitative: Petitioners - <input type="checkbox"/> None DHS/USCIS - <input type="checkbox"/> None Qualitative: Petitioners – <input type="checkbox"/> Reduced confusion regarding which start date they must put on an H-1B petition. DHS/USCIS – <input type="checkbox"/> None
2. Additional Time Burden for the H-1B Registration System	<input type="checkbox"/> Due to changes in the instructions, adding clarifying language regarding the denial or revocation of approved H-1B petitions, adding information collection elements related to the beneficiary centric registration selection process, namely the collection of passport or travel document information and related instructional language, and verifying such information before submitting a registration, this final rule will increase the burden per response by 5 minutes.	Quantitative: Petitioners - <input type="checkbox"/> DHS estimates that the additional time to complete and submit the H-1B registration will cost \$2,376,458 annually. <input type="checkbox"/> Although many DHS rulemakings include monetized or unquantified familiarization costs, DHS believes the addition of passport or travel document information will have no likely consequence or add familiarization costs to existing burdens to review instructions, gather required documentation and complete and submit the request. DHS/USCIS - <input type="checkbox"/> None	Quantitative: Petitioners - <input type="checkbox"/> None DHS/USCIS - <input type="checkbox"/> None Qualitative: Petitioners – <input type="checkbox"/> None DHS/USCIS – <input type="checkbox"/> None

		<p>Qualitative: Petitioners –</p> <p><input type="checkbox"/> None</p> <p>DHS/USCIS –</p> <p><input type="checkbox"/> None</p>	
3. Beneficiary Centric Selection	<p><input type="checkbox"/> Under the new rule, each unique individual who has a registration submitted on their behalf will be entered into the selection process once, regardless of the number of registrations submitted on their behalf. By selecting by a unique beneficiary, DHS will better ensure that each individual has the same chance of being selected, regardless of how many registrations were submitted on their behalf.</p>	<p>Quantitative: Petitioners -</p> <p><input type="checkbox"/> DHS estimates the total annual cost savings to petitioners will be \$3,840,822 for the registrants' cost of time.</p> <p><input type="checkbox"/> DHS estimates that there will be 73,501 fewer registrations due to this change, resulting in a \$735,010 cost savings to petitioners based on those petitioners no longer needing to pay the \$10 registration fee.</p> <p>DHS/USCIS -</p> <p><input type="checkbox"/> None</p> <p>Qualitative: Petitioners –</p> <p>While the final passport or travel document requirement could impact individuals who do not yet hold a valid passport or travel document at the time of registration, DHS has determined the described benefits of program integrity outweigh any additional burden to prospective beneficiaries.</p> <p>DHS/USCIS –</p> <p><input type="checkbox"/> None</p>	<p>Quantitative: Petitioners -</p> <p><input type="checkbox"/> None</p> <p>DHS/USCIS -</p> <p><input type="checkbox"/> None</p> <p>Qualitative: Petitioners/Beneficiaries –</p> <p><input type="checkbox"/> DHS believes that changing how USCIS conducts the selection process to select by unique beneficiaries instead of registrations will give each unique beneficiary an equal chance at selection and will reduce the advantage that beneficiaries with multiple registrations submitted on their behalf have over beneficiaries with a single registration submitted on their behalf.</p> <p><input type="checkbox"/> Selected beneficiaries with more than one legitimate registration would enjoy improved flexibility, and greater autonomy in selecting their employer.</p> <p><input type="checkbox"/> DHS cannot forecast with certainty a reduction in administrative burdens resulting from fewer selection rounds. However, the beneficiary centric selection process may reduce the likelihood</p>

			<p>that USCIS will need to run the selection process more than once in a fiscal year and may achieve the multiple benefits discussed by the commenters. DHS also acknowledges the comments that running multiple selection rounds can negatively affect beneficiaries who are already in the United States and may not be able to stay through multiple selection rounds, and notes that the beneficiary centric registration process may help potential beneficiaries in this manner as well.</p> <p>DHS/USCIS – <input type="checkbox"/> None</p>
<p>4. Registrations with False Information or that are Otherwise Invalid</p>	<p><input type="checkbox"/> DHS is codifying its authority to deny or revoke a petition on the basis that the statement of facts on the underlying registration was not true and correct, or was inaccurate, fraudulent, or misrepresented a material fact.</p> <p><input type="checkbox"/> Additionally, DHS is codifying its authority to deny or revoke the approval of an H-1B petition if it determines that the fee associated with the registration is declined, not reconciled, disputed, or otherwise invalid after submission.</p>	<p>Quantitative: Petitioners - <input type="checkbox"/> None</p> <p>DHS/USCIS - <input type="checkbox"/> None</p> <p>Qualitative: Petitioners – <input type="checkbox"/> DHS anticipates that USCIS adjudicators may issue more RFEs and NOIDs related to registrations with false information under this final rule, which will increase the burden on petitioners and adjudicators. <input type="checkbox"/> USCIS may deny or revoke the approval of any petition filed for the beneficiary based on those registrations with false information or if USCIS determines fee payment is declined, not reconciled, disputed, or</p>	<p>Quantitative: Petitioners - <input type="checkbox"/> None</p> <p>DHS/USCIS - <input type="checkbox"/> None</p> <p>Qualitative: Petitioners – <input type="checkbox"/> None</p> <p>DHS/USCIS – <input type="checkbox"/> The authority to deny or revoke a petition on the basis that the statement of facts on the underlying registration was not true and correct, or was inaccurate, fraudulent, or misrepresented a material fact will lead to improved program integrity for USCIS. <input type="checkbox"/> The authority to deny or revoke due to failed or incomplete payment mitigates the incentive to submit payment only upon selection of</p>

		otherwise invalid after submission. DHS/USCIS – <input type="checkbox"/> DHS will need to spend time issuing RFEs and NOIDs related to registrations with false information.	registrations and will lead to improved program integrity for USCIS.
--	--	--	--

In addition to the impacts summarized above, and as required by OMB Circular A-4, Table 2 presents the prepared accounting statement showing the costs and benefits that will result in this final rule.²⁹

Table 2. OMB A-4 Accounting Statement (\$ millions, FY 2022)				
Time Period: FY 2023 through FY 2032				
Category	Primary Estimate	Minimum Estimate	Maximum Estimate	Source Citation
BENEFITS				
Monetized Benefits	N/A			Regulatory Impact Analysis (RIA)
Annualized quantified, but unmonetized, benefits	N/A	N/A	N/A	RIA
Unquantified Benefits	The purpose of this rulemaking is to improve the regulations relating to the H-1B registration selection process. Through this rule, DHS is implementing a beneficiary centric selection process for H-1B registrations. Instead of selecting by registration, U.S. Citizenship and Immigration Services (USCIS) will select registrations by unique beneficiary. Each unique beneficiary who has a registration submitted on their behalf will be entered into the selection process once, regardless of how many registrations are submitted on their behalf. If a beneficiary is selected, each registrant that submitted a registration on that beneficiary’s behalf will be notified of selection and will be eligible to file a petition on that beneficiary’s behalf during the applicable petition filing period. The beneficiary centric selection process for H-1B registrations will reduce the potential for gaming the process to increase chances for selection and help ensure that each beneficiary has the same chance of being selected, regardless of how many registrations are submitted on their behalf.			RIA
COSTS				
Annualized monetized costs (7%)	-\$2.2			RIA
Annualized monetized costs (3%)	-\$2.2			
Annualized quantified, but unmonetized, costs	N/A			

²⁹ OMB, *Circular A-4* (Sept. 17, 2003), https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf (last viewed June 1, 2021).

Qualitative (unquantified) costs	<p>DHS expects program participants to comply with program requirements, and notes those that do not comply with program requirements could experience significant impacts due to this rule. DHS expects that the final rule prevents registrations with false information from taking a cap number for which they are ineligible.</p> <p>If registrants provide false information to gain an unfair advantage under the beneficiary centric selection process, DHS anticipates that USCIS adjudicators may issue more RFEs and NOIDs related to registrations with false information under this final rule, which will increase the burden on petitioners and adjudicators. USCIS may deny or revoke the approval of any petition filed for the beneficiary based on those registrations with false information.</p>	RIA
TRANSFERS		
Annualized monetized transfers (7%)	N/A	
Annualized monetized transfers (3%)	N/A	
From whom to whom?		
From whom to whom?		
<i>Miscellaneous Analyses/Category</i>	<i>Effects</i>	<i>Source Citation</i>
Effects on State, local, or tribal governments	None	RIA
Effects on small businesses	None	RIA
Effects on wages	None	None
Effects on growth	The beneficiary centric selection process will likely increase fairness in the selection process, as well as enhance the integrity of the selection process overall. DHS anticipates that this change will also enhance transparency and predictability in the selection process by structurally limiting the potential for bad actors to game the system. As noted in the NPRM, DHS is aware that, under the registration-based selection process, an individual's chance of selection with a single registration is lower compared to beneficiaries who have multiple registrations submitted on their behalf and is optimistic that the new beneficiary centric selection system will increase fairness and help restore trust in the system.	None

Background

Through this final rule, DHS is finalizing certain provisions relating to the beneficiary centric selection process for H-1B registrations, start date flexibility for certain H-1B cap-subject petitions, and integrity measures related to registration.

Costs, Transfers, and Benefits of the Final Rule

(1) Start Date Flexibility for Certain H-1B Cap-Subject Petitions

DHS is eliminating all the text currently at 8 CFR 214.2(h)(8)(iii)(A)(4), which relates to a limitation on the requested start date, because the current regulatory language creates confusion when the petition filing period extends beyond October 1 of the applicable fiscal year. The removal of this text will provide clarity and flexibility to employers with regard to the start date listed on H-1B cap-subject petitions, consistent with existing USCIS practice. This clarity may help petitioners by reducing confusion as to what start date they have to put on the petition.

In 2020, USCIS implemented the first electronic registration process for the FY 2021 H-1B cap. In that year, and for each subsequent fiscal year, prospective petitioners seeking to file H-1B cap-subject petitions (including for beneficiaries eligible for the advanced degree exemption) were required to first electronically register and pay the associated H-1B registration fee for each prospective beneficiary. Table 3 shows the number of cap-subject registrations received and selected by USCIS during Cap Year 2021 through FY 2023. Based on the 3-year annual average DHS estimates that 127,980 registrations are selected each year. DHS cannot estimate the number of petitioners that will benefit from this clarification to the start date on their petition because USCIS does not currently reject or deny petitions solely due to the start date not being October 1 of the applicable fiscal year.

Table 3. H-1B Cap-Subject Registrations Received and Selected by USCIS, Cap Year 2021 through FY 2023				
Cap Year	Total Number of Registrations Received	Eligible Registrations for Beneficiaries with No Other Eligible Registrations	Eligible Registrations for Beneficiaries with Multiple Eligible Registrations	Selections
2021	274,237	241,299	28,125	124,415
2022	308,613	211,304	90,143	131,924
2023	483,927	309,241	165,180	127,600
3-Year Total	1,066,777	761,844	283,448	383,939
3-Year Average	355,592	253,948	94,483	127,980
Source: https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process (Mar. 30, 2023).				

In FY 2024 there were 780,884 registrations received, which was a large increase from previous years shown in Table 4. Of those registrations, 758,994 were eligible and 350,103 were eligible registrations for beneficiaries with no other eligible registrations, and 408,891 were eligible registrations for beneficiaries with multiple eligible registrations. Table 4 shows the 4-year annual average including FY 2024. The FY 2024 data shows continued growth in eligible registrations for beneficiaries both with no other eligible registrations and those with multiple registrations. While Tables 3 and 4 suggest that growth in multiple registrations may continue in response to declining odds of random selection in the lottery, DHS cannot accurately project out what the share of future registrations will be for beneficiaries with multiple registrations nor how many registrations might ultimately be submitted for those beneficiaries. Furthermore, Table 3 shows that the number of eligible registrations for beneficiaries with no other eligible registrations has continued to grow for reasons unrelated to the growth in multiple registrations. Although past growth is not indicative of future trend, it is evident from the analysis presented in the NPRM and this Final Rule that should these trends continue, the cost savings estimated in this analysis would only grow larger, and consequently, DHS continues to use the 3-year annual (FY21 through FY23) average as the appropriate estimated population for this final rule. While DHS considered the FY2024 data separately, we are not adjusting the RIA to include FY2024 because this most-recent registration data lacks necessary information on the verified total number of unique beneficiaries with registrations submitted on their behalf which this RIA uses to estimate impacts of the beneficiary centric selection process. DHS incorporated the FY 2024 data into this final rule once partial data became available to show the increase in the total number of registrations received since FY2023. Table 4 shows the 4-year annual average including FY 2024, this annual average is around 106,323 higher than the 3-year annual

average shown in Table 3 even though the increase from FY 2023 to FY 2024 was an increase of 296,957.

Table 4. H-1B Cap-Subject Registrations Received and Selected by USCIS, Cap Year 2021 through Cap Year 2024				
Cap Year	Total Number of Registrations Received	Eligible Registrations for Beneficiaries with No Other Eligible Registrations	Eligible Registrations for Beneficiaries with Multiple Eligible Registrations	Selections
2021	274,237	241,299	28,125	124,415
2022	308,613	211,304	90,143	131,924
2023	483,927	309,241	165,180	127,600
2024	780,884	350,103	408,891	188,400
Total	1,847,661	1,111,947	692,339	572,339
Average	461,915	277,987	173,085	143,085
Source: https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process (Mar. 30, 2023).				

(2) The H-1B Registration System

Through issuance of a final rule in 2019, *Registration Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Cap-Subject Aliens*,³⁰ DHS developed a new way to administer the H-1B cap selection process to streamline processing and provide overall cost savings to employers seeking to file H-1B cap-subject petitions. In 2020, USCIS implemented the first electronic registration process for the FY 2021 H-1B cap. In that year, and for each subsequent fiscal year, prospective petitioners seeking to file H-1B cap-subject petitions (including for beneficiaries eligible for the advanced degree exemption) were required to first electronically register and pay the associated H-1B registration fee for each prospective beneficiary. When registration is required, an H-1B cap-subject petition is not eligible for filing unless it is based on a selected registration that was properly submitted by the prospective petitioner, or their representative, for the beneficiary.

Table 3 shows the number of cap registration receipts by year, as well as the number of registrations that were selected to file Form I-129 H-1B petitions. The number

³⁰ See “Registration Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Cap-Subject Aliens,” 84 FR 888 (Jan. 31, 2019).

of registrations has increased over the past 3 years. DHS believes that this increase is partially due to the increase in multiple companies submitting registrations for the same beneficiary. USCIS received a low of 274,237 H-1B registrations for cap year 2021, and a high of 483,927 H-1B registrations for cap year 2023.

DHS estimates the current public reporting time burden for an H-1B registration is 31 minutes (0.5167 hours), which includes the time for reviewing instructions, gathering the required information, and submitting the registration.

The number of Form G-28 submissions allows USCIS to estimate the number of H-1B registrations that an attorney or accredited representative submits and thus estimate the opportunity costs of time for an attorney or accredited representative to submit a registration. Table 5 shows the number of registrations received with and without Form G-28. USCIS received a low of 148,964 registrations with Form G-28 in cap year 2022, and a high of 207,053 registrations with Form G-28 in cap year 2023. Based on a 3-year annual average, DHS estimates the annual average receipts of registrations to be 171,330 with 48 percent of registrations submitted by an attorney or accredited representative.

Table 5. Total Form I-129 H-1B Registrations with and without Form G-28, Cap Year 2021 through Cap Year 2023				
Cap Year	Total Number of H-1B Registrations Submitted without Form G-28	Total Number of H-1B Registrations Submitted with Form G-28	Total of H-1B Registrations Submitted	Percentage of H-1B Registrations Submitted with Form G-28
2021	116,264	157,973	274,237	58%
2022	159,649	148,964	308,613	48%
2023	276,874	207,053	483,927	43%
3-Year Total	552,787	513,990	1,066,777	48%
3-Year Average	184,262	171,330	355,592	48%
Source: USCIS, Office of Policy and Strategy, PRD, CLAIMS3 and ELIS databases, Mar. 30, 2023.				

Of the 355,592 total average of H-1B registrations submitted, DHS estimates that an annual average of 282,091 unique beneficiaries with registrations will now see increase to the opportunity cost of time completing and submitting an H-1B registration. Of those 282,091 registrations, DHS estimated that an attorney or accredited

representative submitted 48 percent of registrations and an HR representative submitted the remaining 52 percent shown in Table 5.

Table 6. H-1B Cap-Subject Registrations Received by USCIS for Unique Beneficiaries, Cap Year 2021 through 2023					
Cap Year	Total Registrations	Total number of registrations submitted for beneficiaries with multiple registrations	Total number of registrations submitted for beneficiaries with a single registration	Total number of unique beneficiaries with registrations submitted on their behalf	% of Total Registrations submitted for beneficiaries with a single registration
2021	274,237	34,349	239,888	253,331	87%
2022	308,613	98,547	210,066	235,720	68%
2023	483,927	176,444	307,483	357,222	64%
3-year Total	1,066,777	309,340	757,437	846,273	71%
3-year Annual Average	355,592	103,113	252,479	282,091	71%
Source: USCIS Office of Performance and Quality					

In order to estimate the opportunity costs of time for completing and submitting an H-1B registration DHS assumes that a registrant will use an HR specialist, an in-house lawyer, or an outsourced lawyer to prepare an H-1B registration.³¹ DHS uses the mean hourly wage of \$35.13 for HR specialists to estimate the opportunity cost of the time for preparing and submitting the H-1B registration.³² Additionally, DHS uses the mean hourly wage of \$78.74 for in-house lawyers to estimate the opportunity cost of the time for preparing and submitting the H-1B registration.³³

DHS accounts for worker benefits when estimating the total costs of compensation by calculating a benefits-to-wage multiplier using the BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.45 and, therefore, is able to estimate the full opportunity cost per petitioner, including

³¹ USCIS limited its analysis to HR specialists, in-house lawyers, and outsourced lawyers to present estimated costs. However, USCIS understands that not all entities employ individuals with these occupations and, therefore, recognizes equivalent occupations may also prepare and file these petitions or registrations.

³² See BLS, “Occupational Employment and Wage Statistics, Occupational Employment and Wages, May 2022, 13-1071 Human Resources Specialists,” <https://www.bls.gov/oes/2022/may/oes131071.htm> (last visited May 11, 2023).

³³ See BLS, “Occupational Employment and Wage Statistics, Occupational Employment and Wages, May 2022, 23-1011 Lawyers,” <https://www.bls.gov/oes/2022/may/oes231011.htm> (last visited May. 11, 2023).

employee wages and salaries and the full cost of benefits such as paid leave, insurance, retirement, etc.³⁴ DHS multiplied the average hourly U.S. wage rate for HR specialists and in-house lawyers by 1.45 to account for the full cost of employee benefits, for a total of \$50.94³⁵ per hour for an HR specialist and \$114.17³⁶ per hour for an in-house lawyer. DHS recognizes that a firm may choose, but is not required, to outsource the preparation of these petitions and, therefore, presents two wage rates for lawyers. To determine the full opportunity costs of time if a firm hired an outsourced lawyer, DHS multiplied the average hourly U.S. wage rate for lawyers by 2.5³⁷ for a total of \$196.85³⁸ to approximate an hourly wage rate for an outsourced lawyer³⁹ to prepare and submit an H-1B registration.⁴⁰

³⁴ The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) / (Wages and Salaries per hour) (\$42.48 Total Employee Compensation per hour) / (\$29.32 Wages and Salaries per hour) = 1.44884 = 1.45 (rounded). See BLS, Economic News Release, “Employer Costs for Employee Compensation” (Dec. 2022), Table 1. “Employer Costs for Employee Compensation by ownership” (Dec. 2022), https://www.bls.gov/news.release/archives/ecec_03172023.htm (last visited Mar. 21, 2023). The Employer Costs for Employee Compensation measures the average cost to employers for wages and salaries and benefits per employee hour worked.

³⁵ Calculation: $\$35.13 * 1.45 = \50.94 total wage rate for HR specialist.

³⁶ Calculation: $\$78.74 * 1.45 = \114.17 total wage rate for in-house lawyer.

³⁷ DHS Immigration and Customs Enforcement (ICE), “Safe-Harbor Procedures for Employers Who Receive a No-Match Letter,” used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney based on information received in public comment to that rule. We believe the explanation and methodology used in the Final Small Entity Impact Analysis for that rule remains sound for using 2.5 as a multiplier for outsourced labor wages in this final rule, see <https://www.regulations.gov/document/ICEB-2006-0004-0922>, at page G-4.

³⁸ Calculation: $\$78.74 * 2.5 = \196.85 total wage rate for an outsourced lawyer.

³⁹ The DHS analysis in “Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program,” 83 FR 24905 (May 31, 2018), <https://www.federalregister.gov/documents/2018/05/31/2018-11732/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2018-numerical-limitation-for-the>, used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages. The ICE rule “Final Small Entity Impact Analysis: ‘Safe-Harbor Procedures for Employers Who Receive a No-Match Letter’” at G-4 (Aug. 25, 2008), <https://www.regulations.gov/document/ICEB-2006-0004-0922>, also uses a multiplier. The methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this final rule.

⁴⁰ The DHS analysis in “Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program,” 83 FR 24905 (May 31, 2018), <https://www.federalregister.gov/documents/2018/05/31/2018-11732/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2018-numerical-limitation-for-the>, used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages. Also, the analysis for a DHS ICE rule, “Final Small Entity Impact Analysis: ‘Safe-Harbor Procedures for Employers Who Receive a No-Match Letter’” at G-4 (Aug. 25, 2008), <https://www.regulations.gov/document/ICEB-2006-0004-0922>, used a multiplier. The methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this final rule.

Table 7 displays the estimated annual opportunity cost of time for submitting an H-1B registration employing an in-house or outsourced lawyer to complete and submit an H-1B registration. DHS does not know the exact number of registrants who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average. These current opportunity costs of time for submitting an H-1B registration using an attorney or other representative are estimated to range from \$7,987,704 to \$13,772,265 with an average of \$10,879,985.

Table 7. Current Average Opportunity Costs of Time for Submitting an H-1B Registration with an Attorney or Other Representative				
	Population Submitting with a Lawyer	Time Burden to Complete H-1B Registration (Hours)	Cost of Time	Total Current Opportunity Cost
	A	B	C	D=(A×B×C)
In-house lawyer	135,404	0.5167	\$114.17	\$7,987,704
Outsourced lawyer	135,404	0.5167	\$196.85	\$13,772,265
Average				\$10,879,985
Source: USCIS Analysis				

To estimate the current remaining opportunity cost of time for an HR specialist submitting an H-1B registration without a lawyer, DHS applies the estimated public reporting time burden (0.5167 hours) to the compensation rate of an HR specialist. Table 8 estimates the current total annual opportunity cost of time to HR specialists completing and submitting an H-1B registration will be approximately \$3,860,904.

Table 8. Current Average Opportunity Costs of Time for Submitting an H-1B Registration, without an Attorney or Accredited Representative				
	Population	Time Burden to Complete H-1B Registration (Hours)	HR Specialist's Opportunity Cost of time	Total Opportunity Cost of Time
	A	B	C	D=(A×B×C)
Estimate of H-1B Registrations	146,687	0.5167	\$50.94	\$3,860,904
Source: USCIS Analysis				

Table 9 shows the final estimated time burden will increase by 5 minutes to 36 minutes (0.6 hours) to the eligible population and compensation rates of those who may submit registrations with or without a lawyer due to changes in the instructions, adding clarifying language regarding denying or revoking approved H-1B petitions, adding

passport or travel document instructional language, and verifying such information before submitting registrations. DHS does not know the exact number of registrants who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average. DHS estimates that these current opportunity costs of time for submitting an H-1B registration using an attorney or other representative range from \$9,275,445 to \$15,992,566 with an average of \$12,634,006.

Table 9. New Opportunity Costs of Time for an H-1B Registration, Registrants Submitting with an Attorney or Other Representative				
	Population of Registrants Submitting with a Lawyer	Time Burden to Complete H-1B Registration (Hours)	Cost of Time	Total Opportunity Cost
	A	B	C	$D=(A \times B \times C)$
In House Lawyer	135,404	0.6	\$114.17	\$9,275,445
Outsourced Lawyer	135,404	0.6	\$196.85	\$15,992,566
Average				\$12,634,006
Source: USCIS Analysis				

To estimate the current remaining opportunity cost of time for an HR specialist submitting an H-1B registration without a lawyer, DHS applies the final estimated public reporting time burden (0.6 hours) to the compensation rate of an HR specialist. Table 10 estimates the current total annual opportunity cost of time to HR specialists completing and submitting the H-1B registration will be approximately \$4,483,341.

Table 10. Final Average Opportunity Costs of Time for an H-1B Registration, Submitting without an Attorney or Accredited Representative				
	Population	Time Burden to Complete H-1B Registration (Hours)	HR Specialist's Opportunity Cost of time (48.40 /hr.)	Total Opportunity Cost of Time
	A	B	C	$D=(A \times B \times C)$
Estimate H-1B Registration	146,687	0.6	\$50.94	\$4,483,341
Source: USCIS Analysis				

DHS estimates the total additional annual cost for attorneys and HR specialists to complete and submit H-1B registrations are expected to be \$2,376,458 shown in Table 11. This table shows the current total opportunity cost of time to submit an H-1B registration and the final total opportunity cost of time.

Table 11. Total Costs to Complete the H-1B Registration	
Average Current Opportunity Cost Time for Lawyers to Complete the H-1B Registration	\$10,879,985
Average Current Opportunity Cost Time for HR Specialist to Complete the H-1B Registration	\$3,860,904
Total	\$14,740,889
Average Final Opportunity Cost Time for Lawyers to Complete the H-1B Registration	\$12,634,006
Average Final Opportunity Cost Time for HR Specialist to Complete the H-1B Registration	\$4,483,341
Total	\$17,117,347
Final Additional Opportunity Costs of Time to Complete the H-1B Registration	\$2,376,458
Source: USCIS Analysis	

(3) Beneficiary Centric Selection

Under the final provision, DHS will modify the random selection process.

Registrants will continue to submit registrations on behalf of beneficiaries, and beneficiaries will continue to be able to have more than one registration submitted on their behalf, as generally allowed by applicable regulations. If a random selection were necessary (meaning, more registrations are submitted than the number of registrations USCIS projected as needed to reach the numerical allocations), then the random selection will be based on each unique beneficiary identified in the registration pool, rather than each registration. If a beneficiary is selected, then all registrants who properly submitted a registration for that selected beneficiary will be notified of the selection and that they are eligible to file an H-1B cap petition on behalf of the beneficiary during the applicable petition filing period.

DHS believes that changing how USCIS conducts the selection process to select by unique beneficiaries instead of registrations will give each unique beneficiary an equal chance at selection and will reduce the advantage that beneficiaries with multiple registrations submitted on their behalf have over beneficiaries with a single registration submitted on their behalf. DHS believes that it will also reduce the incentive that registrants may have to work with others to submit registrations for the same beneficiary

to unfairly increase the chance of selection for the beneficiary because doing so under the beneficiary centric selection approach will not result in an increase in the odds of selection. Selecting by unique beneficiary could also result in other benefits, such as giving beneficiaries greater autonomy regarding their H-1B employment. Under the baseline, employers attest that the registration reflects a legitimate job offer and they did not work with others to improve their chance of selection, and some beneficiaries have multiple legitimate registrations. Some beneficiaries who registered multiple times may see their relative odds of at least one lottery selection decline as a result of this rule, but this effect will be offset by the increased autonomy for beneficiaries. Under the current registration based selection process, beneficiaries with multiple registrations have their offer of employment determined by which registrant (prospective employer) was selected. After this final rule is in effect, selecting by unique beneficiary and providing each registrant with a selection notice will allow beneficiaries to select from among the registrants with legitimate job offers thus potentially giving beneficiaries greater autonomy regarding their H-1B employment; these beneficiaries may also have greater bargaining power or flexibility to negotiate with prospective employers.

The integrity of the new selection process will rely on USCIS's ability to accurately identify each individual beneficiary, and all registrations submitted on their behalf. DHS is requiring the submission of valid passport information or valid travel document information, including the passport or travel document number, country of issuance, and expiration date, in addition to the currently required information. *See* new 8 CFR 214.2(h)(8)(iii)(A)(4)(ii). While the final passport or travel document requirement could impact individuals who do not yet hold valid passports or travel documents at the time of registration, DHS has determined the described benefits of program integrity outweigh any additional burden to prospective beneficiaries.

DHS estimates that the annual average receipts of H-1B registrations is 355,592 with 71 percent of registrations being submitted for a beneficiary with only a single registration. DHS estimates that 29 percent⁴¹ of registrations are submitted by companies for beneficiaries who have also had other registrations submitted on their behalf. Based on this new provision, DHS estimates that there may be a reduction in registrations because beneficiaries will be less inclined to find as many different employers to submit registrations on their behalf as doing so will not affect their chance of selection. Also, DHS expects to see less abuse by unscrupulous registrants as they will not be able to increase the chance of selection for a beneficiary by working together with others to submit multiple registrations for the same beneficiary.

Table 12. H-1B Cap-Subject Registrations Received by USCIS for Unique Beneficiaries, Cap Year 2021 through 2023					
Cap Year	Total Registrations	Total number of registrations submitted for beneficiaries with multiple registrations	Total number of registrations submitted for beneficiaries with a single registration	Total number of unique beneficiaries with registrations submitted on their behalf	% of Total Registrations submitted for beneficiaries with a single registration
2021	274,237	34,349	239,888	253,331	87%
2022	308,613	98,547	210,066	235,720	68%
2023	483,927	176,444	307,483	357,222	64%
3-year Total	1,066,777	309,340	757,437	846,273	71%
3-year Annual Average	355,592	103,113	252,479	282,091	71%
Source: USCIS Office of Performance and Quality					

DHS estimates that 73,501⁴² registrations annually may no longer be submitted due to this final rule change. Of those 73,501 registrations, DHS estimated that an attorney or accredited representative submitted 48 percent of registrations and an HR representative submitted the remaining 52 percent shown in Table 5.

⁴¹ Calculation: 100% - 71% Registrations for a single beneficiary = 29% Registrations submitted for multiple beneficiaries.

⁴² Calculation: Total Registrations 355,592 - Total average number of unique beneficiaries with registrations submitted on their behalf 282,091 = 73,501 Estimate of registrations that may no longer be submitted.

Table 13 displays the estimated annual opportunity cost of time for submitting an H-1B registration employing an in-house or outsourced lawyer to complete and submit an H-1B registration. DHS does not know the exact number of prospective petitioners who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average. DHS estimates that these current opportunity costs of time for submitting an H-1B registration using an attorney or other representative range from \$2,081,225 to \$3,588,413, with an average of \$2,834,819.

Table 13. Current Annual Average Opportunity Costs of Time for Submitting an H-1B Registration, with an Attorney or Other Representative				
	Population of Registrants Submitting with a Lawyer	Time Burden to Complete H-1B Registration (Hours)	Cost of Time	Total Current Opportunity Cost
	A	B	C	D=(A×B×C)
In House Lawyer	35,280	0.5167	\$114.17	\$2,081,225
Outsourced Lawyer	35,280	0.5167	\$196.85	\$3,588,413
Average				\$2,834,819
Source: USCIS Analysis				

To estimate the current remaining opportunity cost of time for an HR specialist submitting an H-1B registration without a lawyer, DHS applies the estimated public reporting time burden (0.5167 hours) to the compensation rate of an HR specialist. Table 14 estimates the current total annual opportunity cost of time to HR specialists completing and submitting an H-1B registration will be approximately \$1,006,003.

Table 14. Current Annual Average Opportunity Costs of Time for Submitting an H-1B Registration, without an Attorney or Accredited Representative				
	Population	Time Burden to Complete H-1B Registration (Hours)	HR Specialist's Opportunity Cost of time	Total Opportunity Cost of Time
	A	B	C	D=(A×B×C)
Estimate of H-1B Registrations	38,221	0.5167	\$50.94	\$1,006,003
Source: USCIS Analysis				

DHS estimates the total annual opportunity cost savings of time for not having to complete and submit H-1B registrations for beneficiaries with multiple registrations are expected to be \$3,840,822, shown in Table 15.

Table 15. Total Annual Opportunity Cost Savings of Time for H-1B Registrations	
Average Current Opportunity Cost Time for Lawyers to Complete H-1B Registration	\$2,834,819
Average Current Opportunity Cost Time for HR Specialist to Complete H-1B Registration	\$1,006,003
Total	\$3,840,822
Source: USCIS Analysis	

Prospective petitioners seeking to file H-1B cap-subject petitions, including for beneficiaries eligible for the additional visas for advanced degree holders, must first electronically register and pay the associated \$10 H-1B registration fee for each prospective beneficiary. Due to this final change DHS estimates that prospective petitioners may now see an additional cost savings of \$735,010. The annual total cost savings of this final beneficiary centric selection is \$4,575,832.⁴³

Table 16. Total Annual Cost Savings for Registration Fees	
Annual Registrations for the same beneficiaries	73,501
Registration Fee	\$10
Total Cost savings	\$735,010
Source: USCIS Analysis	

For purposes of this regulatory impact analysis, summarized in Table 2 A-4 Accounting Statement, the existing \$10 registration fee is the appropriate baseline against which the impacts of the rule should be evaluated, however, DHS is simultaneously working on finalizing the “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements” Rule. In the NPRM, USCIS proposed to increase the H-1B registration fee from \$10 to \$215. If DHS were to finalize the proposed increase, Table 16b shows an even larger cost savings to registrants based on the estimated reduction in the number of registrations that would be submitted. Currently the cost savings would be \$735,010 shown in Table 6 but would increase to \$15,802,715 in Table 16b. If USCIS continued to see increased numbers of annual registrations for beneficiaries with multiple registrations, then the total cost

⁴³ Calculation: Total Opportunity Cost Savings of time for H-1B Registrations (\$3,840,822) + Total Cost Savings for Registration Fees (\$735,010) = \$4,575,832 Total Cost Savings.

savings of this rule would increase, for example if USCIS saw 100,000 annual registrations for beneficiaries with multiple registrations when the registration fee is \$215, DHS would see a \$21,500,000⁴⁴ cost savings from the beneficiary centric selection.

Table 16b. Total Annual Cost Savings for Registration Fees	
Annual Registrations for beneficiaries with multiple registrations	73,501
Registration Fee	\$215
Total Cost savings	\$15,802,715
Source: USCIS Analysis	

(4) Registrations with False Information or That Are Otherwise Invalid

Although registration is an antecedent procedural step undertaken prior to filing an H-1B petition, the validity of the registration information is key to the registrant's eligibility to file a petition. As stated in the current regulations, "[t]o be eligible to file a petition for a beneficiary who may be counted against the H-1B regular cap or the H-1B advanced degree exemption for a particular fiscal year, a registration must be properly submitted in accordance with 8 CFR 103.2(a)(1), [8 CFR 214.2(h)(8)(iii),] and the form instructions." *See* 8 CFR 214.2(h)(8)(iii)(A)(I). USCIS does not consider a registration to be properly submitted if the information contained in the registration, including the required attestations, was not true and correct. Currently, the regulations state that it is grounds for denial or revocation if the statements of facts contained in the petition are not true and correct, inaccurate, fraudulent, or misrepresented a material fact. DHS will clarify in the regulations that the grounds for denial of an H-1B petition or revocation of an H-1B petition approval extend to the information provided in the registration and to expressly state in the regulations that this includes attestations on the registration that are determined by USCIS to be false.

⁴⁴ Calculation: 100,000 Annual Registrations for beneficiaries with multiple registrations x \$215 Registration Fee = \$21,500,000 Cost savings.

DHS is also changing the regulations governing registration to provide USCIS with clearer authority to deny or revoke the approval of a petition based on a registration that was not properly submitted or was otherwise invalid.

Specifically, DHS is adding that if a petitioner submits more than one registration per beneficiary in the same fiscal year, all registrations filed by that petitioner relating to that beneficiary for that fiscal year may be considered not only invalid, but that “USCIS may deny or revoke the approval of any petition filed for the beneficiary based on those registrations.”

Additionally, DHS is adding that USCIS may deny or revoke the approval of an H-1B petition if it determines that the fee associated with the registration is declined, not reconciled, disputed, or otherwise invalid after submission.

These final changes may increase the need for RFEs and NOIDs. It is important to note that issuing RFEs and NOIDs takes time and effort for adjudicators – to send, receive, and adjudicate documentation – and it requires additional time and effort for petitioners to respond, resulting in extended timelines for adjudications.⁴⁵ Data on RFEs and NOIDs related to H-1B false information are not standardized or tracked in a consistent way, thus they are not accurate or reliable.

(5) Alternatives Considered

DHS considered the alternative of eliminating the registration system and reverting to the paper-based filing system stakeholders used prior to implementing registration. However, when DHS considered the cost savings that registration provides to both USCIS and stakeholders and the significant resources the agency would incur to

⁴⁵ The regulations state that when an RFE is served by mail, the response is timely filed if it is received no more than 3 days after the deadline, providing a total of 87 days for a response to be submitted if USCIS provides the maximum period of 84 days under the regulations. The maximum response time for a NOID is 30 days. *See* Citizenship and Immigr. Servs., U.S. Dep’t of Homeland Security, USCIS Policy Manual, Volume 1, “General Policies and Procedures,” Part E, “Adjudications”, Chapter 6, “Evidence.” <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6>.

revert back to a paper-based H-1B cap selection process, the benefits of having a registration system still outweigh the costs of abuse of the system.

Total Quantified Net Costs of the Final Regulatory Changes

In this section, DHS presents the total annual cost savings of this final rule annualized over a 10-year period of analysis. Table 17 details the annual cost savings of this final rule. DHS estimates the total cost savings is \$4,575,832. This cost savings is based on the current registration fee of \$10 per registration.

Table 17. Summary of Cost Savings	
Description	Cost Savings
Beneficiary Centric Selection Cost of Time	\$3,840,822
Beneficiary Centric Selection Cost of Registrations	\$735,010
Total Cost Savings	\$4,575,832
Source: USCIS Analysis	

Table 17b shows the annual cost savings of this final rule under the proposed \$215 registration fee. DHS estimates the total cost savings would be \$19,643,537. The estimates in Tables 16b and 17b serve only to illustrate the impact to cost savings estimates if the fee is increased to \$215 in a separate rulemaking.⁴⁶

Table 17b. Summary of Cost Savings – Under Proposed Registration Fee Increase	
Description	Cost Savings
Beneficiary Centric Selection Cost of Time	\$3,840,822
Beneficiary Centric Selection Cost of Registrations (Proposed \$215 Fee)	\$15,802,715
Total Cost Savings	\$19,643,537
Source: USCIS Analysis	

DHS summarizes the annual costs of this final rule. Table 18 details the annual costs of this final rule. DHS estimates the total cost is \$2,376,458.

Table 18. Summary of Costs	
Description	Costs
The H-1B Registration System	\$2,376,458
Total Costs	\$2,376,458
Source: USCIS Analysis	

⁴⁶ See “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 88 FR 402, 527 (Jan. 4, 2023) (proposed rule).

Net cost savings to the public of \$2,199,374 are the total costs minus cost savings.⁴⁷ Table 19 illustrates that over a 10-year period of analysis from FY 2023 through FY 2032 annualized cost savings will be \$2,199,374 using 7-percent and 3-percent discount rates.

Table 19. Discounted Net Cost Savings Over a 10-Year Period of Analysis		
Fiscal Year	Total Estimated Cost Savings	
	\$2,199,374 (Undiscounted)	
	Discounted at 3 percent	Discounted at 7 percent
2023	\$2,135,315	\$2,055,490
2024	\$2,073,121	\$1,921,018
2025	\$2,012,739	\$1,795,344
2026	\$1,954,115	\$1,677,892
2027	\$1,897,199	\$1,568,123
2028	\$1,841,941	\$1,465,536
2029	\$1,788,292	\$1,369,660
2030	\$1,736,206	\$1,280,056
2031	\$1,685,637	\$1,196,314
2032	\$1,636,541	\$1,118,050
10-year Total	\$18,761,106	\$15,447,483
Annualized Cost	\$2,199,374	\$2,199,374

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 and 602, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.⁴⁸

An “individual” is not considered a small entity and costs to an individual are not considered a small entity impact for RFA purposes. In addition, the courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity

⁴⁷ Calculations: \$4,575,832 Total Cost Savings – \$2,376,458 Total Costs = \$2,199,374 Net Cost Savings.

⁴⁸ A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632.

impacts only when a rule directly regulates small entities.⁴⁹ Consequently, indirect impacts from a rule on a small entity are not considered as costs for RFA purposes.

USCIS's RFA analysis for this final rule focuses on the population of Form I-129 petitions for H-1B workers as a proxy for the impacts of this rule focused on H-1B registrations and associated registrants. Since H-1B registration is an antecedent procedural step taken before a selected registrant can file an H-1B petition, this is an appropriate proxy for analyzing the impacts of this final rule action on small entities. Where cost savings occur from multiple registrants no longer registering on behalf of a common beneficiary, either deliberately or inadvertently, USCIS is unable to quantify the portion of potential cost savings accruing to small entities. Some of these cost savings may be partially offset by the advantage multiple registrations conferred over single, unique registrants, but it is ambiguous whether such small entities enjoy this advantage or feel increasingly compelled to do this by their belief that other registrants are doing so.

1. A statement of the need for, and objectives of, the rule.

The purpose of this rulemaking is to amend the regulations relating to the H-1B registration selection process.

2. A statement of the significant issues raised by the public comments in response to the IRFA, 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 invited comments in the NPRM but did not receive any comments specific to the IRFA.⁵⁰ USCIS responded to general comments concerning the rule in Section III. Public Comments on the Proposed Rule.

⁴⁹ See Small Business Administration, "A Guide For Government Agencies, How to Comply with the Regulatory Flexibility Act," at 22, <https://advocacy.sba.gov/wp-content/uploads/2019/06/How-to-Comply-with-the-RFA.pdf> (last visited Aug. 23 2023).

⁵⁰ Note however, that in "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 88 FR 402, 527 (Jan. 4, 2023) (proposed rule), DHS proposed to increase the H-1B registration fee from \$10 to \$215 per registration submitted. While the underlying purpose of the proposed fee increase is to ensure full cost recovery for USCIS adjudication and naturalization services, DHS recognizes the possibility that the increase in the H-1B registration fee may have an impact on the number of H-1B registrations submitted, including those submitted to improperly

3. *The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration 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 invited comments in NPRM but did not receive any comments filed by the Chief Counsel for Advocacy of the Small Business Administration.

4. *A description 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.*

For this analysis, DHS conducted a sample analysis of historical Form I-129 H-1B petitions to estimate the number of small entities impacted by this rule. DHS utilized a subscription-based electronic database of U.S. entities, ReferenceUSA, as well as three other open-access, free databases of public and private entities, Manta, Cortera, and Guidestar to determine the North American Industry Classification System (NAICS) code, revenue, and employee count for each entity. To determine whether an entity is small for purposes of RFA, DHS first classified the entity by its NAICS code and then used Small Business Administration (SBA) guidelines to classify the revenue or employee count threshold for each entity. Some entities were classified as small based on their annual revenue, and some by their numbers of employees.

Using FY 2022 internal data on actual filings of Form I-129 H-1B petitions, DHS identified 44,593 unique entities. DHS devised a methodology to conduct the small entity analysis based on a representative, random sample of the potentially impacted population. DHS first determined the minimum sample size necessary to achieve a 95-percent confidence level confidence interval estimation for the impacted population of entities using the standard statistical formula at a 5-percent margin of error. DHS then created a sample size greater than the minimum necessary to increase the likelihood that our

increase the chance of selection. However, any potential impact of that separate regulatory proposal is purely speculative. DHS also acknowledged this related rulemaking in the NPRM. *See* 88 FR 72870, 72897 (Oct. 23, 2023).

matches would meet or exceed the minimum required sample. DHS notes that the random sample was drawn from the population of Form I-129 H-1B petitioners for purposes of estimating impacts of each provision in the NPRM, including those finalized here, on the population of Form I-129 H-1B petitioners at-large. Alternative approaches would be to draw a random sample from the population of H-1B registrants, however, this approach encounters the same problem this final rule seeks to address. Namely, it is difficult to discern the relationship between registrations and the Form I-129 H-1B administrative data. Thus, analyzing the impact of changes to registrations by unique entities using a sample of Form I-129 H-1B data is preferred.

DHS randomly selected a sample of 3,396 entities from the population of 44,593 entities that filed Form I-129 for H-1B petitions in FY 2022. Of the 3,396 entities, 1,724 entities returned a successful match of a filing entity in the ReferenceUSA, Manta, Cortera, and Guidestar databases; 1,672 entities did not return a match. Using these databases' revenue or employee count and their assigned NAICS code, DHS determined 1,209 of the 1,724 matches to be small entities, 515 to be non-small entities. DHS assumes filing entities without database matches or missing revenue/employee count data are likely to be small entities. As a result, in order to prevent underestimating the number of small entities this final rule will affect, DHS considers all the non-matched and missing entities as small entities for the purpose of this analysis. Therefore, DHS classifies 2,881 of 3,396 entities as small entities, including combined non-matches (1,672), and small entity matches (1,209). Thus, DHS estimates that 84.8 percent (2,881 of 3,396) of the entities filing Form I-129 H-1B petitions are small entities.

In this analysis DHS assumes that the distribution of firm size for our sample is the same as the entire population of Form I-129 H-1B petitioners. Thus, DHS estimates the number of small entities to be 84.8 percent of the population of 44,593 entities that filed Form I-129 under the H-1B classification, as summarized in Table 19 below. The

annual numeric estimate of the small entities impacted by this final rule is 37,815 entities.⁵¹

Table 19. Number of Small Entities for Form I-129 for H-1B, FY 2022		
Population	Number of Small Entities	Proportion of Population (Percent)
44,593	37,815	84.8%

Following the distributional assumptions above, DHS uses the set of 1,209 small entities with matched revenue data to estimate the economic impact of the final rule on each small entity. Typically, DHS will estimate the economic impact, in percentage, for each small entity is the sum of the impacts of the final changes divided by the entity's sales revenue.⁵² DHS constructed the distribution of economic impact of the final rule based on the 1,209 small entity matches in the sample. Because this final rule resulted in an overall cost savings for registrants there also would be no adverse impact on the estimated small entity population. Based on FY 2022 revenue, of the 1,209 small entities, 0 percent (0 small entities) would experience a cost increase that is greater than 1 percent of revenues.

5. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

The beneficiary centric selection process would result in additional burden to employers reporting beneficiaries' passport or travel document information in the

⁵¹ The annual numeric estimate of the small entities (37,815) = Population (44,593) * Percentage of small entities (84.8%).

⁵² The economic impact, in percentage, for each small entity i = ((Cost of one petition for entity i x Number of petitions for entity i) / Entity i 's sales revenue) x 100.

The cost of one petition for entity i (\$1-4.43) is estimated by dividing the total cost of this proposed rule by the estimated population. $-\$2,199,374 / 355,592 = -\6.19

The entity's sales revenue is taken from ReferenceUSA, Manta, Cortera, and Guidestar databases.

registration system. DHS estimates increase for each of these respective burdens is 5 minutes.

6. *A description of the steps the agency has taken to minimize the significant adverse economic impact on small entities*

With respect to beneficiary centric selection process, there are no burdens to be minimized. While collection of passport or travel document information imposes some burden to prospective employers, USCIS found no other alternatives that achieved stated objectives with less burden to small entities.

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule, that includes any Federal mandate that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.⁵³

In addition, the inflation-adjusted value of \$100 million in 1995 is approximately \$192 million in 2022 based on the Consumer Price Index for All Urban Consumers (CPI-U).⁵⁴ This final rule does not contain a Federal mandate as the term is defined under

⁵³ See 2 U.S.C. 1532(a).

⁵⁴ See BLS, “Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month,” www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202212.pdf (last visited Jan. 19, 2023). Calculation of inflation: (1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2022); (2) Subtract reference year CPI-U from current year CPI-U; (3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U; (4) Multiply by 100 = [(Average monthly CPI-U for 2022 – Average monthly CPI-U for 1995)/(Average monthly CPI-U for 1995)]*100=[(292.655–152.383)/152.383]*100=(140.272/152.383)*100=0.92052263*100=92.05 percent = 92 percent (rounded). Calculation of inflation-adjusted value: \$100 million in 1995 dollars*1.92=\$192 million in 2022 dollars.

UMRA.⁵⁵ The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

D. Congressional Review Act

OIRA has determined that this final rule is not a major rule, as defined in 5 U.S.C. 804, for purposes of Congressional review of agency rulemaking pursuant to the Congressional Review Act, Pub. L. 104-121, title II, sec. 251 (Mar. 29, 1996), 110 Stat. 868 (codified at 5 U.S.C. 801-808). This rule will not result in an annual effect on the economy of \$100 million or more.

DHS will send this rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1).

E. Executive Order 13132 (Federalism)

This final rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988: Civil Justice Reform

This final rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. DHS has determined that this final rule meets the applicable standards provided in section 3 of E.O. 12988.

G. Executive Order 13175 (Consultation and Coordination with

⁵⁵ The term “Federal mandate” means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6).

Indian Tribal Governments)

This final rule does not have “tribal implications” because it will not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

H. National Environmental Policy Act (NEPA)

National Environmental Policy Act Public Comments

As discussed in the NEPA section of the NPRM,⁵⁶ DHS proposed a broader set of reforms in the H-1B program, as well as discrete reforms impacting other nonimmigrant programs. DHS received one public comment on the NEPA discussion in the NPRM. DHS is addressing that comment here to the extent it pertains to the provisions of this final rule. DHS will also consider the public comment in the context of any future rule it may issue to finalize the remainder of the reforms proposed in the NPRM.

Comment: One commenter asserted that DHS’s reliance on categorical exclusion (“CATEX”) A3⁵⁷ is arbitrary and capricious and indicated that DHS must prepare an environmental impact statement or at least an environmental assessment before finalizing the NPRM. The commenter asserted that the action proposed in the NPRM is an action that, by its nature, increases the population because its goal is to increase the number of foreign nationals who enter the country. The commenter argued that the action proposed

⁵⁶ 88 FR 72870, 72955 (Oct. 23, 2023).

⁵⁷ The commenter stated: “Categorical exclusion A3, in full, is as follows: A3 Promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature: (a) Those of a strictly administrative or procedural nature; (b) Those that implement, without substantive change, statutory or regulatory requirements; (c) Those that implement, without substantive change, procedures, manuals, and other guidance documents; (d) Those that interpret or amend an existing regulation without changing its environmental effect; (e) Technical guidance on safety and security matters; or (f) Guidance for the preparation of security plans.”

in the NPRM has the potential to have a cumulative effect when combined with other actions that increase levels of immigration, and that it should be considered rather than categorically excluded. The commenter further stated that DHS's use of categorical exclusion A3 is "entirely irrational" because DHS could not assess the environmental impact of the rule and thus concluded that the rule is of the type that would not have any. The commenter further stated that the NPRM does not fit into any of the categories under CATEX A3, and that DHS was not considering rules that increase immigration to the United States when it formulated this rule.

Response: DHS disagrees with both the factual and the legal assertions made by this commenter. The commenter cited no data, analysis, evidence, or statements made by DHS in the NPRM to support the commenter's assertion. Specifically with respect to the provisions being finalized through this rule, the intended and expected impact of those provisions has no relationship to increasing the number of foreign nationals in the United States. Rather, as discussed throughout this preamble, DHS is amending existing regulations to make the H-1B registration selection process fairer for all beneficiaries and improve the integrity of the program as a whole. The inclusion of start date flexibility in this final rule eliminates a confusing regulatory provision and aligns with current USCIS practice to allow petitioners to list a start date on the H-1B petition that is later than October 1 of a fiscal year for which an H-1B registration was selected. In addition, the expansion of existing regulatory provisions governing the denial of H-1B, H-2A, and H-2B petitions based on false statements (including findings of fraud or willful misrepresentation) made not only in the petition, but also in the H-1B registration, LCA, or TLC, as applicable, is intended to improve program integrity and provide USCIS with more explicit authority to deny or revoke petitions on the basis of false statements (including findings of fraud or willful misrepresentation). The amendments to existing regulations in this final rule clearly fit within CATEX A3 because they are administrative

in nature, do not have the potential for significantly affecting the environment, and do not result in a change in any environmental effect of the current regulations. For example, the current H-1B registration process is fully electronic – registrants submit electronic registrations into the system and DHS selects from those registrations toward the 65,000 statutory annual cap or the statutory 20,000 advanced degree exemption. After implementation of this final rule, DHS will continue to select toward the two statutory allocations but will do so based on each unique beneficiary, rather than registration. This change is not intended to increase the number of visas or foreign nationals that may come to the United States, and DHS does not foresee such an increase given the statutorily mandated annual numerical limitations. With respect to the start date flexibility provisions, DHS already accepts H-1B petitions with start dates after October 1 of a fiscal year so long as the start date is in the same fiscal year as the fiscal year for which an H-1B registration is selected and within 6 months of the petition filing date. This regulatory change is not intended to increase the number of visas or foreign nationals in the United States, and DHS does not foresee such an increase because start date flexibility is merely a technical change to eliminate potential confusion when the applicable filing period extends after October 1 of the applicable fiscal year. Finally, the provisions governing the denial and revocation of petitions will provide more explicit authority for USCIS to deny or revoke H-1B petitions based on false statements but similarly is not intended to increase the number of visas or foreign nationals who may come to the United States, nor can DHS foresee such an increase happening.

NEPA Final Rule Analysis

DHS and its components analyze proposed actions to determine whether the National Environmental Policy Act (NEPA)⁵⁸ applies to them and, if so, what degree of analysis is required. DHS Directive 023-01, Rev. 01 (Directive) and Instruction Manual

⁵⁸ See Pub. L. 91-190, 42 U.S.C. 4321- 4347.

023-01-001-01, Rev. 01 (Instruction Manual)⁵⁹ establish the procedures DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA.⁶⁰ The CEQ regulations allow Federal agencies to establish in their NEPA implementing procedures categories of actions (“categorical exclusions”) that experience has shown normally do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require preparation of an Environmental Assessment or Environmental Impact Statement.⁶¹ Instruction Manual, Appendix A, Table 1 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.⁶²

As discussed throughout this preamble, this final rule will provide for the equal chance of selection for all H-1B beneficiaries and improve the integrity of the H-1B registration selection process through beneficiary centric selection, will allow for start date flexibility for H-1B petitioners, and will expand the ability of USCIS to deny and/or revoke petitions based on false statements made not just in the H-1B petition, but also in the H-1B registration, LCA, or TLC (applicable to H-2 programs).

DHS considers these changes to be strictly administrative in nature, and finds they will have no significant impact on the environment, or any change in the environmental effect that will result from the final rule changes. DHS therefore finds this final rule

⁵⁹ See DHS, “Implementing the National Environmental Policy Act,” DHS Directive 023-01, Rev 01 (Oct. 31, 2014), and DHS Instruction Manual Rev. 01 (Nov. 6, 2014), <https://www.dhs.gov/publication/directive-023-01-rev-01-and-instruction-manual-023-01-001-01-rev-01-and-catex>.

⁶⁰ See 40 CFR parts 1500 through 1508.

⁶¹ See 40 CFR 1501.4(a).

⁶² See Instruction Manual, section V.B.2 (a-c).

clearly fits within categorical exclusion A3 established in the Department's implementing procedures.

Although, the amendments being put into place by this final rule were initially proposed as part of an NPRM⁶³ that included broader proposed reforms, these amendments can and will operate independently from the other proposed reforms and do not depend on those proposals being finalized. Inclusion of all proposed reforms in a single NPRM was for purposes of administrative efficiency and not an indication that the proposed regulatory amendments in this final rule are a necessary part of a larger regulatory action.

DHS plans to address the other proposed reforms included in the NPRM through a separate final rule in which it will also discuss NEPA. However, this rule and any subsequent final rule resulting from the NPRM are each stand-alone regulatory actions. In accordance with the Instruction Manual's NEPA implementing procedures, DHS has completed an evaluation of this rule to determine whether it involves one or more of the ten identified extraordinary circumstances⁶⁴ that present the potential for significant environmental impacts. DHS concludes from its analysis that no extraordinary

⁶³ 88 FR 72870 (Oct. 23, 2023).

⁶⁴ i. A potentially significant effect on public health or safety; ii. A potentially significant effect on species or habitats protected by the ESA, Marine Mammal Protection Act, Migratory Bird Treaty Act, Magnuson-Stevens Fishery Conservation and Management Act, or other law protecting a species or habitat; iii. A potentially significant effect on historic properties (e.g., districts, sites, buildings, structures, or objects) that are listed in or eligible for listing in the National Register of Historic Places, affects traditional cultural properties or sacred sites, or leads to the loss or destruction of a significant scientific, cultural, or historical resource; iv. A potentially significant effect on an environmentally sensitive area. v. A potential or threatened violation of a Federal, State, or local law or requirement imposed to protect the environment. Some examples of other requirements to consider are: a local noise control ordinance; the requirement to conform to an applicable State Implementation Plan for air quality standards; Federal, Tribal, State, or local requirements to control hazardous or toxic substances; and environmental permits; vi. An effect on the quality of the human environment that is likely to be highly controversial in terms of scientific validity, likely to be highly uncertain, or likely to involve unique or unknown environmental risks. This also includes effects that may result from the use of new technology or unproven technology. Controversy over, including public opposition to, a proposed action absent any demonstrable potential for significant environmental impacts does not itself constitute an extraordinary circumstance; vii. Extent to which a precedent is established for future actions with significant effects; viii. Significantly greater scope or size than normally experienced for this particular category of action; ix. Potential for significant degradation of already existing poor environmental conditions. Also, initiation of a potentially significant environmental degrading influence, activity, or effect in areas not already significantly modified from their natural condition; x. Whether the action is related to other actions with individually insignificant, but cumulatively significant impacts.

circumstances are present requiring further environmental analysis and documentation. Therefore, this action is categorically excluded and no further NEPA analysis is required.

I. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3512, DHS must submit to the OMB, for review and approval, any reporting requirements inherent in a rule, unless they are exempt.

In compliance with the PRA, DHS published an NPRM on October 23, 2023, in which comments on the revisions to the information collections associated with this rulemaking were requested. Any comments received on information collections activities were related to the beneficiary centric changes and documentation required for establishing unique beneficiary identification. DHS responded to those comments in Section III. of this final rule. The information collection instruments that will be revised with this final rule are described below.

H-1B Registration Tool (OMB Control No. 1615-0144)

Overview of information collection:

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

(2) *Title of the Form/Collection:* H-1B Registration Tool.

(3) *Agency form number, if any, and the applicable component of DHS*

sponsoring the collection: OMB-64; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. USCIS uses the data collected on this form to determine which employers will be informed that they may submit a USCIS Form I-129, Petition for Nonimmigrant Worker, for H-1B classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection H-1B Registration Tool (Businesses) is 20,950

and the estimated hour burden per response is 0.6 hours. The estimated total number of respondents for the information collection H-1B Registration Tool (Attorneys) is 19,339 and the estimated hour burden per response is 0.6 hours. The total number of responses (355,590) is estimated by averaging the total number of registrations received during the H-1B cap FYs 2021, 2022, and 2023.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 213,354 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$0.

Form I-129 (OMB Control No. 1615-0009)

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

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

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I-129, E-1/E-2 Classification Supplement, Trade Agreement Supplement, H Classification Supplement, H-1B and H-1B1 Data Collection and Filing Exemption Supplement, L Classification Supplement, O and P Classification Supplement, Q-1 Classification Supplement, and R-1 Classification Supplement; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. USCIS uses Form I-129 and accompanying supplements to determine whether the petitioner and beneficiary(ies) is (are) eligible for the nonimmigrant classification. A U.S. employer, or agent in some instances, may file a petition for nonimmigrant worker to employ foreign nationals under the following nonimmigrant classifications: H-1B, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, P-1S, P-2S, P-3S, Q-1, or R-1 nonimmigrant worker. The collection of this

information is also required from a U.S. employer on a petition for an extension of stay or change of status for E-1, E-2, E-3, Free Trade H-1B1 Chile/Singapore nonimmigrants and TN (USMCA workers) who are in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-129 is 294,751 and the estimated hour burden per response is 2.42 hours. The estimated total number of respondents for the information collection E-1/E-1 Classification Supplement is 4,760 and the estimated hour burden per response is 0.67 hours. The estimated total number of respondents for the information collection Trade Agreement Supplement is 3,057 and the estimated hour burden per response is 0.67 hours. The estimated total number of respondents for the information collection H Classification is 96,291 and the estimated hour burden per response is 2.07 hours. The estimated total number of respondents for the information collection H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement is 96,291 and the estimated hour burden per response is 1 hour. The estimated total number of respondents for the information collection L Classification Supplement is 37,831 and the estimated hour burden per response is 1.34 hours. The estimated total number of respondents for the information collection O and P Classification Supplement is 22,710 and the estimated hour burden per response is 1 hour. The estimated total number of respondents for the information collection Q-1 Classification Supplement is 155 and the estimated hour burden per response is 0.34 hours. The estimated total number of respondents for the information collection R-1 Classification Supplement is 6,635 and the estimated hour burden per response is 2.34 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 1,103,130 hours.

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

The estimated total annual cost burden associated with this collection of information is \$70,681,290.

VI. List of Subjects and Regulatory Amendments

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

Accordingly, DHS amends chapter I of title 8 of the Code of Federal Regulations as follows:

PART 214 -- NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1357, and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

2. Amend § 214.2 by:

- a. Revising paragraphs (h)(8)(iii)(A), (D) and (E);
- b. Revising and republishing paragraph (h)(8)(v);
- c. Revising paragraph (h)(10)(ii);
- d. Adding new paragraph (h)(10)(iii);
- e. Revising paragraphs (h)(11)(iii)(A)(2) and (5); and
- f. Adding paragraph (h)(11)(iii)(A)(6).

The revisions and additions read as follows:

* * * * *

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(8) * * *

(iii) * * *

(A) *Registration--(1) Registration requirement.* Except as provided in paragraph (h)(8)(iv) of this section, before a petitioner can file an H-1B cap-subject petition for a beneficiary who may be counted under section 214(g)(1)(A) of the Act (“H-1B regular cap”) or eligible for exemption under section 214(g)(5)(C) of the Act (“H-1B advanced degree exemption”), the petitioner must register to file a petition on behalf of a beneficiary electronically through the USCIS website (www.uscis.gov). To be eligible to file a petition for a beneficiary who may be counted against the H-1B regular cap or the H-1B advanced degree exemption for a particular fiscal year, a registration must be properly submitted in accordance with 8 CFR 103.2(a)(1), paragraph (h)(8)(iii) of this section, and the form instructions, for the same fiscal year.

(2) *Limitation on beneficiaries.* A prospective petitioner must electronically submit a separate registration for each beneficiary it seeks to register, and each beneficiary must be named. A petitioner may only submit one registration per beneficiary in any fiscal year. If a petitioner submits more than one registration per beneficiary in the same fiscal year, all registrations filed by that petitioner relating to that beneficiary for that fiscal year may be considered invalid, and USCIS may deny or revoke the approval of any H-1B petition filed for the beneficiary based on those registrations. If USCIS determines that registrations were submitted for the same beneficiary by the same or different registrants, but using different identifying information, USCIS may find those registrations invalid and deny or revoke the approval of any H-1B petition filed based on

those registrations. Petitioners will be given notice and the opportunity to respond before USCIS denies or revokes the approval of a petition.

(3) *Initial registration period.* The annual initial registration period will last a minimum of 14 calendar days and will start at least 14 calendar days before the earliest date on which H-1B cap-subject petitions may be filed for a particular fiscal year, consistent with paragraph (h)(2)(i)(I) of this section. USCIS will announce the start and end dates of the initial registration period on the USCIS website at www.uscis.gov for each fiscal year. USCIS will announce the start of the initial registration period at least 30 calendar days in advance of such date.

(4) *Selecting registrations based on unique beneficiaries.* Registrations will be counted based on the number of unique beneficiaries who are registered. USCIS will separately notify each registrant that their registration on behalf of a beneficiary has been selected, and that the petitioner(s) may file a petition(s) for that beneficiary. A petitioner may file an H-1B cap-subject petition on behalf of a registered beneficiary only after their properly submitted registration for that beneficiary has been selected for that fiscal year.

(i) Should a random selection be necessary, as provided in paragraphs (h)(8)(iii)(A)(5)(ii), (h)(8)(iii)(A)(6)(ii), and (h)(8)(iii)(A)(7) of this section, each unique beneficiary will only be counted once towards the random selection of registrations, regardless of how many registrations were submitted for that beneficiary.

(ii) Registrations must include the beneficiary's valid passport information or valid travel document information, as specified in the form instructions. Each beneficiary must only be registered under one passport or travel document, and if or when the beneficiary is abroad, the passport information or travel document information must correspond to the passport or travel document the beneficiary intends to use to enter the United States.

(5) *Regular cap selection.* In determining whether there are enough registrations for unique beneficiaries to meet the H-1B regular cap, USCIS will consider all properly submitted registrations relating to beneficiaries that may be counted under section 214(g)(1)(A) of the Act, including those that may also be eligible for exemption under section 214(g)(5)(C) of the Act. Registrations will be counted based on the number of unique beneficiaries that are registered.

(i) *Fewer registrations than needed to meet the H-1B regular cap.* At the end of the annual initial registration period, if USCIS determines that it has received fewer registrations for unique beneficiaries than needed to meet the H-1B regular cap, USCIS will notify all petitioners that have properly registered that their registrations have been selected. USCIS will keep the registration period open beyond the initial registration period, until it determines that it has received a sufficient number of registrations for unique beneficiaries to meet the H-1B regular cap. Once USCIS has received a sufficient number of registrations for unique beneficiaries to meet the H-1B regular cap, USCIS will no longer accept registrations for petitions subject to the H-1B regular cap under section 214(g)(1)(A) of the Act. USCIS will monitor the number of registrations received and will notify the public of the date that USCIS has received the necessary number of registrations for unique beneficiaries (the “final registration date”). The day the public is notified will not control the applicable final registration date. When necessary to ensure the fair and orderly allocation of numbers under section 214(g)(1)(A) of the Act, USCIS may randomly select the remaining number of registrations for unique beneficiaries deemed necessary to meet the H-1B regular cap from among the registrations received on the final registration date. This random selection will be made via computer-generated selection, based on the unique beneficiary.

(ii) *Sufficient registrations to meet the H-1B regular cap during initial registration period.* At the end of the initial registration period, if USCIS determines that

it has received more than sufficient registrations for unique beneficiaries to meet the H-1B regular cap, USCIS will no longer accept registrations under section 214(g)(1)(A) of the Act and will notify the public of the final registration date. USCIS will randomly select from among the registrations properly submitted during the initial registration period the number of registrations for unique beneficiaries deemed necessary to meet the H-1B regular cap. This random selection will be made via computer-generated selection, based on the unique beneficiary.

(6) *Advanced degree exemption selection.* After USCIS has determined it will no longer accept registrations under section 214(g)(1)(A) of the Act, USCIS will determine whether there is a sufficient number of remaining registrations to meet the H-1B advanced degree exemption.

(i) *Fewer registrations than needed to meet the H-1B advanced degree exemption numerical limitation.* If USCIS determines that it has received fewer registrations for unique beneficiaries than needed to meet the H-1B advanced degree exemption numerical limitation, USCIS will notify all petitioners that have properly registered that their registrations have been selected. USCIS will continue to accept registrations to file petitions for beneficiaries that may be eligible for the H-1B advanced degree exemption under section 214(g)(5)(C) of the Act until USCIS determines that it has received enough registrations for unique beneficiaries to meet the H-1B advanced degree exemption numerical limitation. USCIS will monitor the number of registrations received and will notify the public of the date that USCIS has received the necessary number of registrations for unique beneficiaries (the “final registration date”). The day the public is notified will not control the applicable final registration date. When necessary to ensure the fair and orderly allocation of numbers under sections 214(g)(1)(A) and 214(g)(5)(C) of the Act, USCIS may randomly select the remaining number of registrations for unique beneficiaries deemed necessary to meet the H-1B advanced degree exemption numerical

limitation from among the registrations properly submitted on the final registration date. This random selection will be made via computer-generated selection, based on the unique beneficiary.

(ii) Sufficient registrations to meet the H-1B advanced degree exemption numerical limitation. If USCIS determines that it has received more than enough registrations for unique beneficiaries to meet the H-1B advanced degree exemption numerical limitation, USCIS will no longer accept registrations that may be eligible for exemption under section 214(g)(5)(C) of the Act and will notify the public of the final registration date. USCIS will randomly select the number of registrations for unique beneficiaries needed to meet the H-1B advanced degree exemption numerical limitation from among the remaining registrations for unique beneficiaries who may be counted against the advanced degree exemption numerical limitation. This random selection will be made via computer-generated selection, based on the unique beneficiary.

(7) Increase to the number of beneficiaries projected to meet the H-1B regular cap or advanced degree exemption allocations in a fiscal year. Unselected registrations will remain on reserve for the applicable fiscal year. If USCIS determines that it needs to increase the number of registrations for unique beneficiaries projected to meet the H-1B regular cap or advanced degree exemption allocation, and select additional registrations for unique beneficiaries, USCIS will select from among the registrations that are on reserve a sufficient number to meet the H-1B regular cap or advanced degree exemption numerical limitation, as applicable. If all of the registrations on reserve are selected and there are still fewer registrations than needed to meet the H-1B regular cap or advanced degree exemption numerical limitation, as applicable, USCIS may reopen the applicable registration period until USCIS determines that it has received a sufficient number of registrations for unique beneficiaries projected as needed to meet the H-1B regular cap or advanced degree exemption numerical limitation. USCIS will monitor the number of

registrations received and will notify the public of the date that USCIS has received the necessary number of registrations (the new “final registration date”). The day the public is notified will not control the applicable final registration date. When necessary to ensure the fair and orderly allocation of numbers, USCIS may randomly select the remaining number of registrations for unique beneficiaries deemed necessary to meet the H-1B regular cap or advanced degree exemption numerical limitation from among the registrations properly submitted on the final registration date. If the registration period will be reopened, USCIS will announce the start of the re-opened registration period on the USCIS website at www.uscis.gov.

* * * * *

(D) *H-1B cap-subject petition filing following registration—(1) Filing procedures.* In addition to any other applicable requirements, a petitioner may file an H-1B petition for a beneficiary who may be counted under section 214(g)(1)(A) of the Act or eligible for exemption under section 214(g)(5)(C) of the Act only if the petition is based on a valid registration, which means that the registration was properly submitted in accordance with 8 CFR 103.2(a)(1), paragraph (h)(8)(iii) of this section, and the registration tool instructions; and was submitted by the petitioner, or its designated representative, on behalf of the beneficiary who was selected for that cap season by USCIS. A petitioner may not substitute the beneficiary named in the original registration or transfer the registration to another petitioner. Any H-1B petition filed on behalf of a beneficiary must contain and be supported by the same identifying information provided in the selected registration. Petitioners must submit evidence of the passport or travel document used at the time of registration to identify the beneficiary. In its discretion, USCIS may find that a change in identifying information in some circumstances would be permissible. Such circumstances could include, but are not limited to, a legal name change due to marriage, change in gender identity, or a change in passport number or

expiration date due to renewal or replacement of a stolen passport, in between the time of registration and filing the petition. USCIS may deny or revoke the approval of an H-1B petition that does not meet these requirements.

(2) *Registration fee.* USCIS may deny or revoke the approval of an H-1B petition if it determines that the fee associated with the registration is declined, not reconciled, disputed, or otherwise invalid after submission. The registration fee is non-refundable and due at the time the registration is submitted.

(3) *Filing period.* An H-1B cap-subject petition must be properly filed within the filing period indicated on the relevant selection notice. The filing period for filing the H-1B cap-subject petition will be at least 90 days. If petitioners do not meet the requirements of this paragraph (h)(8)(iii)(D), USCIS may deny or reject the H-1B cap-subject petition.

(E) *Calculating the number of registrations needed to meet the H-1B regular cap and H-1B advanced degree exemption allocation.* When calculating the number of registrations for unique beneficiaries needed to meet the H-1B regular cap and the H-1B advanced degree exemption numerical limitation for a given fiscal year, USCIS will take into account historical data related to approvals, denials, revocations, and other relevant factors. If necessary, USCIS may increase those numbers throughout the fiscal year.

* * * * *

(v) *Severability.* (A) The requirement to submit a registration for an H-1B cap-subject petition and the selection process based on properly submitted registrations under paragraph (h)(8)(iii) of this section are intended to be severable from paragraph (h)(8)(iv) of this section. In the event paragraph (h)(8)(iii) of this section is not implemented, or in the event that paragraph (h)(8)(iv) of this section is not implemented, DHS intends that either of those provisions be implemented as an independent rule, without prejudice to petitioners in the United States under this regulation, as consistent with law.

(B) DHS intends that the provisions governing the beneficiary centric selection process in paragraph (h)(8)(iii) of this section, the elimination of the requirement that the requested start date for the beneficiary be the first day for the applicable fiscal year in (h)(8)(iii)(A)(4), and the provisions governing the denial or revocation of H-1B petitions based on inaccurate, fraudulent, or misrepresented material facts in the H-1B petition, H-1B registration, temporary labor certification, or labor condition application in paragraphs (h)(10)(ii) and (iii) and (h)(11)(iii) of this section, respectively, published on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] be severable from one another. In the event that any of these provision(s) is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it should be construed so as to continue to give the maximum effect to the provision(s) permitted by law, unless any such provision is held to be wholly invalid and unenforceable, in which event the provision(s) should be severed from the remainder of this section and the holding should not affect the remainder of this section or the application of the other provisions to persons not similarly situated or to dissimilar circumstances.

* * * * *

(10) * * *

(ii) *Denial for statement of facts on the petition, H-1B registration, temporary labor certification, labor condition application, or invalid H-1B registration.* The petition will be denied if it is determined that the statements on the petition, H-1B registration (if applicable), the application for a temporary labor certification, or the labor condition application, were inaccurate, fraudulent, or misrepresented a material fact, including if the attestations on the registration are determined to be false. An H-1B cap-subject petition also will be denied if it is not based on a valid registration submitted by the petitioner (or its designated representative), or a successor in interest, for the beneficiary named or identified in the petition.

(iii) *Notice of denial.* The petitioner will be notified of the reasons for the denial and of the right to appeal the denial of the petition under 8 CFR part 103. There is no appeal from a decision to deny an extension of stay to the alien.

(11) * * *

(iii) * * *

(A) * * *

(2) The statement of facts contained in the petition, H-1B registration (if applicable), the application for a temporary labor certification, or the labor condition application, was not true and correct, inaccurate, fraudulent, or misrepresented a material fact, including if the attestations on the registration are determined to be false; or

* * * * *

(5) The approval of the petition violated paragraph (h) of this section or involved gross error; or

(6) The H-1B cap-subject petition was not based on a valid registration submitted by the petitioner (or its designated representative), or a successor in interest, for the beneficiary named or identified in the petition.

* * * * *

Alejandro N. Mayorkas,
Secretary,
U.S. Department of Homeland Security.