

supported administrative costs (e.g. records management, forms management, human resources, procurement, budget, finance). Since these costs are associated with the processing of immigration benefit applications, BCIS proposes adjusting the fees to recover these costs in accordance with the INA. The annual amount, adjusted for FY 2004 and FY 2005, of \$157 million equates to a \$23 per application charge.

D. Cost of Living

To maintain current service levels, the current immigration benefit application fees were adjusted for cost of living increases for FY 2004 and FY 2005

based upon inflationary rates used for the President's annual budget request. This increase in the annual amount of \$28 million equates to a \$4 average per application charge.

How Is the Biometric Fee Changing in This Rule?

BCIS charges a fee to recover the operating costs of its fingerprinting program. The costs of the program have risen since 1999, the time of the last fee review. The annualized cost of the program is \$96 million, which includes the capability to electronically capture and retain necessary biometrics (photo, signature, and press-print images) for certain immigration benefit applications

at the time of the applicant/petitioner's first visit to a BCIS Application Support Center. This equates to an increase of \$20. Therefore, the new biometric fee will be \$70.

To better describe the services provided under this fee, the proposed rule refers to it as a biometric fee rather than a fingerprinting fee.

What Are the New Application Fees and How Do the New Fees Compare to the Current Fees?

The proposed new immigration benefit application fees and their dollar differences are displayed in Table 1.

TABLE 1.—CURRENT VERSUS NEW APPLICATION AND PETITION FEES

Form No.	Description	New fee	Current fee	Change
I-90	Application to Replace Permanent Resident Card	\$185	\$130	\$55
I-102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	155	100	55
I-129	Petition for a Nonimmigrant Worker	185	130	55
I-129F	Petition for Alien Fiancé(e)	165	110	55
I-130	Petition for Alien Relative	185	130	55
I-131	Application for Travel Document	165	110	55
I-140	Immigrant Petition for Alien Worker	190	135	55
I-191	Application for Permission to Return to an Unrelinquished Domicile	250	195	55
I-192	Application for Advance Permission to Enter as a Nonimmigrant	250	195	55
I-193	Application for Waiver of Passport and/or Visa	250	195	55
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal.	250	195	55
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	185	130	55
I-485	Application to Register Permanent Residence or to Adjust Status	315	255	60
I-526	Immigrant Petition by Alien Entrepreneur	465	400	65
I-539	Application to Extend/Change Nonimmigrant Status	195	140	55
I-600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition.	525	460	65
I-601	Application for Waiver on Grounds of Excludability	250	195	55
I-612	Application for Waiver of the Foreign Residence Requirement	250	195	55
I-687	For Filing Application for Status as a Temporary Resident	240	185	55
I-690	Application for Waiver of Excludability	90	35	55
I-694	Notice of Appeal of Decision	105	50	55
I-695	Application for Replacement Employment Authorization or Temporary Residence Card	65	15	50
I-698	Application to Adjust Status from Temporary to Permanent Resident	175	120	55
I-751	Petition to Remove the Conditions on Residence	200	145	55
I-765	Application for Employment Authorization	175	120	55
I-817	Application for Family Unity Benefits	195	140	55
I-824	Application for Action on an Approved Application or Petition	195	140	55
I-829	Petition by Entrepreneur to Remove Conditions	455	395	60
I-881	NACARA—Suspension of Deportation or Application for Special Rule Cancellation of Removal.	275	215	60
I-914	Application for T Nonimmigrant Status	255	200	55
N-300	Application to File Declaration of Intention	115	60	55
N-336	Request for Hearing on a Decision in Naturalization Procedures	250	195	55
N-400	Application for Naturalization	320	260	60
N-470	Application to Preserve Residence for Naturalization Purposes	150	95	55
N-565	Application for Replacement Naturalization Citizenship Document	210	155	55
N-600	Application for Certification of Citizenship	240	185	55
N-600K	Application for Citizenship and Issuance of Certificate under Section 322	240	185	55

BCIS is also making a number of non-substantive stylistic corrections to the fee provisions amended by this rule, and updating the cross-reference to fee regulations under the Freedom of Information Act in 8 CFR 103.7(b)(2) to

refer to Department of Homeland Security rather than Department of Justice regulations. Reference to Form I-700 has been deleted, as this form is no longer used.

Does BCIS Have the Authority To Waive Fees on a Case-By-Case Basis?

Yes, BCIS has the authority to waive 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,” BCIS 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.

How Will BCIS Inform the Public of Future Fee Adjustments Based Solely on Inflation?

The proposed rule provides that in subsequent years, starting with FY 2006, BCIS will adjust the current immigration benefit application fees on October 1st each year based upon the inflation level enacted by Congress. If Congress has not enacted the inflationary rate by the start of the fiscal year, BCIS will use the anticipated inflation rates used in the President’s annual budget request. BCIS will inform the public of the new fee schedule through a notice published in the **Federal Register** and on its Web site.

Regulatory Flexibility Act

This rule has been reviewed in accordance with 5 U.S.C. 605(b), and the Department of Homeland Security certifies that this rule will not have a significant economic impact on a substantial number of small entities. The majority of applications and petitions are submitted by individuals and not small entities as that term is defined in 5 U.S.C. 601(6).

BCIS acknowledges, however, that a number of small entities, particularly those filing business-related applications and petitions, such as Form I-140, Immigrant Petition for Alien Worker; Form I-526, Immigrant Petition by Alien Entrepreneur; and Form I-829, Petition by Entrepreneur to Remove Conditions, may be affected by this rule. For the FY 2004/2005 biennial time period, BCIS projects that approximately 190,000 Forms I-140, 435 Forms I-526, and 508 Forms I-829 will be filed. However, this volume represents petitions filed by a variety of businesses, ranging from large multinational corporations to small domestic businesses. BCIS does not collect data on the size of the businesses filing petitions, and therefore does not know the number of small businesses that may be affected by this rule. However, even if all of the employers applying for benefits met the definition of small businesses, the resulting degree of economic impact would not require a Regulatory Flexibility Analysis to be performed.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule 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.

Executive Order 12866

This rule is considered by the Department of Homeland Security to be a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review. The implementation of this interim rule would provide BCIS with an additional \$232 million in FY 2004 and \$394 million in FY 2005 in annual fee revenue, based on a projected annual fee-paying volume of 6.8 million, 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 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 BCIS does not adjust the current fees to recover the full costs of processing immigration benefit applications, the backlog will likely increase. The revenue increase is based on BCIS costs and projected volumes that were available at the time of the rule. Accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule 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 rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law No. 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 rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

It should be noted that the changes to the fees will require changes to the application/petition forms to reflect the new fees. BCIS will submit a notification to OMB with respect to any such changes.

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(b) is amended by:

- Removing the entry “For fingerprinting by the Service” and adding the entry “For capturing biometric information” in its place, and by revising the entries for the following forms in paragraph (b)(1);

