electronic funds transfer or other means as specified in the loan documents.

§ 4280.54 Construction procurement requirements.

Construction, including bidding and awarding of contracts, must be conducted in a manner that provides maximum open and free competition.

§ 4280.55 Monitoring responsibilities.

(a) The Intermediary must monitor the Project to ensure that:

(1) Funds are used only for the approved purposes as specified in the legal documents;

(2) Disbursements and expenditures of funds are properly supported with certifications, invoices, contracts, bills of sale, or other forms of evidence, which are maintained on the premises of the Intermediary;

(3) Project time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved; and

(4) The Project is in compliance with all applicable regulations.

(b) Rural Development may inspect and copy records and documents that pertain to the Project. The Intermediary must retain these records for the term of the Project loan plus 2 years. In addition, Rural Development may also perform Project site visits and reviews of the use of loan or Grant proceeds.

(c) Rural Development will review and monitor Grants in accordance with 7 CFR parts 3015, 3017, 3018, 3019, 3021, and 3052.

§ 4280.56 Submission of reports and audits.

(a) In addition to any reports required by 7 CFR parts 3015 and 3019, the Intermediary must submit the following monitoring reports to Rural Development:

(1) *Loan.* The Intermediary must submit Form RD 4280–1 ''Survey of Recipients of Rural Economic Development Loan and Grant Program'' to Rural Development on an annual basis until it no longer owes money to USDA under the REDLG Program.

(2) *Grant (Revolving Loan Fund).* The Intermediary must submit the Form RD 4280–1 to Rural Development on an annual basis until all projects financed with Rural Development Grant proceeds have been repaid or are otherwise retired, whichever occurs last. Thereafter, on a triennial basis until the fund is terminated, the Intermediary will submit to Rural Development the Form RD 4280–1, reporting on the activity of all loans made from the Revolving Loan Fund.

(b) If the Intermediary does not have an existing loan with RUS, the Intermediary will submit a copy of its annual audit to Rural Development within 90 days of its completion. All REDL audits must be conducted in accordance with Generally Accepted Government Auditing Standards or Generally Accepted Accounting Principles and REDG audits in accordance with 7 CFR part 3052.

(c) Rural Development may require Ultimate Recipients that receive loans financed with Grant funds provided under the REDG Program to submit annual audits to comply with Federal audit regulations. In accordance with 7 CFR part 3052, Ultimate Recipients that are nonprofit entities, or a State or local government, may be required to submit an audit subject to the threshold established in OMB Circular No. A–133.

§§ 4280.57–4280.61 [Reserved]

§ 4280.62 Appeals.

An Intermediary may appeal any appealable adverse decision made by Rural Development that affects the Intermediary in accordance with 7 CFR part 11.

§ 4280.63 Exception authority.

Except as specified in paragraphs (a) through (c) of this section, the RBS Administrator may, on a case-by-case basis, make exceptions to any requirement or provision of this subpart, if such exception is necessary to implement the intent of the authorizing statute in a time of national emergency or in accordance with a Presidentially-declared disaster, or when such an exception is in the best interests of the Federal Government and is otherwise not in conflict with applicable law.

(a) *Applicant eligibility.* No exception to applicant eligibility can be made.

(b) *Project eligibility.* No exception to project eligibility can be made.

(c) *Rural area definition.* No exception to the definition of rural area, as defined, can be made.

§§ 4280.64–4280.99 [Reserved]

§ 4280.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0035. A person is not required to respond to this collection of information unless it displays a currently valid OMB control number.

Dated: May 17, 2007.

Douglas L. Faulkner,

Deputy Under Secretary, Rural Development.

[FR Doc. 07–2636 Filed 5–29–07; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 103

[Docket No. USCIS–2006–0044; CIS No. 2393–06]

RIN 1615–AB53

Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule

AGENCY: United States Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: This rule adjusts the fee schedule for U.S. Citizenship and Immigration Services (USCIS) immigration and naturalization benefit applications and petitions, including nonimmigrant applications and visa petitions. These fees fund the cost of processing applications and petitions for immigration benefits and services, and USCIS' associated operating costs. USCIS is revising these fees because the current fee schedule does not adequately reflect current USCIS processes or recover the full costs of services provided by USCIS. Without an immediate adjustment of the fee schedule, USCIS cannot provide adequate capacity to process all applications and petitions in a timely and efficient manner. In addition, the revised fees will eliminate USCIS' dependency on revenue from interim benefits, temporary programs, and premium processing fees. This rule also merges fees for certain applications and petitions so applicants and petitioners will only have to pay a single fee. In addition, the rule expands the classes of aliens that will be exempt from paying filing fees for certain immigration benefits, and modifies the criteria for waiving the filing fee due to an individual's inability to pay. Based on comments received by USCIS during the public comment period, this rule changes the fees for adjustment of status applications, and the fee waiver and exemption eligibility criteria for several immigration benefits. This final rule will provide sufficient funding for USCIS to meet national security, customer service, and processing time goals, and to sustain and improve service delivery.

DATES: This rule is effective July 30, 2007. Applications or petitions mailed, postmarked, or otherwise filed, on or after July 30, 2007 must include the new fee.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Chief, Budget Division, Office of Planning, Budget and Finance, United States Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 4052, Washington, DC 20529, telephone (202) 272–1930.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Final Rule
A. Application To Register Permanent Residence or Adjust Status
B. Intercountry Adoptions
C. Fee Waivers and Exemptions
D. Miscellaneous Changes and Corrections
E. Summary of Final Fees
III. Public Comments on the Proposed Rule
A. General Comments
B. Relative Amount of Fees
1. Recovery of Additional Costs and Enhancements
2. Proposed Fees Are Unreasonably High
3. Improve Service, Reduce Inefficiencies
4. Increases Relative to Time
5. Increases Relative to Other Standards
6. Grandfathering
7. Budget Decisions Necessary To Administer Immigration Benefits
8. Reorganization
C. Alternative Sources of Funding
1. Appropriated Funds
2. Finding Other Revenue Sources
D. Comments on Specific Benefit Application and Petition Fees
1. Naturalization Application
2. Application To Register Permanent Residence or Adjust Status
3. Employment Authorization for Students
4. Application for Advance Processing of Orphan Petition
5. Entrepreneurs
6. Effect on Availability of Skilled Workers
E. Fee Waivers and Exemptions
1. Victims and Asylee Adjustment of Status Applications
2. Special Immigrant—Juvenile
3. Biometric Fee
F. Authority To Set and Collect Fees
1. Authority Under the INA
2. General Authority for Charging Fees
3. Surcharge for Asylum, Refugee and Fee Waiver/Exemption Costs
4. OMB Circular A–25
5. Homeland Security Act
G. Methods Used To Determine Fee Amounts
1. USCIS Costs
2. Alternative Budget Modeling
3. ''Make Determination'' Activity
4. Activity-Based Costing
5. Calculating Specific Processing Requirements
6. Overhead Charges
7. Recovering Deficit From Current Operations
8. Charging a Flat Fee
9. Financial Audits
10. Acceptance of Electronic Payment options
11. Other USCIS Fees
IV. Statutory and Regulatory Reviews
A. Regulatory Flexibility Act
B. Unfunded Mandates Reform Act of 1995
C. Small Business Regulatory Enforcement Fairness Act of 1996
D. Executive Order 12866
E. Executive Order 13132
F. Executive Order 12988
G. Paperwork Reduction Act

List of Acronyms and Abbreviations

ABC—Activity-Based Costing
BSS—Biometrics Storage System
CBP—United States Customs and Border Protection
DHS—Department of Homeland Security
EAD—Employment Authorization Document
FBI—Federal Bureau of Investigation
FDNS—Fraud Detection and National Security
FY—Fiscal Year
GAO—Government Accountability Office
GDP—Gross Domestic Product
HSA—Homeland Security Act
ICE—United States Immigration and Customs Enforcement
IEFA—Immigration Examinations Fee Account
INA—Immigration and Nationality Act
INS—Immigration and Naturalization Service
IOAA—Independent Offices Appropriation Act
LPR—Lawful Permanent Resident
OIG—Office of Inspector General
OMB—Office of Management & Budget
OPT—Optional Practical Training
PPBS—Planning Programming Budgeting System
SSA—Social Security Administration
TPS—Temporary Protected Status
USCIS—United States Citizenship and Immigration Services
VAWA—Violence Against Women Act
ZBB—Zero Based Budget

I. Background

On February 1, 2007, U.S. Citizenship and Immigration Services (USCIS) published a notice of proposed rulemaking proposing to adjust USCIS' immigration and naturalization benefit fee schedule. 72 FR 4888. USCIS' current fee schedule does not establish a level of funding sufficient to fully fund USCIS operations, allow for future requirements, ensure adequate staffing, or provide USCIS with funding sufficient for technological capabilities to continue or improve timely and efficient processing of immigration benefits. The fees that fund the IEFA were last updated on October 26, 2005, but merely to adjust the existing fee schedule to reflect inflation. *See* 70 FR 56182 (Sept. 26, 2005). The last comprehensive fee review was conducted in fiscal year 1998 by the Immigration and Naturalization Service (INS). *See* 63 FR 1775 (Jan. 12, 1998) (proposed rule); 63 FR 43604 (Aug. 14, 1998) (final rule fee adjustment).

In 2004, the Government Accountability Office (GAO) reported that the fees collected by USCIS were insufficient to fund USCIS operations. GAO, *Immigration Application Fees: Current Fees are Not Sufficient to Fund U.S. Citizenship and Immigration Services' Operations* (GAO–04–309R, Jan. 5, 2004). GAO recommended that USCIS ''perform a comprehensive fee study to determine the costs to process new immigration applications.'' *Id.* at 3. In response to GAO's recommendations, USCIS undertook a comprehensive fee review to revise its application and petition fees to ensure full recovery of its operational costs.

As discussed in the proposed rule, the Immigration and Nationality Act of 1952 (INA), as amended, provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants. INA section 286(m), 8 U.S.C. 1356(m). The INA also states that the fees may recover administrative costs as well. *Id.* The fee revenue collected under INA section 286(m) remains available to provide immigration and naturalization benefits and the collection of, safeguarding of, and accounting for fees. INA section 286(n), 8 U.S.C. 1356(n).

USCIS must also conform to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901–03. The CFO Act requires each agency's Chief Financial Officer (CFO) to ''review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.'' *Id.* at 902(a)(8). This final rule reflects recommendations made by the DHS CFO and USCIS CFO as required under the CFO Act.

Office of Management and Budget (OMB) Circular A–25 establishes Federal policy regarding fees assessed for Government services and the basis upon which federal agencies set user charges sufficient to recover the full cost to the Federal Government. OMB Circular A–25, User Charges (Revised), section 6, 58 FR 38142 (July 15, 1993) (OMB Circular A–25). Under OMB Circular A–25, the objective of the United States Government is to ensure that it recovers the full costs of providing specific services to users. Full

costs include, but are not limited to, an appropriate share of—

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;

(b) Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel and rents or imputed rents on land, buildings, and equipment; and,

(c) Management and supervisory costs.

Full costs are determined based upon the best available records of the agency. *Id*; *see also* OMB Circular A–11, section 31.12 (June 30, 2006) (Fiscal Year (FY) 2008 budget formulation and execution policy regarding user fees), found at *http://www.whitehouse.gov/omb/circulars/a11/current_year/a11_toc.html*. When developing fees for services, USCIS also looks to the Federal Accounting Standards Advisory Board (FASAB) which defines ''full cost'' to include ''direct and indirect costs that contribute to the output, regardless of funding sources.'' Federal Accounting Standards Advisory Board, Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government 36 (July 31, 1995). To obtain full cost, FASAB identifies various classifications of costs to be included, and recommends various methods of cost assignment. *Id*. at 33–42.

USCIS entered supporting fee review documentation for this rulemaking and its methodology, including budget methodology analyses and regulatory flexibility analyses, into the public docket. *See http://www.regulations.gov*, docket number USCIS–2006–0044. A more detailed discussion of USCIS' fee review can be found in the proposed rule for this rulemaking action at 72 FR 4888.

II. Final Rule

This fee rule sets out fees to recover the full costs of USCIS operations. Without these fee adjustments, USCIS will not be able to maintain critical business functions, properly address fraud and national security issues, or process incoming applications and petitions in a timely manner. The revised fee schedule will close existing funding gaps and allow USCIS to take specific and demonstrable steps to strengthen the security and integrity of the immigration system, improve customer service, and modernize business operations. The fee revenue generated by the revised fee schedule will support increased security and fundamentally transform and automate USCIS business operations, all of which will greatly strengthen the ability of USCIS to perform its mission and place USCIS in a better position to support possible future legislative reforms. This fee rule assumes that no new appropriation will be enacted.

This final rule largely implements the fee structure described in the proposed rule, but makes some adjustments to the fee schedule based on public comments received. This rule also expands the proposed fee waiver policy to include additional classes of applicants and petitioners who may apply for a waiver of certain application and petition fees for certain services. The rationale for each change is discussed in the section of the rule that discusses comments on that issue. The specific changes made are summarized as follows.

A. Application To Register Permanent Residence or Adjust Status

In the proposed rule, the proposed fee of $905 for an Application to Register Permanent Residence or Adjust Status, Form I–485, was based on USCIS' projected overall cost of processing the average application, regardless of the applicant's age. Under the final rule, the standard fee for filing a Form I–485 by an individual will be $930; the fee for a child under the age of fourteen years will be $600 when submitted concurrently for adjudication with the application of a parent under sections 201(b)(A)(i), 203(a)(2)(A), or 203(d) of the INA. The comments received on this issue and the rationale for making this change are discussed in section III.D.2 below.

B. Intercountry Adoptions

In the proposed rule, the proposed fee of $670 for filing an Application for Advance Processing of Orphan Petition, Form I–600A, was based on USCIS' projected overall cost of processing the average application. This final rule does not change that proposed fee, retaining it at $670. However, the final rule provides that the first request for extension of the approval of an Application for Advance Processing of Orphan Petition will be accepted without a fee if the request is filed in advance of the expiration of the Notice of Favorable Determination Concerning Application for Advance Processing of Orphan Petition, Form I–171H, and no Petition to Classify Orphan as Immediate Relative, Form I–600, has been filed with USCIS for adjudication. This no charge extension is limited to only one occasion. A complete application and fee must be submitted for any subsequent application.

This final rule also provides that no biometric fee will be charged for an update of an approved Application for Advance Processing of Orphan Petition. Section III.D.4. below discusses the comments received in this area and the reasons for making this change.

C. Fee Waivers and Exemptions

The final rule alters the proposed rule regarding fee waivers in three important ways:

- It permits an application for a fee waiver for the Application for Adjustment of Status from asylees, victims of human trafficking (T visas), victims of violent crime (U visas), and Violence Against Women Act (VAWA) self petitioners, and Special Immigrant—Juveniles.
- It provides that a ''Special Immigrant—Juvenile'' will not be charged a fee for submitting the Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360.
- It permits an application for fee waiver of the biometric fee.

These three changes represent a significant expansion of the fee waiver policy from what was proposed and will ensure that many applicants or petitioners, who may have faced financial hardship as a result of these fees, may now have that hardship alleviated. Section III.E. below discusses these changes and the comments received in this area more fully.

D. Miscellaneous Changes and Corrections

The final rule makes a few clarifying changes to the regulatory text in the proposed rule. First, as a result of a comment, USCIS found that the fee schedule contained a form that was no longer being used. As a result, references to the entry for Application for Change of Nonimmigrant Classification, Form I–506, are removed by this rule. Second, the explanation of the fee for a Motion, Form I–290B, was found to be outdated in that the section had not been updated to comport with changes that had been made to 8 CFR part 242 and 8 CFR 1003.8. This rule also clarifies that fee to reflect current procedures and policies and the applicability of the Motion fee. Finally, the maximum fee proposed for Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99–603),[1] Form I–698, and Application for Status as a Temporary Resident under Section 245A of the Immigration and

[1] Immigration Reform and Control Act of 1986, Public Law 99–603, tit. II, sec. 201, 100 Stat. 3359, 3394 (Nov. 6, 1986).

Nationality Act, Form I–687, to be paid by a family with children under eighteen years of age living at home was removed from the final rule. The statutory eligibility requirements for adjustment of status under Public Law 99–603 preclude anyone who is currently under age eighteen from eligibility. Accordingly, that provision was obsolete.

E. Summary of Final Fees

The USCIS Immigration and Naturalization Benefit Application and Petition Fee Schedule, the proposed fees, and the final fees established by this rule are summarized in the attached table.

Form No.	Description	Current fees	Proposed fees	Final fees
I–90	Application to Replace Permanent Resident Card	$190	$290	$290
I–102	Application for Replacement/Initial Non-immigrant Arrival-Departure Record (I–94).	160	320	320
I–129	Petitions for a Nonimmigrant Worker	190	320	320
I–129F	Petition for Alien Fiancé(e)	170	455	455
I–130	Petition for Alien Relative	190	355	355
I–131	Application for Travel Document	170	305	305
I–140	Immigrant Petition for Alien Worker	195	475	475
I–191	Application for Advance Permission to Return to Unrelinquished Domicile	265	545	545
I–192	Application for Advance Permission to Enter As a Nonimmigrant	265	545	545
I–193	Application for Waiver of Passport and/or Visa	265	545	545
I–212	Application for Permission to Reapply for Admission into the United States After Deportation or Removal.	265	545	545
I–360	Petition for Amerasian, Widow(er), or Special Immigrant	190	375	375
I–485	Application to Register Permanent Residence or Adjust Status	325	905	930
I–526	Immigrant Petition by Alien Entrepreneur	480	1,435	1,435
I–539	Application to Extend/Change Nonimmigrant Status	200	300	300
I–600/I–600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition.	545	670	670
I–601	Application for Waiver of Grounds of Inadmissibility	265	545	545
I–612	Application for Waiver of the Foreign Residence Requirement	265	545	545
I–687	For Filing Application for Status as a Temporary Resident	255	710	710
I–690	Application for Waiver of Excludability	95	185	185
I–694	Notice of Appeal of Decision	110	545	545
I–695	Application for Replacement Employment Authorization or Temporary Residence Card.	65	130	130
I–698	Application to Adjust Status from Temporary to Permanent Resident	180	1,370	1,370
I–751	Petition to Remove Conditions on Residence	205	465	465
I–765	Application for Employment Authorization	180	340	340
I–817	Application for Family Unity Benefits	200	440	440
I–824	Application for Action on an Approved Application or Petition	200	340	340
I–829	Petition by Entrepreneur to Remove Conditions on Residence	475	2,850	2,850
I–881	NACARA—Suspension of Deportation or Application for Special Rule Cancellation of Removal.	285	285	285
I–914	Application for T Nonimmigrant Status	270	0	0
N–300	Application to File Declaration of Intention	120	235	235
N–336	Request for Hearing on a Decision in Naturalization Procedures	265	605	605
N–400	Application for Naturalization	330	595	595
N–470	Application to Preserve Residence for Naturalization Purposes	155	305	305
N–565	Application for Replacement of Naturalization Citizenship Document	220	380	380
N–600	Application for Certification of Citizenship	255	460	460
N–600K	Application for Citizenship and Issuance of Certificate under Section 322	255	460	460
	Biometric Services	70	80	80

III. Public Comments on the Proposed Rule

USCIS provided a 60-day comment period in the proposed rule and received more than 3,900 comments.[2] USCIS received comments from a broad spectrum of individuals and organizations, including refugee and immigrant service and advocacy organizations, public policy and advocacy groups, State and local governmental entities, educational and other not for profit institutions, labor organizations, corporations, and individuals. Many comments addressed multiple issues. USCIS received hundreds of comments through many distinct form letters and mass mailings that were identical or nearly identical in content. Many comments provided variations on the same substantive issues.

The comments ranged from strongly supportive of the increased fees to strongly critical. Many comments provided critiques of the methodology and the proposed fee schedule; some suggested alternative methods and funding sources.

USCIS also invited the public to access the commercial software utilized in executing the budget methodology and developing the proposed rule to facilitate public understanding of the fee modeling process explained in the supporting documentation. 72 FR 4889. USCIS received no requests for such access to the modeling program.

On February 14, 2007, the House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security,

[2] All comments may be reviewed at the Federal Docket Management System (FDMS) at *www.regualtions.gov,* docket number USCIS–2006–0044. The public may also review the docket upon request by contacting USCIS through the contact information listed in this rule. [0]

and Immigration Law heard testimony from the USCIS Director on the fee proposal during the public comment period. USCIS has included an unofficial transcript of that hearing in the docket. See, Proposal to Adjust the Immigration Benefit Application and Petition Fee Schedule, 110th Congress, 1st Sess. (Feb. 14, 2007).

USCIS leadership met with stakeholders and conducted ''question and answer'' sessions during the public comment period at various cities throughout the United States, including: Washington, DC.; Los Angeles, California; New York, New York; Chicago, Illinois; Detroit, Michigan; Boston, Massachusetts; San Francisco, California; San Jose, California; Dallas, Texas; Phoenix, Arizona; and Denver, Colorado. Participants were encouraged to submit written comments on the rule.

USCIS considered the comments received, the congressional hearing transcript, the content of the public meetings, and all other materials contained in the docket in preparing this final rule. Throughout the comment period, USCIS conducted a ''rolling'' review process. Comments were reviewed as soon as practical after receipt and re-reviewed in light of subsequent comments. The review process was very resource intensive and it permitted USCIS to develop a continuous understanding of the issues presented and maturation of consideration of the issues most commonly presented.

A number of comments were not relevant to the substance of the proposed rule and criticized the rule for not addressing other immigration law issues. Many commenters suggested changes in the substantive regulations implementing the immigration laws by USCIS, United States Customs and Border Protection (CBP), United States Immigration and Customs Enforcement (ICE), and other agencies. These comments are beyond the scope of this rulemaking.

The final rule does not address comments seeking changes in United States statutes, changes in regulations or applications and petitions unrelated to or not addressed by the proposed rule, changes in procedures of other components within the Department of Homeland Security (DHS) or other agencies, or the resolution of any other issues not within the scope of the rulemaking or the authority of DHS.

The public may also review any item in the docket upon request by contacting USCIS through the contact information listed in this rule.

A. General Comments

Numerous comments supported the rule, although many of those were qualified by expectations that the fee increase will result in better service. Many of these comments emphasized that the costly delays in case processing are far more expensive to applicants and petitioners than the cost of the discrete filing fee. Others emphasized that filing fees are often a small portion of the total cost incurred by an individual or family immigrating to the United States.

In addition, many comments criticized the level of fees and the amount of the fee increase. A significant number of comments criticized the proposed fee schedule, suggested that the fee increase would impede immigration, or argued that specific fees should not be increased at all or not by the amount proposed. Many commenters disagreed with the budget decision to fund USCIS entirely from fees and argued that USCIS should seek an appropriation from Congress.

B. Relative Amount of Fees

A significant number of commenters argued that the proposed fees were too low. Some expressed general concerns about immigration levels. Others argued that fees should be high enough to cover all immigration related costs, not simply application and petition processing and related USCIS costs, so taxpayers are not asked to pay for someone entering, residing, or seeking services in the United States.

1. Recovery of Additional Costs and Enhancements

Many comments suggested that even greater increases could be used to further improve customer service, stating that this result would reduce the perceived need for an individual to seek the assistance of an attorney to understand and navigate the immigration benefits application and petition process. Other comments suggested that fees should not be based on USCIS' costs of administration, but on the value of the benefit received by the applicant (e.g., United States citizenship). Additionally, some comments pointed out that many aliens make large payments to those who help them enter the United States illegally, suggesting that this demonstrated the willingness to pay more to enter and remain in this country legally or illegally.

Some comments supporting the proposed fees, or even higher increases, asserted that the fee increases are not significant when viewed in a broader context. Some cited the value of naturalization relative to the cost. Others noted that most people must be permanent residents for five years before they can apply for United States citizenship and the proposed fee requires saving less than $10 per month toward that goal. Other examples were also cited, including the fact that the fee for a petition for a relative, fiancé, or orphan is a very small part of the total cost of bringing that person to the United States.

The filing fees proposed and established under this rule are significantly higher than applicants and petitioners pay today. These fees, however, are based only on the costs associated with adjudicating applications.

Several comments suggested that the fee increases were overdue and should have been implemented long ago. These commenters agreed with the proposed rule that the fee increases were necessary to increase the effectiveness of USCIS services. They recommended quick implementation of this rule so USCIS could begin making the planned improvements to its operations as soon as possible. As stated in the proposed rule, the current fee schedule does not generate enough revenue for USCIS to even process the current volumes of applications and petitions in a timely manner. As the Director of USCIS stated in his testimony before Congress on February 14, 2007, USCIS intends to implement this fee increase in the summer of 2007 so that it can begin its efforts to reduce average application processing times. This plan was also stated in the USCIS press release of January 31, 2007. USCIS plans to begin collecting these new fees in order to begin fully recovering its costs and obtaining the resources necessary to timely process applications. Thus, the commenters' suggestions are being recognized, but they are in line with original plans of USCIS.

Specific comments suggested that the application fee for a Petition for a Nonimmigrant Worker, Form I–129 (Nonimmigrant Worker Petition), which is filed by businesses seeking to allow aliens to work in the United States, should be increased. According to these comments, higher fees should offset or alleviate the stress that these workers placed on the infrastructure of the United States, increased demand for governmental services, impact on the American labor market, reduced opportunities for citizens, and lowered salaries for American workers. Similarly, some comments suggested that a portion of fees should reimburse States for providing job training programs.

Although a number of comments suggested that USCIS increase fees further it is important to note that the purpose of filing fees is to only recover the costs associated with providing a benefit or service. Filing fees are not designed to function like tariffs and generate general revenue to support broader policy decisions, or like fines to deter certain behaviors. The filing fees are not intended to influence public policy in favor of or in opposition to immigration, limit immigration, support broader infrastructure, or impact costs beyond USCIS.

Other comments suggested that increasing specific fees, such as for an Application to Extend/Change Nonimmigrant Status, Form I–539, would serve as a deterrent to reinstatement applications and, instead, cause more aliens to remain in the United States longer than their period of authorized stay.

USCIS considered these suggestions and others and in some cases, discussed further in this rule, made changes in response to public comments. These changes though continue to follow the President's FY 2007 Budget which called for USCIS to reform its fee structure, and the GAO recommendation that USCIS ''perform a comprehensive fee review to determine the costs to process new immigration applications.'' This rule is designed to establish fees sufficient to reimburse the full, necessary, ongoing, and projected costs of processing immigration benefit applications and petitions and the related operating costs of USCIS.

While USCIS has authority to collect fees for certain broader costs of administering the United States' immigration system, it has chosen to structure the fees to only recover the full cost of operating USCIS. USCIS believes that this decision is the most consistent with broader Administration policy on user fees and the intent of Congress in the enactment of, and amendments to, section 286(m) of the Immigration and Nationality Act (INA), 8 U.S.C. 1356(m). Accordingly, USCIS has not changed fees based on these comments.

2. Proposed Fees Are Unreasonably High

The largest number of comments opposed the proposed fee increases in general terms or highlighted particular applications and petitions and argued that the proposed fee increases would effectively exclude aliens generally, or groups of aliens, from immigration benefits and services. Some suggested that fee increases send the wrong message to people who are attempting to comply with the immigration benefit process and United States immigration laws in good faith, and that higher fees may discourage legal immigration while encouraging aliens to attempt to enter the United States and work illegally. These comments reflect another specific position on the larger issues of immigration law and policy that aliens should be induced to immigrate to the United States. As noted above in relation to the opposite position, the purpose of the fee schedule is not to establish policy, but to recover the costs necessary to operate USCIS. Accordingly, the final rule does not adjust the fee schedule in response to these comments.

A portion of these comments argued that the fee increases would result in a decrease in applications and petitions. Contrary to the opinions expressed, USCIS records do not reflect any empirical evidence suggesting a long-term reduction in the demand for immigration benefits resulting from fee increases. While fees at an extremely high level could be a factor in whether or not someone files an application with USCIS, neither past fee increases nor the incremental increases in this rule begin to approach the level necessary to have any significant impact on the demand for USCIS benefits. USCIS acknowledges that short-term increases in applications and petitions occur after a fee increase has been announced, followed by short-term decreases in demand immediately after the fee increases become effective. This fluctuation is a normal result of an increase in the cost of any service, whether governmental or private. Generally, applicants and petitioners with the ability to file do so before fees increase. Individuals logically choose to pay a lower price for a service if and when available. However, USCIS records indicate that demand returns to normal shortly after the effective date of a fee increase. When the Immigration and Naturalization Service (INS) conducted the last comprehensive fee review in FY 1998 and fees increased, on an average percentage basis, more than they increase in this rule, the demand for immigration benefits remained fairly constant shortly thereafter. In any case, USCIS fees are generally believed to be only a portion of the total expenses incurred by a typical applicant.

These comments infer that these temporary fluctuations undercut the stability of the funding stream to be generated by the proposed fees. USCIS acknowledges that slight fluctuations will occur and will be reflected in the funding stream, but these fluctuations are not significant enough, in the context of the overall USCIS budget, to adversely affect services.

3. Improve Service, Reduce Inefficiencies

a. Service improvement and fees.

Many comments noted lengthy waiting times to process immigration benefit applications and petitions and highlighted the need to improve overall customer service. These comments suggested that, regardless of whether the proposed fees were justified, applicants and petitioners should not be asked to pay the full fee increase until USCIS improves service. Others suggested that even if fees were increased before service level improvements were made, there should be detailed commitments to service level improvements to ensure that increased revenues are used to improve service.

Some comments stated that USCIS has increased fees before with the promise of enhanced services, but never fully delivered on that promise. Other comments indicated that the proposed rule does not outline an overall strategic plan for improvements, with measurable benchmarks and tangible goals for implementing the needed upgrades, or a specific timeline or completion schedule to assure interested parties that these improvements will actually be accomplished. One commenter complained that customer service and processing backlogs have not improved enough to justify such a steep fee increase.

These comments illustrate the main distinction between the revised fee schedule and current one in that the current fee schedule does not reflect the existing costs of performance. The current fee schedule does no more than sustain USCIS operations and provide for delivery of benefits at an unacceptable level. Historically, USCIS balanced resource requirements to allocate insufficient revenues from a fee structure that did not recover full costs. The new fee structure is designed to maintain sufficient capacity to meet appropriate performance standards and goals, while sustaining performance through investments to deliver continuous improvements into the foreseeable future. USCIS acknowledges the commenters' concerns, and believes that these concerns will be satisfied, at least in part, after implementation of the new fee structure.

USCIS is required by law to review its fees at least once every two years. 31 U.S.C. 902(a)(8). USCIS has established a dedicated staff in its Office of Planning, Budget, and Finance to conduct future comprehensive analyses. USCIS is firmly committed to seeking

improved ways of doing business and reengineering processes in order to contain costs. The new fee structure will enable USCIS to make improvements that may ultimately help avoid future increases and possibly reduce costs. Process improvements implemented over the past several years, as well as projected productivity increases, are taken into account in the current fee review, keeping fees lower than they might otherwise have been. Future productivity enhancements will produce lower costs per unit that will be reflected in future price adjustments.

The fees are based on the costs necessary to sustain the processing of applications and petitions. If fees collected remain below processing costs, the imbalance will, as it has in the past, result in a backlog. Backlogs mean customers will not receive the benefits and services for which they have applied in a timely manner. A structural deficit between costs and fees will also mean USCIS cannot effectively sustain operations because of insufficient capital to invest in improvements. Over time, a structural deficit between costs and fees will create and accelerate the growth of backlogs and deteriorate service levels. Delays caused by the inability to meet demand resulting from fees set below cost often have far more impact on the person than the discrete application or petition fee.

The proposed fee adjustments and this final rule reflect these concerns. Over the past several years, USCIS received appropriated funds to reduce processing times and meet the President's goal of a six-month or less processing time for nearly all immigration benefit applications and petitions. By the end of FY 2006, the application and petition backlog had fallen from a high of 3.8 million cases in January 2004 to less than 10,000 considered under USCIS control. The total volume of pending cases is currently less than the backlog was at its height, which shows real and substantial progress.

USCIS has also made many customer service improvements, including, but not limited to, expanding online capabilities (such as online filing, change of address and case status updates), INFOPASS appointments (providing the ability to go online to make, cancel, or reschedule appointments with a USCIS Immigration Information Officer), and introducing a broad range of fact sheets to help the public understand various benefits, eligibility criteria, and USCIS procedures. These improvements were made prior to the proposed fee increase. With the revenue generated from the new fee schedule, USCIS will be able to deliver significant additional improvements. Until USCIS aligns its fees with costs, however, it will be unable to afford sufficient capacity to process incoming applications and petitions, resulting in backlogs.

b. Inefficiency in business-related visas.

Some comments highlighted particular inefficiencies and suggested that correcting these would mitigate the need for fee increases. An example of inefficiency mentioned by many commenters was the long processing delays for employment-based visa categories, including the immigrant employment-based classifications and the nonimmigrant classifications such as the temporary employee H nonimmigrant visa, and the intra-company transferees L nonimmigrant visa.

USCIS acknowledges that it does not always quickly and efficiently process the Immigrant Petition for Alien Worker, Form I–140 (Alien Employee Petition) for firms requesting USCIS approval to hire a foreign worker. Processing delays result from a number of factors that are beyond the control of USCIS, including extensive Federal Bureau of Investigation (FBI) name checks and retrogression of petition priority dates caused by over-subscription of the applicable visa categories. The solutions suggested by one commenter, however, such as mandatory processing times, automatic fee refunds, or automatic approval, would neither improve efficiency nor result in shorter processing time. The suggestion that delays result in refunds would merely cause more delays. Employers may use the premium processing service, if applicable, to obtain faster processing of certain employment-based petitions and applications, a process that may alleviate the commenters' concerns.

The national interest is not served and immigration laws are not complied with by automatically approving immigration benefits for persons solely as a result of the passage of time. Each applicant or petitioner must prove his or her eligibility for the benefit sought. While a backlog still exists, USCIS has achieved an average processing time for an Alien Employee Petition as of January 2007 of less than 135 days per case, which represents fifteen days faster than five years ago, but with a much higher current monthly volume. With the additional USCIS resources from this updated fee schedule, performance will be enhanced even further.

c. Multiple biometric data requests.

Many commenters pointed to the fact that applicants or petitioners must provide biometric data more than once. Some commenters considered the expiration of fingerprints submissions to be inefficient. Others suggested that it was inefficient for USCIS to again request fingerprints when they apply for sequential benefit applications. USCIS agrees that an applicant should not be required to provide biometric data multiple times for a single application. USCIS is developing the Biometrics Storage System (BSS) which will allow the re-use of fingerprints and, if an application or petition has not been adjudicated within the fifteen month validity period, USCIS will be able to simply re-submit the stored fingerprints to the FBI, without any involvement of the applicant or petitioner. See 72 FR 17172 (Apr. 6, 2007) (establishing a new system of records). Also, as a matter of policy, when an application remains pending, USCIS does not charge the applicant the biometric fee again because of a processing delay at USCIS.

In the revised fee structure, the biometric fee is not simply a fee for biometric collection or the USCIS cost of the applicant or petitioner appearing at an Application Support Center. The biometric fee also covers costs associated with the use of the collected biometrics for FBI and other background checks. Thus, an applicant will pay the biometric fee whenever he or she files another application that requires the collection, updating, or use of biometrics for background checks. At that point, USCIS can verify the identity of the applicant by comparing the newly collected biometrics with those previously submitted, providing an important security enhancement. USCIS believes that this new process may result in some decreases in costs which may offset the costs of background checks incorporated into the biometric fee, and has already factored this impact into the fee structure along with projected efficiency increases.

d. Petitions for aliens of extraordinary ability or performers.

USCIS received many comments requesting improved efficiency in the processing of visa petitions for aliens of extraordinary ability in science, art, education, business, or athletics, and their spouses and/or children (the O visa category), or aliens coming to the United States temporarily to perform at a specific athletic competition or as a member of a foreign-based entertainment group (the P visa category). Many O and P petitions are submitted on relatively short schedules, i.e. the individual/group is scheduled to

visit the United States in the near future for a specific event.

These commenters stated that lengthy and uncertain O and P visa processing periods complicated booking foreign artists for performances and requested the implementation of a thirty-day maximum processing period. This issue is not germane to this rule; however, because of the volume of comments received, a brief response is provided.

The USCIS receipt notice received by an O and P petitioner after filing states that the petition will be processed in 30–120 days, but that time is a standardized estimate for all O and P petitions for many types of performers and organizations. Still, USCIS does everything in its control to adjudicate these petitions within 60 days. In spite of this fact, cases may be delayed by a number of causes that are beyond USCIS control, most commonly a lack of response to USCIS inquiries by the sponsoring organization, labor unions and other representatives, and the prospective visa recipient. For planning purposes, current estimates of various visa classification processing times and processing dates are posted on the USCIS website.

USCIS recently published a final rule to permit petitioners to file O and P nonimmigrant petitions up to one year prior to the need for the alien's services. 72 FR 18856 (April 17, 2007). Although that rule will not resolve all of the commenters' concerns, the longer filing window will better assure O and P petitioners that they will receive a decision on their petitions in a timeframe that will allow them to secure the services of the O or P nonimmigrant when such services are needed. USCIS suggests, however, that the nature of the O and P visa classifications creates a need to carefully plan performances and book foreign entertainment acts. Fees collected after publication of this rule will be used to cover USCIS costs and will assist in more reliable and consistent adjudication of all applications and petitions, including O and P visa petitions.

e. Pre-screening applications and petitions for lawful permanent residence.

One commenter supported the recommendation of the USCIS Ombudsman to require a comprehensive prescreening of Applications to Register Permanent Residence or Adjust Status, Form I–485, prior to filing. Citizenship and Immigration Services Ombudsman, *Annual Report to Congress*, 50–55 (June 29, 2006) (Recommendation 27). Recognizing that adoption of a prescreening process would reduce revenues, the commenter posited that it would instead promote efficiency and integrity, and enhance security.

USCIS is committed to a process that handles cases efficiently and effectively, meeting all quality requirements in a way that protects the national security and public safety of the United States. USCIS cannot, however, agree with this recommendation at this time. The suggestion for ''up-front processing'' is very similar to a process that came to be known as ''front-desking''—a procedure followed by the INS in which employees were instructed to review certain applications in the presence of the applicant to correct facial deficiencies, incomplete responses or errors before accepting the application for filing, and not to accept those applications thought to be statutorily deficient. Front-desking effectively precluded administrative and judicial review of rejected applications because there was no formal denial to appeal—only a return of an uncorrectable document. *Reno* v. *Catholic Social Services*, 509 U.S. 43, 61–63 (1993). Legitimation of the concept of up-front processing would require a fundamental change in the regulations administered by USCIS and goes well beyond the scope of this rulemaking. USCIS will not adopt this proposal as a part of this rulemaking.

f. Transformation project and premium processing.

Some comments requested more information on transformation plans and how premium processing revenues will be spent. Others suggested that premium processing be expanded. Another commenter suggested that transformation from a paper to electronic process would create excessive costs and burdens that would create financial and paperwork barriers to citizenship.

As required by statute, premium processing revenues are deposited in the IEFA and will be fully isolated from other revenues and devoted to the extra services provided to premium processing customers, and to broader investments in a new technology and business process platform to radically improve USCIS capabilities and service levels. INA Section 286(u), 8 U.S.C. 1356(u). USCIS has recognized that its existing technology has not kept pace with changing demands and additional requirements placed upon USCIS. Since the previous fee structure was retrospective and did not include funds for real investments to sustain and improve USCIS infrastructure, business choices have been limited to those that can be supported by existing technology or no technology.

The premium processing fee ($1,000) is statutorily authorized for employment based applications and petitions. USCIS cannot expand the premium processing fee or the applications and petitions available for premium processing beyond the statutory limitations.

USCIS plans to transform the current paper based process into an electronic adjudicative process. This transformation will allow USCIS to better detect and deter those who seek to do harm or violate the laws of the United States, while facilitating benefits processing for eligible, low-risk persons.

USCIS acknowledges that the transition from a paper-based to an electronic adjudication system carries with it certain burdens, but believes the benefits of the new process will significantly outweigh those costs. The new adjudicative process will enable USCIS to enhance national security, improve customer service, and increase efficiency by increasing its ability to share data with immigration partners, improving security by uniquely identifying individuals, improving system integrity by creating customer accounts, and providing a single worldwide case management system. Nonetheless, as some commenters pointed out, not all applicants will have access to the Internet or other electronic means of submission. For those individuals, paper submissions will remain an option.

g. Actions planned to improve efficiency.

USCIS believes that, while sustainability of its operations focused on continuous improvement is important, so is real and substantive near-term improvement. USCIS structured the revised fee schedule to allow it to commit to specific substantial improvements over the next two years.

USCIS is committed to substantial reductions in processing times by the end of FY 2008 for four key applications: (1) Application to Renew or Replace a Permanent Resident Card, Form I–90 (Application for LPR Card); (2) Application to Register Permanent Residence or Adjust Status, Form I–485 (Adjustment of Status Application); (3) Immigrant Petition for Alien Worker, Form I–140 (Alien Employee Petition), the petition for an employer to sponsor a foreign worker for permanent residence based on its job offer; and (4) Application for Naturalization, Form N–400 (Naturalization Application), the petition to become a United States Citizen through naturalization. These four applications and petitions represent almost one-third of the USCIS total workload. By the end of FY 2008,

USCIS plans to reduce processing times for each of these cases by two months, from six months to four months (naturalization processing will be reduced from seven months to five months when the ceremony at which a person takes the oath of allegiance is included as part of the process). Thus, applicants and petitioners will see a significant improvement in the first full fiscal year following these fee adjustments. Further, as also indicated in the proposed rule, USCIS is committed to a twenty-percent average reduction in case processing times by the end of FY 2009, which will extend improvements in processing times and service delivery across the spectrum of applications and petitions.

The proposed fee structure commits USCIS to real improvements as it is not built simply on today's productivity rates, but on anticipated increases in productivity (four percent for the Adjustment of Status Application, and two percent for all other products). USCIS is accountable for these productivity increases in order for fees to support operations as intended.

Another commenter suggested that hiring more permanent employees would improve USCIS efficiency. USCIS agrees with the commenter that sufficient staffing is directly related to the ability to collect sufficient fees for service as explained in the proposed rule and this final rule. As presented in the President's FY 2008 Budget, USCIS plans to add 1,004 Adjudication Officers and support staff. However, twenty percent of the new staff will be other than permanent employees. Most of that staff will handle application and petition volume surges, a critical resource to ensure that the backlog does not increase due to sudden and unpredictable workload increases. However, the comment suggests no regulatory changes. Thus, no changes are made to the final rule.

One commenter questioned how quickly USCIS will be able to implement all of the resources outlined in the additional resource requirements. The commenter also questioned whether USCIS took into consideration ongoing expenses versus one-time expenses. USCIS has factored into the fee schedule the appropriate start up costs. USCIS did differentiate one-time costs versus recurring costs in its fee calculations. For example, one-time costs such as background investigations and computer equipment for new hires were included in the FY 2008 costs, but not in the FY 2009 costs. These calculations are accurately identified in the fee review supporting documentation.

4. Increases Relative to Time

Some comments suggested that some fees were excessive for certain applications and petitions relative to the time it takes to process the application or petition. As mentioned above and in the proposed rule, the primary basis of the USCIS fee model is the administrative complexity, which is the amount of time that it takes to process a particular kind of application or petition (identified as ''Make Determination'' activity in the proposed rule). The calculation also factors in other direct costs, such as the cost of manufacturing and delivering a document when that is part of the processing of a particular benefit.

In addition to these costs, the fee calculation model factors in the full costs of USCIS operations, including services provided to other applicants and petitioners at no charge, overhead costs (e.g., office rent, equipment, and supplies) associated with the adjudication of the application or petition, and other processing costs. These latter costs include responding to inquiries from the public (''Inform the Public'' activity), application and petition data capture and fee receipting (''Intake'' activity), conducting background checks (''Conduct Interagency Border Inspection System Checks'' activity), the acquisition and creation of files (''Review Records'' activity), preventing and detecting fraud (''Fraud Prevention and Detection'' activity), and, when applicable, producing and distributing secure cards (''Issue Document'' activity) and electronically capturing applicants' fingerprints, photographs, and signatures (''Capture Biometrics'' activity). In total, all application and petition fees include a total of $72 in ''surcharges'' to recover asylum and refugee costs, and fee waiver and exemption costs.

5. Increases Relative to Other Standards

Many commenters suggested that the fee average or weighted average fee increases were out of line with, for example, the Social Security Administration's (SSA) 2007 basic cost of living increase, the increase in the Gross Domestic Product (GDP), or the federal General Schedule salary increase. USCIS appreciates the concerns expressed, but these external indicators of costs are not comparable with USCIS' costs. For example, SSA's basic cost of living increase is a benefit increase tied to inflation, whereas the USCIS fees recover all of the costs of operating USCIS, including enhancements required to meet congressional mandates, improve efficiency, detect fraud, secure the immigration system, and to consolidate elements such as federal salary increases into base costs. The real GDP or ''real gross domestic product,'' on the other hand, is an estimate of the output of goods and services produced by labor and property located in the United States by the United States Department of Commerce Bureau of Economic Analysis. GDP bears no relation to the cost models that must generate the fees to be charged by USCIS.

Many commenters stated that the increase in the fee for the Application for Replacement Naturalization/Citizenship Document, Form N–565, from $220 to $380, was unreasonable when compared with replacement of other documentation. Most of these commenters compared the fee for replacing a citizenship certificate with replacing a Social Security card, which the Social Security Administration provides for free, or replacing state documents (e.g. driver's licenses) that many states provide for a nominal charge.

Replacement of a social security card, driver's license, voter registration card, or passport is substantially different from replacement of a certificate of citizenship. USCIS incurs substantial costs in determining the validity of the naturalization for which the certificate was issued before it can issue a new certificate. As stated in the proposed rule and above, this fee schedule is based on the relative complexity of adjudication of a benefit application and reflects the average relative cost of adjudication of all such applications. The fees charged for replacing secure documents reflect the full costs incurred by USCIS in replacing those documents. Regardless of the type of change requested, USCIS must obtain the original records and issue a new certificate after the appropriate review and decisions. Charging $380 for adjudication of Form N–565 for an infant may recover more fees than that specific adjudication may require, however, $380 fails to recover the resources expended to determine the validity of the more complicated applications such as in the case of an adult who requires significant background investigation. Therefore, the Form N–565 fee was not adjusted from what was proposed.

Other comments stated that some fees should reflect validity periods with lower fees for benefits with shorter validity periods. This argument is similar to that advanced by many who advocated higher fees—that the fees should not be based just on costs, but

on the real or perceived value of the benefit. USCIS' methodology is based on the complexity of the adjudication, not the validity period. USCIS establishes maximum allowable time periods that may pass between its approval of a benefit and the applicant's receipt of the benefit based on the type of case and how passage of time influences the need for updates in the information used to make the determination. The approval validity period is not designed to generate revenue through unnecessary repeat filings. USCIS believes that the current methodology is fair and complies with Federal fee guidelines. Decreasing the fee for applications for benefits with shorter validity would only shift costs to other immigration benefit applications and petitions based on considerations that are not applicable. The comment will not be adopted.

6. Grandfathering

Some comments recommended phasing in the fee increase over a period of years, or fixing fees at current levels for those who already applied for one or more immigration benefits in the past, effectively grandfathering fees for those who are already in the USCIS system. Deferring fee increases would directly result in service delays. In addition, setting fees lower for any class of applicants or petitioners would merely transfer costs to other applicants. Thus, USCIS has not incorporated these recommendations.

7. Budget Decisions Necessary To Administer Immigration Benefits

Many comments highlighted a critical aspect of the fee structure—operations must be sustainable. The real cost of processing a type of application or petition is more than the discrete cost of processing a particular individual case today. It includes the cost of sustaining operations and making investments to continually improve service delivery and performance. The proposed fee structure is designed to meet performance standards and make continuous improvements through investments in training to ensure a high performance workforce, facilities to provide services that are more accessible to our customers, systems to support operations and performance, and resources to improve quality and performance management. These goals are consistent with the principles of Office of Management and Budget (OMB) Circular A–25.

8. Reorganization

Another commenter suggested that efficiency could be improved by reorganizing USCIS in accordance with the recommendations of the USCIS Ombudsman. USCIS has recently reorganized its functions and expects this reorganization to provide greater efficiency once it has gained traction. *See* 71 FR 67623. Those expectations were incorporated into the proposed rule and this final rule.

C. Alternative Sources of Funding

Many comments did not dispute the methodology and costs, but asserted that applicants and petitioners simply should not be required to bear the burden of these fee increases. Many pointed to the benefits of immigration and assimilation and argued that because the United States benefits as a whole from immigration, as a matter of public policy immigrants should not bear the entire cost of processing. Many asserted that USCIS should find ways to keep fees down, even if it means operating at a deficit. Others suggested substituting appropriated monies for user fees to offset particular fees or activities or subsidize general USCIS operations.

1. Appropriated Funds

Many comments recommended that USCIS seek appropriated funds to close funding gaps, meaning that taxpayers should subsidize particular applications and petitions, certain processes, activities not directly related to the adjudication of the particular kind of application or petition, or fees in general. Some highlighted the public good and positive impact resulting from immigration, naturalization, or certain procedures (i.e., background checks) and argued that the public good merited the use of tax dollars to offset costs. Many comments suggested that appropriations be used to either subsidize specific benefit application or petition fees or all fees in general. Some comments suggested that fees should be the last recourse for funding immigration services; that is, USCIS should be required to have exhausted all possible means of seeking appropriated funds before imposing fee increases. One commenter faulted USCIS for not engaging Congress to cooperatively work on this issue. Others suggested funds be appropriated for discrete purposes to offset the cost of a particular activity associated with case processing or overall management of USCIS.

Other comments point out that section 286(m) of the INA, 8 U.S.C. 1356(m), authorizes the recovery of the full cost of providing immigration and naturalization services, including services provided without charge to many applicants. These comments point out, however, that section 286(m) does not mandate full cost recovery, and that USCIS still has the option of seeking appropriations and choosing to recover less than full cost through user fees. Some commenters urged support for specific legislation that would alter the fee development process or affect this specific fee review process.

Finally, one commenter suggested that USCIS use appropriated funds to fund unusual or atypical expenses from its fee calculation. The commenter suggested that these infrastructure costs represent an ''investment'' that should not be funded by current immigration and naturalization applicants and must not be included in the fee calculation.

These comments go beyond the scope of the regulation and raise questions of whether Congress should alter the immigration laws of the United States or appropriate general funds for USCIS. In effect, these comments suggest that USCIS should take other actions outside the rulemaking and the authorization for this rulemaking under INA section 286(m), 8 U.S.C. 1356(m).

Law and policy have long supported the proposition that the costs of providing immigration benefits should be borne by those applying for those benefits. Thus, in this final rule, USCIS is adopting a fee schedule to recover its costs through user fees. While it is true that Congress has enacted intermittent appropriations to subsidize the operations of USCIS, the President's budget for FY 2008 does not request such an appropriated subsidy, except specific funds for expansion of an Employment Eligibility Verification program. Even if an appropriation were to be requested, receipt of sufficient funds (without adjusting the fee schedule) to cover the costs of USCIS operations may be doubtful. USCIS must fund the services it provides through the legal means at its disposal. Deferring the recovery of full costs while USCIS explores other funding options will delay service delivery to applicants and petitioners.

2. Finding Other Revenue Sources

Some comments suggested funding USCIS through fines assessed against employers who hire aliens who are not authorized to work in the United States. Other comments suggested a variation on the methodology, such as charging employers more than individuals or charging additional fees at the time of naturalization.

USCIS is statutorily barred from using fines assessed against employers. Unless specified in law, all fines and penalties under the immigration laws become miscellaneous United States Treasury

receipts and are deposited into the general fund, not the IEFA. INA section 286(c), 8 U.S.C. 1356(c). Those additional sources of USCIS revenue that are authorized, such as the DHS share of certain supplemental fees collected under section 286(v) of the INA, 8 U.S.C. 1356(v), have been taken into account in USCIS budgeting and fee setting.

USCIS believes that the methodology used to develop these fees—a methodology based on the complexity of the specific application or petition—is the most appropriate process to equitably allocate costs and provide long-term stable and reliable funding. Part of USCIS' funding problem has been reliance on temporary funding sources, including appropriated funding. This new fee schedule will establish a more stable source of funding. As the number of applications and petitions increases, USCIS will be better able to respond to increasing workload changes and will no longer be compelled to sacrifice customer service or rely on unreliable funding sources.

D. Comments on Specific Benefit Application and Petition Fees

Many comments that suggested that USCIS seek appropriated funds or other subsidies, or other means to reduce fees from the proposed levels, also emphasized issues and impacts related to particular applications and petitions. The fee development methodology is sensitive to the costs of adjudicating each type of application or petition based on the complexity of adjudicating it.

1. Naturalization Application

The fee for the Naturalization Application generated a large number of comments from a wide spectrum of commenters. The proposed rule would raise this fee from $400 to $675, including the required biometrics fee, or a 69 percent increase. Many comments highlighted the public interest in promoting citizenship and recommended reducing this fee.

USCIS understands the sentiment expressed by the commenters that becoming a citizen of the United States is an honor to be cherished. USCIS disagrees with the commenters who suggested that the proposed fee increase is inconsistent with our tradition of welcoming and integrating immigrants and that increasing the fee would send the wrong message to intending citizens.

The fee for a Naturalization Application is established at $595 in this final rule and properly reflects the intensive scrutiny with which a request for such an honor should be reviewed. Naturalization applicants who are initially found eligible must be examined under oath to assure compliance with the many requirements for citizenship under the INA including competency in English, knowledge and understanding of United States Government and history, physical presence and maintenance of resident status in the United States, and facts and conduct reflecting their moral character and attachment to the United States Constitution and law. 8 U.S.C. 1401 *et seq.*

In adjudicating some naturalization applications, USCIS adjudicators must resolve complex subsidiary applications for certain exemptions, such as the Application to Preserve Residence for Naturalization Purposes, Form N–470, or the Medical Certification for Disability Exceptions, Form N–648 (which is processed and adjudicated without charge). Further, criminal and national security record checks are required for naturalization applications and may require the involvement of numerous USCIS personnel. In addition, the naturalization adjudication process may require multiple interviews, and solicitation and consideration of additional evidence bearing on eligibility. Finally, in the event of an adverse decision on the application or petition, the applicant is entitled to request a new hearing by a different adjudicator. All of these factors are reflected in the fee charged to recover the cost of adjudication.

Two factors in this final rule mitigate the Naturalization Application fee increase. First, the final rule maintains the current USCIS policy of permitting naturalization applicants to request an individual fee waiver. In determining inability to pay, USCIS officers consider all factors, circumstances, and evidence supplied by the applicant including age, disability, household income, and qualification within the past 180 days for a federal means tested benefit, as well as other factors associated with each specific case. For those applicants not granted a fee waiver, USCIS will charge a fee of $595 for processing naturalization applications. Additionally, the cost of fingerprints has been reduced slightly, resulting in a decreased overall cost for naturalization applicants. Accordingly, USCIS has determined that the effort and resources expended to process Naturalization Applications justifies this level of fee increase.

2. Application To Register Permanent Residence or Adjust Status

Many comments emphasized the overall size of the proposed increase for the Adjustment of Status Application fee from $325 to $905, or 178 percent. Most of the proposed fee increase for the Form I–485 was driven by the packaging or ''bundling'' of related benefits with no separate fee. As indicated in the proposed rule, factoring in separate fees, applicants typically pay for additional services related to the Form I–485 for which they will no longer pay separately. In this rule, after consolidating the fees for the Adjustment of Status Application and the requests for interim benefits that previously required additional fees, the increase in the fee from $865 to $1,010 (17%), including the biometric fee, is significantly below the average increase for all fees.

A few comments suggested that incorporating the fee for the Application for Employment Authorization, Form I–765, (Application for EAD) and the fee for the Application for Travel Document, Form I–131, (Application for Travel Document) into the Adjustment of Status Application should only be an option. USCIS issues an Employment Authorization Document (EAD) to the alien after it approves an Application for Employment Authorization. An alien submits an Application for Travel Document to apply for a travel document, reentry permit, refugee travel document, or advance parole. EAD and travel documents are commonly referred to as ''interim benefits.''

These commenters suggested that children may not need or desire travel documents or work authorization, so the fee for an Adjustment of Status Application should be consequently reduced for a child or a family. Other comments suggested that, like refugees, asylees should not be required to pay the portion of the new Adjustment of Status Application fee attributable to the interim benefits, because eligibility to work is incident to their status. Finally, several commenters suggested that USCIS apply the fee consolidation for the Adjustment of Status Application, Application for EAD, and Application for Travel Document to all currently pending Adjustment of Status Applications.

USCIS has made no adjustment in this final rule as a result of these comments. USCIS determined that a change in the fee schedule was not justified because a type of applicant mentioned by the commenters may not need or want interim benefits. Neither does this rule adopt the suggestion to process Applications for EADs or Applications for Travel Documents for currently pending Adjustment of Status Applications without fee. USCIS records indicate that most applicants who

initially choose not to apply for an EAD or travel documents soon do so because they find that they need interim benefits almost immediately. As for asylees and refugees, asylees are authorized to work, but USCIS records indicate that most asylees and refugees obtain an EAD to provide to employers as readily accepted proof that they are authorized to work in the United States. The fees collected by USCIS for EAD Applications fund the costs incurred by USCIS for issuing EADs. USCIS incurs costs for adjudicating the Application for EAD which is a different issue from an asylee's authorization to work incident to asylee status. Further, although refugees are not required to submit a fee for their initial Adjustment of Status Application, they are required to pay the fee for an Application for EAD or for the Application for Travel Document to request a refugee travel document. Providing multiple fee options based on who typically requests interim benefits, when records indicate that the vast majority of applicants do request interim benefits, would be too complicated and costly for USCIS to administer. Applicants with a pending Adjustment of Status Application who did not pay a fee that incorporates the cost of an Application for EAD and an Application for Travel Document must continue to file separate interim benefit applications with the appropriate fee for each service.

A number of comments pointed out that the packaging of these services and the fee increase means that the total fees a family will pay for concurrently filed Adjustment of Status Applications will increase substantially, and argued for some form of family cap on the total fee to be collected. These commenters pointed out that the child fee level under the fee schedule was almost one-third lower than the adult fee, but the $100 difference under the proposed fees represents only an eleven percent differential between an adult's and a child's Adjustment of Status Application fees. These comments added that this effect exacerbated the impact of the fee changes on families. Other commenters were concerned that, while refugees are charged no fee for their Adjustment of Status Applications, the proposed rule provides that asylees must pay a fee for an Adjustment of Status Application and suggested that this treatment was disparate.

USCIS considered the suggestion that it institute a maximum fee for a family where several members submit simultaneous Adjustment of Status Applications (family cap). USCIS analyzed a number of scenarios to determine at what level a family cap would not result in a significant transfer of the direct costs for adjudicating Adjustment of Status Applications for entire large families to individuals or smaller families. USCIS also weighed whether or not to transfer the costs of adjudicating Adjustment of Status Applications for large families to only other adjustment of status applicants or to all other benefit applications. Unfortunately, USCIS was unable to determine the size of the family at which it was no more administratively burdensome to process an Adjustment of Status Application for an additional relative when processing multiple, simultaneous Adjustment of Status Applications from family members. In the end, USCIS determined that the policy or humanitarian considerations inherent in the decisions made in this final rule to allow additional fee waivers is not sufficiently prevalent in the case of family Adjustment of Status Applications to warrant a family cap, absent such data on the requisite burden based on size. Thus, USCIS then turned to consideration of the variation in Adjustment of Status Application fees based on the applicant's age.

As pointed out by some comments, the fee for the Adjustment of Status Application was $325 for aliens fourteen years of age or older, but for aliens under fourteen years of age, the fee was $225. This amounted to a 31 percent difference in the base filing fee. In response to these comments, USCIS evaluated the difference in actual processing time and costs associated with the ''Make Determination'' activity for Adjustment of Status Applications. While the proposed fee for an Adjustment of Status Application was based on the overall cost of processing the average application, regardless of the applicant's age, the large majority of Adjustment of Status Applications are filed by persons fourteen or older. USCIS conducted an analysis of Adjustment of Status Applications submitted concurrently as part of an application from a family. For the application to be filed concurrently, the child must be a derivative applicant of the adult or the child's status must be based on the same legal authority as the adult's. This analysis found that there is a 35 percent difference in the average time it takes to process an Adjustment of Status Application filed by someone under fourteen years of age versus the time it takes to process a case filed by someone age fourteen or older. This calculation was consistent with the methodology employed by the proposed rule in that an identifiable adjudication was segregated and the relative complexity of processing the benefit for a subset of applicants was determined. Applying this difference to the fee model reduces the fee for an Adjustment of Status Application for a family member under age fourteen from $805 to $600, and adjusts the fee for family members age fourteen and older from $905 to $930. Since the fee will drop for every concurrently-filed adjustment of status application for someone under 14, families with children who all file concurrently will see a drop in their collective adjustment fee. For example, a family of two adults and one child will see their total adjustment application fees drop by $155 relative to what they would have paid without this change, and a family with two adults and two children will see their collective fees drop by $360. A family with two adults and four children will see their fees drop by $770.

USCIS explored establishing a child discount in other immigration and naturalization benefit areas and has determined that a discount for adjudication of a child is only appropriate in the case of an Adjustment of Status Application. The Adjustment of Status Application requires adjudication of a distinct and separate application for a child, although it can be submitted simultaneously with other family members. Other benefits that require submission of a separate application from family members, but allow the family members to submit them concurrently for processing are distinguishable. For example, no fee is charged for the Registration for Classification as Refugee, I–590, and the fee for the Application for Temporary Protected Status, Form I–821, is statutorily capped at $50 per applicant, which is substantially below its adjudication costs. Similarly, besides children, there are no other subgroups of applicants for adjustment of status who possess qualities that would provide for segregation of relative adjudicative complexity that would provide sufficient data for a separate fee calculation.

Likewise, the maximum amount payable by a family was removed from the fee proposed for Application to Adjust Status from Temporary to Permanent Resident (under Section 245A of Pub. L. 99–603), Form I–698, and the Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, Form I–687. That change was made mainly because Immigration Reform and Control Act of 1986 (Pub. L. 99–603, November 6, 1986) requires an applicant under that

Act to have entered the United States before January 1, 1982, which would exclude anyone currently under the age of 18. Further, the family cap for fees charged filing Form I–698 and Form I–687 was a policy established by INS for legalization and established at three times the fee for an individual. As explained earlier, a family cap that is not based on adjudicative complexity does not comport with the methods used for establishing the fee schedule in this rule. Therefore, beyond reducing Adjustment of Status Application fees for children, USCIS will not provide any discount for families based on size, and USCIS has decided to base Adjustment of Status Application fees on the direct costs associated with that service.

With regard to the different treatment for refugees and asylees, the exception for a fee for refugees is based on the requirement that a refugee must apply for adjustment of status within one year of admission as a refugee. INA section 209(a), 8 U.S.C. 1159(a). Further, while refugees have been affirmatively invited by the United States Government to come to the United States for permanent resettlement, asylees have sought admission of their own accord and requested to be allowed to stay. While USCIS agrees that both asylees and refugees should receive full protection from persecution, it is a reasonable policy choice to be more generous in awarding immigration benefits to those who are invited. Nonetheless, in response to comments on this subject, USCIS has decided to allow asylees to request a waiver of the Adjustment of Status Application fee on an individual basis. Section III.E addresses changes in fee waivers in more detail below.

3. Employment Authorization for Students

Many educational institutions and their representatives submitted nearly verbatim comments on the proposed fee increase for an Application for EAD. These commenters expressed significant concerns about the size of the fee and its effect on the limited financial capability of most international students in F visa status and their ability to apply for work authorization when they choose to participate in the Optional Practical Training (OPT) program. These comments noted that international students on F–1 visas are limited to 20 hours per week of on-campus employment and the money to pay the Application for EAD fee will curtail their ability to buy food and pay rent. Similarly, these same commenters, for the most part, expressed general concerns about the immigration benefit application expenses for international students and their family members, who typically are of limited means.

For international students, F–1 status allows a student to remain in the United States as long as they are a properly registered full-time student. To maintain full-time status, a student must take at least four courses per semester at the undergraduate level, and depending on the academic program, three or four courses per semester at the graduate level. Also, under F–1 status, a student may work part-time in an on-campus job and in a ''practical training'' job directly related to the student's field of study for twelve months during or after the completion of studies. The OPT program mentioned by the commenters grants temporary employment authorization to provide F–1 students with an opportunity to apply knowledge gained in the classroom to a practical work experience off campus. To be eligible for OPT, a student must have been in full time student status for at least one full academic year preceding the submission of their application for OPT, be maintaining valid F–1 status at the time of the application, and intend to work in a position directly related to his or her major field of study.

The United States places a very high value on attracting international students and scholars to this country. The contributions to the academic experience for all students provided by the existence of a diverse international student body are invaluable. The resources devoted to delivering immigration benefits to deserving students show the importance of this goal to USCIS. USCIS also understands that international students already face significant hurdles, including financial hurdles, which is why the fee structure consolidated fees where consolidation made sense, and kept fees to a minimum. Nonetheless, substantial resources are expended by USCIS for adjudication of the student's eligibility for employment documents and the fee for an Application for EAD was established based on those needs. Further, while USCIS acknowledges that the salaries provided by OPT are helpful, the emphasis of OPT is on training students in their fields of study, not as a source of income. To that end, the $340 cost of requesting an Application for EAD is a very small portion of the total expenses incurred by an alien pursuing studies in the United States. EAD applicants may request an individual fee waiver based on inability to pay. For Applications for EAD that are not granted a fee waiver, USCIS will charge a fee of $340 for processing based on the effort and resources expended to process this benefit.

4. Application for Advance Processing of Orphan Petition

Many comments focused specifically on the fees for a Petition to Classify Orphan as Immediate Relative, Form I–600, and an Application for Advance Processing of Orphan Petition, Form I–600A. Several comments suggested that USCIS should reduce the fee and offer fee waivers for orphan petitions. These commenters effectively request that USCIS shift the costs of this program to other immigration benefit applications and petitions.

Adjudicating orphan petitions involves some of the most complex decision-making within immigration services because adjudication of Petitions to Classify Orphan as Immediate Relative and Applications for Advance Processing of Orphan Petition requires knowledge of many state adoption regulations and statutes and foreign country adoption requirements. Each petition must be accompanied by a home study, background checks, and evidence that must be carefully examined. Approval of parents as suitable to adopt is time sensitive as a result of the potential changes in a household that may impact the suitability of the home for an adopted orphan, such as loss of a job or divorce. Such changes often prevent reconsideration of the parents' petition. As a result of this approval expiration period, currently set as eighteen months, prospective adoptive parents must submit a new petition and all supporting documents if they wish to continue with the adoption process if they have not been matched with a child. USCIS sometimes works with a case for months, involving frequent contact with adoption agencies, social workers, and prospective adoptive parents. Finally, international orphan adoption adjudications require an investigation and information verification, and may require travel. This fee increase will allow USCIS to automate case management of adoption cases, further reducing any real or perceived delays in the manual, paper-based process currently in place.

Orphan petitioners must attest that the beneficiary will not become a public charge in order to be approved as a suitable adoptive parent. Further, the orphan petition fee is a small part of what a United States citizen petitioner chooses to accept as part of the overall process and cost of adopting a child from overseas and raising that child. The financial circumstances required to be eligible for this benefit directly contradict the rationale for shifting costs related to these applications to others,

or for offering a waiver of the fee because of inability to pay.

A significant number of comments suggested that USCIS mitigate the cost by extending the validity of approved orphan petitions and the results of background checks. Commenters complained that processing in the country from which the child comes often takes longer than the current approval validity, which creates re-work and additional fees. The length of the validity of the approval of any petitioner or applicant for a benefit was not mentioned in the proposed rule and cannot be amended by this final rule. Thus, these comments are beyond the scope of this rule.

The final rule provides, as does the current USCIS fee schedule, that when more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required. No fee is collected on additional siblings because USCIS determined that processing efficiencies provided by the ability to adjudicate two siblings simultaneously did not justify an additional fee. However, in the case of multi-child simultaneous petitions when the orphans are not siblings, USCIS requires separate fees for each child because of the processing requirements of determining eligibility of each child. In addition, if a filing fee is paid at the time of filing an Application for Advance Processing of Orphan Petition, a fee is not required again to file a Petition to Classify Orphan as Immediate Relative.

Since a large number of commenters ardently mentioned this issue as part of their comments, USCIS has decided to allow a prospective adoptive parent to receive one extension of the approval of the Application for Advance Processing of Orphan Petition at no charge. Prospective adoptive parents, who have not found a suitable child for adoption as evidenced by their failure to submit a Petition to Classify Orphan as Immediate Relative after approval of their Application for Advance Processing of Orphan Petition, will be allowed to request one extension of the approval without charge, including the biometric fee. This final rule does not change the proposed petition fee of $670. The request from the applicant for an extension of the approval must be in writing and received by USCIS prior to the expiration date of approval indicated on the Notice of Favorable Determination Concerning Application for Advance Processing of Orphan Petition, Form I–171H. This no charge extension is limited to only one occasion. A complete application and fee must be submitted for any subsequent application. This final rule also provides that no biometric service fee will be charged for an update of the biometrics required for an extension of an approved Application for Advance Processing of Orphan Petition. The same limitations apply.

USCIS determined that the costs of processing an initial extension were minimal when it results only from the parents' inability to match with a child within the first approval period and the update process begins before expiration actually occurs. The full fee will be charged, however, for adjudicating a new application when a child has not been matched after the first extension (the second approval period). Because of the length of time involved (three years) and the need for substantial updates, the second update often involves the same complexity as the initial application. Similarly, when the approval expires and a new application is submitted as a result of the first child selected by the prospective adoptive parents not being adopted (denial of Petition to Classify Orphan as Immediate Relative, Form I–600), the resources expended to adjudicate the first Petition to Classify Orphan as Immediate Relative require a new fee for beginning the process anew for a new orphan from the same country or a different foreign country as the first application.

5. Entrepreneurs

One commenter, representing an association of affected individuals, claimed that the fee for the Immigrant Petition by Alien Entrepreneur, Form I–526, is incorrect because this benefit is only adjudicated at USCIS service centers, not at USCIS local offices as stated in the proposed rule. In addition, the commenter stated that USCIS has not shown why the percentage increase for the Immigrant Petition by Alien Entrepreneur (for EB–5 status) filing fees should be higher than others, especially when compared to the Petition by Entrepreneur to Remove Conditions, Form I–829. The commenter stated that petitions to remove conditions generally should take less time to adjudicate the original entrepreneur petition, which has a lower proposed fee. USCIS recognizes that the Immigrant Petition by Alien Entrepreneur is indeed adjudicated at local offices. USCIS service centers will refer certain cases to local offices for interview, however, the volumes of Immigrant Petition by Alien Entrepreneur filings referred are relatively small (three percent), and the resulting cost impact is minimal.

The Immigrant Petition by Alien Entrepreneur and the Petition by Entrepreneur to Remove Conditions are two of the more labor intensive petitions that USCIS processes, as evidenced by the high completion rates in the proposed rule. As stated in the proposed rule, the more complex an immigration or naturalization benefit application or petition is to adjudicate, the higher the unit costs. Although the completion rates for the entrepreneur petition and the petition to remove conditions are approximately the same, the fees are substantially different because the costs are being spread across a smaller number of petitions (600 for immigrant entrepreneur petitions compared to 45 for Petitions By Entrepreneur to Remove Conditions), resulting in a higher unit cost for the petition to remove conditions. USCIS explained this reasoning in the proposed rule and it remains valid.

6. Effect on Availability of Skilled Workers

Some commenters specifically argued that an increase in fees will deter employers from seeking skilled workers from outside the United States to fill gaps in the workforce, adversely affecting the competitiveness of the United States. USCIS disagrees with the notion that an increase in fees will deter employers from seeking skilled workers for employment in the United States. There is no evidence suggesting that fee increases deter skilled workers from coming to the United States, as these comments suggested. In addition, this rule does not require an individual alien to pay his own petition fees since the fees for employment-based visa petitions are generally paid by the firms hiring an alien for a position. Moreover, in most employment-based visa categories, the demand for immigrants greatly exceeds the maximum number of visas permitted each year under the INA. For example, applications for H–1B visas exceeded the FY 2007 statutory cap on the first day that applications were accepted.

USCIS expects substantial demand for these visas to continue following the implementation of this rule. Similarly, there is no evidence suggesting a direct correlation between a fee increase of this magnitude for immigration benefits and illegal immigration, as some comments have suggested.

One commenter, representing an association of agricultural employers, claimed that the proposed fee for the Nonimmigrant Worker Petition is unfair because the cost to adjudicate this benefit varies greatly depending on the type of petitioner. The commenter suggested that H–2A employers are subsidizing the other, more complicated petitions of this form type. USCIS

recognizes that some adjudications within a particular form type are more expensive than others, and that the more complex petitions are subsidized by the simpler ones since the fee is calculated as an average. While USCIS understands the position of this commenter, it would be far too complex and expensive to administer a fee schedule based on the type of applicant or petitioner within a particular benefit. USCIS disagrees with this recommendation as it would further increase fees to recover the additional costs necessary to administer this change.

E. Fee Waivers and Exemptions

A number of comments focused on applicants or petitioners who would not be required to pay a filing fee for immigration benefits, relating to fee exemptions for classes of applicants or petitioners and requests for fee waivers due to inability to pay, as set forth in 8 CFR 103.7(c). Some comments argued that class fee exemptions and fee waivers should be further limited because they simply transfer costs to other applicants or petitioners. Others argued that fee waivers should be granted on a far wider basis. In response to comments, USCIS reconsidered the fee waiver provisions of the proposed rule.

A fee waiver based on inability to pay requires that other applicants or petitioners pay for the same service and for a portion of the fee being waived for that applicant or petitioner. Fee waivers represent approximately one percent of the total applications and petitions filed with USCIS each year.

Many comments implied that waiving fees in such a small percentage of cases suggests that the current fee waiver policy is far too stringent, and should be liberalized rather than further restricted. However, while the number of fee waivers USCIS grants represents a small percentage of total filings, USCIS has historically granted most of the fee waiver requests received. Another reason why the number of fee waivers may be seen by some as low is that individual fee waivers are granted in addition to fee exemptions granted to certain classes of individuals. Taken together, on a transactional basis, USCIS does not collect a fee in over seven percent of the cases received. Excluding business petitions to bring in foreign workers, nonimmigrant matters where the aliens must be able to support themselves to be eligible for status, and cases involving international travel, fee waivers represent over eight percent of the remaining workload. Given the complexity of asylum and refugee processing, from a workload perspective, fee waivers represent well over ten percent of the remaining effort.

In addition, the application fee for Temporary Protected Status (TPS) is limited by statute to $50. INA section 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B). USCIS has historically waived the filing fee for TPS status for aliens unable to pay even this statutorily capped fee. 8 CFR 244.20.

1. Victims and Asylee Adjustment of Status Applications

USCIS proposed to exempt certain classes of aliens from paying a filing fee where it believes that the incidence of fee waivers due to inability to pay would be very high. In the proposed rule, USCIS proposed to expand the class fee exemptions to three small volume programs: Victims of human trafficking (T visas), victims of violent crime (U visas), and Violence Against Women Act (VAWA) self petitioners. *See* INA sections 101(a)(15)(T) or (U), 8 U.S.C. 1101(a)(15)(T) and (U), and Public Law 109–162, secs. 811–817, 119 Stat. 2960, 3057 (Jan. 5, 2006). Those programs involve the personal well being of a few applicants and petitioners, and the decision to waive these fees reflects the humanitarian purposes of the authorizing statutes. The final rule maintains this blanket fee exemption because it is consistent with the legislative intent to assist persons in these circumstances. Anecdotal evidence indicates that applicants under these programs are generally deserving of a fee waiver. Thus, USCIS determined that these programs would likely result in such a high number of waiver requests that adjudication of those requests would overtake the adjudication of the benefit requests themselves.

After reviewing the potential numbers of such applicants, USCIS has decided to allow these classes of aliens to request a fee waiver for when filing an Adjustment of Status Application. USCIS has made this determination for all of the reasons stated above, but tempered by the fact that an application to adjust status cannot be filed for a significant time after the alien has been granted T, or U status. Accordingly, this rule provides that a Form I–485 may be subject to a fee waiver when the person's eligibility for adjustment of status stems from asylum status, T status (victims of human trafficking), U status (victims of violent crime who assist in the prosecution), self petitioners under the Violence Against Women Act, or where by law the person otherwise is not required to demonstrate that he or she will not become a public charge, including but not limited to, Adjustment of Status Applications for Special Immigrant—Juveniles, or based on the Cuban Adjustment Act, Haitian Refugee Immigration Fairness Act, and the Nicaraguan Adjustment and Central American Relief Act. This final rule does not expand fee waiver eligibility further in adjustment of status cases. The changes made to the fee waiver and exemption eligibility criteria did increase fee waiver and exemption costs somewhat, but this had no impact on the resulting fee schedule given the insignificant volume numbers associated with the affected applications and petitions.

2. Special Immigrant—Juvenile

A number of commenters suggested that ''Special Immigrant—Juveniles'' also should be exempt from certain fees. A ''Special Immigrant—Juvenile'' is an immigrant under the age of 21, unmarried, who is a ward of a court in the United States (for the most part State courts) or eligible for long-term foster care or in custody of a state agency, and judicial proceedings have determined that it would not be in that Special Immigrant—Juvenile's best interests to be returned to his or her home country.

USCIS has determined that a fee exemption for this petition would be consistent with the exemptions granted for other classes of aliens and the humanitarian purpose of the statute. Therefore, the final rule exempts ''Special Immigrant—Juveniles'' from the fee for submitting a Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360. This fee exemption is a change from the proposed rule in addition to the change allowing a Special Immigrant—Juvenile to apply for an individual waiver of the fee for an Adjustment of Status Application.

3. Biometric Fee

Numerous comments suggested that the biometric fee was a burden for those aliens who could not afford it. In response, USCIS conducted an analysis of the costs to USCIS if such waivers were allowed. As with any other waiver, the loss of that fee revenue would necessarily be spread across all other benefit applications and petitions, having the potential to increase those fees.

To analyze this issue, USCIS determined the total number of requests for waivers received in FY 2006, the number of fee waivers approved, and the number approved that were for applications where biometrics were required. USCIS determined that, had the biometric fee been waived for those

applicants or petitioners whose waiver request for the underlying application or petition was approved, the associated costs for collecting the biometrics spread across all paying applicants would have added only one dollar to the biometric collection fee. Because all fees are rounded to the nearest $5 increment, the model showed that allowing a fee waiver for the biometric fee would result in no increase. Therefore, USCIS decided to accept the commenters' suggestion. This final rule provides discretion to USCIS officials to waive the biometric fee, following the same general guidelines used to consider all other requests for fee waivers such as financial hardship. Beyond these limited programs, and those for asylees and refugees, USCIS has decided not to shift the costs of processing any other specific immigration benefit applications and petitions to others.

F. Authority To Set and Collect Fees

Some comments suggested that the proposed rule exceeded USCIS' statutory authority to collect fees. Some comments suggested that administrative and overhead costs were not related to the provision of services and should be excluded. Other comments suggested that enforcement costs should be excluded from the fees, while others posited that all of the enforcement costs of immigration and law enforcement agencies should be recovered by fees. Underlying these comments is the issue of compliance with the authorizing statute and internal Executive Branch guidance. On the other hand, one commenter particularly noted that while USCIS is permitted to fund all of its operations from fees, there is no statutory mandate requiring it to do so. These comments raise the issue of the general structure of the fee account, and whether user fees can legally recover certain costs. Accordingly, a more detailed explanation of the legislative authority and management guidance is provided.

1. Authority Under the INA

Before the IEFA was created in 1988, all activities related to case processing were funded by appropriations. Public Law 100–459, sec. 209, 102 Stat. 2186 (Oct. 1, 1988). While fees were charged prior to 1988, the fees were treated as miscellaneous receipts of United States Treasury and deposited in the general fund; those fees were not available to USCIS for spending. The fee account was created to provide an alternative to appropriations. As many of the comments stated, the law does not preclude the use of appropriations to subsidize fee receipts to fund operations. In the absence of appropriations, however, the only funding source is fee revenue. The President's FY 2008 budget is based on user fee funding for USCIS operations (other than expansion of employment verification) and will fund all other USCIS operations from fee receipts. Accordingly, the proposed rule was issued in conjunction with the FY 2008 budget proposal.

INA Section 286(m), 8 U.S.C. 1356(m), provides that the United States may collect fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants:

> Notwithstanding any other provisions of law, all adjudication fees as are designated by the [Secretary] in regulations shall be deposited as offsetting receipts into a separate account entitled ''Immigration Examinations Fee Account'' in the Treasury of the United States, * * *: Provided further, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

Under this authority, user fees are employed not only for the benefit of the payor of the fee and any collateral benefit resulting to the public, but also provide a benefit to certain others, particularly asylum applicants and refugees and others whose fees are waived.

2. General Authority for Charging Fees

Comments suggested that only the activities directly relating to specific adjudications should be charged to those who apply for the benefits. These comments rely on statutory authority separate from the authority for these fees. The general authority for the federal government to collect fees stems from the Independent Offices Appropriation Act, 1952 (IOAA), 31 U.S.C. 9701(b). Under the IOAA, a ''value'' to the recipient is a key threshold factor and the costs of ''public interest'' have been effectively included within the fees. *National Cable Television Ass'n* v. *United States,* 415 U.S. 336 (1974); *FPC* v. *New England Power Co.,* 415 U.S. 345 (1974); *Seafarers Internat'l Union* v. *Coast Guard,* 81 F.3d 179, 183 (D.C. Cir. 1996). In *New England Power Co.,* the Supreme Court held that the IOAA authorizes ''a reasonable charge'' to be made to ''each identifiable recipient for a measurable unit or amount of Government service or property from which [the recipient] derives a special benefit.'' 415 U.S. at 349 (quoting Bureau of the Budget Circular No. A–25 (Sept. 23, 1959)). Such fees may be assessed even when the service redounds in part to the benefit of the public as a whole. *National Cable Television Ass'n,* 415 U.S. at 343–44. So long as the service provides a special benefit above and beyond that which accrues to the public at large to a readily-identifiable individual, the fee is permissible. *New England Power,* 415 U.S. at 349–51 & n. 3.

Prior to the enactment of section 286(m) of the INA, fees charged for immigration services were governed by the IOAA and were judicially reviewed under the IOAA. A more elementary cost analysis than that currently used was upheld by the courts. *Ayuda, Inc.* v. *Attorney General,* 661 F. Supp. 33 (D.D.C. 1987), aff'd, 848 F.2d 1297 (D.C. Cir. 1988). As the Court of Appeals in *Ayuda* stressed, the procedures were ''triggered only at the instance of the individual who seeks, obviously, to benefit from them.'' 848 F.2d at 1301.

The United States is a nation largely built by immigrants and immigration continues to refresh this country. Accordingly, USCIS agrees that there is a certain undeniable public interest in immigration. The costs reflected in the proposed fees exist, however, because applicants and petitioners seek immigration benefits and services. There are also public interests in discrete processes such as background checks. Background checks are an integral part of determining the applicant's eligibility for a benefit, and thus, their costs are appropriate for full recovery through a fee. Were it not for the underlying application or petition for immigration benefits, these specific security checks would not have been conducted.

USCIS authority under section 286(m) of the INA is an exception to any limitation of the IOAA. 31 U.S.C. 9701(c). The relevant, second proviso was added to the INA after the Court of Appeals decided *Ayuda* under the IOAA. Public Law 101–515, sec. 210(d)(1), (2), 104 Stat. 2120, 2121 (Nov. 5, 1990). The statutory provisions in section 286(m) of the INA are broader than the IOAA, authorizing USCIS to recover the full cost of providing benefits and ensuring sufficient revenues to invest in improved service and technology. Even though the requirements of the IOAA do not apply in developing these fees, USCIS is mindful of the need to explain the

process to the general public. *Cf. Engine Manufacturers Assoc.* v. *EPA,* 20 F.3d 1177 (D.C. Cir. 1994).

3. Surcharge for Asylum, Refugee and Fee Waiver/Exemption Costs

Some comments questioned whether fees should include the surcharge for services USCIS provides without fee or where it waives a fee, and asserted that these costs should not be transferred to other applicants. Pursuant to section 286(m) of the INA, USCIS does include these surcharges in other application and petition fees.

USCIS could charge a specific fee to apply for asylum and that fee would be limited to the ''costs in adjudicating the applications.'' Section 208(d)(3) of the INA, 8 U.S.C. 1158(d)(3). The humanitarian nature of the asylum process gives USCIS good reason not to exercise this authority. USCIS has never charged fees for an Application for Asylum, Form I–589. For the same reasons, asylum applicants are exempt from the requirement to submit the fee for fingerprinting with the application for asylum. 8 CFR 103.2(e)(4)(ii)(B).

4. OMB Circular A–25

When a service enables the beneficiary to obtain more immediate or substantial gains or values than those that accrue to the general public, a user fee is appropriate. The fact that a process benefits the public interest as well as a private party does not mean that process cannot be funded by a user fee. The entire legal immigration and citizenship process, with respect to both grants of benefits and denials for national security or other reasons, is one that benefits the public as well as private interests, but focuses on the adjudication of eligibility for individual benefits. A fee-based structure is appropriate even when the public as a whole benefits. As OMB Circular A–25 makes clear, ''when the public obtains benefits as a necessary consequence of an agency's provision of special benefits to an identifiable recipient (i.e., the public benefits are not independent of, but merely incidental to the special benefits), an agency need not allocate any costs to the public and should seek to recover from the identifiable recipient either the full cost to the Federal Government of providing the special benefit or the market price, whichever applies.'' OMB Circular A–25, ¶ 6.a.3. Accordingly, the proposed fees do not conflict with the guidance in OMB Circular A–25.

Moreover, OMB Circular A–25 is one of a series of circulars, bulletins and memoranda issued by OMB for the internal management of the Executive Branch. To be transparent, the circulars and agency use of the circulars are often publicly spelled out in regulations and other public statements. In this case, as with any fee rule of this nature and magnitude, the proposed rule and this final rule have been considered by OMB and other Executive offices in accordance with the appropriate Executive Orders, including Executive Order 12866, as amended, and other management instructions and directives.

While section 286(m) of the INA is a separate authority for the cost analysis and fees, as stated earlier, USCIS follows the procedures outlined in OMB Circular A–25 and standard accounting procedures as discussed in the proposed rule to the extent that they are applicable. Further, the ''full cost'' concept also includes the amount required to manage USCIS or ''overhead.'' The proposed rule described the types of costs that USCIS considered as overheard when determining the proposed fee levels.

One commenter provided a detailed but limiting analysis of USCIS' authority under section 286(m) of the INA, 8 U.S.C. 1356(m), suggesting that ''full cost'' was more limited than suggested in the proposed rule and limited to specific ''activities,'' and suggesting that most of the enhancements fell outside USCIS authority to recover as fees. USCIS disagrees.

Section 286(m) permits USCIS wide latitude in determining the degree to which fees will be used to support operations. USCIS, in conjunction with DHS and OMB, has determined that fees should recover all, but not more, than the cost of operation for USCIS. Accordingly, the Administration has not requested an appropriation for USCIS, except specific funds for expansion of a voluntary employment verification program, for which USCIS is prohibited by statute from charging fees for this program. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, tit. IV, sec. 402(c)(1), 110 Stat. 3009–657 (Sept. 30, 1996).

The ''full cost'' of services may be interpreted, and USCIS interprets the full cost of services to mean all of the support costs for such service within USCIS. The activities that may be included are not strictly those with a direct effect on a specific application or petition, but may include those activities that support the determination, including determining whether fraud is being perpetrated against the immigration system and providing public information to help improve understanding of both the specific applications and petitions and the manner in which immigration benefits are adjudicated. Accordingly, USCIS believes that all of the costs identified in the proposed rule may be recovered through fees.

Finally, the costs of all of the 27 identified enhancements may be recovered. Some of these enhancements are designed to comply with Congressional mandates for the operation of the government; others are designed to ensure that USCIS operates securely and efficiently. While these costs and many other enhancements could be the basis for disagreement, USCIS acts within its discretion to account for them within the fees to be charged.

5. Homeland Security Act

A commenter suggested that the proposed rule, if promulgated in final form, exceeded the authority provided to DHS in the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 1135 (Nov. 26, 2002). In particular, the commenter suggested that the division of functions between USCIS under section 451 of the HSA, 6 U.S.C. 271, and the then-Under-Secretary for Border and Transportation Security under section 441 of the HSA, 6 U.S.C. 251, required a more limited scope for USCIS fees, excluding any law enforcement or national security functions under the Fraud Detection and National Security operations.

Another commenter suggested that USCIS authority was even more restricted to the functions of the former Adjudications Branch of the INS that were transferred to DHS. By contrast, another commenter conceded that while USCIS is permitted to fund all of its operations from fees, there is no statutory mandate requiring it to do so.

DHS disagrees with these suggested restrictions and agrees that it may fund, as a matter of discretion, all of USCIS operations, or more, from fees. Congress provided the Secretary with reorganization authority to allocate or reallocate functions within DHS. HSA, section 872, 6 U.S.C. 452. The division of functions transferred by the HSA is subject to the direction and management of the Secretary. HSA sections 101, 102; 6 U.S.C. 111, 112. Accordingly, the Secretary may adjust the functions within USCIS or across component lines as appropriate.

The reorganization of functions within USCIS to create the FDNS was a consolidation of specific previous functions to streamline operations. Accordingly, USCIS disagrees that the inclusion of FDNS in the fee calculation is inappropriate and will continue to fund that function through fees.

Furthermore, the functions performed by USCIS are entirely consistent with those transferred from INS to USCIS by the HSA.

Accordingly, this final rule establishes a level of fees sufficient to recover the full cost of operating USCIS. The rule has not been amended to include other costs that could be legally charged or to exclude any costs of operating USCIS.

G. Methods Used To Determine Fee Amounts

The cost of providing the right benefit to the right person in an appropriate amount of time without compromising security is a complex, carefully administered process. The fees promulgated in this final rule reflect the costs resulting from the complexity of the various immigration benefits that USCIS administers and the costs of the large number of benefits provided for which there is no charge. By recovering the full cost of doing business, the revised fee schedule will enable USCIS to reduce application and petition processing times and improve customer service, and in the long run, make the legal immigration process more secure, efficient, and welcoming to all immigrants.

1. USCIS Costs

A number of comments questioned or asked for additional information on the methodology used to determine USCIS costs. Others questioned the costs and calculations provided in the proposed rule, while some requested an invoice that details the costs of services. USCIS is making no changes to the final rule as a result of these comments.

Detailed information on the methodology and the cost components and calculations was provided in the proposed rule and remains on the docket of this rule, and will be provided directly by USCIS upon request. The underlying supporting elements, such as independent legal requirements, the General Schedule pay scales, or travel reimbursement rates, are all publicly available. In the notice of proposed rulemaking, USCIS offered to provide the public with an opportunity to review the functioning of the computerized cost model used by USCIS through onsite viewing on its computer system. While USCIS cannot provide complete access to the computer software purchased under license, USCIS' fee determination is, within reason, an open process, and a summary of how calculations were made and results achieved were available for review upon request. USCIS did not receive any requests to access the modeling program.

Finally, preparation of an ''invoice'' would be an additional administrative task that would itself add to the costs to be recovered by the fees. The United States does not prepare such documents beyond the warrants, journals, ledgers, and books of account required to be prepared and preserved by law and Executive policy. *See,* e.g. OMB, *Financial Reporting Requirements,* OMB Circular A–136 (rev. July 24, 2006).

2. Alternative Budget Modeling

Several commenters suggested that USCIS consider alternative budget modeling. One commenter suggested using a ''zero-based budget'' to determine application and petition fees, stating that the enacted FY 2007 IEFA budget used by USCIS could involve inefficient expenditures that waste time and money and disserve immigrants and families who have filed applications or petitions. A ''zero-based budget,'' or ZBB, is a planning tool in which all expenditures must be justified and analyzed. The United States attempted ZBB in the late 1970s. The first requirements for the calculation of a ''current services'' baseline were enacted in the early 1970s, and a variety of concepts and measures have been employed, including ZBB. USCIS believes, however, that the baseline has serious technical flaws, which compromise its ability to serve as a neutral measure. ZBB, like other systems such as Planning-Programming-Budgeting System (PPBS), can be a useful tool, but requires defined decision units that, for a service organization like USCIS, would mean a complete time and motion study of every activity, which would be very labor intensive and time consuming and which would be a cost factored into the fee requirements.

The commenters' concerns about the budgeting methods are addressed in the fee determination and budgeting methodology utilized. The Budget of the United States is developed on a ''current services estimates,'' or ''baseline'' budgeting, methodology which is designed to provide a neutral benchmark against which policy proposals can be measured. The current services estimates (which include inflation) may only be changed through justification of adjustments and enhancements. Accordingly, consistent with the United States Government budget methodology, USCIS used the FY 2007 congressionally-enacted spending level as a baseline, before subtracting nonrecurring expenses and adding in inflation and additional resource requirements, to calculate application and petition fees. This budget accurately reflects USCIS' current spending as approved by the Congress.

Consistent with its previous comprehensive fee review, USCIS used the FY 2007 budget as a baseline, before subtracting nonrecurring expenses and adding in inflation and additional resource requirements, to calculate application and petition fees. In addition, prior to the start of FY 2007, USCIS leadership conducted an extensive evaluation of its FY 2007 spending. This level of scrutiny has enabled USCIS to meet several service delivery goals, such as eliminating the application and petition backlog. The scrutiny employed in analyzing the USCIS cost structure and future needs should minimize misused resources. Thus, USCIS disagrees with the assertion that its current expenditures are inefficient.

Another commenter suggested that USCIS use the actual time it took to perform the various immigration adjudication and naturalization activities, with no analysis of whether USCIS could operate its program more efficiently and for a reduced cost to those paying fees, thereby implying that greater efficiencies could be factored into the proposed fees.

USCIS disagrees with this suggestion. To the extent practical, USCIS has factored into the fees those efficiencies that can be predicted (particularly enhancements). USCIS is firmly committed to seeking new ways of doing business and reengineering processes in order to contain costs and pass on the savings to all of our customers, and the new fee structure will enable USCIS to make improvements that will ultimately help reduce USCIS costs. Productivity enhancements that affect hours per completion calculations produce lower cost per unit. Process improvements implemented over the past several years, as well as projected productivity increases, were taken into account in the current fee review, keeping fees lower than they might otherwise have been. Specifically, this fee increase reflects USCIS' commitment to a projected four percent increase in productivity for Adjustment of Status Application processing, and a two percent increase in productivity for all other applications and petitions. USCIS will remain accountable for these projected productivity increases in order for fees to support operations as intended.

Another commenter expressed concerns about the level of scrutiny in

identifying the amount of the additional resource requirements or enhancements. These costs were subject to the same level of scrutiny as all other USCIS costs. The additional resource requirements have been carefully reviewed by both DHS and OMB to ensure accuracy, and are displayed (with assumptions) in the supporting fee review documentation on the docket. USCIS provided this detailed information for transparency purposes to facilitate public scrutiny during the sixty-day public comment period.

3. ''Make Determination'' Activity

A few commenters questioned the calculation of the ''Make Determination'' activity cost estimates as well as the volume estimates used in the fee review. As explained in the proposed rule and the fee review supporting documentation, ''Make Determination'' costs were assigned to the applications and petitions by completion rates (level of effort or complexity) and workload volume. USCIS uses the most current and accurate completion rates and workload volumes provided by the USCIS Performance Analysis System. USCIS adjusts these workload volumes to reflect filing trends in FY 2007 and projected changes for FY 2008/2009. The USCIS Workload and Fee Projection Group leverages a time series model based on a regression analysis over the last fifteen years, with the most recent data trends given the greatest weight.

The commenters quoted two particular instances of concern, one being the variance between the Application to Preserve Residence (with a completion rate of 3.39 hours and a make determination cost of $428) and Petition for Amerasian, Widow(er), or Special Immigrant (with a completion rate of 3.21 hours and a make determination cost of $2,268); and the other being the variance between the Application To Extend/Change Nonimmigrant Status, Form I–539 (with a completion rate of 1.32 hours at the local office and 0.39 hours at the service center and a make determination cost of $84), and the Petition to Remove Conditions of Residence, Form I–751 (with a completion rate of 1.36 hours at the local office and 0.46 hours at the service center and a make determination cost of $210). These variations are driven by the volumes associated with each application. In the first instance, the workload volume of Application to Preserve Residence filings is equal to the fee-paying volume (669), which means that the costs to process these applications are spread to an equal amount of applications for which a fee is received. The fee-paying volume of the Petition for Amerasian, Widow(er), or Special Immigrant is much less than the workload volume (4,772 compared to 16,000) resulting in costs being spread to fewer applications and, consequently, a higher Make Determination cost. The second instance is simply a case of costs being spread to a greater number of applications (220,000 for Application To Extend/Change Nonimmigrant Status compared to 143,000 for the Petition to Remove Conditions of Residence) resulting in a lower unit cost. After reviewing these comments, USCIS remains convinced that the calculations are correct.

One commenter also questioned why the costs for an Application for EAD are significantly higher than the Application for LPR Card costs, when Application for EAD completion rates for local offices, service centers, and National Benefits Center are lower than the Application for LPR Card completion rates. As stated in the proposed rule, $11.5 million in Application Support Center contract costs directly support processing an Application for LPR Card. Therefore, this cost comparison cannot be fairly analyzed by solely looking at the completion rates at local offices, service centers, or the National Benefits Center since a significant portion of the work is performed outside these offices.

4. Activity-Based Costing

A few commenters suggested that USCIS' activity-based costing analysis was flawed since USCIS included completion rates for local offices that no longer have jurisdiction or responsibility to process certain form types (e.g., Nonimmigrant Worker Petition, Form I–129; Petition for Alien Fiance(e), Form I–129F; Alien Employee Petition, Form I–140; Application To Extend/Change Nonimmigrant Status, Form I–539; Petition by Entrepreneur to Remove Conditions, Form I–829), and service centers that do not have jurisdiction or responsibility to process certain forms (e.g. Application to Preserve Residence for Naturalization Purposes, Form N–470). While it is true that certain USCIS offices have primary jurisdiction over particular form types, it is not uncommon for form types to be processed at other USCIS offices for various reasons. For example, service centers will refer cases to local offices for interview. These volumes, however, are relatively small, and, therefore, the cost impact is minimal. For example, of the 439 Application to Preserve Residence filings processed in FY 2006, USCIS processed 427 (or 97 percent) at local offices and twelve (or 3.0 percent) at service centers.

A commenter questioned why the Naturalization Application is filed at service centers, but no completion rate data is provided for service center processing. Completion rate data is displayed for local offices instead of service centers for this benefit because the local offices perform the adjudication. Using completion rate data for benefits that are only received at Service Centers and not adjudicated would not be accurate.

Another commenter suggested that it is simply not credible that local offices spend an average of two hours processing each Alien Employee Petition, when service centers only spend 52 minutes on an Alien Employee Petition. For various reasons, more complex cases are referred to local offices for an interview, explaining why the completion rate varies from service center to local office. However, as previously stated, the volumes are relatively small for these cases, and therefore the cost impact is minimal.

A commenter also questioned the increased fee for the Application for EAD, stating that the proposed fee is inaccurate given that USCIS implemented a new policy to no longer issue interim EADs at local offices. Because local offices have higher completion rates than other offices for this benefit, the commenter stated that the fee should be re-calculated and reduced. Although USCIS has implemented a new policy to no longer issue interim EADs at local offices, the practice of where the adjudication takes place has not changed. Local offices will continue to adjudicate Application for EAD filings and, therefore, USCIS believes the fee is accurate as stated in the proposed rule.

5. Calculating Specific Processing Requirements

One commenter remodeled the costs for the fee increase for an Adjustment of Status Application and questioned the 66 percent fee increase calculation after consolidating the fees for the Application for EAD that previously required additional fees. The commenter stated that if the Adjustment of Status Application processing time is seven months as stated in the proposed rule, then applicants pay for only one Application for EAD and one Adjustment of Status Application, for fees of $675, not what USCIS assumed for two Applications for EAD and one Adjustment of Status Application, for fees of approximately $800. The processing times identified in the proposed rule represent the processing

times for applications and petitions within USCIS control. When including the volume of Adjustment of Status Applications that are not within USCIS control, the processing times for the Adjustment of Status Applications in total are closer to one year. With a processing time of one year, the average applicant normally would pay for two employment authorizations, not one. Therefore, the USCIS calculation is correct.

6. Overhead Charges

One commenter questioned the methodology behind incorporating overhead costs into the processing costs for each application and petition, suggesting that these costs are not connected to actually moving an application or petition forward. The goal of the fee review is to recover the resources necessary to fund the full cost of processing immigration benefit applications and petitions for which USCIS charges a fee, plus the cost of similar services provided at no cost. Overhead items, such as the rent necessary to house Adjudication Officers, are vital to the operation of USCIS and are not a means for hiding expenditures, as suggested. These costs were spread in a pro rata fashion to the processing activities based on the number of government employees and the specific schedules of required space. That is, the more government staff time associated with a processing activity, the higher the overhead costs associated with that activity. Further detail of the overhead cost calculation, including the number of government staff per office and the identification of overhead items, are provided in the fee review supporting documentation available on the docket.

7. Recovering Deficit From Current Operations

One commenter addressed the fact that USCIS is losing money on each application and petition now being filed in advance of the increase and questioned whether the increase in fees was intended to recover these losses. The fee increase is not intended to recover the losses currently being sustained by USCIS or for retiring any accumulated deficits. USCIS is currently closing a funding gap created by the insufficiency of the fee schedule by relying on spending cuts to critical programs and services, premium processing revenues, interim benefit revenues, and revenues from temporary programs to fund base operations. The fees are designed to recover the costs of operations in the future and are not retroactive.

The commenter also noted the decrease in the projected number of Application for LPR Card filings and the recent surges in Naturalization Application filings. The commenter expressed concern that USCIS did not explain the projected decline in Application for LPR Card filings and wanted to know the impact if volumes declined more than what was projected in the fee review (e.g., Naturalization Applications). As identified in the workload assumptions of the fee review supporting documentation, the decline in projected Application for LPR Card filings is due to the increase in projected Naturalization Application filings. Projections are not expected to vary widely from those in the fee review. Regardless, USCIS' new fee model enables USCIS to adjust fees in a timely manner and USCIS plans to continuously review fees. If unforeseen costs or volumes result in fees that are not recovering full costs, a new fee schedule may be proposed before the fee review that is required by OMB Circular A–25 and law to be undertaken in two years.

8. Charging a Flat Fee

At least one commenter suggested that USCIS should change its methodology and charge the same fee amount regardless of the complexity of the immigration benefit. Fees based on the complexity of the application or petition are consistent with standard cost accounting practices and are also consistent with USCIS' past fee setting practices. USCIS does not agree that charging the same fee, regardless of the benefit, is a better methodology. USCIS believes that applicants and petitioners should generally pay a reasonable fee commensurate with the level of effort required to adjudicate such application or petition.

9. Financial Audits

Some commenters suggested that USCIS' costs should be subject to an audit. Federal law already requires an annual audit of financial activity, including cost, revenues, and payments for all executive agencies. 31 U.S.C. 3521, 7501–7506. USCIS costs are included in DHS's financial statements. The DHS Office of Inspector General (OIG) employs an independent public accounting firm to audit all DHS and component financial statements. In addition, GAO and OIG conduct reviews of the effectiveness and efficiency of USCIS programs and operations, providing recommendations for improvements.

10. Acceptance of Electronic Payment Options

Several comments recommended USCIS accept credit cards for all filings, both for convenience and also to let filers take advantage of the credit aspect of the card, to pay the amount to their credit card vendor over time, pointing out that this would slightly soften the impact of the new fees. While the commenters' suggestion cannot be implemented at this time, USCIS plans to expand electronic payment acceptance over time as it shifts receipting of applications and petitions to other platforms such as lockboxes operated by the Department of the Treasury.

11. Other USCIS Fees

One commenter questioned whether USCIS is fully accounting for all its other fee revenues. The commenter noted an additional $44 million in fee revenues from other accounts as noted in the FY 2006 budget request, and asked specifically about disposition of the money from the anti-fraud fee under section 286(v) of the INA, 8 U.S.C. 1356(v). As noted in the proposed rule, in addition to the IEFA, USCIS receives fee funding from several smaller, specific accounts, such as the H–1B Nonimmigrant Petitioner Account under section 286(s) of the Act, 8 U.S.C. 1356(s), and the Fraud Prevention and Detection Account under section 286(v) of the Act, 8 U.S.C. 1356(v), which this proposed rule does not affect.

In FY 2006, the Congress enacted $31 million for activities funded from the Fraud Prevention and Detection Account. The requested amount is set by statute providing USCIS with one-third of the fraud fees collected for the H1-B, H2-B, and L visas and applied to fraud prevention and detection activities. The proposed rule addresses the costs of processing immigration and naturalization benefit applications and petitions, biometric services, and associated support services of the IEFA, which is in addition to the costs for activities funded from the Fraud Prevention and Detection Account.

IV. Statutory and Regulatory Reviews

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601(6), USCIS examined the impact of this rule on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632), a small not-for-profit organization, or a

small governmental jurisdiction (locality with fewer than fifty thousand people). USCIS determined which entities were small by using the definitions supplied by the Small Business Administration. The size of the companies was determined by using the *ReferenceUSA* databases at *http://www.referenceusa.com/.* Below is a summary of the small entity analysis. A more detailed analysis is available in the rulemaking docket.

Individuals rather than small entities submit the majority of immigration and naturalization benefit applications and petitions. Entities that would be affected by this rule are those that file and pay the alien's fees for certain immigration benefit applications. These applications include the Nonimmigrant Worker Petition and the Alien Employee Petition. USCIS conducted a statistically valid sample analysis of applicants of these application types to determine if this rule has an economically significant impact on a substantial number of small entities.

Out of the 439,000 applications filed in FY 2005 for these application types, USCIS first identified the minimum sample size that was large enough to achieve a 95 percent confidence level. This sample size was identified as 383 (out of a total of 149,658 unique entities that filed applications in FY 2005). USCIS then randomly selected 653 entities, of which 561 or 86 percent were classified as small entities. Therefore, USCIS determined that a substantial number of small entities are impacted by this rule. This determination was not updated based on FY 2006 or FY 2007 applications since programs have not substantially changed and the percentage of small business applicants is expected to remain fairly constant.

USCIS then analyzed the economic impact on small entities of this rule by: (1) Identifying the number of applications filed by the small entities having sales revenue data identified by the random sample and (2) multiplying the number of applications by the fee increase associated with the applicable application types in order to estimate the increased annual burden imposed by this rulemaking. Once USCIS determined the additional cost of this rulemaking on the randomly selected small entities, USCIS divided this total increased cost by the annual sales revenue of the entity. By comparing the cost increases imposed by this rulemaking with the sales revenue of the impacted small entities, USCIS was able to understand the economic impact of this rule on the individual small entities USCIS has sampled. Using the *ReferenceUSA* database of business information, USCIS was able to identify annual sales revenue estimates for 273 of the 561 small entities previously sampled. Of the 273 small entities, 213 or about 78 percent of the small entities exhibited an impact of less than one tenth of one percent of sales revenue, and all of the small entities sampled exhibited an impact of less than one percent of total revenue. A simple (non-weighted) average of the 273 small entities equated to an overall impact of only six one hundredths of one percent of sales revenue. Therefore, USCIS believes that a substantial number of small entities are not significantly impacted economically by this rule.

One comment was received on the USCIS determination that a substantial number of small entities are not significantly impacted economically by this rule. First, the commenter suggested that the sample size used to make this determination was too small to provide an accurate picture of the rule's impact on small firms. Second, the commenter suggested that USCIS failed to consider that many firms pay for an alien's individual immigration benefit application fee in addition to those incurred by the business.

The sample size used by USCIS was statistically valid to allow USCIS to estimate the rule's impact on small entities. In the initial regulatory flexibility analysis, USCIS determined that 86 percent of the affected entities were small entities using Small Business Administration classifications. Eighty-six percent represents a significant majority. More importantly, USCIS compared the cost increases imposed by this rulemaking with the sales revenue of the impacted small entities and determined that the rule would, on average, have an impact of only 0.063 percent of sales revenue.

The commenter is correct that USCIS did not consider the effect on firms that choose to pay alien's individual immigration benefit application fee to induce the alien to accept a position with their firm. The Immigration Benefit Application and Petition Fee Schedule is established based on the assumption that an individual alien will pay his or her own application or petition fees and does not impose any regulatory requirement on a firm to pay fees for their employees. A business may choose to assist an employee in that manner; however, since it is not a direct cost imposed by USCIS on the firm, it was not a consideration for the analysis of the impacts of this rule.

The employment-based visa programs of USCIS are predominately used by small businesses, 86 percent as determined by the initial regulatory flexibility analysis. After the changes made in this rule, the participating firms will still be predominantly small. Nonetheless, while a significant number of small businesses are affected, USCIS has determined that the effects on these small businesses are not sufficiently significant to exceed this rule's benefits or require adjustments in the rule's requirements based on the size of a petitioner's business. If fee discounts or exceptions were allowed for employment-based immigration benefits based on firm size, the predomination of small firms in the programs would result in the small percentage of larger firms that participate being required to pay an inordinate portion of the costs of adjudicating employment-based immigration petitions. Further, USCIS has determined that, even for a small entity, the amount of the fees established in the USCIS Immigration Benefit Application and Petition Fee Schedule are so small as to impose no significant financial or compliance burden on such firms.

In summary, although the analysis shows that this rulemaking would affect a substantial number of small entities, the economic impact of this rule was found to be negligible. This rule has been reviewed in accordance with 5 U.S.C. 605(b), and the Department of Homeland Security certifies that this rule will not have a significant economic impact on a substantial number of small entities. Thus, USCIS is required to take no steps to minimize or mitigate the effects of this rule on small entities.

B. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires certain actions to be taken before an agency promulgates any notice of rulemaking ''that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of one hundred million or more (adjusted annually for inflation) in any one year.'' 2 U.S.C. 1532(a). While this rule may result in the expenditure of more than one hundred million by the private sector annually, the rulemaking is not a ''Federal mandate'' as defined for these purposes, 2 U.S.C. 658(6), as the payment of application and petition fees by individuals or other private sector entities is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary Federal program, applying for immigration status in the United States.

2 U.S.C. 658(7)(A)(ii). Therefore, no actions were deemed necessary under the provisions of the UMRA.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rulemaking will result in an annual effect on the economy of more than $100 million, in order to generate the revenue necessary to fully fund the increased cost associated with the processing of immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the regulation, at no charge. The increased costs will be recovered through the fees charged for various immigration benefit applications.

D. Executive Order 12866

This rule is considered by the Department of Homeland Security to be an economically significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. The implementation of this rule would provide USCIS with an additional $1.081 billion in FY 2008 and FY 2009 in annual fee revenue, based on a projected annual fee-paying volume of 4.742 million applications/petitions and 2.196 million requests for biometric services, over the fee revenue that would be collected under the current fee structure. This increase in revenue will be used pursuant to subsections 286(m) and (n) of the Act, 8 U.S.C. 1356(m) and (n), to fund the full costs of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants at no charge. If USCIS does not adjust the current fees to recover the full costs of processing immigration benefit applications, USCIS will be forced to implement significant spending reductions resulting in a reversal of the considerable progress it has made over the last several years to reduce the backlog of immigration benefit applications and petitions, to increase the integrity of the immigration benefit system, and to protect national security and public safety. The revenue increase is based on USCIS costs and projected volumes that were available at the time the proposed rule was drafted. USCIS has placed in the rulemaking docket a detailed analysis that explains the basis for the annual fee increase. Accordingly, this rule has been reviewed by the Office of Management and Budget.

In response to the proposed rule, one commenter expressly questioned the rule's benefit and cost analysis. This commenter stated that USCIS had not conducted a sufficient analysis of the costs, benefits, and, foreseeable consequences of the fees proposed. The commenter is correct that USCIS is required under Executive Order 12866 to perform an analysis of this benefits and costs of this rule that complies with OMB Circular A–4, Regulatory Analysis (09/17/2003) (OMB Circular A–4). However, as A–4 states, ''There are justifications for regulations in addition to correcting market failures. A regulation may be appropriate when you have a clearly identified measure that can make government operate more efficiently.'' The need for this final rule is not based on economics or a failure of the private markets to address a problem but, rather, on enhancing the ability of USCIS to advance its goal of improving the delivery of immigration programs. This rule is intended to correct breakdowns in the delivery of immigration benefit programs that have occurred as a result of the currently inadequate fee schedule. Further, as OMB Circular A–4 states, ''It will not always be possible to express in monetary units all of the important benefits and costs.'' The net economic effects of this rule are difficult if not impossible to determine.

The public policy rationale behind the United States immigration policies are well known and the benefit of immigrants to the United States and its citizens are enormous, as reiterated in the thousands of comments received on the proposed rule. As stated throughout the proposed rule and repeated often in this final rule, the fees established by this rule are necessary to update and modernize the USCIS infrastructure. The fee amounts comport with methodology required by OMB and meet both government and private sector standards. Also, while an equilibrium analysis has not been performed, the demand for immigration benefits obviously and greatly exceeds the availability of such benefits. Thus, these fees will have no impact on application volumes or any other public behavior. If USCIS can cover its expenses, delays in processing benefits and complaints about USCIS service will abate. That is a tangible and noticeable benefit. Thus, the benefits of this rule exceed its costs. OMB has reviewed this rule and concurs in this conclusion.

One commenter stated that USCIS did not consider the potential costs and benefits of pursuing possible alternative funding sources. This comment is similar to many comments suggesting that USCIS must pursue a Congressional appropriation that were addressed earlier. With regard to the analysis of the benefits or pursuing alternative funding sources, these comments are beyond the scope of the regulation. USCIS is limited to this rulemaking as an affirmative source of addressing shortfall in its revenues under section 286(m) of the INA, 8 U.S.C. 1356(m). If Congress provides funds for USCIS operations, the benefits of that action, especially as it relates to persons who pay fees, are self evident. An in-depth economic analysis is not required for USCIS to recognize that fact. With regard to ''benefits of pursuing possible alternative funding,'' USCIS sees no benefit and only costs to be realized from such a pursuit. Congress is well aware of the funding scheme described in this rule.

E. Executive Order 13132

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

F. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rulemaking does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

The changes to the fees will require minor amendments to applications and petitions to reflect the new fees. In addition, this rule anticipates (but is not dependent on) consolidating the Application for Travel Document and Application for EAD into the Application of Adjustment of Status since applicants will not be required to

file three separate application types in order to apply for adjustment of status, travel documents, and employment authorization. This change will reduce paperwork burdens on these applicants. The necessary revisions to the approved information collection burden for any new or revised applications will be submitted to OMB for approval before being issued for use by USCIS as required under the PRA and 5 CFR 1320.

Since the forms will be amended to reflect the new fees, USCIS will submit the appropriate requests for non-substantive change to OMB to reflect the additional costs.

List of Subjects in 8 CFR Part 103

Administrative practice and procedures; Authority delegations (government agencies); Freedom of Information; Privacy; Reporting and recordkeeping requirements; and Surety bonds.

■ Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

■ 2. Section 103.7 is amended by:
■ a. Removing the entries for ''Form I–506'' ''Form I–914'' and ''Motion'' in paragraph (b)(1);
■ b. Revising the entries ''For capturing biometric information'' and the entries for forms ''I–90, I–102, I–129, I–129F, I–130, I–131, I–140, I–191, I–192, I–193, I–212, I–290B, I–360, I–485, I–526, I–539, I–600, I–600A, I–601, I–612, I–687, I–690, I–694, I–695, I–698, I–751, I–765, I–817, I–824, I–829, N–300, N–336, N–400, N–470, N–565, N–600, and N–600K''in paragraph (b)(1); and by
■ c. Adding paragraph (c)(5).

The revisions and addition read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

For capturing biometric information (Biometric Fee). A service fee of $80 will be charged for any individual who is required to have biometric information captured in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), and whose residence is in the United States; provided that: *Extension for intercountry adoptions:* If applicable, no biometric service fee is charged when a written request for an extension of the approval period is received by USCIS prior to the expiration date of approval indicated on the Form I–171H if a Form I–600 has not yet been submitted in connection with an approved Form I–600A. This extension without fee is limited to one occasion. If the approval extension expires prior to submission of an associated Form I–600, then a complete application and fee must be submitted for a subsequent application.

* * * * *

Form I–90. For filing an application for a Permanent Resident Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name—$290.

* * * * *

Form I–102. For filing a petition for an application (Form I–102) for Arrival/Departure Record (Form I–94) or Crewman's Landing Permit (Form I–95), in lieu of one lost, mutilated, or destroyed—$320.

Form I–129. For filing a petition for a nonimmigrant worker—$320.

Form I–129F. For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act—$455; no fee for a K–3 spouse as designated in 8 CFR 214.1(a)(2) who is the beneficiary of an immigrant petition filed by a United States citizen on Form I–130.

Form I–130. For filing a petition to classify status of an alien relative for issuance of an immigrant visa under section 204(a) of the Act—$355.

Form I–131. For filing an application for travel document—$305.

Form I–140. For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act—$475.

Form I–191. For filing an application for discretionary relief under section 212(c) of the Act—$545.

Form I–192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government—$545.

Form I–193. For filing an application for waiver of passport and/or visa—$545.

Form I–212. For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at government expense in lieu of deportation—$545.

* * * * *

Form I–290B. For filing an appeal from any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction—$585 (the fee will be the same when an appeal is taken from the denial of a petition with one or multiple beneficiaries, provided that they are all covered by the same petition, and therefore, the same decision). *Motions.* For filing a motion to reopen or reconsider any DHS decision in any type of proceeding over which the Executive Office for Immigration Review does not have jurisdiction. This fee shall be charged whenever a motion is filed to reopen or reconsider a single decision, whether it applies to one or multiple beneficiaries—$585.

Form I–360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant—$375, except there is no fee for a petition seeking classification as: An Amerasian; a self-petitioning battered or abused spouse, parent, or child of a United States citizen or lawful permanent resident; or a Special Immigrant—Juvenile.

Form I–485. For filing an application for permanent resident status or creation of a record of lawful permanent residence—$930 for an applicant fourteen years of age or older; $600 for an applicant under the age of fourteen years when submitted concurrently for adjudication with the Form I–485 of a parent and the applicant is seeking to adjust status as a derivative of the parent, based on a relationship to the same individual who provides the basis for the parent's adjustment of status, or under the same legal authority as the parent; no fee for an applicant filing as a refugee under section 209(a) of the Act; provided that no additional fee will be charged for a request for travel document (advance parole) or employment authorization filed by an applicant who has paid the Form I–485 application fee, regardless of whether the Form I–131 or Form I–765 is required to be filed by such applicant to receive these benefits.

* * * * *

Form I–526. For filing a petition for an alien entrepreneur—$1,435.

Form I–539. For filing an application to extend or change nonimmigrant status—$300.

* * * * *

Form I–600. For filing a petition to classify an orphan as an immediate

relative for issuance of an immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$670.

Form I–600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$670. No fee is charged if Form I–600 has not yet been submitted in connection with an approved Form I–600A if a written request from the applicant for an extension of the approval has been received by USCIS prior to the expiration date of approval indicated on the Form I–171H. This extension will require an update of the applicant's home study and a determination from USCIS that proper care will be provided to an adopted orphan. A no fee extension is limited to one occasion. If the Form I–600A approval extension expires prior to submission of an associated Form I–600, then a complete application and fee must be submitted for any subsequent application.

Form I–601. For filing an application for waiver of ground of inadmissibility under section 212(h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both sections 212(h) and (i).)—$545.

Form I–612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—$545.

Form I–687. For filing an application for status as a temporary resident under section 245A(a) of the Act. A fee of $710 for each application is required at the time of filing with the Department of Homeland Security.

Form I–690. For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act as amended, in conjunction with the application under sections 210 or 245A of the Act, or a petition under section 210A of the Act—$185.

Form I–694. For appealing the denial of an applications under sections 210 or 245A of the Act, or a petition under section 210A of the Act—$545.

Form I–695. For filing an application for replacement of temporary resident card (Form I–688)—$130.

Form I–698. For filing an application for adjustment from temporary resident status to that of lawful permanent resident under section 245A(b)(1) of the Act. For applicants filing within thirty-one months from the date of adjustment to temporary resident status, a fee of $1,370 for each application is required at the time of filing with the Department of Homeland Security. For applicants filing after thirty-one months from the date of approval of temporary resident status, who file their applications on or after July 9, 1991, a fee of $1,410 is required. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.

* * * * *

Form I–751. For filing a petition to remove the conditions on residence, based on marriage—$465.

Form I–765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—$340.

* * * * *

Form I–817. For filing an application for voluntary departure under the Family Unity Program—$440.

* * * * *

Form I–824. For filing for action on an approved application or petition—$340.

Form I–829. For filing a petition by entrepreneur to remove conditions—$2,850.

* * * * *

Form N–300. For filing an application for declaration of intention—$235.

Form N–336. For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act—$605.

Form N–400. For filing an application for naturalization (other than such application filed on or after October 1, 2004, by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service, for which no fee is charged)—$595.

* * * * *

Form N–470. For filing an application for benefits under section 316(b) or 317 of the Act—$305.

Form N–565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act—$380.

Form N–600. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act—$460, for applications filed on behalf of a biological child and $420 for applications filed on behalf of an adopted child.

Form N–600K. For filing an application for citizenship and issuance of certificate under section 322 of the Act—$460, for an application filed on behalf of a biological child and $420 for an application filed on behalf of an adopted child.

* * * * *

(c) * * *

(5) No fee relating to any application, petition, appeal, motion, or request made to United States Citizenship and Immigration Services may be waived under paragraph (c)(1) of this section except for the following: Biometrics; Form I–90; Form I–485 (only in the case of an alien in lawful nonimmigrant status under sections 101(a)(15)(T) or (U) of the Act; an applicant under section 209(b) of the Act; an approved self-petitioning battered or abused spouse, parent, or child of a United States citizen or lawful permanent resident; or an alien to whom section 212(a)(4) of the Act does not apply with respect to adjustment of status); Form I–751; Form I–765; Form I–817; Form N–300; Form N–336; Form N–400; Form N–470; Form N–565; Form N–600; Form N–600K; and Form I–290B and motions filed with United States Citizenship and Immigration Services relating to the specified forms in this paragraph (c).

* * * * *

Dated: May 3, 2007.

Michael Chertoff,

Secretary.

[FR Doc. E7–10371 Filed 5–29–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–26857; Directorate Identifier 2006–NM–126–AD; Amendment 39–15069; AD 2007–11–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to all Airbus Model A310 series airplanes. That AD currently requires inspections of the lower door surrounding structure to detect cracks and corrosion; inspections to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the door structures; and repair if necessary. That AD also currently