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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services



8 CFR Part 103

CIS No. 2393-06

Docket No. USCIS-2006-0044

RIN 1615-AB53

Adjustment of the Immigration and Naturalization

Benefit Application and Petition Fee Schedule

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

ACTION: Proposed rule.

SUMMARY: This rule proposes to adjust the immigration and naturalization benefit application and petition fees of the Immigration Examinations Fee Account. Fees collected from persons requesting these benefits are deposited into the Immigration Examinations Fee Account. These fees are used to fund the full cost of processing immigration and naturalization benefit applications and petitions, biometric services, and associated support services. In addition, these fees must recover the cost of providing similar services to asylum and refugee applicants and certain other immigrants at no charge.

The fees that fund the Immigration Examinations Fee Account were last updated on October 26, 2005, solely to reflect an increase in costs due to inflation. The last comprehensive fee review was conducted in fiscal year 1998. U.S. Citizenship and Immigration Services conducted a new comprehensive review of the resources and

activities funded by the Immigration Examinations Fee Account and determined that the current fees do not reflect current processes or recover the full costs of services that should be provided. Therefore, this rule proposes to increase the immigration and naturalization benefit application and petition fee schedule by a weighted average of \$174, from an average fee of \$264 to \$438. These increases will ensure sufficient funding to meet immediate national security, customer service, and standard processing time goals, and to sustain and improve service delivery. Furthermore, the rule proposes to merge the fees for certain applications so applicants will pay a single fee rather than paying several fees for related services. The rule would permit U. S. Citizenship and Immigration Services to devote certain revenues to broader investments in a new technology and business process platform to improve substantially its capabilities and service levels.

This rule also proposes generally to allocate costs for surcharges and routine processing activities evenly across all form types for which fees are charged, and to vary fees in proportion to the amount of adjudication decision-making and interview time typically required. This rule proposes to eliminate fees for interim benefits, duplicate filings, and premium processing by consolidating and reallocating costs among the various fees. The rule also proposes to exempt applicants for T nonimmigrant status, or for status under the Violence Against Women Act from paying certain fees, and modify substantially the availability of individual fee waivers by limiting them to certain specified form types.

DATES: Written comments must be submitted on or before April 2, 2007.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS-2006-0044 by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: OSComments@dhs.gov. Include the docket number in the subject line of the message.
- Facsimile: Federal eRulemaking portal at 866-466-5370.
- Mail: Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW, 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS-2006-0044 on your correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.
- Hand Delivery/Courier: Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW, 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 272-8377.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Chief, Office of Budget, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW, Suite 4052, Washington, DC 20529, telephone (202) 272-1930.

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- PART 103--POWERS AND DUTIES; AVAILABILITY OF RECORDS

List of Acronyms and Abbreviations

- ABC -- Activity-Based Costing.
- AAO -- Administrative Appeals Office.
- CBP -- Bureau of Customs and Border Protection.
- CFO Act -- Chief Financial Officers Act of 1990.
- CFO -- Chief Financial Officer.
- COOP -- Continuity of Operations.
- CHEP -- Cuban Haitian Entrant Program.
- DHS -- Department of Homeland Security.
- FASAB -- Federal Accounting Standards Advisory Board.
- FBI -- Federal Bureau of Investigation.
- FY -- Fiscal Year.
- FDNS -- Fraud Detection and National Security.
- FOIA -- Freedom of Information Act.
- GAO -- Government Accountability Office.
- GPRA -- Government Performance Results Act of 1993.
- IEFA -- Immigration Examination Fee Account.
- ICE -- Bureau of Immigration and Customs Enforcement.
- IIO -- Immigration Information Officers.
- INA -- Immigration and Nationality Act.
- IT -- Information Technology.

IBIS -- Interagency Border Inspection System.
LAP -- Lease Acquisition Program.
NARA -- National Archives and Records Administration.
NRP -- National Recruitment Program.
NSRV -- National Security and Records Verification.
NACARA -- Nicaraguan Adjustment and Central American Relief Act.
ORS -- Office of Records Services.
OMB -- Office of Management and Budget.
PMB -- Performance Management Branch.
PA -- Privacy Act.
TPS -- Temporary Protected Status.
UMRA -- Unfunded Mandates Reform Act of 1995.
USPS -- United States Postal Service.
USCIS -- United States Citizenship and Immigration Services.
VAWA -- Violence Against Women Act.

I. Public Participation

USCIS invites interested persons to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. Comments that will provide the most assistance to the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS-2006-0044 for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services,

Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor,
Washington, DC 20529.

The docket includes additional documents that support the analysis contained in this rule to determine the specific fees that are proposed. These documents include:

- FY 2008 / 2009 Fee Review Supporting Documentation; and
- Small Entity Analysis for Adjustment of the Immigration Benefit Application/Petition Fee Schedule.

These documents may be reviewed on the electronic docket. The budget methodology software used in computing the immigration benefit application/petition and biometric fees is a commercial product licensed to USCIS which may be accessed on-site by appointment by calling (202) 272-1930.

II. Legal Authority and Requirements.

The Immigration and Nationality Act of 1952, as amended, (INA) 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 costs of providing services without charge must be funded by filing fees from other application and petition types. USCIS refers to the additional charges used to pay for these services as “surcharges.” The INA also states that the fees may recover administrative costs as well. Id. The fee revenue collected under section 286(m) of the INA 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 proposed rule reflects recommendations made by the DHS CFO and USCIS CFO.

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). 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 cost accounting concepts and standards recommended by the Federal Accounting Standards Advisory Board (FASAB). The FASAB 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.

This rule proposes enhanced service levels, more complete funding of existing services, and specific cost allocation methods.

III. The Immigration Examinations Fee Account

A. General Background.

In 1988, Congress established the Immigration Examination Fee Account (IEFA). Pub. L. 100-459, sec. 209, 102 Stat. 2186 (Oct. 1, 1988); enacting, after correction, INA sections 286(m), (n), 8 U.S.C. 1356(m), (n). Since 1989, fees deposited into the IEFA fund the provision of immigration and naturalization benefits, and other benefits as directed by Congress. In subsequent legislation, Congress directed that the IEFA fund the cost of asylum processing and other services provided to immigrants at no charge. Pub. L. 101-515, sec. 210(d)(1), (2), 104 Stat. 2101, 2121 (Nov. 5, 1990). Consequently, the immigration benefit application fees were increased to recover these additional costs. E.g., 59 FR 30520 (June 14, 1994).

USCIS, with limited exceptions, prepares all fingerprint cards (and electronic fingerprint capture) used to conduct Federal Bureau of Investigation (FBI) criminal background checks on individuals applying for certain benefits under the INA. Pub. L. 105-119, tit. I, 111 Stat. 2440, 2448 (Nov. 26, 1997). This legislation also authorizes USCIS to charge a fee for this fingerprinting service (which is now referred to as a biometric service fee). *Id.* The fees are deposited into the IEFA and are available for expenditure by USCIS to provide services. INA section 286(n), 8 U.S.C. 1356(n).

Table 1 lists, by form number, the types of immigration benefit applications and petitions for which fees are collected.¹

| Table 1 – Types of Immigration Benefit Applications and Petitions | |
|--|--|
| Form No. | Description |
| I-90 | Application to Replace Permanent Resident Card |
| I-102 | Application for Replacement/Initial Nonimmigrant Arrival--Departure Document |
| I-129 | Petition for a Nonimmigrant Worker |
| I-129F | Petition for Alien Fiancé(e) |
| I-130 | Petition for Alien Relative |
| I-131 | Application for Travel Document |
| I-140 | Immigrant Petition for Alien Worker |
| I-191 | Application for Advance Permission to Return to Unrelinquished Domicile |
| I-192 | Application for Advance Permission to Enter as Nonimmigrant |
| I-193 | Application for Waiver of Passport and/or Visa |
| I-212 | Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal |
| I-290B / Motions | Appeal for any decision other than BIA; Motion to reopen or reconsider decision other than BIA |
| I-360 | Petition for Amerasian, Widow(er), or Special Immigrant |
| I-485 | Application to Register Permanent Residence or Adjust Status |
| I-526 | Immigrant Petition by Alien Entrepreneur |

1. The Form I-905, Application for Authorization to Issue Certification for Health Care Workers, is represented in Table 1 and in subsequent tables for the purpose of identifying total IEFA volume, but is not subject to the proposed fee adjustments in this rule since the form type and associated fee has only recently been established.

| | |
|------------|--|
| I-539 | Application to Extend/Change Nonimmigrant Status |
| I-600/600A | Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of Orphan Petition |
| I-601 | Application for Waiver on Grounds of Excludability |
| I-612 | Application for Waiver of the Foreign Residence Requirement |
| I-687 | For Filing Application for Status as a Temporary Resident |
| I-690 | Application for Waiver of Excludability |
| I-694 | Notice of Appeal of Decision |
| I-695 | Application for Replacement Employment Authorization or Temporary Residence Card |
| I-698 | Application to Adjust Status from Temporary to Permanent Resident |
| I-751 | Petition to Remove the Conditions on Residence |
| I-765 | Application for Employment Authorization |
| I-817 | Application for Family Unity Benefits |
| I-821 | Application for Temporary Protected Status |
| I-824 | Application for Action on an Approved Application or Petition |
| I-829 | Petition by Entrepreneur to Remove Conditions |
| I-881 | Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Pub.L. 105-100 (NACARA)) |
| I-905 | Application for Authorization to Issue Certification for Health Care Workers |
| I-914 | Application for T Nonimmigrant Status |
| N-300 | Application to File Declaration of Intention |
| N-336 | Request for Hearing on a Decision in Naturalization Procedures |
| N-400 | Application for Naturalization |
| N-470 | Application to Preserve Residence for Naturalization Purposes |
| N-565 | Application for Replacement Naturalization/Citizenship Document |
| N-600/600K | Application for Certification of Citizenship/ Application for Citizenship and Issuance of Certificate under Section 322 |
| Biometrics | Capturing and Processing Biometric Information |

Several IEFA fees are set by statute. Section 244(c)(1)(B) of the INA, 8 U.S.C. 1254a(c)(1)(B), limits the filing fee for Temporary Protected Status (Form I-821) to \$50. Section 286(u) of the INA, 8 U.S.C. 1356(u), created a Premium Processing Service for certain kinds of employment-based applications, and set the premium fee at \$1,000. Premium Processing Service guarantees that USCIS will process a petition or application within fifteen calendar days of receiving a Form I-907, Request for Premium Processing Service. 8 CFR 103.2(f). The use of premium processing fees is limited to

providing premium processing services themselves and to making infrastructure improvements in adjudications and customer service processes. INA section 286(u), 8 U.S.C. 1356(u). These statutory fees relating to immigration services are not affected by this proposed rule.

As is the case with the current fee structure, waiver applications (Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile; Form I-192, Application for Advance Permission to Enter as a Non-Immigrant; Form I-193, Application for Waiver of Passport and/or Visa; Form I-212, Application to Reapply for Admission into the U.S. After Deportation; Form I-601, Application for Waiver on Grounds of Excludability; and Form I-612, Application for Waiver of the Foreign Residence Requirement) will be combined and subsequently referenced as “Waiver Applications.” One universal fee applies to these application and form types.

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 INA, 8 U.S.C. 1356(s), and the Fraud Prevention and Detection Account under section 286(v) of the INA, 8 U.S.C. 1356(v), which this proposed rule does not affect.

B. Fee Schedule History.

The current immigration benefit application and petition fees are based on a review implemented in FY 1998, adjusted for cost of living increases and other factors. USCIS periodically adjusts the fees for inflation with the last adjustment for inflation effective October 25, 2005. 70 FR 56182 (Sept. 26, 2005).

USCIS began charging a fee for fingerprinting services in 1998. 63 FR 12979 (Mar. 17, 1998). USCIS later adjusted the fee to recover the full costs of providing

fingerprinting services. 66 FR 65811 (Dec. 21, 2001). USCIS last adjusted the biometric fee on April 30, 2004 to \$70. 69 FR 20528 (April 15, 2004).

Table 2 illustrates the history of the adjustments to the IEFA fee schedule and the biometric fee schedule.

Table 2 – History of Immigration Benefit Application and Petition Fees

| Form Type | Prior to IEFA | | FY 1989 | FY 1991 | FY 1994 | FY 1998 | FY 2002 | FY 2004 | Current Fees |
|---------------------|---------------|---------|---------|---------|---------|---------|---------|---------|--------------|
| | FY 1985 | FY 1986 | | | | | | | |
| I-90 | \$15 | | \$35 | \$70 | \$75 | \$110 | \$130 | \$185 | \$190 |
| I-102 | \$15 | | \$35 | \$50 | \$65 | \$85 | \$100 | \$155 | \$160 |
| I-129 | \$35 | | \$50 | \$70 | \$75 | \$110 | \$130 | \$185 | \$190 |
| I-129F | \$35 | | \$40 | \$75 | \$75 | \$95 | \$110 | \$165 | \$170 |
| I-130 | \$35 | | \$40 | \$75 | \$80 | \$110 | \$130 | \$185 | \$190 |
| I-131 | \$15 | | \$45 | \$65 | \$70 | \$95 | \$110 | \$165 | \$170 |
| I-140 | \$50 | \$35 | \$50 | \$70 | \$75 | \$115 | \$135 | \$190 | \$195 |
| Waiver Applications | \$35 | | \$45 | \$90 | \$95 | \$170 | \$195 | \$250 | \$265 |
| I-290B/Motions | \$50 | | \$110 | | | | | | \$385 |
| I-360 | | | | | | \$110 | \$130 | \$185 | \$190 |
| I-485 | \$50 | | \$60 | \$120 | \$130 | \$220 | \$255 | \$315 | \$325 |
| I-526 | | | | \$140 | \$155 | \$350 | \$400 | \$465 | \$480 |
| I-539 | \$15 | | \$35 | \$70 | \$75 | \$120 | \$140 | \$195 | \$200 |
| I-600/600A | \$50 | | \$75 | \$140 | \$155 | \$405 | \$460 | \$525 | \$545 |
| I-687 | | | | \$185 | \$185 | \$185 | \$185 | \$240 | \$255 |
| I-690 | | | | | | | \$35 | \$90 | \$95 |
| I-694 | \$50 | | | | | | \$50 | \$105 | \$110 |
| I-695 | | | | \$15 | \$15 | \$15 | \$15 | \$65 | \$65 |
| I-698 | \$120 | | | | | | \$120 | \$175 | \$180 |
| I-751 | | | \$35 | \$65 | \$80 | \$125 | \$145 | \$200 | \$205 |
| I-765 | | | \$35 | \$60 | \$70 | \$100 | \$120 | \$175 | \$180 |
| I-817 | | | | \$75 | \$80 | \$120 | \$140 | \$195 | \$200 |

| | | | | | | | | | |
|------------|------|------|------|-------|-------|-------|-------|-------|-------|
| I-821 | \$50 | | | | | | \$50 | | \$50 |
| I-824 | | | | \$30 | \$30 | \$120 | \$140 | \$195 | \$200 |
| I-829 | | | | | \$90 | \$345 | \$395 | \$455 | \$475 |
| I-881 | | | | | | | \$215 | \$275 | \$285 |
| I-905 | | | | | | | | | \$230 |
| I-914 | | | | | | | \$200 | \$255 | \$270 |
| N-300 | \$15 | \$50 | | | | \$50 | \$60 | \$115 | \$120 |
| N-336 | | | | | | \$170 | \$195 | \$250 | \$265 |
| N-400 | \$35 | \$60 | \$90 | \$95 | \$225 | \$260 | \$320 | \$330 | |
| N-470 | \$15 | \$55 | | | \$80 | \$95 | \$150 | \$155 | |
| N-565 | \$15 | \$50 | \$50 | \$65 | \$135 | \$155 | \$210 | \$220 | |
| N-600/600K | \$35 | \$60 | \$90 | \$100 | \$160 | \$185 | \$240 | \$255 | |
| Biometrics | | | | | | \$25 | \$50 | \$70 | \$70 |

C. Urgency and Rationale for New Fee Schedule.

In developing this proposed rule, USCIS reviewed its recent cost experiences, current service levels, goals for additional services, and various factors for allocating costs to particular form types. This rule proposes a fee structure that will allow USCIS to close current funding gaps, accomplish performance goals, eliminate problematic incentives, expedite processing, and fairly allocate costs.

For FY 2008 and FY 2009, USCIS projects a continuing funding gap between revenue and expenses in the IEFA. Over the last several years, USCIS has come to rely on a combination of fee funding from temporary programs (e.g., Temporary Protected Status, penalty fees under INA section 245(i), 8 U.S.C. 1255(i)) and appropriated subsidies for temporary programs (e.g., backlog elimination) to close this funding gap. With the termination of these temporary funding sources, fee adjustments are needed to prevent significant service reductions, backlog increases, and reduced investment in infrastructure. While the workload associated with these temporary programs will terminate along with the termination of its funding sources, significant fixed costs that were previously recovered through the fees still remain. This includes costs that do not directly vary with this temporary workload, including USCIS Headquarters office costs and asylum and refugee operations.

USCIS has received appropriated dollars for the past several years to improve processing times as part of a five year effort to reduce a backlog of immigration applications. In FY 2006, Congress appropriated \$115 million for USCIS, subject to later rescissions. Department of Homeland Security Appropriations Act, 2006, 109-90, 119 Stat. 2064, 2080 (Oct. 18, 2005). In FY 2007, Congress appropriated \$181,990,000 for

USCIS. Department of Homeland Security Appropriations Act, 2007, 110 Stat. 1355, 1374 (Oct. 4, 2006). During the time since the last comprehensive fee adjustment, USCIS has increased emphasis on national security and public screening of applicants, and on quality controls. At the same time, certain immigration benefit determinations have become more complex as legislation has created new programs and eligibilities. This resulted in a significant funding gap between revenues and costs that led to decreases in performance and services. Because USCIS did not conduct a comprehensive fee review earlier, it has been limited to the revenue that the current fee structure provides. This funding gap has resulted in inadequate facilities to provide services to customers, inadequate investments in infrastructure to improve service, and, most notably, inadequate case processing capacity to keep up with the volume of applications and petitions filed, creating a very significant backlog that would still exist today if not for the temporary appropriated dollars received from FY 2002 to FY 2006. However, significant backlogs will recur unless USCIS restructures its fees to provide adequate case processing capacity.

Spending reductions to meet the funding gap would result in a reversal of the considerable progress USCIS has made over the last several years to reduce the backlog of immigration benefit applications and petitions. Such a reversal would likely include increases in customer complaints, requests to expedite certain applications and petitions, litigation seeking mandamus against USCIS, and other negative consequences that consume more resources in an ad hoc and reactive manner. This fee rule is essential to bringing fees into alignment with desired levels of service.

USCIS' security-related activities and objectives are its highest priority in allocating resources, and the effects of rising immigration benefit application backlogs could undermine these national security and public safety objectives. USCIS therefore places an emphasis on timely background checks to ensure that the United States is not placed at risk by failing to identify individuals who may be national security or public safety risks at the earliest possible time in the adjudications process. Backlogs allow some applicants and petitioners who are already in the United States to remain in the United States without authorization, and delay identification of potential risks and actions to initiate removal proceedings as appropriate.

Based on the current weighted average application/petition fee of \$264 and a projected application/petition fee-paying volume of 4.742 million, immigration benefit application/petition fees will generate \$1.250 billion in annual revenue for the FY 2008 and FY 2009 biennial period. For the same period, USCIS estimates the annual cost of processing those immigration and naturalization benefit applications and petitions, including additional resource requirements, will be \$2.329 billion. The resulting annual funding gap between revenue and expenses is \$1.079 billion, of which \$524.3 million is additional resource requirements (see section IV.E for a detailed discussion of these requirements).

1. Delay in Performing a Comprehensive Fee Review.

The fee changes proposed in this rule reflect a more robust capability to calculate, predict, and analyze costs and revenues. USCIS has not performed a comprehensive cost analysis of the IEFA since the FY 1998 Fee Review. The fact that a comprehensive fee review has been delayed for such a long period of time is a major reason why the current

fee schedule is inadequate to recover the full costs of USCIS operations. This is a primary cause for the creation and growth of the immigration benefit application and petition backlog.

A Government Accountability Office (GAO) Report in January 2004 concluded that the “fees were not sufficient to fully fund [US]CIS’ 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) at 2. GAO stated that “[i]n part, this has resulted because (1) the current fee schedule is based on an outdated fee study that did not include all costs of [US]CIS’ operations and (2) costs have increased since that study was completed due to an additional processing requirement and other actions.” Id. GAO recommended that USCIS “perform a comprehensive fee study to determine the costs to process new immigration applications.” Id. at 3. The fee review that is the basis for the proposed fees in this rule addresses that recommendation.

As noted by the GAO, USCIS currently incurs several significant costs that are not recovered in the current fee structure. These include a 2002 estimate of \$101 million in costs incurred that any previous fee increases had not adequately addressed: Integrated Card Production System; National Customer Service Center; National Records Center; additional Adjudication Officers; and expansion of Service Center operations. Id. at 31. The GAO also identified the need to recover the costs of “new departmental requirements,” especially expanding the number of Interagency Border Inspection System (IBIS) checks conducted as a result of the September 11, 2001 terrorist attacks. Id. at 33. A portion of these costs were recovered in the April 2004 fee increase. GAO also suggested that USCIS identify and recover “administrative and overhead” costs

associated with the creation of USCIS as a separate component within DHS in March 2003. Id. at 42-44.

Since fee revenues have not been sufficient to recover full operating costs, USCIS has relied on funding from temporary programs, curtailed spending in critical areas, used premium processing funds for base infrastructure rather than for major business infrastructure improvements to the adjudication and customer-service processes, and used fees from pending applications to fund applications being processed. This insufficiency delayed investment in a new technology and business process platform to radically improve USCIS' capabilities and service levels as originally envisioned by Congress when it first established the premium processing program.

2. Presidential Mandate to Eliminate the Backlog.

In FY 2002, the President called for an average processing time standard of six months for the adjudication of most immigration benefit applications and petitions to eliminate the backlog of pending applications and petitions at USCIS within five years (end of FY 2006). USCIS received a total of \$460 million in appropriated funds for this effort. At the end of FY 2006, the backlog was significantly reduced from a high of 3.84 million cases in January 2004 to 9,482 cases. Additionally, a six-month processing time standard was achieved for fifteen out of sixteen Backlog Elimination Plan applications. In some instances, such as naturalization applications, USCIS decreased processing times to below the six-month goal. Table 3 sets out the processing times (in terms of months) for each application and petition as of September 30, 2006. This fee rule would provide the necessary resources to maintain these processing time standards and fund further

improvements to USCIS business operations to continue to reduce processing times while ensuring the appropriate level of security.

| Table 3 – Application and Petition Processing Times | |
|--|--|
| Form No. | Processing Time (in months) |
| I-90 | 4.38 |
| I-102 | 2.91 |
| I-129 | 2.03 |
| I-129F | 2.90 |
| I-130 | 6.02 |
| I-131 | 1.97 |
| I-140 | 3.31 |
| Waiver Applications | 9.39 |
| Form I-290B/Motions | 7.73 |
| I-360 | 6.34 |
| I-485 | 7.07 |
| I-526 | 4.14 |
| I-539 | 2.07 |
| I-600/600A | 3.39 |
| I-687 | 10.59 |
| I-690 | 10.19 |
| I-694 | 4.50 |
| I-695 | 22.76 |
| I-698 | 26.85 |
| I-751 | 3.74 |
| I-765 | 1.97 |
| I-817 | 3.94 |
| I-821 | 2.54 |
| I-824 | 3.63 |
| I-829 | 38.94 |
| I-881 | 0.35 |
| I-914 | 3.64 |
| N-300 | 23.88 |
| N-336 | 6.22 |
| N-400 | 5.57 |
| N-470 | 16.18 |
| N-565 | 4.35 |
| N-600/600K | 5.27 |

The President's FY 2006 Budget prioritized USCIS resources to achieve the time standard and eliminate the backlog. After FY 2006, USCIS' budget requests for adjudication programs will be limited to fee resources, as USCIS strives to maintain the six-month or less processing time standard and identify opportunities for performance improvements within a fee-based environment.

As mentioned previously, the significant reduction in the backlog is due to temporary appropriated dollars. These funds were not only necessary to reduce the backlog that had grown prior to FY 2002, but also to make up for the insufficiency of the fee schedule. This was clearly made apparent in the FY 2005 budget when Congress appropriated an additional \$60 million towards backlog elimination efforts due to the significant impact of the September 11th attacks on the United States on the standards, procedures, and policies of USCIS. Without this temporary subsidy, not only would the pre-FY 2002 backlogs continued to have grown, but the backlog would have grown even greater due to the insufficiency of the fee schedule to process incoming workload for the period FY 2002 through FY 2006.

3. Enhanced Staffing Models.

The new fee schedule will improve service levels and ensure the security and integrity of the immigration system without causing backlogs to return. This fee review is based for the first time on an enhanced staffing model that is designed to align resources with the need to prevent future backlogs, providing for an efficient and effective workforce balance. Prior to this analysis, USCIS' distribution of adjudicators across field offices did not match the distribution of workload across field offices.

A 2001 GAO report recommended that USCIS “[d]evelop a staffing model for processing naturalization applications and expand the model to include other application types as their processes are reengineered or automated.” GAO, Immigration Benefits: Several Factors Impede Timeliness of Application Processing (GAO-01-488, May 4, 2001) at 55. In addition, in November, 2005, GAO stated that:

This kind of planning is consistent with the principle of integration and alignment that we have advocated as one of the critical success factors in human capital planning. As we have previously reported, workforce planning that is linked to strategic goals and objectives can help agencies be aware of their current and future needs such as the size of the workforce and its deployment across the organization. In addition, we have said that the appropriate geographic and organizational deployment of employees can further support organizational goals and strategies.

GAO, Immigration Benefits: Improvements Needed to Address Backlogs and Ensure Quality of Adjudications (GAO-06-20, Nov. 21, 2005) at 34.

Historically, USCIS has been required to balance resource requirements against budgetary realities with the end result often being a staffing model based on what USCIS could afford, not what is required to meet acceptable performance standards. Following the last comprehensive fee review in FY 1998, USCIS’ predecessor was only able to maintain the status quo and the backlog actually increased despite significant fee increases in FY 1998. The clear distinction between this proposed fee schedule and prior fee schedules is that the proposed fee schedule does not simply reflect costs and performance retrospectively, locking USCIS into a revenue stream that at best allows it to maintain the status quo. Instead the proposed fee schedule is designed to provide for an adequate and sustainable level of investment in staff, infrastructure, and processes designed to improve the USCIS’ ability to administer the nation’s immigration laws.

The staffing model identifies sufficient funding not only to meet current standard

processing time goals, but also to sustain and improve service delivery by providing additional funding to handle sudden surges in workload, another reason for the growth in immigration benefit application and petition backlogs. Sufficient capacity to process workload is a problem not limited to USCIS. Capacity also relates to agencies that USCIS depends upon to meet its performance goals. For example, this rule proposes additional funding in support of FBI name checks.

4. Isolation of Premium Processing Fees.

The current fee system has not enabled USCIS to undertake the investments in a new technology and business process platform that are needed to radically improve USCIS' capabilities and service levels. The proposed fee structure is designed to recover annual costs for facilities, information technology systems, business processes, and other capacities in a way that allows USCIS to continue improving service levels, both to applicants/petitioners and to the American public, through more effective administration of the immigration laws of the United States. Under the proposed fee schedule, premium processing revenues 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.

Specifically, premium processing fees will be used to transform USCIS from a paper-based process to an electronic environment, making it possible to incorporate more effective processing of low risk applicants and better identification of higher risk individuals. The new operational concept will be based on the types of online customer accounts used in the private sector in order to facilitate transactions, track activities, and

reduce identity fraud. The solution will also help to meet customer expectations, generated from their private sector experiences, for on-demand information and immediate real-time electronic service over the Internet.

The solution will enable applicants to apply on-line for immigration benefits by either selecting a specific benefit application process or by participating in an on-line electronic interview that will help applicants navigate the system to apply for the correct benefit in the correct manner. Individuals, employers, and representatives will establish unique accounts that will enable them to change attributes such as changes of address or name, and allow individuals to record a change in marital status, representation, or other contact information. The solution will provide enhanced and real-time case status information with email capabilities to request information or inform the applicant about a pending application and to enable the entire process to be completed in an efficient paperless manner.

In short, this proposed rule would fully fund normal operations and infrastructure maintenance with standard fees so that USCIS can apply premium fees to significant infrastructure improvements, as envisioned by Congress. Currently, because of the insufficiency of the fee schedule, USCIS cannot use premium processing funds to invest in major infrastructure improvements to the adjudication and customer-service processes.

5. Eliminating Perceptions of Impediments to Efficiency.

This proposed rule would restructure certain fee arrangements that are currently perceived to provide disincentives for USCIS to improve efficiency in processing. For example, USCIS has long authorized certain customers, particularly applicants for adjustment of status, to apply for certain benefits while the initial application is pending,

referred to generally as “interim benefits.” These include, most importantly, employment authorization and permission to travel abroad and return to the United States to pursue the pending application. In the current fee structure, USCIS charges additional fees for interim benefits in addition to initial application fees. Thus, the longer cases take to adjudicate, the more total revenue is collected. This creates the perception that USCIS gains by processing cases slowly.

Through the provisions proposed in this rule, USCIS would eliminate its reliance on interim benefits as a significant funding source for base operations and address the problem that aliens are required to pay for services they would not need if the underlying petition were timely processed, while ineligible and fraudulent applicants receive work authorization and travel documents because of processing delays. Moreover, this change addresses the historic perception that because of the Congressional requirement that USCIS be self-funded from fees, USCIS may make decisions that compromise operational efficiency to ensure revenue flow. Under the proposed fee structure, an applicant for adjustment of status will pay a single fee. If USCIS is unable to process the base application within the established processing goals, the applicant will not pay separate fees for interim benefits, no matter how long the case remains pending. For certain application types, most notably applications for adjustment of status to permanent residence (Form I-485), the most critical interim benefit is the fact an applicant is allowed to remain in the United States while his or her application is pending. This spurs USCIS to process cases quickly and ensure that it promptly identifies those applicants who are risks to national security or public safety, resolves their cases, and initiates removal proceedings as appropriate. The restructuring proposed under this rule would create

more appropriate pricing structures and eliminate perceived disincentives to process cases in a timely manner.

At the same time, USCIS recognizes that, in some cases, delays in processing applications alone will require issuance of interim benefits. Accordingly, USCIS has built into the cost model for all adjustment of status applications the cost of processing interim benefits for a percentage of applicants.

USCIS estimates that the current application fees paid by an applicant for adjustment of status with interim benefits over a multi-year time period are approximately \$800. The proposed rule would increase the adjustment of status application (Form I-485) fee for an adult applicant to \$905, but exempts applicants who have paid that fee from any additional fee that otherwise might be payable to apply for advance parole or employment authorization. USCIS anticipates revising the Form I-485 accordingly, but this proposed rule would give USCIS flexibility to continue to use the Forms I-131 and I-765 for adjustment applicants. Either way, no additional fee would be charged for a Form I-485 applicant who has paid the base fee that now includes the cost of processing interim benefits.

Similarly, this rule proposes to eliminate from revenue projections separate fees from the two petitions currently required to be filed for an alien spouse abroad who will enter the United States in the K-3 nonimmigrant classification for certain spouses of United States citizens. See INA section 101(a)(15)(K)(ii), 8 U.S.C. 1101(a)(K)(ii); 8 CFR 214.1(a)(2). These two petitions are Form I-130, Petition for Alien Relative, and Form I-129F, Petition for Alien Fiancé(e). USCIS is working to consolidate the K-3 petitions so that separate fees will not be necessary.

The elimination of separate fees for interim benefits or the second K-3 petition affect more than adjustment of status applicants and family petitioners. The consolidation of these fees reduces the number of application types for which any fee is charged and thereby reallocates the amount of certain processing activity costs, administrative overhead and surcharge costs that must be spread across all other fee-paying application and petition types. All other fees will be increased.

6. Program Changes to Ensure Integrity of the Immigration System.

Since the tragic events of September 11, 2001, a persistent issue has been that weaknesses in the integrity of the immigration system make the United States vulnerable to terrorism, crime, and the economic cost of an underground population. USCIS takes these concerns seriously and has aggressively addressed them with the creation of a new directorate for National Security and Records Verification (NSRV). This directorate is focused on preserving the integrity of the immigration system. One component of the new directorate is the Fraud Detection and National Security (FDNS) Division. FDNS fulfills its mission in a variety of ways that include conducting benefit fraud assessments, providing investigative support to Adjudication Officers, and implementing remedial processes to discourage fraud.

The current fee structure does not allow FDNS to address fraud more broadly or to attend to USCIS' needs in national security cases. The proposed fee structure to support FDNS will fill this void. The proposed fee structure also enhances quality assurance, provides additional Adjudication Officer training, requires Adjudication Officers to attend removal proceedings when appropriate, tracks the delivery of secure documents,

and enhances internal security and investigative operations. Section IV.E details these additional resource requirements.

7. USCIS' Commitment to Future Fee Reviews.

USCIS is committed to update its fees through a similar analysis at least once every two years. In comparison to fee reviews over the last decade, which essentially made retrospective adjustments on a narrowly calculated fee review, future fee reviews will combine assumptions from recent experiences (which may allow for cost reductions from new efficiencies) and from prospective activity changes (such as those that may arise from additional security measures or performance changes).

D. Programs and Services Currently Funded.

For FY 2007, the IEFA is anticipated to provide approximately 89% of USCIS' total funding. The major programs, activities and services funded by the IEFA are discussed below.

1. Adjudication Services.

The Adjudication Services program is the primary program responsible for the processing of immigration benefit applications and petitions while ensuring the security of the immigration system. Through a network of 250 local offices, Application Support Centers, Service Centers, and Asylum Offices, the program funds the timely and quality processing of: (1) Family-based petitions - facilitating the process for close relatives to immigrate, gain permanent residence, work, etc.; (2) Employment-based petitions - facilitating the process for current and prospective employees to immigrate to or stay in the United States temporarily; (3) Asylum and Refugee processing - adjudicating asylum applications, conducting credible and reasonable fear screenings, and the processing of

refugees; and (4) Naturalization - processing applications of those who wish to become United States citizens. The Adjudication Services program currently receives 94% of its total funding from the IEFA.

On average, USCIS annually: (1) processes over six million applications and petitions, (2) processes close to 90,000 asylum applicants, (3) interviews approximately 70,000 refugee applicants, and (4) naturalizes approximately half a million new citizens. Adjudication Officers review applications and often conduct interviews of the applicants and petitioners. They have the dual responsibility of providing courteous service to the public while being alert to the possibility of security concerns, fraud, and misrepresentation. District Adjudications Officers are located in offices nationwide. Service Center Adjudications Officers are located only in the following Service Centers: St. Albans, VT; Lincoln, NE; Irving, TX; and Laguna Niguel, CA.

An Asylum Officer determines if an applicant for asylum qualifies for that status based on the requirements of the INA. These officers are specially trained in country conditions, interviewing techniques (including credibility determinations), and asylum law. Positions are located in eight Asylum Offices throughout the United States. The Asylum Officer Corps and new Refugee Officer Corps (which provides similar adjudicative services for refugee applications overseas) also leverage specialized resources, including professional interpreters, to deliver timely and accurate provision of legal protection to individuals who have been persecuted and displaced.

In coordination with other components of DHS and other Federal agencies, USCIS combats immigration benefit fraud through the FDNS office in the NSRV Directorate, as previously discussed. USCIS trains FDNS staff to analyze and identify fraud patterns

and trends and document evidence of fraud for administrative action. USCIS will continue to implement fraud detection measures in Service Centers, field offices, and Refugee and Asylum programs, including training adjudications staff to proactively identify fraud/security profiles while considering an application. Apart from FDNS, the other major division within NSRV is the Office of Records Services (ORS), which establishes policies, procedures, and performance objectives for the USCIS Records Program. The Records Program manages over 160 million Alien-files and related records in support of the enforcement and benefits missions of the DHS. The ORS also manages the National Records Center and coordinates the USCIS Freedom of Information Act/Privacy Act (FOIA/PA) program.

2. Information and Customer Services.

Through the Information and Customer Services Program, USCIS reduces the frequency of repeated, redundant applicant and petitioner contact with USCIS employees, thus improving USCIS efficiency. USCIS makes it easier for the public to get the information they need when they need it, through multiple channels of available assistance, including the USCIS website, toll-free call center (National Customer Service Call Center), and face-to-face appointments. On an annual basis, USCIS: (1) handles over 14 million calls via the National Customer Service Call Centers, (2) receives 78 million “hits” on the USCIS website, and (3) serves approximately five million individuals through information counters at local offices. The Information and Customer Services program currently receives 52% of its total funding from the IEFA.

Each year millions of people apply for various types of benefits under the INA. The Immigration Information Officers (IIOs) provide information about immigration and

nationality requirements; IIOs are not authorized to, and do not, provide legal advice to applicants and petitioners. IIOs assist with a wide variety of requests, including questions on how to complete required form types, and explain the administrative procedures and normal processing times for each application. IIOs provide a range of customer services, including certain case services and problem resolution assistance on applications and petitions. IIOs also process and make decisions on a limited array of applications and petitions. Positions are located throughout the country in Districts, Sub Offices, Asylum Offices, and Service Centers.

Through the National Customer Service Center, USCIS provides toll-free nationwide assistance to individuals calling from within the United States. Individuals can access live assistance from 8:00 AM until 6:00 PM, Monday through Friday (local time; hours slightly different for those persons calling from outside the continental United States). They can also access recorded information (including information about the status of their specific case) 24 hours a day/7 days a week. Both live and recorded service are available in English and Spanish. Callers from outside the United States can access limited information through a separate toll number.

USCIS receives about 1.7 million direct information and customer service related contacts per month, or more than 20 million contacts per year. Today, over 84% of all information and customer service interactions are self-service. The self-service options provide the public with new choices that are simpler and more effective to both the public and USCIS. They also save significant amounts of money compared to providing live assistance to all individuals.

In-person service continues, however, to be a critical component of the USCIS service model. To improve service levels, USCIS has shifted to offering most in-person service by appointment that is scheduled through USCIS' website. This has helped reduce long lines and wait times, and address public concerns and inquiries. USCIS also has developed and made available online a new series of focused fact sheets on available services to assist and communicate more clearly with the public.

3. Administration.

Nine Headquarters offices provide administrative and mission support to Headquarters offices and USCIS field locations worldwide. The USCIS Administration program currently receives 100% of its total funding from the IEFA.

- The Office of Administration plans, develops, implements, and evaluates USCIS-wide policies and procedures for the operation of centrally managed, USCIS-wide support activities. It is responsible for programming, budgeting and oversight for the direct delivery of administrative support to USCIS in the areas of Acquisition, Procurement, Asset Management and Personal Property, Facilities and Real Property, and Logistics.
- The Office of Planning, Budget, and Finance is responsible for planning and budgeting integration and financial management activities.
- The Office of Chief Counsel consists of legal divisions advising and representing USCIS Operations both at Headquarters and in the field on behalf of the DHS General Counsel. Chief Counsel divisions include Adjudications Law, Refugee and Asylum Law, National Security, Commercial and Administrative Law, Ethics, Legislation, Field Offices, and Training, with each division responsible for reviewing,

interpreting, and providing legal advice and litigation support to USCIS operational components.

- The Office of Citizenship promotes civic integration and instruction and training on citizenship responsibility for legal immigrants interested in becoming naturalized citizens of the United States, including development of educational materials and community outreach activities.
- The Office of Communications oversees and coordinates communication to internal and external stakeholders in order to empower employees with the tools needed to perform their jobs, to educate the public regarding USCIS benefits and services, and to facilitate consistent messaging for USCIS.
- The Office of Congressional Relations advises the Director on legislative matters and serves as the primary point of contact for members of Congress and congressional staffers.
- The Office of Policy and Strategy directs, prioritizes, and sets the agenda for USCIS-wide policy, strategy, and long-term planning activities, as well as research and analysis on immigration services issues.
- The Office of Security and Investigations (OSI) oversees secure communications and document storage, USCIS-wide physical and facility security programs, and security awareness training.
- The Office of Human Capital and Training manages human capital policy and operations and provides continuous professional training and career development to all USCIS employees through a variety of career, executive and managerial development programs.

IV. The Fee Review of Immigration Benefit Applications/Petitions and Biometric Services.

The current immigration benefit application and petition fees are based on the FY 1998 Fee Review, adjusted for cost of living increases and other factors. The FY 1998 Fee Review model does not reflect today's accounting models, costs and processes have changed significantly since the FY 1998 Fee Review, and the current fees do not reflect today's costs and procedures. This proposed rule is based on a new cost model, and proposes enhanced service levels, more complete funding of existing services, and specific cost allocation methods.

A. Methodology.

To develop this proposed rule, USCIS convened its Workload and Fee Projection Group. The Workload and Fee Projection Group is composed of subject matter experts throughout USCIS and statistical experts from the DHS Office of Immigration Statistics.

USCIS employed an Activity-Based Costing (ABC) methodology to determine the full cost of immigration and naturalization benefit applications and petitions, as well as biometric services, for which fees are charged. This is an improved version of the same methodology used in the FY 1998 Fee Review that is the basis for the current fee structure. ABC is a business management tool that provides insight into the relationship between inputs (costs) and outputs (products and services) by quantifying how work is performed in an organization (activities).

The ABC methodology uses a two-stage approach to assigning costs. The first stage assigns costs to activities, and the second stage assigns activity costs to products. For USCIS, the products are decisions on the immigration and naturalization benefit

applications and petitions and the biometric services for which fees are charged. To implement this two-stage approach, ABC requires four analytic steps:

- identifying and defining the activities involved in processing immigration and naturalization benefit applications and petitions and biometric services;
- examining budgetary records/execution plans and additional resource requirements to identify the resources required to process immigration and naturalization benefit applications and petitions and biometric services;
- assigning these resources to the defined processing activities; and
- assigning processing activity costs to defined immigration and naturalization benefit applications and petitions and biometric services for which a fee is charged.

USCIS used commercially available ABC software in computing the immigration benefit application/petition and biometric fees. This software application is designed to assign costs through activities to final products (applications/petitions and biometric services). The data entered into the software were tailored to USCIS specifications using the preexisting software structure. This new software is vastly improved over any models previously used by USCIS, particularly because it can readily accept the most up-to-date information, as well as “what-if” scenarios, on a continual and real time basis for fee review and cost management purposes.

B. Assumptions.

As previously discussed, USCIS is assuming that it will no longer collect separate fee revenues from certain interim benefits or K-3 petitions.

In this proposed rule, USCIS is assuming no revenues from certain penalty fees. INA section 245(i), 8 U.S.C. 1255(i), permits certain aliens who otherwise would be ineligible

for adjustment of status to lawful permanent residence (primarily because of their unlawful presence) to obtain such adjustment upon payment of a \$1,000 penalty in addition to the base application fee. Section 245(i) adjustment of status is available, however, only to beneficiaries of immigrant petitions or applications for labor certification filed on or before April 30, 2001. As a result of this sunset provision, USCIS has seen a steady decline in these revenues over the last several years (\$66 million in FY 2001; \$37 million in FY 2003; and \$21 million in FY 2006) and projects that an insignificant amount of penalty fees will be collected by the time the proposed fee structure is in place given the finite and declining number of people affected by this legislation.

USCIS does not anticipate any significant new Temporary Protected Status (TPS) populations at this time, although because of the nature of TPS (including, for example, response to natural disaster) USCIS cannot make such predictions with certainty. Given the statutory requirement that TPS status be periodically reviewed and the reasonable possibility of the termination of TPS designations for long-standing, high volume countries, USCIS must build its budgets on the assumption that it cannot rely on fee revenue from such programs to fund on-going activities. INA section 244, 8 U.S.C. 1254a. For planning purposes and without intending to forecast any particular policy assessments, USCIS has assumed that the TPS Program for re-registrants of certain nationalities will not continue, which will result in a substantial decline of volumes for Form I-821 (Application for Temporary Protected Status) and associated Form I-766 (Application for Employment Authorization). This assumption eliminates a limited source of fee receipts, but also reduces a larger amount of costs distributed across all

other application fees because the statutory fee (\$50) does not recover the full cost of processing TPS applications.

Finally, USCIS assumes the elimination of revenues associated with the Form I-881, Nicaraguan Adjustment and Central American Relief Act – Suspension of Deportation or Application Special Rule (NACARA 203). See Pub. L. 105-100, sec. 203, 111 Stat. 2196 (Nov. 19, 1997), as amended by Pub. L. 105-139, 111 Stat. 2644 (Dec. 2, 1997). This program provided a benefit for a finite group of people, the vast majority of whom are Guatemalans and Salvadorans who entered the United States prior to 1991 and who had an asylum application pending by specified deadlines in 1995 and 1996. Since enactment of NACARA, USCIS has adjudicated approximately 170,000 applications for relief under NACARA 203. USCIS projects that by the end of FY 2007, nearly all qualifying NACARA 203 applications will have been adjudicated, and that there will be virtually no filings in FY 2008 and 2009. USCIS projects a decline in the annual workload volume from approximately 22,509 applications in FY 2006, to fewer than 200 in FY 2007.

In FY 2001, the USCIS Asylum Division hired approximately 70 term employees to assist with the NACARA 203 workload. As the number of pending NACARA 203 applications and individuals still eligible to apply for this relief declined, the Asylum Division stopped back-filling term positions as they became vacant in order gradually to reduce the staffing level and budget commensurate with the decreasing workload. Thus, through attrition of the term employees, USCIS has been able to reach appropriate staffing levels for this workload. Cost adjustments associated with the workload were incorporated in the FY 2007 Enacted Budget.

USCIS also assumes no revenues from applications for T nonimmigrant status, or self-petitions under the Violence Against Women Act of 1994 (VAWA), Public Law 103-322, tit. IV, subtit. G, 108 Stat. 1796, 1902, 1953 (Sept. 13, 1994), as reauthorized and amended, as this proposed rule exempts applicants from paying the otherwise applicable fees for these benefits. T nonimmigrant status is available to aliens, and certain family members, who (in the case of principal aliens) are victims of severe forms of trafficking in persons, are physically present in the United States or a United States jurisdiction on account of the trafficking, have (if over the age of 18) complied with any reasonable requests for assistance to investigate or prosecute the trafficking, and would suffer extreme hardship involving unusual or severe harm if removed from the United States.

USCIS also assumes that the number of fee waiver requests will hold steady from FY 2006 levels. Although USCIS anticipates an increase in the number of fee waiver requests as a result of the proposed fee structure, this increase will be offset by the new fee waiver policy that limits fee waivers to certain situations as explained in section XI of this preamble. The number of fee exemption applications will increase over FY 2006 levels commensurate with new exemptions proposed in this rule (e.g. certain initial applications for benefits for humanitarian reasons – VAWA or T Visa).

C. Defining Processing Activities.

In ABC, activities are the critical link to assigning costs to products (decisions on applications/petitions and biometric services for which the USCIS charges a fee). USCIS used the following activities:

- **Inform the Public**, involving receipt and response to inquires through telephone

calls, written correspondence, or walk-in inquiries;

- **Capture Biometrics**, involving electronic capture of biometric (fingerprint, photograph, signature) information, and background checks performed by the FBI;
- **Intake**, involving mailroom operations, data capture and collection, file assembly, fee receipting, and file room operations;
- **Conduct Interagency Border Inspection System (IBIS) Checks**, involving comparison of information on applicants, petitioners, beneficiaries, derivatives and others against various Federal lookout systems;
- **Review Records**, involving acquisition and creation of relevant files, consolidation of files, connection of returned evidence with application or petition files, movement of files upon request, and management of file location and archives;
- **Make Determination**, involving actual adjudication of applications and petitions, requests for additional evidence, interviewing of applicants, consultation with supervisors or legal counsel and researching applicable laws and decisions on complex adjudications, and recordation of decision;
- **Fraud Detection and Prevention**, involving detection, combat, and deterrence of immigration and naturalization benefit fraud; and,
- **Issue Document**, involving production and distribution of secure documents that identify the holder's immigration status or employment authorization.

D. Sources of Cost Information.

The first step in implementing an ABC methodology is to identify the appropriate amount of FY 2008/2009 IEFA costs and assign these costs to the defined processing activities. USCIS began with the FY 2007 Enacted Budget (less non-recurring costs),

adjusted for inflation for the FY 2008/2009 biennial period, and added resource requirements as the best available source of information for determining the full cost of immigration benefit applications/petitions and biometric services. The FY 2007 Enacted Budget (\$1,760,000,000) best represents USCIS' base resources since it is indicative of the costs incurred by USCIS today and adjusts the base for inflation from FY 2006 levels. Inflation is determined for this purpose by referring to Government-wide standards discussed below in section IV.E.2. The additional resource requirements are discussed below in section IV.E.3.

E. Adjustments.

1. Non-Recurring Costs.

USCIS first eliminated any spending items in the FY 2007 Enacted Budget that would not recur after FY 2007. Accordingly the base was reduced by \$8.5 million associated with the temporary expansion of Application Support Centers for additional workload associated with a temporary planned program for the recall of green cards issued before 1989 and thus lacking expiration dates and up-to-date security features. After adjustment, the FY 2007 Enacted Budget has a base of \$1,751,500,000.

2. Inflation.

USCIS then adjusted the FY 2007 IEFA Budget (\$1,751,500,000) enacted level for the FY 2008 and FY 2009 biennial period by pay (Federal employee payroll and benefits) and non-pay (contracts, utilities, rent, etc.) inflation factors used by OMB in implementing OMB Circular A-76 (Performance of Commercial Activities), found at http://www.whitehouse.gov/omb/circulars/a076/a76_incl_tech_correction.pdf.

The pay portion of the FY 2007 budget totals \$727,600,000. The FY 2008/2009 blended pay inflation factor is 3.3%. This blended pay inflation factor is calculated using 2.2% for FY 2008 plus half of 2.2% (1.1%) for FY 2009). The pay inflation of \$24,010,800 was then added to the FY 2007 base, yielding a FY 2008/2009 pay base of \$751,610,800.

The non-pay portion of the President's FY 2007 Budget was \$1,023,900,000. The blended non-pay inflation factor is 2.85%. The blended non-pay inflation factor is calculated using 1.9% for FY 2008 plus half of 1.9% (0.95%) for FY 2009. The non-pay inflation of \$29,181,150 was then added to the FY 2007 base, yielding a FY 2008/2009 non-pay base of \$1,053,081,150.

These pay and non-pay inflation projections of \$53.192 million yield a FY 2008/2009 base of \$1,804,691,950.

3. Additional Resource Requirements.

USCIS also identified \$524.3 million in additional resource requirements to fulfill legal requirements and policy decisions. These additional resource requirements involve costs above and beyond what was presented in the FY 2007 Enacted Budget, plus inflation for the FY 2008/2009 biennial period, that are necessary for USCIS to meet its mission responsibilities. "Additional Resource Requirements" represent enhancements that are not currently funded in the FY 2007 Enacted Budget. These include: (1) Service Enhancements, (2) Security and Integrity Enhancements, (3) Humanitarian Program Enhancements, and (4) Infrastructure Enhancements.

a. Service Enhancements.

USCIS is enhancing service to provide efficient and customer-oriented immigration and naturalization benefit and information services. The following enhancements will enable USCIS to achieve and maintain timely processing of immigration and naturalization benefits; provide information resources and services to appropriate individuals and entities; foster a customer-centered approach to service delivery; and develop seamless, information technology (IT)-supported processes that efficiently support immigration and naturalization benefits adjudication and information sharing:

Enhance adjudications and support staff to maintain application and petition processing times, officer training, additional capacity for unanticipated surges in workload, and process Notices to Appear. Additional funding is necessary to support a staffing model designed to align resources with the need to prevent future backlogs and provide for an efficient and effective workforce balance. This includes Adjudication Officers and support staff (Supervisors, Clerks, Immigration Information Officers, Records personnel, Administration personnel, and Quality Assurance Analysts). Current funding and the staffing model it supports are not sufficient to maintain prescribed processing time requirements. USCIS' staffing model incorporates additional requirements which include: (1) additional time required of Adjudication Officers to attend removal proceedings when appropriate; (2) additional Adjudication Officer training to provide a 5% increase in USCIS' investment in employee training in order to maintain a more appropriate balance between the commitment to production and an ongoing investment in things, such as training, designed to improve qualitative performance; and (3) providing USCIS with a small surplus production capacity that gives USCIS flexibility to adapt to temporary increases in filings without those increases

immediately affecting service levels to all applicants. USCIS' staffing model also provides capacity to improve processing times and service delivery over time rather than, at best, perpetuating current levels. This additional resource requirement addresses the need to reduce lengthy and costly waiting periods for determination of benefits and the need for relevant training and staffing to handle USCIS' substantial and complex workloads. This enhancement requires 1,004 staff and \$123.8 million.

Process Freedom of Information Act requests. The Freedom of Information Act (FOIA), 5 U.S.C. 552, provides for the public disclosure of governmental records unless an exemption applies. USCIS' FOIA program has been historically understaffed, resulting in a growing backlog that is currently 82,000 cases. USCIS determined that approximately 82 positions (74 contractors and eight government staff) would be needed in order to reduce the backlog by 50% the first year and the remaining 50% during the second year. Also, USCIS determined that a total of 146 staff is necessary to keep pace with the average 120,000 cases per year workload. To reach the required level of staff to handle this continuing normal workload, an additional ten government staff are permanently needed. To meet the requirements of the FOIA to process 120,000 cases annually and eliminate existing while preventing new backlogs, this enhancement requires 18 staff and \$8.8 million.

Provide Change of Address (AR-11) data entry services. Aliens, who enter the United States and are required to be registered, must notify DHS of any change of address within ten days, using Form AR-11. INA section 265, 8 U.S.C. 1305; 8 CFR 265.1. USCIS estimates that the costs to support AR-11 data entry operations will total \$1 million (\$83,300 per month). Over 480,000 AR-11 forms will be processed in FY

2008 (268,000 nonimmigrant and 212,000 immigrant). Additionally, system operations and maintenance costs are estimated to cost approximately \$200,000 per year. This enhancement requires \$1.2 million.

Print and distribute guidebooks for new naturalized citizens. USCIS currently prints and distributes a small quantity of two educational resources: A civics study guide, designed for naturalization applicants, that helps immigrants learn United States history and civics in preparation for the naturalization test; and the “Citizen’s Almanac”, a document to be given to each new citizen at his or her naturalization ceremony, which presents America’s most cherished founding documents, Presidential quotes on citizenship, and other civics and history content. This enhancement requires approximately \$900,000 and would allow USCIS to produce a larger quantity of these documents.

Enhance mail and file room support for the Administrative Appeals Office. The Administrative Appeals Office (AAO) produces appellate decisions that provide fair and legally supportable resolutions of individual applications and petitions for immigration benefits. This enhancement provides needed resources for the AAO’s requirements for clerical support for the office's mail and file room operations. In addition to mail and file room support, contractors answer the telephone, obtain electronic records, update information in electronic databases, provide periodic reporting of receipts and completions, and conduct workload analysis. This enhancement requires \$129,000.

b. Security and Integrity Enhancements.

Consistent with the President’s and the Secretary’s priorities, USCIS is enhancing the security and integrity of the immigration and naturalization system. The following

enhancements will enable USCIS to ensure that benefits are granted only to eligible applicants and petitioners; deter, detect, and pursue immigration and naturalization benefits fraud; and identify and communicate immigration and naturalization-related information to partners in support of DHS strategic goals:

Establish a second, full-service card production facility and fully fund card production workload. The Federal Information Security Management Act (FISMA), Pub. L. 107-347, 116 Stat. 2899 (Dec. 17, 2002) (40 U.S.C. 11331; 44 U.S.C. 101 note, 3541 – 3549), and implementing directives require compliance with National Institute of Standards and Technology principles for critical systems for contingency planning. To meet these standards, USCIS must establish a second full-service card production site. The second facility will support day-to-day production as well as be available in the event of catastrophic failure. Finally, additional funding is included to fully fund card production requirements based on workload projections. To meet these requirements, USCIS is proposing to add four staff and \$32.4 million.

Enhance fraud prevention and detection efforts. To meet its mandated responsibilities of enhancing fraud prevention and detection efforts, USCIS created the FDNS to implement, direct, and oversee anti-fraud and detection operations throughout USCIS. By focusing efforts on such initiatives as Benefit Fraud Assessments, FDNS is better able to acquire the information needed to determine the type, causes, and amount of fraud that exist, so as to focus efforts accordingly. FDNS has developed and implemented a joint anti-fraud strategy with Immigration and Customs Enforcement (ICE) for the referral of all suspected fraud cases. Due to the volume of referrals, only those cases meeting the ICE threshold (large conspiracies, multi-party, etc.) are accepted for criminal

investigation. Since the majority of referrals do not meet the threshold, they are returned to FDNS for initiation of an administrative inquiry/investigation. Additionally, FDNS identifies systemic vulnerabilities and other weaknesses that could compromise the integrity of the legal immigration system by reviewing existing regulations, policies and procedures and offering corrective remedies where deficiencies exist. This enhancement requires 170 staff and \$31.3 million.

Enhance the delivery of secure documents. USCIS currently delivers its secure documents (Permanent Resident Cards, Employment Authorization Documents and travel documents) through the United States Postal Service (USPS) first class mail. There is no process in place that enables USCIS to track their delivery and ensure that these documents are delivered to the proper recipient. Some beneficiaries claim not to have received their documents in the mail to avoid paying document replacement fees. USCIS and the USPS have partnered to develop and implement a process wherein the documents would be delivered via USPS priority mail (two to three day delivery) with delivery confirmation. The additional funding will enable USCIS to track delivery of each document and to respond to queries from applicants regarding the status of document delivery. This enhancement requires \$31.6 million.

Pay increased costs due to the FBI for background checks. USCIS pays the FBI for fingerprint and name checks performed on certain immigration and naturalization benefit applications. USCIS needs the additional funds to align with the projected filing increases for Forms N-400 and I-90, less the projected decrease in Form I-485. USCIS will also be expanding the biometric service to applications for travel documents and petitions to remove conditions of residence (Forms I-131 and I-751). Finally, USCIS is

providing additional funds to the FBI for name check costs to enhance services. This enhancement requires \$12.4 million.

Enhance national security systems and processes. Funding is necessary to continue the enhancement of the FDNS Data System and other supporting systems. The development effort will enable FDNS to creatively leverage new technology to enhance the ability to centrally direct and oversee the resolution of background check hits pertaining to national security, egregious public safety, and fraud investigations. These data systems will be used by all FDNS employees and will assist in the adjudication of all cases with national security and fraud implications. This enhancement is also needed to provide for major enhancements and improvements to USCIS'/FDNS national security background check process (i.e. software, systems development and change management and training efforts). All systems efforts will be coordinated with the USCIS Transformation Office to ensure system integration. Additionally, these systems will facilitate FDNS in its data sharing efforts with law enforcement agencies and other authorized government offices. This enhancement requires \$4 million.

Enhance Internal Security and Investigative Operations. Internal Security and Investigative Operations includes the conduct of investigations of allegations of misconduct for approximately 15,000 USCIS federal and contract employees located throughout the United States as well as many located overseas. Additionally, this program is charged with: preparation and delivery of relevant training to all USCIS employees; specific training for and oversight of selected collateral duty "management inquiry representatives" (or fact-finders); the conduct of and follow-up to program and office inspections geared toward the integrity of personnel, products and processes;

coordination of efforts with companion investigative authorities; material contribution to the USCIS counter-intelligence program; and preparation of general and specific reports to USCIS executives. There are presently only a limited number of investigators for these activities. To keep pace with demand, to ensure professional and timely investigative activity and result, and to ensure proportional capability growth, USCIS requires an additional 60 field-based and five headquarters-based investigative staff resulting in a total of 78 investigative personnel. This enhancement requires 65 staff and \$15 million.

Establish an Administrative Site Inspection Program. Funds are necessary to support an administrative site inspection program aimed at deterring fraud when USCIS has determined a systematic vulnerability. This initiative will enable the USCIS to secure contract support to conduct preliminary site inspections that will serve as an enhancement to the existing FDNS personnel's abilities to conduct administrative investigations and enable the FDNS staff officers to focus on high risk cases. Inspections have been identified as an invaluable tool in detecting fraud. This and other USCIS anti-fraud initiatives will help restore integrity to this Nation's legal immigration system. This enhancement requires \$8 million.

Enhance Protective Security Operations. USCIS has or operates within approximately 281 facilities, 250 of which are located within the United States and 31 located overseas. Approximately 15,000 federal and contract employees work within and are associated with these facilities. There are presently only a limited number of Field Security Officers available to provide the full range of security services to protect USCIS operations, products, personnel and facilities. Current shortfalls in this critical activity

increase the risks aimed at existing USCIS personnel, facilities, products and mission success. This enhancement requires 36 staff and \$8.3 million.

Enhance existing card production program. The USCIS document production facility utilizes contractor support for its document production activities. The prime contractor on site is responsible for securing maintenance contracts on the equipment to ensure that all equipment runs optimally, without interruptions. Many companies will not prorate their maintenance contracts and want to have them funded on an annual basis, which becomes problematic when USCIS does not issue a full year of funding to its production contractor. Current funding mechanisms do not allow for contractor support during the full period of performance reflected in the contract, and result in inefficient use of both program office contracting officer technical representative time, and contract officer and administration time, as duplicative work needs to be performed each time additional funds are placed on the contract. The additional base requirement will enable USCIS to fund the production support contract for the full 12-month period of performance. By doing this, USCIS can ensure that secure document production can continue without disruptions associated with continuing resolutions and interim funding allocations that may develop at the beginning of new fiscal years. This enhancement requires \$4.4 million.

Enhance Emergency Preparedness Operations; Establish Crisis Management and Information Security Operations; and Enhance Technology Security Operations. USCIS needs additional funds to prepare to continue essential operations and to recover from an event or incident and return to full operations. Funds are required to conduct Continuity of Operations (COOP) exercises and successful participation in and contribution to

government COOP exercises. Continued refinement of training and presentation of that training to various audiences and at various locations is critical. Additional funding is also necessary to operate a certified full-time, real-time mission coordination and support capability for national security information control and communications throughout USCIS and with DHS and other agencies. This includes sustained operation and security of the Crisis Communications and Coordination Center on a real-time 24/7 basis to monitor USCIS operations throughout the world and to permit secure communications throughout the Federal government on behalf of USCIS executive leadership. Finally, additional funding is necessary, in conjunction with the USCIS Office of Information Technology, to review all USCIS IT efforts with specific focus on the security aspects of those efforts and systems, including expert forensic IT analyses related to internal investigations. Internal use of the data, and use of the data by external authorities, especially when required to address emergency incident situations, require an ongoing and certain commitment to the security features of its IT infrastructure and the data therein. This enhancement requires 14 staff and \$3.0 million.

Enhance Personnel Security Operations. Additional funding is necessary to provide proper and timely security clearances for USCIS and contract employees; review of and contributions to USCIS acquisitions for goods and services; and coordination with other agencies and authorities to assure maintenance of current, accurate and complete personnel security information. This enhancement requires ten staff and \$1.6 million.

c. Humanitarian Program Enhancements.

USCIS supports the United States' humanitarian commitments. This support includes fully funding the Cuban Haitian Entrant Program (CHEP). CHEP assists the resettlement

of Cubans and Haitians who are irregular arrivals or paroled into the United States, including those who are paroled directly from Cuba under the Cuban Special Migration Program. In FY 2006, two non-government grant recipients, Church World Service and the United States Conference of Catholic Bishops, provided resettlement services. The actual number of migrants served each year is unpredictable, in part because many arrive irregularly. This enhancement requires \$14 million.

d. Infrastructure Enhancements.

USCIS is strengthening the infrastructure necessary to achieve USCIS' mission. The following enhancements will enable USCIS to strengthen key management processes, systems, and administrative support activities, including information technology infrastructure; enhance the organization's ability to support the mission in an environment of fluctuating workloads and new external mandates; and manage financial resources strategically, including revenue, expenditures, and capital investments:

Upgrade and maintain the USCIS information technology environment. Additional funds are necessary to upgrade and maintain the USCIS information technology environment, which includes several programs in support of a national security-based immigration process that is more effective and customer focused. One of the programs will provide necessary technology upgrades to the current USCIS enterprise legacy IT systems so that these comply with OMB, GAO, DHS, and other Federal regulations, law, and guidelines. Decommissioning of the legacy environment systems is a lengthy process and, in the meantime, these systems are required to be upgraded to meet minimum standards in the areas of IT security and privacy.

Another program focuses on upgrading and maintaining the USCIS IT operating environment so that it can sustain continued operations, reduce IT security risks and information sharing limitations through hardware and software standardization, and maintain USCIS' ability to process cases and support Federal enforcement organizations. By having a more reliable IT environment, USCIS staff can better support applicants and petitioners.

The third program provides USCIS with the capability to implement quick turnaround IT solutions as well as feature/functional enhancements to the enterprise legacy IT environment to address time critical needs and legislative changes that occur on a frequent and on-going basis. Funds are also necessary for other activities to provide additional trained and experienced IT Government staff, governance capabilities, IT security, continuity of operations planning and disaster recovery, and other IT oversight capabilities. This enhancement requires 88 staff and \$124.3 million.

Rent and lease acquisition resources. Rental payments to the General Services Administration for USCIS facilities are currently budgeted at \$153 million, but are projected to increase to \$168 million. Thus, additional resources are required to fund projected FY 2008/FY 2009 payments. In addition, the Lease Acquisition Program (LAP) is the USCIS' Real Property Capital Assets Investment Plan. This program will improve workplaces to better meet USCIS mission and goals and better utilize real property assets. Current USCIS real property inventory includes 188 facility leases requiring sustainment from year to year. Most leases have a 10-year term and must be either renewed or replaced at the end of the term. Recent experience shows that 11 facility projects are required each year, either as a replacement for a non-renewable lease

or for a renewal in the same facility but with additional space. USCIS currently has 37 leases that have already or will expire by FY 2008. The LAP currently is funded for \$16.8 million based on the lease expiration schedule; the lease funding requirement is \$34.9 million. The additional funding allows USCIS to increase its investment in facilities, so that its local offices can meet appropriate standards, and applicants/petitioners and others coming to those offices can be reasonably comfortable. This enhancement requires \$33.1 million.

Enhance the training program for all USCIS employees to foster organizational individual achievement by promoting continuous learning. The additional funds will enable USCIS to expand both mission support and professional development modules available to all USCIS employees through online technology. The USCIS Learning Management System provides mandatory training modules, mission support modules, and more than 2000 commercial, web-based, information technology, business, and leadership courses for personal and professional development. In addition, USCIS requires resources to plan and develop a comprehensive and continuing orientation plan for all USCIS employees. This program will serve as the primary vehicle for introductory, foundational and continuous information about DHS and USCIS leadership, mission, core values, vision, organizational structure and policies. It will also provide functional information about USCIS' business processes and practices, standard operating procedures and the cultural environment of a high-performance organization that is an employer of choice. This program will serve as a cornerstone for promoting employee career development, leadership development, and succession management. The project will also include the development of web-based orientation modules.

Finally, funds will be used to support an Enterprise Development Program that will provide USCIS government employees with an Individual Learning Account (ILA), which includes annual resources and time set aside exclusively for training. This program is seen as the primary means for employees to increase their knowledge, skill and capacity to perform their work and build careers consistent with USCIS goals for performance excellence. Such a program is designed to enhance critically needed training while taking advantage of USCIS transformational initiatives including the availability of new technologies and processes. This enhancement requires 25 staff and \$41.2 million.

Enhance resources for the Office of Chief Counsel. Additional resources will be focused on filling the legal needs of USCIS' field offices, both district and regional, where most areas do not currently have any attorney on site. The provision of additional attorneys will allow USCIS to ensure that there is at least one attorney available in each district. All types of litigation continue to increase, including mandamus actions when USCIS is perceived to not respond to applications in a timely manner, employment, acquisition protests, and claims. Furthermore, there is a critical need to advise adjudicators and investigators on issues affecting national security concerns and citizenship qualifications. Attorney responsibilities include providing on-site legal advice on immigration benefits-related matters, adjudications involving issues of national security, visa appeal briefs, reviewing Notices to Appear, and providing litigation support to the Department of Justice's litigating divisions and United States Attorneys' Offices. Additional attorneys will also provide training to USCIS personnel on issues involving

immigration related adjudications, inadmissibility and deportability. This enhancement requires 30 staff and \$7.4 million.

Transfer records to the National Archives and Records Administration. The National Archives and Records Administration (NARA) has determined, pursuant to 44 U.S.C. 2905, that immigration records should become permanent records of the United States. Therefore, all immigration records that become eligible for retirement based upon the year of birth will be turned over in five-year “collections.” The first collection is to include records relating to persons born in 1907 or earlier. All records transferred to NARA must be inventoried. Due to the age of records and data integrity, the records must be audited and systems must be updated before the transfer. Therefore, \$3.4 million is needed annually to audit the immigration records in preparation for the transfer of ownership of over 25 million records to the NARA to become permanent records. USCIS will begin transfer of all immigration records with 1907 year of birth and earlier beginning in 2008. This initiative will span a period of ten years. Future records will be transferred to NARA as they become eligible. This mandatory cost totals \$3.4 million.

Fully fund the Human Resources and Occupational Safety and Health Service Level Agreements/Programs. Based on workload trends over the past three years, USCIS requires an additional \$3 million that will allow the service provider, the Bureau of Customs and Border Protection (CBP), to provide additional capacity to handle human resources and occupational safety and health requirements. In addition, an additional \$150,000 (fully-burdened costs) will allow USCIS to meet the requirement to provide every supervisor with occupational safety and health training. This enhancement requires \$3.2 million.

Conduct policy evaluation and research. The Homeland Security Act of 2002 (HSA), Public Law 107-296, sec. 451, 116 Stat. 2135, 2195 (Nov. 25, 2002), requires that USCIS conduct policy research to develop sound information to inform and guide immigration program and policy development. In addition, the Government Performance Results Act of 1993 (GPRA), Pub. L. 103-62, 107 Stat. 285 (Aug.3, 2003) (codified in various sections of titles 5 and 31 U.S.C.), requires agencies to evaluate pilot and experimental programs that are designed to improve mission delivery, including efficiency, national security and customer service, before implementing such programs on a large scale. USCIS requires funding to conduct targeted research and evaluation to develop and assess policy options affecting national immigration programs and policies and to assess USCIS pilot programs. The mandated research and evaluation efforts will ensure prudent use of USCIS resources, enhanced information to inform policy options and impact assessment, and improved performance consistent with the stated GPRA and HSA requirements. This enhancement requires \$3.1 million.

Enhance internal controls, build a data warehouse for performance information, enhance budget staff, conduct competitive sourcing reviews, and provide additional financial management resources to evaluate and analyze service level agreements under the auspices of the Office of Chief Financial Officer. In an effort to strengthen USCIS' planning and financial management functions, during FY 2006 USCIS created an Office of the Chief Financial Officer (CFO). The strengthened CFO function within USCIS ensures that reasonable internal controls exist within USCIS to safeguard assets from waste, fraud and abuse. In order to execute these duties, additional resources are necessary to review organizational program offices. The reviews require highly skilled

personnel to assess internal USCIS components. The assessments identify vulnerabilities in program regulations, standard operating procedures, and work processes. This element of review is imperative as self-assessment is key to eliminating internal fraud, waste and abuse, as well as identifying inefficiencies and recommending corrective actions. In addition, funds sought will be used for additional staff to maintain the financial health and stability of the USCIS.

Finally, DHS mandated that USCIS, ICE and CBP establish service level agreements covering several core administrative support areas. While these service level agreements have been established, USCIS needs to strengthen oversight of the services performed and received. Several of the key factors that justify service level agreements, such as cost efficiencies, consistency in operational processing, and effective cross-agency communication require better monitoring. Funds will also be used for staff to evaluate and analyze service level agreements to gauge the benefits. Currently, performance evaluations/surveys are not initiated to ensure accountability and effectiveness or efficiency. This enhancement requires 16 staff and \$3.1 million.

Establish a National Recruitment Program. Since its inception, USCIS has not had the resources to establish a National Recruitment Program (NRP). According to the Office of Personnel Management, the recruitment process for federal employers holds a number of challenges, one of which is the ability to replace an aging workforce. Over the next five years, over half of USCIS' workforce will be eligible for retirement. USCIS must be positioned to compete for talent in light of the retirement wave. The primary mission of the NRP will be to help management attract the right talent in order to ensure

the employment of a high-quality and diverse workforce making USCIS an employer of choice. This enhancement requires three staff and \$3.0 million.

Enhance procurement operations. The current procurement workload requires additional contract specialists. Currently, USCIS has only ten warranted contract specialists averaging 171 actions annually. USCIS procurement staff obligated approximately \$605 million in new contractual actions in FY 2005, in addition to administering \$4 billion in ongoing contracts. Also, the USCIS Office of Contracting recently assumed responsibility for the USCIS portion of several large contracts formerly administered by ICE. Continued understaffing poses significant internal control issues and increases the risk that limited contract dollars will not be used as effectively as possible. This request will double the size of USCIS' Office of Procurement. This enhancement requires ten staff and \$1.6 million.

4. Summary.

Table 4 summarizes the calculation of the FY 2008 / 2009 costs at the \$2.329 billion (rounded to the nearest million).

| Table 4 – FY 2008/2009 IEFA Costs | |
|--|--------------------|
| FY 2007 IEFA Budget | \$1,760,000 |
| Less: Non-Recurring Costs | (8,500) |
| FY 2007 Adjusted IEFA Budget | 1,751,500 |
| Plus: Inflation | 53,192 |
| Plus: Additional Resource Requirements | 524,317 |
| Total | \$2,329,000 |

F. Determining Application and Petition Surcharge Costs.

Asylum/Refugee and fee/exempt costs are referred to as “surcharges” since they are not directly related to the processing activity costs of a particular immigration benefit. These costs must be ascertained and then applied to all fee-paying applications.

1. Asylum and Refugee Costs.

Congress has authorized USCIS to set its immigration benefit application and petition fees at a level that recovers sufficient revenue to provide asylum and refugee services. INA section 286(m), 8 U.S.C. 1356(m). USCIS determined the asylum and refugee surcharge costs to be \$191 million or 8% (including \$14 million for the Cuban Haitian Entrant Program as identified in the “Additional Resource Requirements” section in part IV.E) of the FY 2008/2009 IEFA Costs.

2. Fee Waiver/Exemption Costs.

Congress has authorized USCIS to set its immigration benefit application and petition fees at a level that recovers sufficient revenue to provide services to other immigrants at no charge. INA section 286(m), 8 U.S.C. 1356(m). Eligible applicants and petitioners are granted fee waivers if they can establish that they are unable to pay the fee. In addition, asylum and refugee applicants are exempt from paying the fee for certain immigration benefit applications and petitions. This amount also includes fees received from applicants residing in the Virgin Islands of the United States and in Guam, since these fees are paid over to the treasuries of the Virgin Islands and Guam per section 286(m) of the INA, 8 U.S.C. 1356(m). USCIS determined the full costs of fee waivers and exemptions by subtracting the workload volume from the fee-paying volume of each application/petition, and multiplying that amount by the proposed fee. USCIS

determined the fee waiver/exempt costs to be \$150 million or 6% of the FY 2008/2009 IEFA Costs.

G. FY 2008/2009 Processing Activity Costs.

The amount of immigration and naturalization benefit application and petition and biometric costs that were assigned to processing activities was determined by adjusting the FY 2008/2009 IEFA costs by the costs attributable to the asylum/refugee and fee waiver/exemption services.

Table 5 summarizes the total of \$1.988 billion assigned to processing activities (dollars in thousands):

| Table 5 – FY 2008/2009 Processing Activity Costs | |
|---|---------------------------|
| FY 2008/2009 IEFA Costs | \$2,329,000 |
| Less: Asylum and Refugee Services | (191,000) |
| Less: Fee Waiver and Exempt Services | (150,000) |
| Total | <u>\$1,988,000</u> |

V. Volumes.

USCIS used two types of volume data in the fee review. The first is workload volume (measured in terms of the number of incoming applications and petitions) that was used as one of the main cost drivers for assigning processing activity costs to immigration and naturalization benefit applications and petitions (explained further in section VII.B). The other is fee-paying volume data that was used as the denominator in

the equation to calculate the immigration and naturalization benefit application and petition and biometric service unit costs.

A. Biometric Services.

Projected volume decreases from the FY 2006 levels include a projected decline of 304,086 in associated biometric services for TPS. As mentioned previously, USCIS will not assume that the TPS Program for re-registrants of certain nationalities will continue. USCIS also projects a workload volume decline of 22,509 associated with the conclusion of NACARA filings. In addition, USCIS projects a decrease of 119,075 in corresponding biometric service volume given the decrease in Form I-90 (130,124), less the increases in Form N-400 (4,074) and Form I-485 (6,975). This issue is explained in the next section. These decreases are offset by an increase in biometric services of 282,000 since USCIS will be expanding biometric services to the Form I-131 (Refugee Travel Document, Reentry Permit only) and Form I-751 (Petition to Remove the Conditions on Residence) in FY 2007. This was not projected in the FY 2007 IEFA budget. The overall projected decrease in biometric services from FY 2006 levels is 163,670. Given a workload volume of 3,318,000 in FY 2006, the projected FY 2008/2009 workload volume is 3,154,330. Also, given the fee-paying volume of 2,359,482 in FY 2006, the projected FY 2008/2009 fee-paying volume is 2,195,812.

B. Immigration Benefit Applications and Petitions.

As previously stated, this rule proposes to eliminate USCIS' operational dependency on certain interim benefit fees. Interim benefits are associated with the Form I-765, Application for Employment Authorization, and Form I-131, Application for Travel Document (Advance Parole only), that are issued to individuals on request while their

applications for adjustment of status to permanent residence (Form I-485, Application to Register Permanent Status or Adjust Status) are pending. USCIS' analysis of interim benefits associated with a pending Form I-485 identified a total fee-paying volume decrease of 517,000 applications (317,000 Form I-765 and 200,000 Form I-131). This proposed rule eliminates separate fees for interim benefits for applicants for adjustment of status to permanent residence.

As previously mentioned, this proposed rule eliminates K-3 (certain spouses of United States citizens) petition fees associated with Form I-129F. USCIS' analysis of K-3 petitions identifies a volume decrease of 20,997 in the total number of fee-paid Form I-129F as a result of this change.

USCIS also will not assume that TPS for re-registrants of certain nationalities will continue, resulting in an assumed decline of volumes for Form I-821 (Application for Temporary Protected Status) and Form I-765. As such, USCIS projects a decrease in volume of 304,086 for each of these benefits, with the fiscal effect adjusted by the fact that there is no fee charged for the Form I-821 for re-registrants.

USCIS projects that there will be no filings for Form I-881, Nicaraguan Adjustment and Central American Relief Act – Suspension of Deportation or Application Special Rule (NACARA 203) in FY 2008 and 2009, for a workload volume decline of 22,509 (from 22,509 in FY 2006 to zero). The fee-paying volume decline is 22,487.

Projected volume increases are the product of projections from the USCIS Workload and Fee Projection Group – similar to the FY 1998 Fee Review. USCIS leveraged a time series model based on a regression analysis over the last 15 years, with the most recent data trends given the greatest weight. USCIS then adjusted this data based on known or

projected program, policy, or other factors that would impact the analysis. The Workload and Fee Projection Group mainly focused on the applications and petitions that comprise the majority of the workload. For the remainder of the workload, USCIS used FY 2006 actual volumes for the FY 2008/2009 biennial period. The Workload and Fee Projection Group did not foresee a reason to change these figures from FY 2006 levels since this was a fairly typical year.

The Workload and Fee Projection Group projected an overall decrease of 391,824 in immigration benefit application and petition volumes over FY 2006 levels due to projected decreases in Form I-129 (17,955), Form I-130 (3,189), Form I-131 (32,880), Form I-140 (5,158), Form I-539 (13,531), Form I-687 (workload of 37,778; fee-paying of 36,756), Form I-765 (162,583), Form I-90 (130,124), less increases projected in the Form I-485 (6,975), Form N-400 (4,074), and other form types (325).

Finally, USCIS is proposing to exempt applicants from paying a fee from certain initial applications for benefits for humanitarian reasons. This includes all applicants filing Form I-914 (124 fee-paying applications), Application for T Nonimmigrant Status, and Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, who seek immigrant classification under VAWA (8,813 fee-paying applications). These applications have in common the fact that they are filed by victims of crime who are often in an extremely vulnerable position. Many of these applicants are already in a position to qualify for an individual fee waiver, and waiving fees more generally for these relatively low-volume applications will save the adjudication time necessary to consider fee waivers individually, and will serve the public interest without undue cost to other applicants as a result. The costs associated with these exemptions increase the surcharge

for fee exemptions, and are added to all applications in accordance with the methodology identified in section VIII.

In sum, the overall projected workload decrease in immigration benefit applications and petitions from FY 2006 levels is 414,317. Given a total workload volume of 5,991,362 in FY 2006, the projected FY 2008/2009 total workload volume is 5,577,045. The overall fee-paying decrease is 960,204. Given the total fee-paying volume of 5,702,571 in FY 2006, the projected FY 2008/2009 total fee-paying volume is 4,742,367 (includes additional fee exemptions for humanitarian reasons outlined above).

USCIS' projections show a decline in the total volume of applications. However, staffing requirements to handle this work increase relative to current levels because the current staffing level is based on what USCIS can afford, not what is required to meet acceptable performance standards. That situation contributed to large backlogs in the past. As stated previously, USCIS was only able to catch up temporarily through the infusion of a large temporary subsidy of appropriated dollars that allowed USCIS to temporarily acquire sufficient capacity to handle the work.

Table 6 summarizes the FY 2006 actual workload volumes, the projected FY 2008/2009 biennial workload volumes, and the difference by application/petition.

| Table 6 – Workload Volumes by Application/Petition | | | |
|---|---------------------------------------|---|-------------------|
| Form No. | FY 2006 Actual Workload Volume | FY 2008/2009 Projected Workload Volume | Difference |
| I-90 | 682,149 | 552,025 | (130,124) |
| I-102 | 24,139 | 24,035 | (104) |
| I-129 | 417,955 | 400,000 | (17,955) |
| I-129F | 66,177 | 66,177 | |

| | | | |
|---------------------|------------------|------------------|------------------|
| I-130 | 747,012 | 743,823 | (3,189) |
| I-131 | 371,880 | 339,000 | (32,880) |
| I-140 | 140,158 | 135,000 | (5,158) |
| Waiver Applications | 45,459 | 45,459 | |
| Form I-290B/Motions | 47,645 | 47,645 | |
| I-360 | 16,086 | 16,000 | (86) |
| I-485 | 606,425 | 613,400 | 6,975 |
| I-526 | 600 | 600 | |
| I-539 | 233,531 | 220,000 | (13,531) |
| I-600/600A | 29,500 | 29,601 | 101 |
| I-687 | 38,278 | 500 | (37,778) |
| I-690 | 3,293 | 3,293 | |
| I-694 | 3,696 | 3,696 | |
| I-695 | 29 | 56 | 27 |
| I-698 | 831 | 494 | (337) |
| I-751 | 143,360 | 143,000 | (360) |
| I-765 | 1,462,583 | 1,300,000 | (162,583) |
| I-817 | 5,762 | 5,762 | |
| I-824 | 40,105 | 40,785 | 680 |
| I-829 | 88 | 88 | |
| I-881 | 22,509 | | (22,509) |
| I-905 | 2 | 10 | 8 |
| I-914 | 403 | 400 | (3) |
| N-300 | 91 | 100 | 9 |
| N-336 | 13,692 | 14,000 | 308 |
| N-400 | 730,642 | 734,716 | 4,074 |
| N-470 | 669 | 669 | |
| N-565 | 31,902 | 32,000 | 98 |
| N-600/600K | 64,711 | 64,711 | |
| Total | 5,991,362 | 5,577,045 | (414,317) |

To calculate unit costs, USCIS identified the number of fee-paying volumes for each application/petition and biometric fee by dividing the actual fee revenues received in FY 2006 by the FY 2006 fee. USCIS then adjusted this number to reflect the filing trends in FY 2007, which is reflected in Table 7.

| |
|---|
| Table 7 – Fee-Paying Volumes by Application/Petition |
|---|

| Form No. | FY 2006 Actual Fee-Paying Volume | Adjustment | FY 2008/2009 Projected Fee-Paying Volume |
|---------------------|---|-------------------|---|
| I-90 | 640,529 | (130,124) | 510,405 |
| I-102 | 22,486 | (104) | 22,382 |
| I-129 | 417,712 | (17,955) | 399,757 |
| I-129F | 65,728 | (20,997) | 44,731 |
| I-130 | 743,741 | (3,189) | 740,552 |
| I-131 | 365,048 | (232,880) | 132,168 |
| I-140 | 134,901 | (5,158) | 129,743 |
| Waiver Applications | 45,459 | | 45,459 |
| I-290B/Motions | 47,645 | | 47,645 |
| I-360 | 13,671 | (8,899) | 4,772 |
| I-485 | 548,035 | 6,975 | 555,010 |
| I-526 | 600 | | 600 |
| I-539 | 229,160 | (13,531) | 215,629 |
| I-600/600A | 29,159 | 101 | 29,260 |
| I-687 | 37,256 | (36,756) | 500 |
| I-690 | 3,293 | | 3,293 |
| I-694 | 3,696 | | 3,696 |
| I-695 | 25 | 27 | 52 |
| I-698 | 668 | (337) | 331 |
| I-751 | 130,529 | (360) | 130,169 |
| I-765 | 1,339,126 | (479,583) | 859,543 |
| I-817 | 5,762 | | 5,762 |
| I-824 | 39,551 | 680 | 40,231 |
| I-829 | 45 | | 45 |
| I-881 | 22,487 | (22,487) | |
| I-905 | 2 | 8 | 10 |
| I-914 | 124 | (124) | |
| N-300 | 83 | 9 | 92 |
| N-336 | 13,640 | 308 | 13,948 |
| N-400 | 706,387 | 4,074 | 710,461 |
| N-470 | 669 | | 669 |
| N-565 | 30,643 | 98 | 30,741 |
| N-600/600K | 64,711 | | 64,711 |
| Total | 5,702,571 | (960,204) | 4,742,367 |

VI. Assigning Costs to Processing Activities.

USCIS uses a detailed operating plan to manage its resources effectively. The plan identifies the payroll (pay and benefits, awards, overtime) and non-payroll costs (general

expenses, information technology, contracts) associated with each USCIS office, as well as costs that are managed and funded centrally such as rent, information technology operations and maintenance, and service level agreements. The operating plan is a vast improvement over the cost data used in the FY 1998 Fee Review, where the information was only available at very high levels conglomerating various functions.

Each USCIS office was classified as “overhead” versus “direct.” This classification was performed since direct cost items can be directly “assigned” to activities based on a relationship that is readily identifiable between the cost item and a processing activity. For example, an Adjudications Officer performs work under the “Make Determination” activity. Therefore, the costs associated with an Adjudications Officer are directly assigned to this activity. Overhead cost items are “allocated” to activities since no direct relationship can be developed between the resource item and the activity. For example, there is no direct relationship between the Office of Planning, Budget, and Finance and the “Make Determination” activity, and as such, a portion of the costs from this office were allocated to the “Make Determination” activity based on number of government staff, as was the case with most overhead cost items.

A. Overhead Costs.

USCIS defined overhead as “the ongoing administrative expenses of a business which cannot be attributed to any specific business activity, but are still necessary for the business to function.” Examples include the majority of Headquarters functions such as the Office of Planning, Budget, and Finance, the Office of Information Technology, the Office of Chief Counsel, the Congressional Relations Office, and the Office of Policy and Strategy. These offices are further identified in section III.D under the “Administration”

program. Field functions classified as overhead include support positions such as management, administration, analysts and information technology staff. Centrally managed costs such as rent, information technology operations and maintenance, and service level agreements were also classified as overhead.

Total overhead costs were identified to be \$924 million, of which \$183 million is payroll (20%) and \$741 million is non-payroll (80%). Total overhead costs represent 39% of the FY 2008/2009 IEFA costs. This includes \$41.2 million to enhance the training program, \$33.1 million for rent and lease acquisition resources, and \$124.3 million to upgrade and maintain the USCIS information technology environment as identified in section IV.E.3. USCIS assessed a total of \$843 million (\$924 million less \$81 million associated with the asylum and refugee program) in overhead costs as a flat percentage of each application/petition and biometric processing activity costs. While the amount of the overhead will vary between processing activities, the percentage of cost is constant.

B. Direct Costs.

USCIS reviewed and analyzed the FY 2008/2009 IEFA costs in detail to determine which direct items could be directly assigned to the immigration benefit application/petition and biometric service processing activities. The following depicts the major direct cost items assigned to the processing activities:

Inform the Public. Of the \$1.988 billion assigned to immigration benefit application/petition and biometric service processing activities, \$228 million or 11% is assigned directly to the “Inform the Public” activity. “Inform the Public” includes \$43 million for the National Customer Service Center contract and support activities to

provide nationwide assistance by telephone to individuals calling from within the United States about immigration services and benefits. Most of the \$80 million in direct payroll costs (including \$9.5 million of the \$123.8 million to enhance adjudications and support staff as identified in section IV.E.3) are for IIOs who assist persons with information necessary to complete required form types and explain the administrative procedures and average processing times for each application/petition.

Intake. Of the \$1.988 billion assigned to immigration benefit application/petition and biometric service processing activities, \$86 million or 4% is assigned directly to the “Intake” activity. “Intake” includes \$84 million for activities related to the mail, filing, data entry, and fee receipting at USCIS Service Centers. It also includes \$2 million for the lockbox, which is an agent of the Department of Treasury that performs the electronic fee receipting, fee deposit, and initial data entry for specific form types.

Conduct IBIS Checks. Of the \$1.988 billion assigned to immigration and naturalization benefit application and petition and biometric service processing activities, \$48 million or 2% is assigned directly to the “Conduct IBIS Check” activity. Since July 2002, USCIS has added security checks to the processing of all immigration and naturalization benefit applications and petitions. “Conduct IBIS Check” includes \$23 million in direct payroll costs of Adjudication Officers and other authorized personnel to compare information on applicants, petitioners, beneficiaries, derivatives and household members who apply for an immigration or naturalization benefit on a USCIS application or petition against various Federal lookout systems.

Review Records. Of the \$1.988 billion assigned to immigration benefit application/petition and biometric service processing activities, \$214 million or 11% is

assigned directly to the “Review Records” activity. “Review Records” includes \$54 million in direct payroll costs to oversee records operations (including processing Freedom of Information Act (FOIA) requests) in Headquarters, the National Records Center (a centralized facility for storing alien records), and field offices. This activity covers \$8.8 million in new funding to process FOIA requests (as identified in section IV.E.3), a \$17 million records support contract to maintain records at local field offices, \$13 million in contract support staff in support of the Harrisonburg File Facility for receipt file holdings, and the National Archives and Records Administration contract for the retirement of alien files, among other records activities.

Make Determination. Of the \$1.988 billion assigned to immigration benefit application/petition and biometric service processing activities, \$1.058 billion or 53% is assigned directly to the “Make Determination” processing activity. This activity includes \$421 million in direct payroll costs for Adjudication Officers and support personnel (including \$78.2 million of the \$123.8 million to enhance adjudications and support staff as identified in section IV.E.3), \$24 million for field office discretionary general expenses, \$13 million for field office overtime, \$50 million for investment technology field support contract, \$3.2 million for field training, \$23 million for the National Benefits Center contract, \$21 million for the adjudications clerical contract in support of field offices, and \$11.5 million in Application Support Center contract costs in direct support of processing the Form I-90 (Application to Replace Permanent Resident Card).

Fraud Detection and Prevention. Of the \$1.988 billion assigned to immigration and naturalization benefit application and petition and biometric service processing activities, \$90 million or 5% is assigned directly to the “Fraud Detection and Prevention” activity.

This activity includes \$50 million in payroll costs for Immigration Officers and Intelligence Research specialists to detect and combat immigration and naturalization benefit fraud. The activity also includes \$31 million in additional government staff for fraud prevention and detection efforts, \$8 million for a new Administrative Site Inspection Program, and \$4 million in system enhancements to national security systems and processes (as identified in section IV.E.3).

Issue Document. Of the \$1.988 billion assigned to immigration and naturalization benefit application/petition and biometric service processing activities, \$90 million or 5% is assigned directly to the “Issue Document” activity. The “Issue Document” activity involves work performed at centralized facilities to produce secure cards for certain immigration benefits. This includes \$20 million for the Integrated Card Production system, including the contract, consumables, and information and technology operations and maintenance. The activity also includes \$32.4 million for a backup card production facility, and \$31.6 million for the enhanced delivery of secure documents (as identified in section IV.E.3).

Capture Biometrics. Of the \$1.988 billion assigned to immigration and naturalization benefit application and petition and biometric service processing activities, \$174 million or 9% is assigned directly to the “Capture Biometrics” activity. The “Capture Biometrics” activity includes \$74 million in contract costs and \$12.5 million in direct payroll costs (most of which is for Application Support Center managers) of operating the Application Support Centers to electronically capture applicants’ fingerprints, photographs, and signatures. This activity also includes \$63 million (including \$12.4 million for increased costs associated with an overall increase in projected biometric

workload as well as an increase in FBI background check costs passed on to USCIS through an interagency agreement, as identified in section IV.E.3) in costs paid to the FBI to conduct the appropriate background checks of fingerprints and/or applicant names (depending upon the immigration benefit). This is a change in the manner in which USCIS currently calculates the biometric fee since FBI background check costs were previously included in the immigration benefit application/petition fees. USCIS believes this is a more accurate methodology since there is a direct relationship between the biometric workload and the costs paid to the FBI. In addition, under this method, applicants and petitioners directly bear the costs of FBI background checks, as is the case today.

The FY 2008/2009 IEFA costs by processing activity are summarized in Table 8 (dollars in thousands).

| Table 8 – FY 2008/2009 Costs by Processing Activity | |
|--|---------------------------|
| Activity | Amount (000) |
| Capture Biometrics | \$174,000 |
| Inform the Public | \$228,000 |
| Intake | \$86,000 |
| Conduct IBIS Checks | \$48,000 |
| Review Records | \$214,000 |
| Make Determination | \$1,058,000 |
| Fraud Detection and Prevention | \$90,000 |
| Issue Document | <u>\$90,000</u> |
| Total | <u>\$1,988,000</u> |

VII. Assigning Processing Activity Costs to Applications and Petitions and Biometric Services.

In ABC, the final stage in the process is assigning the processing activity costs to the products. The products are decisions on the immigration and naturalization benefit applications and petitions and biometric services for which USCIS charges fees.

A. Biometric Services.

The “Capture Biometrics” processing activity was assigned directly to the biometric fee. The unit cost for this activity, and the biometric fee, is \$79 based on total costs of \$174 million and a fee-paying volume of 2.196 million. The other processing activities represent the basic components of processing immigration and naturalization benefit applications and petitions.

B. Immigration Benefit Applications and Petitions.

In general, the more complex an immigration or naturalization benefit application or petition is to adjudicate, the higher the unit costs. This is because the largest processing activity cost, “Make Determination,” was assigned to the various immigration and naturalization benefit applications and petitions by a factor of workload volume weighted by completion rate (hours per completion). Workload volume is the measure of how many times an activity is performed for a particular product (number of application/petitions and biometrics received in a fiscal year), and “completion rate” measures the average adjudicative time or “level of effort” needed to perform the activity for a particular product, since time is a key factor in determining immigration benefit application and petition fees. The completion rates were based on the most recent data available from the period of September 2005 – August 2006. Exceptions to this general

rule occur when: (1) volumes skew the unit costs (e.g., high volume applications tend to have lower unit costs since costs are allocated over a higher volume base), (2) additional activities were performed (e.g., some applications require the creation of secure cards); and 3) applications and petitions with low volumes were increased only by the weighted average fee increase (discussed below).

For the processing activities of “Inform the Public,” “Intake,” “Conduct IBIS Check,” “Review Records,” “Fraud Prevention and Detection” and “Issue Document,” the applications and petitions reflect the same average unit processing activity costs for each activity. The “Issue Document” processing activity costs were allocated only to those applications for which a secure document is required. This is a departure from the basis of the current fees since the current unit processing activity costs vary for every immigration benefit application and petition. USCIS decided that this was the best allocation method since these processing activity costs are not particularly driven by the complexity of the application/petition, and also to minimize the dollar impact on the more complex applications and petitions (which already will carry higher fees due to their complexity).

As explained previously, USCIS assumed no separate interim benefit fees from Form I-485 applicants, and thus added interim benefit costs from the “Make Determination” activity into the cost of the Form I-485, the primary immigration benefit application for which interim benefits are relevant. USCIS accomplished this by adding the completion rates for the Forms I-765 and I-131 to the Form I-485 completion rate. As a result, the costs for the “Make Determination” activity for the Form I-485 received more of those costs, including associated overhead costs, than it normally would have without factoring

in interim benefits. USCIS believes this is a fair and equitable methodology since applicants, when filing a Form I-485, would also pay for the processing costs of interim benefits, and would not be required to pay for surcharges, other processing activities, and associated overhead costs more than once as they do today. Interim benefit costs outside the “Make Determination” processing activity were distributed to the other immigration benefit applications and petitions in accordance with the general methodology. Also explained previously, in anticipating the elimination of duplication in the K-3 petition process, USCIS assumed no revenues from Form I-129F as it relates to the K-3 classification, depending instead on one petition on Form I-130. This, too, has the effect of redistributing costs relating to the K-3 classification over all other form types.

USCIS leveraged “completion rates,” reflective of hours per completion, to identify the adjudicative time required to complete specific form types. The rate for each form type represents an average, as some cases within certain form types are more complex than others. Completion rates reflect what is termed “touch time” or the time the Adjudication Officer is actually handling or touching the case. Completion rates are not reflective of “queue time” or time spent waiting, for example, for additional information or supervisory approval. “Touch time” and “queue time” are different from “processing time,” which reflects the total time applicants and petitioners can expect to await a decision on their case once the application or petition is received by USCIS. Even though the completion rates for select applications and petitions have increased since the FY 1998 Fee Review, as referenced in section X, processing times have decreased for the majority of form types.

All Adjudication Officers are required to report completion rate information. In addition to using this data in determining fees, completion rates are a key factor in determining local office staffing allocations to match resources and workload since the type of workload (and amount) dictates the resource requirements. For this reason, the data are scrutinized both at the local office and regional level by management, and by the Performance Management Branch (PMB) at the Headquarters level to ensure data accuracy. When the data reported are found to be inconsistent with other offices, or inconsistent with prior reported data, PMB will contact the reporting office and make any necessary adjustments. USCIS also places confidence in the data, given the consistency of reporting it has witnessed over the last few years. The fact that this information is now available on a continual basis makes it easier for USCIS to update cost information more frequently for fee review and cost management purposes. This methodology is substantially superior to that available for the FY 1998 Fee Review, where it was necessary to use a method of physical observations (based on a statistically valid sample).

Local Office, Service Center, and the National Benefit Center completion rates, reflected in terms of hours per completion, are summarized in Table 9 by application and petition. The completion rates for Form I-914 are not identified here since this proposed rule would exempt applicants from paying the fee for this form type, and the completion rates for Form I-290B/Motions (Administrative Appeals Office) and Biometric Services (Application Support Centers) are also not identified here since specific costs can be directly assigned to these fee-based services, and therefore the factors of workload volume and completion rates are not necessary to assign processing activity costs to products.

| Table 9 – Completion Rates | | | |
|-----------------------------------|----------------------|------------------------|--------------------------------|
| Form No. | Local Offices | Service Centers | National Benefit Center |
| I-90 | .93 | .50 | N/A |
| I-102 | .61 | .30 | .39 |
| I-129 | .09 | .40 | N/A |
| I-129F | 4.98 | .41 | .37 |
| I-130 | .86 | .35 | .65 |
| I-131 | .54 | .20 | .14 |
| I-140 | 2.00 | .87 | N/A |
| Waiver Applications | 1.15 | 1.10 | .85 |
| I-360 | .95 | 2.26 | N/A |
| I-485 | 2.30 | 1.30 | 2.65 |
| I-526 | 2.38 | 4.03 | N/A |
| I-539 | 1.32 | .28 | .31 |
| I-600/600A | 1.53 | N/A | N/A |
| I-687 | 2.37 | 2.89 | .27 |
| I-690 | 3.49 | 1.91 | .23 |
| I-694 | 4.00 | .72 | N/A |
| I-695 | 1.85 | 13.00 | N/A |
| I-698 | 2.43 | 2.40 | N/A |
| I-751 | 1.36 | .46 | N/A |
| I-765 | .31 | .19 | .16 |
| I-817 | 1.81 | .46 | .64 |
| I-824 | 1.10 | .39 | .69 |
| I-829 | 4.45 | 4.24 | N/A |
| N-300 | 1.67 | N/A | N/A |
| N-336 | 1.34 | N/A | N/A |
| N-400 | 1.17 | N/A | N/A |
| N-470 | 1.48 | 1.91 | N/A |
| N-565 | .58 | .60 | N/A |
| N-600/600K | .80 | 1.17 | N/A |

Table 10 displays the unit costs (processing activity costs divided by the number of fee-paying applications/petitions) for each immigration benefit application and petition by processing activity, and the average processing activity unit costs. The processing

activity costs were identified in Table 8, and the number of fee-paying applications/petitions was identified as 4.742 million in Table 7.

The application and petition unit costs are generally increased by varying amounts according to the form type, mainly due to the “Make Determination” processing activity cost differences. As previously stated, the “Make Determination” processing activity unit cost generally follows the premise that the more complex the application/petition is to adjudicate, the higher the unit costs. For the processing activities of “Inform the Public,” “Intake,” “Conduct IBIS Check,” “Review Records,” “Fraud Prevention and Detection” and “Issue Document,” the applications and petitions reflect the same average unit costs for each processing activity. Since the “Issue Document” processing activity costs were allocated only to those applications for which a secure document is required, the average processing activity unit costs of \$19 (based on total fee-paying volume of 4.742 million) is less than the processing activity unit costs of \$41 (based on associated fee-paying volume of 2.193 million) for the associated applications.

Table 10 – Processing Activity Unit Costs by Application/Petition

| Form No. | Inform the Public | Intake | Conduct IBIS Check | Review Records | Make Determination | Fraud Prevention and Detection | Issue Document | Total Unit Processing Activity Cost |
|---------------------|--------------------------|---------------|---------------------------|-----------------------|---------------------------|---------------------------------------|-----------------------|--|
| I-90 | \$48 | \$18 | \$10 | \$45 | \$34 | \$19 | \$41 | \$215 |
| I-102 | \$48 | \$18 | \$10 | \$45 | \$104 | \$19 | \$0 | \$244 |
| I-129 | \$48 | \$18 | \$10 | \$45 | \$104 | \$19 | \$0 | \$244 |
| I-129F | \$48 | \$18 | \$10 | \$45 | \$239 | \$19 | \$0 | \$379 |
| I-130 | \$48 | \$18 | \$10 | \$45 | \$142 | \$19 | \$0 | \$282 |
| I-131 | \$48 | \$18 | \$10 | \$45 | \$49 | \$19 | \$41 | \$230 |
| I-140 | \$48 | \$18 | \$10 | \$45 | \$261 | \$19 | \$0 | \$401 |
| Waiver Applications | \$48 | \$18 | \$10 | \$45 | \$331 | \$19 | \$0 | \$471 |
| I-290B/Motions | \$48 | \$18 | \$10 | \$45 | \$371 | \$19 | \$0 | \$511 |
| I-360 | \$48 | \$18 | \$10 | \$45 | \$2,268 | \$19 | \$0 | \$2,408 |
| I-485 | \$48 | \$18 | \$10 | \$45 | \$647 | \$19 | \$41 | \$828 |
| I-526 | \$48 | \$18 | \$10 | \$45 | \$1,212 | \$19 | \$0 | \$1,352 |
| I-539 | \$48 | \$18 | \$10 | \$45 | \$84 | \$19 | \$0 | \$224 |
| I-600/600A | \$48 | \$18 | \$10 | \$45 | \$453 | \$19 | \$0 | \$593 |
| I-687 | \$48 | \$18 | \$10 | \$45 | \$495 | \$19 | \$0 | \$635 |
| I-690 | \$48 | \$18 | \$10 | \$45 | \$390 | \$19 | \$0 | \$530 |
| I-694 | \$48 | \$18 | \$10 | \$45 | \$330 | \$19 | \$0 | \$470 |
| I-695 | \$48 | \$18 | \$10 | \$45 | \$1,117 | \$19 | \$0 | \$1,257 |
| I-698 | \$48 | \$18 | \$10 | \$45 | \$1,107 | \$19 | \$41 | \$1,288 |
| I-751 | \$48 | \$18 | \$10 | \$45 | \$210 | \$19 | \$41 | \$391 |
| I-765 | \$48 | \$18 | \$10 | \$45 | \$83 | \$19 | \$41 | \$264 |
| I-817 | \$48 | \$18 | \$10 | \$45 | \$182 | \$19 | \$41 | \$363 |
| I-824 | \$48 | \$18 | \$10 | \$45 | \$126 | \$19 | \$0 | \$266 |
| I-829 | \$48 | \$18 | \$10 | \$45 | \$2,579 | \$19 | \$41 | \$2,760 |

| | | | | | | | | |
|---|-------------|-------------|-------------|-------------|--------------|-------------|-------------|--------------|
| N-300 | \$48 | \$18 | \$10 | \$45 | \$536 | \$19 | \$0 | \$676 |
| N-336 | \$48 | \$18 | \$10 | \$45 | \$391 | \$19 | \$0 | \$531 |
| N-400 | \$48 | \$18 | \$10 | \$45 | \$378 | \$19 | \$0 | \$518 |
| N-470 | \$48 | \$18 | \$10 | \$45 | \$428 | \$19 | \$0 | \$568 |
| N-565 | \$48 | \$18 | \$10 | \$45 | \$167 | \$19 | \$0 | \$307 |
| N-600/600K | \$48 | \$18 | \$10 | \$45 | \$245 | \$19 | \$0 | \$385 |
| Average Application/Petition | \$48 | \$18 | \$10 | \$45 | \$223 | \$19 | \$19 | \$382 |

VIII. Assigning Surcharge Costs to Applications and Petitions.

The final step in calculating the immigration and naturalization benefit application and petition fees is to add amounts to recover asylum and refugee costs, and fee waiver and exempt costs. As previously mentioned, these costs are referred to as “surcharges” since they are not directly related to the processing activity costs of a particular immigration benefit. Surcharges are not assigned to the biometric fee.

A. Method of Assigning Costs.

USCIS used the same average unit surcharge cost for every application and petition type. This is a departure from the current allocation methodology, since the current surcharges are based upon a flat percentage of each application/petition processing activity cost and therefore vary for each case type. USCIS decided that using the same average cost is a better allocation method, since the surcharges are unrelated to the complexity of the application/petition, and this new allocation method also minimizes the dollar impact on the more complex applications and petitions (which already will carry higher fees due to their complexity).

B. Fee Waiver/Exemption Costs.

As previously stated, total fee waiver and exemption costs were determined to be \$150 million. The average of \$32 was derived by dividing the \$150 million by the total 4.742 million application/petition fee-paying volumes.

C. Asylum/Refugee Costs.

As previously stated, the full costs of asylum and refugee operations were determined to be \$191 million. The average of \$40 was derived by dividing the \$191 million by the total 4.742 million application/petition fee-paying volume.

Table 11 displays the amount of surcharges applied to each application and petition on a per unit basis. Unit processing activity costs average (weighted) \$382 or 86% of FY 2008/2009 IEFA costs, while unit fee waiver/exemption and Asylum/Refugee surcharges average \$72 or 14%. This equates to a weighted average unit cost per application/petition of \$454.

| Table 11 – Application and Petition Unit Costs | | | | |
|---|--------------------------------------|--|---------------------------------------|------------------------|
| Form No. | Unit Processing Activity Cost | Unit Fee Waiver/ Exempt Surcharge | Unit Asylum/ Refugee Surcharge | Total Unit Cost |
| I-90 | \$215 | \$32 | \$40 | \$287 |
| I-102 | \$244 | \$32 | \$40 | \$316 |
| I-129 | \$244 | \$32 | \$40 | \$316 |
| I-129F | \$379 | \$32 | \$40 | \$451 |
| I-130 | \$282 | \$32 | \$40 | \$354 |
| I-131 | \$230 | \$32 | \$40 | \$302 |
| I-140 | \$401 | \$32 | \$40 | \$473 |
| Waiver Applications | \$471 | \$32 | \$40 | \$543 |
| I-290B/Motions | \$511 | \$32 | \$40 | \$583 |
| I-360 | \$2,408 | \$32 | \$40 | \$2,480 |
| I-485 | \$828 | \$32 | \$40 | \$900 |
| I-526 | \$1,352 | \$32 | \$40 | \$1,424 |
| I-539 | \$224 | \$32 | \$40 | \$296 |
| I-600/600A | \$593 | \$32 | \$40 | \$665 |
| I-687 | \$635 | \$32 | \$40 | \$707 |
| I-690 | \$530 | \$32 | \$40 | \$602 |
| I-694 | \$470 | \$32 | \$40 | \$542 |
| I-695 | \$1,257 | \$32 | \$40 | \$1,329 |
| I-698 | \$1,288 | \$32 | \$40 | \$1,360 |
| I-751 | \$391 | \$32 | \$40 | \$463 |
| I-765 | \$264 | \$32 | \$40 | \$336 |
| I-817 | \$363 | \$32 | \$40 | \$435 |
| I-824 | \$266 | \$32 | \$40 | \$338 |
| I-829 | \$2,760 | \$32 | \$40 | \$2,832 |
| N-300 | \$676 | \$32 | \$40 | \$748 |
| N-336 | \$531 | \$32 | \$40 | \$603 |
| N-400 | \$518 | \$32 | \$40 | \$590 |
| N-470 | \$568 | \$32 | \$40 | \$640 |

| | | | | |
|--|--------------|-------------|-------------|--------------|
| N-565 | \$307 | \$32 | \$40 | \$379 |
| N-600/600K | \$385 | \$32 | \$40 | \$457 |
| Weighted Average Application/Petition | \$382 | \$32 | \$40 | \$454 |

IX. Proposed Fee Adjustments

To arrive at the final proposed fees, the unit costs are rounded up or down to the nearest \$5 increment consistent with past fee practices as reflected in 8 CFR 103.7(b).

A. Biometric Services.

The biometric fee is increased by \$10, from \$70 to \$80, or 14%. USCIS last increased the fee by \$20, from \$50 to \$70, or 40% in April 2004. As discussed above, a portion of this fee is paid by USCIS to the FBI for fingerprint processing and that cost may change.

B. Immigration Benefit Applications and Petitions.

The weighted average application/petition fee is increased by \$223, from \$231 to \$454, or 96%. When combined with the biometric fee, the weighted average application/petition is increased from \$264 to \$491, or 86%. After consolidating the fees for adjustment of status (Form I-485) and interim benefits that previously required additional fees, the increase would only be 66%. When USCIS last performed a comprehensive fee review in FY 1998, the immigration benefit application/petition fees increased by a weighted average of \$65 or 76%, from \$85 to \$150.

To arrive at the proposed fees, in addition to rounding adjustments, USCIS adjusted certain low volume form types. Since some low volume form types (20,000 or less) produced particularly high unit costs as compared to the current fees (greater than 250%), USCIS decided to increase them only by the average percentage fee increase (96%) of all

immigration benefit applications and petitions. The additional costs from these form types were then prorated to other applications and petitions. These form types are:

- Form I-360, Petition for Amerasian Widow(er) or Special Immigrant (with respect to those Form I-360 applicants whose fee is not removed altogether);
- Form I-690, Application for Waiver of Excludability;
- Form I-695, Application for Replacement Employment Authorization or Temporary Residence Card;
- Form N-300, Application to File Declaration of Intention; and
- Form N-470, Application to Preserve Residence for Naturalization Purposes.

USCIS did, however, use its normal methodology to increase proposed fees for form types related to the legalization program under the Immigration Reform and Control Act of 1986, INA sec. 245A, 8 U.S.C. 1255a (Form I-694, Notice of Appeal of Decision; Form I-698, Application to Adjust Status From Temporary to Permanent Resident) and for Form I-829, Petition by Entrepreneur to Remove Conditions, although these increases were more than 250%. These applications, which relate to IRCA legalization applicants who have resided in the United States since at least 1982, or entrepreneurs seeking lawful permanent residence on the basis of investments of at least \$500,000, did not appear to involve a substantial rationale for a lower fee than would otherwise be charged under the applicable methodology.

The proposed fee schedule for the immigration and naturalization benefit applications and petitions is illustrated in Table 12. The proposed rounded fee for each application or petition is compared to the current rounded fee, and the difference between the two is

identified. This table omits some variations within specific form types relating to children, family caps, etc.; for these fees, please see the proposed regulation text itself.

| Table 12 – Current and Proposed Fees | | | |
|--|--------------------|---------------------|-------------------|
| Form No. | Current Fee | Proposed Fee | Difference |
| I-90 | \$190 | \$290 | \$100 |
| I-102 | \$160 | \$320 | \$160 |
| I-129 | \$190 | \$320 | \$130 |
| I-129F | \$170 | \$455 | \$285 |
| I-130 | \$190 | \$355 | \$165 |
| I-131 | \$170 | \$305 | \$135 |
| I-140 | \$195 | \$475 | \$280 |
| Waiver Applications | \$265 | \$545 | \$280 |
| I-290B/Motions | \$385 | \$585 | \$200 |
| I-360 | \$190 | \$375 | \$185 |
| I-485 | \$325 | \$905 | \$580 |
| I-526 | \$480 | \$1,435 | \$955 |
| I-539 | \$200 | \$300 | \$100 |
| I-600/600A | \$545 | \$670 | \$125 |
| I-687 | \$255 | \$710 | \$455 |
| I-690 | \$95 | \$185 | \$90 |
| I-694 | \$110 | \$545 | \$435 |
| I-695 | \$65 | \$130 | \$65 |
| I-698 | \$180 | \$1,370 | \$1,190 |
| I-751 | \$205 | \$465 | \$260 |
| I-765 | \$180 | \$340 | \$160 |
| I-817 | \$200 | \$440 | \$240 |
| I-824 | \$200 | \$340 | \$140 |
| I-829 | \$475 | \$2,850 | \$2,375 |
| I-914 | \$270 | \$0 | (\$270) |
| N-300 | \$120 | \$235 | \$115 |
| N-336 | \$265 | \$605 | \$340 |
| N-400 | \$330 | \$595 | \$265 |
| N-470 | \$155 | \$305 | \$150 |
| N-565 | \$220 | \$380 | \$160 |
| N-600/600K | \$255 | \$460 | \$205 |
| Weighted Average Application/Petition | \$231 | \$454 | \$223 |

Based on the proposed fee schedule and a projected application/petition fee-paying

volume of 4.742 million and biometric service volume of 2.196 million, immigration and naturalization benefit application and petition and biometric fees will generate \$2.331 billion in annual revenue for the FY 2008 and FY 2009 biennial period. For the same period, the estimated FY 2008/2009 cost of processing immigration and naturalization benefit applications and petitions and biometric services is \$2.329 billion. The \$2 million difference is due to rounding.

X. Impact on Applicants and Petitioners.

The USCIS recognizes that this proposed rule would have an impact on persons who file the affected applications and petitions and biometric fees. The proposed fee increases range from \$65 to \$2,350, depending on the type of immigration or naturalization benefit for which the application or petition is submitted. Fifteen fees will increase by amounts between \$65 and \$200; eight fees will increase, and one will decrease, by amounts between \$200 and \$300; one fee will increase by amounts between \$300 and \$400; and six fees will increase more than \$400.

USCIS is retaining the authority to waive certain fees on a case-by-case basis pursuant to 8 CFR 103.7(c). In all fee waiver requests, applicants are required to demonstrate “inability to pay.” In determining “inability to pay,” USCIS officers will 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. The current fees are based on a comprehensive fee review completed in FY 1998 that was based on projected FY 1998 costs and volumes, and processes that existed in FY 1996. The new fee review proposes to correctly align the fees with currently planned costs and processes. The methodology is similar to the FY

1998 Fee Review, yet improved in many areas given the more detailed and accurate data sources and improved management tools to align resources and workload (e.g., staffing model). For these reasons, the proposed fees cannot be compared to the current fees because so many of the factors that influence the costs of processing immigration benefit application and petition fees have changed over this significant amount of time.

However, besides the fact that overall costs have increased dramatically, the increases in fees can mainly be explained by comparing completion rate data (termed “cycle time” in the FY 1998 Fee Review).

As stated previously, the more time or “level of effort” spent on adjudicating a particular application or petition, measured in terms of completion rates, the higher the fee. Most of the increases in completion rates are associated with the additional time devoted to the expansion of background checks to all immigration benefit applications instituted in July 2002. Examples include:

- Form I-140, Immigrant Petition for Alien Worker, fee increase is due to the threefold increase in completion rates (i.e., three times the level of effort) as compared with the FY 1998 Fee Review;
- Form I-129F, Petition for Alien Fiancé, fee increase is due to the threefold increase in completion rates as compared with the FY 1998 Fee Review;
- Waiver Applications, fee increases are due to the threefold increase in completion rates as compared with the FY 1998 Fee Review;
- Form I-485, Application to Register Permanent Status or Adjust Status, fee increase is due to the threefold increase in completion rates as compared with the FY 1998 Fee Review, as well as the manner in which interim benefits are added to this form type

as explained in section VI (when comparing the fees applicants pay today for adjustment of status and interim benefits versus the proposed single fee for adjustment of status, the difference is far less significant);

- Form N-400, Application for Naturalization, fee increase is due to the threefold increase in completion rates as compared with the FY 1998 Fee Review;
- Form I-751, Petition to Remove the Conditions on Residence, fee increase is due to the doubling in completion rates as compared with the FY 1998 Fee Review; and
- Form I-817, Application for Family Unity Benefits, fee increase is due to the threefold increase in completion rates as compared with the FY 1998 Fee Review.

Finally, even though the fee for Form I-290B/Motions was increased recently (September 28, 2005), the actual Fee Review supporting the increase was completed in November 2002. The data that were used for the current fee are outdated and costs have significantly increased. The November 2002 Fee Review was not a comprehensive analysis, as it did not analyze the full costs outside the Administrative Appeals Office that should be assigned to this form type, such as overhead, and other activities outside of the “Make Determination” activity such as “Fraud Prevention and Detection,” and “Inform the Public” activities. In addition, the November 2002 Fee Review did not include the allocation of fee waiver/exempt and asylum and refugee surcharges to the Form I-290B/Motions as this rulemaking does.

XI. Fee Waivers

In tandem with the proposed increase in fees, USCIS also proposes to modify and clarify eligibility for an individual fee waiver in 8 CFR 103.7(c). Where appropriate in its fee structure, USCIS waives the application/petition fee for a class of

applicants/petitioners. For example, there is no fee for filing an application for asylum. The applicable rule, 8 CFR 103.7(c) provides for an individual fee waiver request in other cases. USCIS considers waiving the fee for a single individual based on his or her circumstances when all others in similar circumstances applying for the same benefit or service must pay the fee.

Every fee waiver, whether for a group of applicants done through the rate setting process or through an individual fee waiver, does not simply waive the fee for the affected individual or individuals. Since USCIS is funded from application fees, a fee waiver transfers the cost to all other fee-paying applicants. Fairness requires that there be compelling reasons when granting an individual fee waiver to one applicant while making others applying for the same benefit or service pay full cost plus a surcharge to pay for the free service provided to the first customer.

In recent months, the number of individual fee waiver requests has risen, both in terms of total volume and as a percentage of applications filed. In addition, the proposed rate setting is based on historical data with respect to fee waivers. The higher fees proposed in this rule would likely mean more customers will apply for fee waivers as they attempt to avoid the rising costs of applying for a benefit or service. The process of considering a fee waiver request itself has a significant associated adjudication cost.

To offset this potential, this proposed rule clarifies the fee waiver process by limiting fee waivers to certain situations. The current rule permits application for a fee waiver even when such an application contradicts the basic benefit or service being requested. For example, companies can apply for a waiver of the fee when seeking to admit a foreign worker to whom they must pay appropriate wages. Similarly, individuals may

apply for a fee waiver when seeking status based on a substantial investment or an extension of stay where they must demonstrate the ability to support themselves during the period of extended stay without working. Applicants for permanent residence must demonstrate they can support themselves and will not become a public charge, and those seeking to sponsor the immigration of a relative must commit to providing a financial safety net to the relative if necessary to ensure the alien does not become a public charge, yet such applicants can seek a fee waiver.

These examples illustrate situations where the basic premise of a fee waiver is wholly or largely inconsistent with the status held or benefit or service sought. The proposed rule applies this principle by limiting the possibility of a fee waiver to certain kinds of applications where a need-based waiver is not inconsistent with the status or benefit being sought. In so doing, it also clarifies and simplifies the waiver process. The proposed rule limits the list of applications for which an individual fee waiver based on inability to pay may be granted to the Form I-90; 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 the Form I-290B (if relating to a motion or appeal filed with USCIS regarding one of the other waiver-eligible form types).

Finally, a fee waiver based on an inability to pay implicates other provisions of the INA. INA section 212(a)(4), 8 U.S.C. 1182(a)(4), provides that an alien who is likely to become a public charge is inadmissible to the United States. In family-sponsored immigration, for example, this potential ground for inadmissibility may be overcome through the appropriate affidavit of support under INA section 213A, 8 U.S.C. 1183a.

USCIS should not grant a waiver of a fee that indicates that the alien may be inadmissible and such affidavit of support may be suspect.

XII. 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 proposed 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 50,000 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 proposed rule are those that file and pay the fees for certain immigration benefit applications on behalf of an alien. These applications include the Form I-129, Petition for a Nonimmigrant Worker, and the Form I-140, Immigrant Petition for Alien Worker. USCIS conducted a statistically valid sample analysis of applicants of these form types to determine if this proposed 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 form types, USCIS first identified the minimum sample size that was large enough to achieve a 95% 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% were classified as small entities. Therefore, USCIS determined that a substantial number of small entities are impacted by this proposed rule.

USCIS then analyzed the economic impact on small entities of this proposed 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 form 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, we are able to understand the economic impact of this proposed rule on the individual small entities we have 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% of the small entities exhibited an impact of less than 0.1% of sales revenue, and all of the small entities sampled exhibited an impact of less than 1% of total revenue. A simple (non-weighted) average of the 273 small entities equated to an overall impact of only 0.06 % of sales revenue. Therefore, USCIS believes that a substantial number of small entities are not significantly impacted economically by this proposed rule.

In summary, although the analysis shows that this rulemaking would affect a substantial number of small entities, the economic impact of this proposed rule was found to be negligible. This proposed rule has been reviewed in accordance with 5 U.S.C. 605(b), and the Department of Homeland Security certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

B. Unfunded Mandates Reform Act of 1995.

The Unfunded Mandates Reform Act of 1995 (UMRA) requires certain actions to be taken before an agency promulgates any notice of proposed 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 \$100,000,000 or more (adjusted annually for inflation) in any 1 year.” 2 U.S.C. 1532(a). While this proposed rule, if finally promulgated, may result in the expenditure of more than \$100 million by the private sector annually, the rulemaking is not a “Federal mandate” as defined for UMRA 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 proposed 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 proposed 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 INA, 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 would be forced to enact 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 proposed rule has been reviewed by the Office of Management and Budget.

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 proposed 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), 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 propose to impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

The changes to the fees will require changes to the application/petition form types to reflect the new fees. USCIS will submit a notification to OMB with respect to any such changes. In addition, this proposed rule anticipates (but is not dependent on) consolidating the Form I-131 and Form I-765 into the Form I-485 so that applicants for

adjustment of status will not be required to file three separate form types in order to apply for adjustment of status, advance parole and employment authorization. This change will reduce paperwork burdens on these applicants.

List of Subjects in 8 CFR Part 103.

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

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is proposed to be 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 entry for the Form I-914 in paragraph (b)(1);
 - b. Revising the entries for the following forms in paragraph (b)(1);
 - c. Removing the fifth and sixth sentences in paragraph (c)(1); and by
 - d. Adding a new paragraph (c)(5).

The revision and addition read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

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For capturing biometric information. 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.

* * * * *

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.

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Form I-102. For filing a petition for an application (Form I-102) for Arrival/Departure Record (Form I-94) or Crewman's Landing (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 section 214.1(a)(2) of this chapter who is the beneficiary of an immigrant petition filed by a U.S. 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 documents--\$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).

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 or as a self-petitioning battered or abused spouse, parent, or child of a U.S. citizen or Lawful Permanent Resident.

Form I-485. For filing an application for permanent resident status or creation of a

record of lawful permanent residence--\$905 for an applicant 14 years of age or older; \$805 for an applicant under the age of 14 years; no fee for an applicant filing as a refugee under section 209(a) of the Act. No additional fee will be charged for a request for travel document (advance parole) or employment authorization by an applicant who has paid the Form I-485 application fee, regardless whether or not the Form I-131 or Form I-765 is required to be filed by such applicant to receive these benefits.

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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.

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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.

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 those subsections.)--\$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 or \$570 for each application for a minor child (under 18 years of age) is required at the time of filing with the Department of Homeland Security. The maximum amount payable by a family (husband, wife, and any minor children) shall be \$1,990.

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 31 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. The maximum amount payable by a family (husband, wife, and any minor children (under 18 years of age living at home)) shall be \$4,110. 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 (a maximum of \$4,230 per family) 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.

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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.

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

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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.

* * * * *

Motion. For filing a motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Executive Office for Immigration Review does not have jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for relief for which no fee is chargeable or for any motion to reopen or reconsider made concurrently with any initial application for relief under the immigration laws for which no fee is chargeable. (The fee of \$585 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision. When a motion to reopen or reconsider is made concurrently with any application for relief under the immigration laws for which a fee is chargeable, the motion is filed and, if the motion is granted, the requisite fee for filing the application for relief will be charged and must be paid within the time specified in order to complete the application.)--\$585.

* * * * *

(c) * * *

(5) Except as otherwise specifically provided by this paragraph and by paragraphs (c)(2) and (c)(4) of this section, no fee relating to any application, petition, appeal, motion or request made to U.S. Citizenship and Immigration Services may be waived under this section except for the following: Form I-90; 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 Forms I-290B and motions filed with U.S. Citizenship and Immigration Services relating to the specified forms in this paragraph (c)(5).

* * * * *

Dated:

Michael Chertoff,
Secretary