Done in Washington, DC, this 14th day of May 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–12027 Filed 5–19–10; 7:25 am]

BILLING CODE 3410–34–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27687; Directorate Identifier 2000–NE–42–AD; Amendment 39–16144; AD 2009–26–09]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 Turbofan Engines; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting airworthiness directive (AD) 2009–26–09, which published in the **Federal Register**. That AD applies to General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines. The GE alert service bulletin (ASB) numbers CF34–AL S/B 72 A0212, CF34–AL S/B 72 A0234, and CF34–AL S/B 72 A0235 in the regulatory section are incorrect. This document corrects those ASB numbers. In all other respects, the original document remains the same.

DATES: This correction is May 20, 2010. The compliance date of AD 2009–26–09 remains February 11, 2010.

FOR FURTHER INFORMATION CONTACT: John Frost, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: john.frost@faa.gov; phone:* (781) 238–7756; *fax:* (781) 238–7199.

SUPPLEMENTARY INFORMATION: On January 7, 2010 (75 FR 910), we published a final rule AD, FR Doc, E9–30471, in the **Federal Register**. That AD applies to (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines. We need to make the following corrections:

§ 39.13 [Corrected]

1. On page 914, in the second column, in paragraph (k)(1)(i), in the fifth and eighth lines, "CF34–AL" is corrected to read "CF34–BJ".

2. On page 914, in the second column, in paragraph (k)(2)(iii), in the fifth line, "CF34–AL" is corrected to read "CF34–BJ".

3. On page 914, in the second column, in paragraph (l), in the seventh line, "CF34–AL" is corrected to read "CF34–BJ".

4. On page 914, in the second column, in paragraph (l)(1), in the second line, "CF34–AL" is corrected to read "CF34–BJ".

5. On page 914, in the third column, in paragraph (l)(1)(i), in the seventh and tenth lines, "CF34–AL" is corrected to read "CF34–BJ".

6. On page 914, in the third column, in paragraph (m)(1), in the second, ninth, and twelfth lines, "CF34–AL" is corrected to read "CF34–BJ".

Issued in Burlington, Massachusetts, on May 10, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–11642 Filed 5–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice: 7018]

RIN 1400–AC57

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Bureau of Consular Affairs, State.

ACTION: Interim final rule.

SUMMARY: Further to the Department's proposed rule to amend the Schedule of Fees for Consular Services (Schedule) for nonimmigrant visa and border crossing card application processing fees, this rule raises from $131 to $140 the fee charged for the processing of an application for most non-petition-based nonimmigrant visas (Machine-Readable Visas or MRVs) and adult Border Crossing Cards (BCCs). The rule also provides new tiers of the application fee for certain categories of petition-based nonimmigrant visas and treaty trader and investor visas (all of which are also MRVs). Finally, the rule increases the $13 BCC fee charged to Mexican citizen minors who apply in Mexico, and whose parent or guardian already has a BCC or is applying for one, by raising that fee to $14 by virtue of a congressionally mandated surcharge that went into effect in 2009. The Department of State is adjusting the fees to ensure that sufficient resources are available to meet the costs of providing consular services in light of an independent cost of service study's findings that the U.S. Government is not fully covering its costs for the processing of these visas under the current cost structure. Eighty-one comments were received during the period for public comment, and this rule also addresses a comment received about a prior change to the MRV fee implemented on January 1, 2008. This rule addresses comments received thus far, and reopens the comment period on these fees for an additional 60 days.

DATES: *Effective Date:* This interim final rule becomes effective June 4, 2010. *Comment date:* Written comments must be received on or before July 19, 2010.

ADDRESSES: Interested parties may contact the Department by any of the following methods:

- Persons with access to the Internet may view this notice and submit comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*
- *Mail (paper, disk, or CD–ROM):* U.S. Department of State, Office of the Executive Director, Bureau of Consular Affairs, U.S. Department of State, Suite H1001, 2401 E Street, NW., Washington, DC 20520.
- *E-mail: fees@state.gov.* You must include the RIN (1400–AC57) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Amber Baskette, Office of the Executive Director, Bureau of Consular Affairs, Department of State; phone: 202–663–3923, telefax: 202–663–2599; e-mail: *fees@state.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Department published a proposed rule in the **Federal Register**, 74 FR 66076, on December 14, 2009, proposing to amend 22 CFR 22.1. Specifically, the rule proposed changes to the Schedule of Fees for Consular Services for nonimmigrant visa and border crossing card application processing fees, and provided 60 days for comments from the public. In response to requests by the public for more information and a further opportunity to submit comments, the Department subsequently published a supplementary notice in the **Federal Register**, 75 FR 14111, on March 24, 2010 (Public Notice 6928). The supplementary notice provided a more detailed explanation of the Cost of Survey Study (CoSS), the activity-based costing model that the Department used to determine the proposed fees for consular services, and reopened the comment period for an additional 15 days. During this and the previous 60-

day comment period, 81 comments were received, either by e-mail or through the submission process at *http://www.regulations.gov.* The current notice reflects responses by the Department to the comments received in the 75 days during which the comment period for this proposed rule was open. While the Department will implement the proposed changes to the Schedule of Fees contained in this notice and begin collecting the new fees 15 days after publication of this rule, on that same date it will also post additional information regarding the CoSS model and fee-setting exercise on its Web site (travel.state.gov) and will accept further public comments for an additional 60 days. The Department will consider these further comments, and whether to make any changes to the rule in response to them, prior to publishing a final rule.

What Is the Authority for This Action?

As explained when the revised Schedule of Fees was published as a proposed rule, the Department of State derives the statutory authority to set the amount of fees for the consular services it provides, and to charge those fees, from the general user charges statute, 31 U.S.C. 9701. *See, e.g.,* 31 U.S.C. 9701(b)(2)(A) ("The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency * * * based on * * * the costs to the Government."). As implemented through Executive Order 10718 of June 27, 1957, 22 U.S.C. 4219 further authorizes the Department to establish fees to be charged for official services provided by U.S. embassies and consulates. When a service provided by the Department "provides special benefits to an identifiable recipient beyond those that accrue to the general public," guidance issued by the Office of Management and Budget (OMB) directs that charges for the good or service in question shall be "sufficient to recover the full cost to the Federal Government * * * of providing the service * * * or good * * * ." OMB Circular A–25, ¶ 6(a)(1), (a)(2)(a).

Other authorities allow the Department to charge fees for consular services, but not to determine the amount of such fees, as the amount is statutorily determined, such as the $13 fee, discussed below, for machine-readable BCCs for certain Mexican citizen minors. Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Public Law 105–277, 112 Stat. 2681–50, Div. A, Title IV, § 410(a), (reproduced at 8 U.S.C. 1351 note).

A number of other statutes address specific fees and surcharges related to nonimmigrant visas. A cost-based, nonimmigrant visa processing fee for MRVs and BCCs is authorized by section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Public Law 103–236, 108 Stat. 382, as amended, and such fees remain available to the Department until expended. *See, e.g.,* Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173, 116 Stat. 543; *see also* 8 U.S.C. 1351 note (reproducing amended law allowing for retention of MRV and BCC fees). Furthermore, section 239(a) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("Wilberforce Act") requires the Secretary of State to collect a $1 surcharge on all MRVs and BCCs in addition to the processing fee, including on BCCs issued to Mexican citizen minors qualifying for a statutorily mandated $13 processing fee; this surcharge must be deposited into the Treasury. *See* Public Law 110–457, 122 Stat. 5044, Title II, § 239 (reproduced at 8 U.S.C. 1351 note).

The Department last changed MRV and BCC fees in an interim final rule dated December 20, 2007 and effective January 1, 2008. 72 FR 72243. *See* Department of State Schedule for Fees and Funds, 22 CFR 22.1–22.5. This rule changed the MRV fee from $100 to $131.

Why Is the Department Raising the Nonimmigrant Visa Fees at This Time?

Consistent with OMB Circular A–25 guidelines, the Department contracted for an independent cost of service study (CoSS), which used an activity-based costing model from August 2007 through June 2009 to provide the basis for updating the Schedule. The results of that study are the foundation of the current changes to the Schedule.

The CoSS concluded that the average cost to the U.S. Government of accepting, processing, adjudicating, and issuing a non-petition-based MRV application, including an application for a BCC, is approximately $136.93 for Fiscal Year 2010. (The only exception is the non-petition-based E category visa, discussed below, for which costs are greater than $136.93.) The CoSS arrived at the $136.93 figure taking into account actual and projected costs of worldwide nonimmigrant visa operations, visa workload, and other related costs. Please note that in the proposed rule published December 14, 2009, the Department used a figure of $136.37, which was calculated using a weighted average of Fiscal Year 2009 and Fiscal Year 2010 costs; the $136.93 figure now included is based exclusively on Fiscal Year 2010 costs—as are all other costs presented in this Interim Final Rule. This cost also includes the unrecovered costs of processing BCCs for certain Mexican citizen minors. That processing fee is statutorily frozen at $13, even though such BCCs cost the Department the same amount to process as all other MRVs and BCCs—that is, significantly more than $13. (As discussed below, a statutorily imposed $1 surcharge brings the total fee for Mexican citizen minor BCCs to $14.) The Department's costs beyond $13 must, by statute, be recovered by charging more for all MRVs, as well as all BCCs not meeting the requirements for the reduced fee. *See* Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Public Law 105–277, Div. A, Title IV, § 410(a)(3) (reproduced at 8 U.S.C. 1351 note) (Department "shall set the amount of the fee [for processing MRVs and all other BCCs] at a level that will ensure the full recovery by the Department * * * of the costs of processing" all MRVs and BCCs, including reduced cost BCCs for qualifying Mexican citizen minors).

Subsequent to the completion of data-gathering for the CoSS, the Department's Bureau of Consular Affairs decided to consolidate visa operations support services through an initiative called the Global Support Strategy (GSS) in Fiscal Year 2010. GSS consolidates in one contract costs of services currently being paid by MRV and BCC applicants directly to various private vendors in addition to the application processing fee paid to the Department, including appointment setting, fee collection, offsite data collection services, and document delivery. The GSS contract was initiated due to concerns that total application fees for visa services varied from country to country because, although the Department charges the same application processing fee for the same category of visa across all countries, the private vendors providing the necessary ancillary services charged fees that were different from one another. The Department's intent is to charge a consistent fee worldwide to applicants for the same category of visa that is comprehensive of the services the Department performs to process the visa, including any support services performed by companies contracted by the Department. The Department awarded the GSS contract on February 26, 2010, but total costs are not yet known. According to Department estimates, the costs of GSS services performed in Fiscal Year 2010 will be at least $2 per application. Future costs

related to GSS will be significantly higher and will impact fee revenue for the Department. When this additional cost is factored in along with the costs of recovering losses from the Mexican citizen minor BCC, the estimated cost to the U.S. Government of accepting, processing, and adjudicating non-petition-based MRV (except E category) applications, and BCC applications for all Mexican citizens not qualifying for a reduced-fee minor BCC, becomes $138.93.

Moreover, section 239(a) of the Wilberforce Act requires the Department to collect a fee or surcharge of $1 ("Wilberforce surcharge") in addition to cost-based fees charged for MRVs and BCCs, to support anti-trafficking programs. *See* Wilberforce Act, Public Law 110–457,Title II, § 239.

Combining the $138.93 cost to the U.S. Government with the $1 Wilberforce surcharge, the Department has determined that the fee for non-petition-based MRV (except E category) and BCC applications, with the exception of certain Mexican citizen minors' BCCs statutorily set at $13, will be $140. (The BCC fee is being set at the same level as the MRV fee—$140—because its processing procedures, and attendant production costs, are almost identical to those of the MRV.) This $140 fee will allow the Government to recover the full cost of processing these visa applications during the anticipated period of the current Schedule, and to comply with its statutory obligation to collect from applicants the $1 Wilberforce surcharge. The Department rounded up to $140 to make it easier for U.S. embassies and consulates to convert to foreign currencies, which are most often used to pay the fee.

As noted above, for Mexican citizens under 15 years of age who apply for a BCC in Mexico, and have at least one parent or guardian who has a BCC or is also applying for one, the BCC fee is statutorily set at $13. *See* Consolidated and Emergency Supplemental Appropriations Act of 1999, Public Law 105–277, Div. A, Title IV, § 410(a)(1)(A) (reproduced at 8 U.S.C. 1351 note). Nevertheless, the $1 Wilberforce surcharge applies to this fee by the terms of law establishing the surcharge, which postdates Public Law 105–277, Division A, Title IV, § 410(a)(1)(A), and does not exempt it from its application. *See* Wilberforce Act, Public Law 110–457, Title II, § 239(a). Therefore, the Department must now charge $14 for this category of BCC.

As discussed in the supplementary notice of March 24, 2010, the Department has used detailed activity-based costing models in past years to set fees in Consular Schedules of Fees. However, in previous iterations of the CoSS, the Department was not able to review the activity-based costs of its services, including the production of MRVs and BCCs, with the same degree of accuracy that the most recent CoSS now allows.

The most recent CoSS found that the cost of accepting, adjudicating, and issuing MRV applications for the following categories of visas is appreciably higher than for other categories: E (treaty-trader or treaty-investor); H (temporary workers and trainees); K (fiancé(e)s and certain spouses of U.S. citizens); L (intracompany transferee); O (aliens with extraordinary ability); P (athletes, artists, and entertainers); Q (international cultural exchange visitors); and R (aliens in religious occupations). Each of these visa categories requires the Department to perform a number of additional tasks and processes beyond those that are necessary for producing a BCC or other MRV, including review of extensive documentation and a more in-depth interview of the applicant. Some of the specific additional tasks and processes required to process the K-category fiancé(e) visa, for example, are described below in the "Analysis of Comments" section.

The CoSS determined that for FY 2010, the average cost of processing applications for H, L, O, P, Q, and R visas is $148.16; the average cost of processing applications for K visas is $348.39; and the average cost of processing applications for E visas is $390.58. These totals do not include the Wilberforce surcharge or any funding for GSS. Rather than setting a single MRV fee applicable to all MRVs regardless of category as was done in the past, the Department has concluded that it will be more equitable to set the fee for each MRV category at a level commensurate with the average cost of producing that particular product. Accordingly, since applications for BCCs and non-petition-based MRVs (except E-category) require less review and have unit costs lower than E, H, K, L, O, P, Q, or R visa applications, the applicant should pay a lower fee. By the same token, those applying for an H, L, O, P, Q, or R visa should pay a lower fee than those applying for an E or K visa, as the latter two categories require an even more extensive review.

Therefore, this rule establishes the following fees for these categories corresponding to projected cost figures for the visa category as determined by the CoSS. These fees incorporate the $1 Wilberforce surcharge that must be added to all nonimmigrant MRVs, *see* Public Law 110–457, Title II, § 239(a):

—H, L, O, P, Q, and R: $150;
—E: $390; and
—K: $350.

The Department rounded these fees to the nearest $10 for the ease of converting to foreign currencies, which are most often used to pay the fee. The additional revenue resulting from this rounding will be used for GSS services.

Analysis of Comments

As noted, the proposed rule was published for comment on December 14, 2009. During the comment period, which initially closed February 12, 2010 and was subsequently extended until April 8, 2010, the Department received 81 comments. With the publication of this interim final version of the rule, the Department is reopening the comment period for an additional 60 days, and will consider any further comments received before publishing a final rule.

The majority of comments received—48 out of 81—criticized the increase in the application fee for K-category fiancé(e) visas. The Department of State is adjusting the fee for K-category fiancé(e) visas from $131 to $350 specifically because adjudicating a K visa requires a review of extensive documentation and a more in-depth interview of the applicant than other categories MRVs. As noted in the supplementary notice, for example, a K visa requires pre-processing of the case at the National Visa Center, where the petition is received from the Department of Homeland Security (DHS), packaged, and assigned to the appropriate embassy or consulate. K visa processing also requires intake and review of materials not required by some other categories of nonimmigrant visas, such as the I–134 affidavit of support and the DS–2054 medical examination report. *See* 75 FR 14111, 14113. The higher incidence of fraud in K visa applications also requires, in many cases, a more extensive fraud investigation than is necessary for some other types of visa. Indeed, Department of State processing of a K visa is almost identical to that required for a family-based immigrant visa, so it follows that the costs of K visa processing are similar to those for immigrant visas. (Spouses, children, and parents applying for immigrant visas to the United States currently pay the Department of State a $355 application processing fee as well as a $45 immigrant visa security surcharge, items 32 and 36 on the Schedule of Fees.)

Several authors commented on the overall price of a K visa, which includes fees paid by the U.S. citizen fiancé(e) to

DHS. It is important to note, however, that DHS fees are not received by and do not cover the costs of Department of State processing. While the Department of State is aware of the financial impact this fee increase will have on individuals seeking to bring their fiancé(e)s to the United States, the Department has concluded that it would be more equitable to those applying for other categories of MRVs, for which such extensive review is not necessary, to establish separate fees that more accurately reflect the cost of processing these visas, rather than set a single average fee for all MRV categories that is necessarily higher due to the inclusion of K visas in the calculation.

The Department received one comment that supported the fee increase for K visas, but argued that these fees should be based not on the cost of maintaining the current level of visa processing services, but rather should assess the quality of those services and seek to determine if there would be a public preference for higher fees if they resulted in higher quality expedited visa services. This proposal offers an alternative to the current fee structure, which is based on cost. *See, e.g.,* 31 U.S.C. 9701(b)(2); OMB Circular A–25, ¶ 6(a)(2). Furthermore, while the Department does not as a policy offer expedited visa service in exchange for a higher fee, it appreciates the recommendation and will examine it for future fee-setting exercises.

One commenter argued that Australian applicants for E–3 "treaty alien in a specialty occupation" visas, which are not petition-based, should be charged the same fee as applicants for H visas, which are petition-based, rather than the proposed higher E rate—that is, $150 instead of $390. However, because E–3 visas are not petition-based when issued overseas, they require the Department of State visa adjudicator to both determine whether the employment falls under the E–3 program (similar to the work DHS performs in adjudicating the petition), and assess the eligibility of the applicant; this process is more similar to other E visas than to H visas, for which DHS has already adjudicated a petition.

One comment requested that the Department allow exchange visitors in the United States on a J–1 visa to renew their visas by mail in order to save costs. Current policies and procedures do allow a consular officer to waive the physical appearance of an applicant in the J–1 visa class, but only if he or she meets a number of specific criteria. 9 Foreign Affairs Manual 41.102 N3.

The Department of State received seven comments endorsing the fee increases or asking that the fees be increased further. As described above, the Department has set the current proposed fees at cost, and it may not set its fees above cost. *See, e.g.,* 31 U.S.C. § 9701(b)(2)(A). The Department received one request for clarification as to whether these fee increases will eliminate all visa reciprocity fees. They will not eliminate such fees.

A number of other comments proposed alternatives to cost-based fees, or expressed other concerns over charging fees commensurate with the Department's cost to produce the visa in question. For instance, the Department received six comments arguing that increasing MRV fees would be disadvantageous to applicants in less wealthy nations, and one comment arguing that fees should be based on the ability of the applicant to pay, rather than the cost to the U.S. Government of providing the service. The Department received four comments questioning whether increasing these fees will result in higher visa fees charged to U.S. citizens by foreign governments, two of which referenced China in particular. Two additional comments argued against the fee increases in general, suggesting that these fee changes were based not on cost but only on a desire to get more money from applicants. The Department is sympathetic to those with less means to cover the costs of a visa application, and acknowledges that the higher fees may result in some countries reciprocally raising visa fees charged to U.S. applicants. Nevertheless, as noted above, the Department of State is required to recover the costs of visa processing through user fees, and the Department has accordingly set these fees at a level that will allow full cost recovery.

The Department received two comments regarding U.S. nationality law, which is not affected in any way by this rule.

The Department received five comments, including one submitted jointly by United Air Lines, Inc. and the U.S. Travel Association on January 29, 2010, that expressed concern that raising MRV fees would result in a decline in travel to the United States and harm the U.S. economy. While the Department appreciates the concerns expressed, it reiterates that it is required to set its visa processing user fees at an amount that allows full cost recovery, so that these services are not subsidized by U.S. taxpayers. *See, e.g.,* OMB Circular A–25, ¶ 6(a)(2). The Department also points out that 92 percent of MRV applicants will see an increase of less than ten dollars. In addition, demand for U.S. nonimmigrant visas did not decline as a result of the last MRV fee increase, which took effect January 1, 2008. In fact, workload in the final three quarters of Fiscal Year 2008 was greater than the same period in Fiscal Year 2007.

Three comments, including the previously referenced joint comment from United Air Lines and the U.S. Travel Association, one from the American Immigration Lawyers Association, and one from the Air Transport Association of America, Inc., requested that the Cost of Service Study be made publicly available. In response, the Department published the supplementary notice of March 24, 2010, *see* 75 FR 14111, and allowed an additional 15 days for public comment. The Department received one further comment from United Airlines and the U.S. Travel Association, on April 8, 2010, within the 15-day period. That comment made an additional request for actual cost and related data and specifically requested: Specific inputs used to determine cost for the U.S. passport book and passport card; that the Department confirm how the CoSS ensured that administrative support costs were correctly attributed to individual consular services and that these costs for positions not dedicated to fee-based consular activities were excluded from the CoSS; and that the Department confirm whether the CoSS accounted for the transition to the DS–160 electronic nonimmigrant visa application. The comment also requested that the Department suspend final publication of the rules, release additional data supporting its proposed fee increases, and hold a public meeting to address questions from the public.

Concerning the request for specific inputs used to determine the cost for the U.S. passport book and card, the Department will address that request in the separate interim final rule governing fees for those and other consular services, RIN 1400–AC58.

With regard to the question of administrative support costs, the International Cooperative Administrative Support Services (ICASS) system is the means by which the Department shares with other agencies the costs of shared administrative support at embassies and consulates overseas. The CoSS includes not all Department of State ICASS costs, but rather only the share of those costs equal to the share of consular "desks" at all embassies and consulates. The consular share of ICASS costs—which represent an "allocated cost", a concept described in more detail in the supplementary notice of March 24, 2010—was then assigned equally within

the model to all overseas services. Because the Department aims to use the most accurate and complete cost data in its cost calculations, beginning in Fiscal Year 2011 the Bureau of Consular Affairs will be considered its own separate entity for ICASS purposes, which the Department believes will result in a more precise accounting of ICASS costs than calculating consular ICASS costs based on the proportion of consular staff. We anticipate that this adjustment will actually increase the ICASS costs attributed to consular services.

With regard to the DS–160, United and the U.S. Travel Association suggest that the DS–160 will "presumably reduce the space, personnel, storage and other costs associated with previous paper based nonimmigrant visa applications." The most recent CoSS, upon which the proposed fees are based, were calculated using Fiscal Years 2006, 2007, and 2008 as "base years" and Fiscal Years 2009 and 2010 as "predictive years." The DS–160 was still only a pilot program through Fiscal Year 2009, and has not yet been rolled out worldwide. Once changes in costs are known, they will of course be incorporated into future Cost of Service Studies. Further, while the DS–160 presents great advantages in making more applicant data available electronically and allowing advance review of such data, it has not thus far resulted in any significant time savings for consular staff. Even storage space and labor required to box and ship applications will continue until all previous paper applications are retired from embassies and consulates, which we anticipate will be sometime in Fiscal Year 2011.

Based on review of all the comments, including those of United and the U.S. Travel Association, the Department has determined that it is unnecessary to suspend publication of this interim final rule pending release of additional data or a public meeting. As explained above, the Department has provided information regarding the basis for the MRV and BCC fee increases in an initial notice of proposed rulemaking on December 14, 2009, and provided additional qualitative information in response to the requests of United, the U.S. Travel Association, and others in a supplemental notice dated March 24, 2010. The Department provided the public a total of 75 days in which to make comments and pose questions to the Department about the proposed MRV and BCC fee changes. The Department determined that a supplemental written notice would provide more useful information and reach a broader public audience, than a public meeting or other action. The Department has also decided to post additional quantitative information regarding its CoSS model and fee-setting exercise on its Web site (travel.state.gov), which will be available on the date this rule is published. It will accept public comments for an additional 60 days and consider them in advance of publishing a final rule.

The American Immigration Lawyers Association argued that the Department did not provide evidence to support what it termed a "substantial" increase for petition-based employment visas, and stated that adjudication of these petition-based visa applications should require less time than for non-petition cases. The Department has provided cost data for those cases: The average cost of processing applications for H, L, O, P, Q, and R visas is $148.16 in Fiscal Year 2010, versus $136.93 for most non-petition-based visas. (Neither cost figure includes the Wilberforce surcharge or GSS costs.) As discussed above, the unit cost for petition-based cases includes the costs of activities that are not required for non-petition cases, such as receiving petition information from DHS, conducting reviews of government and commercial databases to confirm the existence of the petitioning business, and entering that data into the Petition Information Management Service (PIMS) database. The single exception to the greater expense of producing petition-based visas is the non-petition-based E-category visa which, for reasons described above, is even more costly to produce than the various categories of petition-based visa.

The Department received a comment from the Microsoft Corporation regarding the January 2008 MRV fee increase resulting from the interim final rule dated December 20, 2007. *See* 72 FR 72243. That comment argued that the Department should give the public an opportunity to comment on proposed MRV fee changes before they are put into effect, and that it should make available a more detailed analysis of overall cost. The Department has made this information available, and has given the public a total of 75 days to comment on it and the proposed fees, in the proposed rule of December 14, 2009, and the supplementary notice of March 24, 2010. *See* 74 FR 66076, 75 FR 14111. The comment also touched upon the cost of FBI fingerprint and name checks, suggesting that such checks may not be effective or necessary. The U.S. Government has determined that checking the fingerprints of visa applicants against the FBI's Integrated Automated Fingerprint Identification System database is a critical tool for identifying applicants with criminal ineligibilities. Further, FBI name checks are an important piece of the interagency clearance process for applicants subject to security advisory opinions. Microsoft also argued that the December 20, 2007 interim final rule did not provide assurance that the fee increases would lead to improvements in customer service. However, as noted repeatedly above, these fees must be based on actual cost. *See, e.g.,* OMB Circular A–25, ¶ 6(a)(2). While customer service is extremely important to the Department and it strives constantly to improve the quality of its service, changing process or altering customer service standards do not figure strictly into the calculus of setting user fees.

Finally, in their joint comment of January 29, 2010, United Airlines and the U.S. Travel Association protested the incorporation of a $2 startup cost per MRV or BCC application for GSS, since as of the date of the proposed rule on MRV and BCC fees, final costs of GSS were not yet known and the contract had not yet been awarded, and thus the Department had not yet incurred any GSS startup costs. The Department awarded the GSS contract on February 26, 2010, with a 10-year ceiling of $2.8 billion. The costs of the three-to-five task orders the Department will award under this contract in Fiscal Year 2010 will be at least $2 per application.

Regulatory Findings

Administrative Procedure Act

The Department is issuing this interim final rule, with an effective date 15 days from the date of publication. The Administrative Procedure Act permits a final rule to become effective fewer than 30 days after publication if the issuing agency finds good cause. 5 U.S.C. § 553(d)(3). The Department finds that good cause exists for an early effective date in this instance for the following reasons.

As stated in the supplementary information above, the Department's mandate is to align as closely as possible its user fees for consular services with the actual, measured costs of those services. This enables better cost recovery and ensures that U.S. taxpayers do not subsidize consular services. 31 U.S.C. 9701; OMB Circular A–25. *See also* GAO–08–386SP, *Federal User Fees: A Design Guide.* The CoSS, which supports the fees set by this rule, used data from past years, as well as predictive data for Fiscal Years 2010

and 2011, to determine the amount of the fees set by this rule.

The fees currently charged by the Department cover less than 94 percent of the underlying services' true cost. On a monthly basis, taxpayers are paying $5.4 million in unmet costs for consular services that should be borne by those who actually benefit from those services. In the current economic climate, this shortfall is unusually grave, exacerbating budgetary pressures and threatening other critical Department priorities. It is thus in the public's interest to make the appropriated funds currently used to fill this gap available as soon as possible.

For these reasons, and because the public's level of preparation for this fee increase is unlikely to be meaningfully improved by 15 additional days of advance warning, the Department finds that good cause exists for making this rule effective 15 days after its publication as an interim final rule.

Regulatory Flexibility Act

The Department, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6). This rule raises the application processing fee for nonimmigrant visas. Although the issuance of some of these visas is contingent upon approval by DHS of a petition filed by a U.S. company with DHS, and these companies pay a fee to DHS to cover the processing of the petition, the visa itself is sought and paid for by an individual foreign national overseas who seeks to come to the United States for a temporary stay. The amount of the petition fees that are paid by small entities to DHS is not controlled by the amount of the visa fees paid by individuals to the Department of State. While small entities may be required to cover or reimburse employees for application fees, the exact number of such entities that does so is unknown. Given that the increase in petition fees accounts for only 7 percent of the total percentage of visa fee increases, the modest 15 percent increase in the application fee for employment-based nonimmigrant visas is not likely to have a significant economic impact on the small entities that choose to reimburse the applicant for the visa fee.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. Chapter 25.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Executive Order 12866

OMB considers this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), *Regulatory Planning and Review,* September. 30, 1993. Accordingly, this rule was submitted to OMB for review. This rule is necessary in light of the Department of State's CoSS finding that the cost of processing nonimmigrant visas has increased since the fee was last set in 2007. The Department is setting the nonimmigrant visa fees in accordance with 31 U.S.C. 9701 and other applicable legal authority, as described in detail above. *See, e.g.,* 31 U.S.C. 9701(b)(2)(A) ("The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency * * * based on * * * the costs to the Government."). This regulation sets the fees for nonimmigrant visas at the amount required to recover the costs associated with providing this service to foreign nationals.

Executive Orders 12372 and 13132

This regulation 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, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities do not apply to this regulation.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of section 5 of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new or modify any existing reporting or recordkeeping requirements.

List of Subjects in 22 CFR Part 22

Consular services, fees, passports and visas.

■ Accordingly, for the reasons stated in the preamble, 22 CFR part 22 is amended as follows:

PART 22—[AMENDED]

■ 1. The authority citation for part 22 is revised to read as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1183a note, 1351, 1351 note, 1714, 1714 note; 10 U.S.C. 2602(c); 11 U.S.C. 1157 note; 22 U.S.C. 214, 214 note, 1475e, 2504(a), 4201, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; Exec. Order 10,718, 22 FR 4632 (1957); Exec. Order 11,295, 31 FR 10603 (1966).

■ 2. Revise § 22.1 Item 21 to read as follows:

§ 22.1 Schedule of fees.

* * * * *

Item No.	Fee
SCHEDULE OF FEES FOR CONSULAR SERVICES	
* * * * * * *	
Nonimmigrant Visa Services	
21. Nonimmigrant visa and border crossing card application processing fees (per person):	
(a) Non-petition-based nonimmigrant visa (except E category)	$140
(b) H, L, O, P, Q and R category nonimmigrant visa	$150
(c) E category nonimmigrant visa	$390
(d) K category nonimmigrant visa	$350
(e) Border crossing card—age 15 and over (valid 10 years)	$140
(f) Border crossing card—under age 15; for Mexican citizens if parent or guardian has or is applying for a border crossing card (valid 10 years or until the applicant reaches age 15, whichever is sooner)	$14
* * * * * * *	

Dated: May 14, 2010.

Patrick Kennedy,

Under Secretary of State for Management, Department of State.

[FR Doc. 2010–12125 Filed 5–19–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0277]

RIN 1625-AA00

Safety Zone; San Clemente 3 NM Safety Zone, San Clemente Island, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around San Clemente Island in support of potentially hazardous military training and testing exercises. The existing zones do not sufficiently overlap potential danger zones and testing areas used by the Navy during live-fire and ocean research operations resulting in a delay or cancellation of these operations. The new safety zone will protect the public from hazardous, live-fire and testing operations and ensure operations proceed as scheduled.

DATES: This rule is effective June 21, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0277 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0277 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail *Corey.R.McDonald@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 7, 2009, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; San Clemente Island, CA in the **Federal Register** (74 FR 39584). We received one comment on the proposed rule.

Basis and Purpose

As part of the Southern California Range Complex, San Clemente Island (SCI) and the surrounding littoral waters support the training requirements for the U.S. Pacific Fleet, Fleet Marine Forces Pacific, Naval Special Warfare Command, Naval Expeditionary Combat Command and other military training and research units. In 1934, Executive Order 6897 transferred full ownership of SCI from the Department of Commerce to the Department of the Navy for "naval purposes". The San Clemente Island Range Complex (SCIRC) has the capability to support training in all warfare areas including Undersea Warfare, Surface Warfare, Mine Warfare, Strike Warfare, Air Warfare, Amphibious Warfare, Command and Control, and Naval Special Warfare. It is the only location in the United States that supports Naval Special Warfare full-mission training profiles. The Shore Bombardment Area (SHOBA) is the only range in the United States where expeditionary fire support exercises utilizing ship to shore naval gunfire can be conducted. SCI's unique coastal topography, proximity to the major Fleet and Marine concentration areas in San Diego County, supporting infrastructure, and exclusive Navy ownership make the island and surrounding waters vitally important for fleet training, weapon and electronic systems testing, and research and development activities.

Background

In the 2009 NPRM, the Coast Guard proposed to establish a permanent safety zone in the area of San Clemente Island in order to conduct training essential to successful accomplishments of U.S. Navy missions relating to military operations and national security. We proposed to establish a safety zone consisting of 8 segments, which were described in the NPRM as Sections (A) through (G) and Wilson Cove. We believe that a safety zone is necessary to protect the public from hazardous, live-fire and testing operations and ensure operations proceed as scheduled.

Discussion of Comments and Changes

The Coast Guard received one comment in response to the NPRM. This was a joint statement from three commercial fishing organizations: the Sea Urchin Commission (CSUC), the California Lobster and Trap Fishermen's Association (CLTFA), and the Point Conception Ground Fishermen's Association (PCGA), and is available in the docket. The commenters joined together to express their support for the Navy training missions associated with San Clemente Island, including the use of safety zones and permanent closures at Special Warfare Training Area 1