Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1768–96; AG No. 2137–98]

RIN 1115–AE42

Adjustment of Certain Fees of the Immigration Examinations Fee Account

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to adjust the fees schedule of the Immigration Examinations Fee Account for certain immigration adjudication and naturalization applications and petitions. Fees collected from persons filing these applications and petitions are deposited into the Immigration Examinations Fee Account and used to fund the cost of processing immigration adjudication and naturalization applications and petitions and associated support services; the cost of providing similar services to asylum and refugee applicants; and the cost of similar services provided to other immigrants at no charge. The fees that fund the Immigration Examinations Fee Account were last revised on July 14, 1994; since the revision, the cost of the services supported by the Account have increased. The Immigration and Naturalization Service (INS) conducted a thorough review of the resources and activities funded by the Account and has determined that the current fees do not recover the costs of services. The fee increases range from $20.00 to $255.00 depending on the type of application or petition filed. Without a fee increase and based on 4.3 million fee-paying applications, the INS projects FY 1998 fee revenues of $368.4 million. The INS also estimates that it will cost $638.6 million to process 5 million applications, of which 4.3 are expected to be fee-paying. This would result in a shortfall of revenue to expenses of approximately $270.2 million. This rule is necessary to ensure that the fees that fund the Immigration Examinations Fee Account generate sufficient revenue to recover the full cost of processing immigration adjudication and naturalization applications, petitions, the cost of asylum, refugee and other immigrant services provided at no charge to the applicant.

DATES: Written comments must be submitted on or before March 13, 1998.

ADDRESSES: Please submit written comments, in triplicate (one original and two copies), to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service (INS), 425 I Street, N.W., Room 5307, Washington, D.C., 20536, Attention: Public Comment Clerk. To ensure proper handling, please reference INS Number 1768–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Michael T. Natchuras, Chief, Fee Policy and Rate Setting Branch, Office of Budget, Immigration and Naturalization Service, or Diane M. Eggert, Senior Staff Accountant, Fee Policy and Rate Setting Branch, Office of Budget, Immigration and Naturalization Service, on (202) 616–2754, or in writing at 425 I Street, N.W., Room 6240, Washington, D.C., 20536. Detailed documentation of the rate setting process is available upon request by calling (202) 616–2754.

SUPPLEMENTARY INFORMATION:

Legislative Authority

A. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Acts of 1989 and 1991

The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1989 (Public Law (P.L.) 100–459) authorized the INS to prescribe and collect fees to recover the cost of providing certain immigration adjudication and naturalization services. P.L. 100–459 also authorized the establishment of the Immigration Examinations Fee Account (Examinations Fee Account) in the Treasury of the United States. All revenue from fees collected for the provision of immigration adjudication and naturalization services are deposited in the Examinations Fee Account and ''* * * remain available * * * to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees * * * (8 U.S.C. 1356(n)).''

In subsequent legislation, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991 (P.L. 101–515), Congress further authorized ''* * * that fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.'' (8 U.S.C. 1356(m))

Conference Report 104–378, Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies For the Fiscal Year Ending September 30, 1996, and For Other Purposes, directs the INS to fund the cost of the Cuban-Haitian Entrant Program from the Examinations Fee Account. The Report states, ''(t)he conferees have also agreed that the activities related to the resettlement of Cubans and Haitians should be transferred to the * * * Service and that the costs of these activities should be supported by the Immigration Examinations Fee account.''

B. The Independent Offices Appropriation Act, 1952

The INS also employs the authority granted through the Independent Offices Appropriation Act, 1952 ((P.L. 82–137) (IOAA), 31 U.S.C. 9701), commonly referred to as the ''user fee statute,'' to develop its fees. The user fee statute directs Federal agencies to identify services provided to unique segments of the population and to charge fees for those services, rather than supporting such services through general tax revenues. The IOAA states that ''* * * each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible.'' The IOAA further states that

charges for such services or things of value should be based on ''* * * [t]he costs to the Government * * *''

C. The Chief Financial Officers Act of 1990

The INS must also conform to the requirements of the Chief Financial Officer Act of 1990 (P.L. 101–576). Section 205(a)(8) of the Act requires each agency's Chief Financial Officer to ''review, on a biennial basis, the fee, 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.'' (31 U.S.C. 902(a)(8))

Federal Cost Accounting and Fee Setting Standards and Guidelines

A. Office of Management and Budget (OMB) Circular No. A–25, User Charges

When developing fees for services, the INS adheres to the principles contained in OMB Circular Number A–25, User Charges. OMB Circular A–25 states that as a general policy a ''user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.'' (OMB Circular A–25, User Charges, section 6.) The Circular provides the following discussion of what constitutes a ''special benefit'':

> When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit * * *). For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service: (a) [E]nables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); or (b) [P]rovides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., insuring deposits in commercial banks); or (c) [I]s performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Customs inspection after regular duty hours). (OMB Circular A–25, User Charges, section 6.a.(1))

The guidance contained in OMB Circular A–25 is applicable to the extent that it is not inconsistent with any Federal statute. Specific legislative authority to charge fees for services takes precedence over OMB Circular A–25 when the statute expressly designates ''* * * who pays the charge; how much is the charge; where collections are deposited.'' (OMB Circular A–25, User Charges, section 4.b.) When a statute does not address issues of how to calculate fees or what costs to include in the fee calculation, Federal agencies must follow the principles and guidance contained in OMB Circular A–25 to the fullest extent allowable.

OMB Circular A–25 directs Federal agencies to charge the ''full cost'' of providing services when calculating fees that provide a specific benefit to recipients. According to the Circular:

> ''Full cost'' includes all direct and indirect costs to any part of the Federal Government of providing a good, resource, or * * * appropriate share of:
>
> (a) Direct [or] 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 * * *
>
> (c) The management and supervisory costs.
>
> (d) The costs of enforcement, collection, research, establishment of standards, and regulation * * *
>
> (e) Full cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose. (OMB Circular A–25, User Charges, section 6.d.)

B. Department of Justice Guidelines

The Department of Justice issued guidance on User Fee Programs in April 1993. The guidance states that as a general policy ''[a] charge shall be imposed to recover the full cost to the Federal Government of rendering a service that provides specific benefits to an identifiable recipient above and beyond those that accrue to the public at large.'' (User Fee Program, Supplement to Department of Justice Budget Formulation and Execution Calls, April 1993, pg. 2)

C. Federal Accounting Standards Advisory Board Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government

When developing fees for services, the INS also adheres to the cost accounting concepts and standards recommended by the Federal Accounting Standards Advisory Board (FASAB). The FASAB was established in 1990 through a Memorandum of Understanding between the Secretary of the Treasury, the Director of the OMB, and the Comptroller General of the United States. The Board's purpose is to recommend accounting standards for the Federal Government. In developing its recommendations, the FASAB considers the financial and budgetary information requirements of the Congress, Executive agencies, and other users of Federal financial information.

In June 1995, OMB and General Accounting Office (GAO) published the FASAB *Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government.* In this document the FASAB recommends five standards as the fundamental elements of managerial cost accounting for Federal agencies: ''(1) accumulating and reporting costs of activities on a regular basis for management information purposes, (2) establishing responsibility segments to match costs with outputs, (3) determining full costs of government goods and services, (4) recognizing the costs of goods and services provided among federal entities, and (5) using appropriate costing methodologies to accumulate and assign costs to outputs.'' (FASAB, Statement of Federal Financial Accounting Standards Number 4, section 2, pg. 1) These standards became effective for Federal agencies on September 30, 1996.

In the Basis for Conclusions, the FASAB states, ''* * * As stated in the [Exposure Draft], the full cost of an output produced by a responsibility segment is the sum of direct and indirect costs that contribute to the output, including the costs of supporting services provided by other segments and entities.'' (FASAB, Statement of Federal Financial Accounting Standards Number 4, section 199, pg. 78) The discussion emphasizes that full cost information has many uses, including ''Setting fees and prices for government goods and services'' and provides the following discussion on full cost:

> Many respondents agreed that full cost should be considered as a primary basis for setting fees and reimbursements for government goods and services. As pointed out in the E[xposure] D[raft], it is a federal policy that, with certain exceptions, user charges (prices or fees) should be sufficient to recover the full costs of goods, services, and resources provided by the federal government as sovereign. (FASAB Statement of Federal Financial Accounting Standards Number 4, section 203, pg. 79)
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> To implement the policy, full cost information is necessary. Only with reliable full cost information can management ensure that user charges fully recover the costs. (FASAB, Statement of Federal Financial

Accounting Standards Number 4, section 204, pg. 79–80)

The Immigration Examinations Fee Account

A. Background

The Department of Justice (DOJ), Immigration and Naturalization Service (INS) charges fees for the processing of specific immigration adjudication and naturalization applications and petitions. The INS maintains four fee accounts; the fees collected and deposited in each account are used to fund specific services. The four fee accounts are: the Examinations Fee Account, the Immigration User Fee Account, the Land Border Inspection Fee Account, and the Legalization Fee Account. Since the fees deposited into each of the accounts are designed to recover the cost of specific immigration and naturalization services, these fees must be reviewed regularly and adjusted as: (1) Costs change, (2) more precise cost determination processes become available, or (3) directed by legislation. This rule proposes to revise certain immigration adjudication and naturalization fees that are collected and deposited into the Examinations Fee Account.

B. History of Immigration Adjudication and Naturalization Fees and the Immigration Examinations Fee Account

The INS has been charging fees for immigration adjudication and naturalization services since 1968. At that time, the INS' authority to assess fees derived from the authority of the IOAA. The revenue generated from these fees was deposited into the General Fund of the United States Treasury as miscellaneous receipts and was not available to the INS. The INS received an appropriation to fund immigration adjudication and naturalization services. The fees charged during the period of 1968 to 1989 were calculated based on the salary and benefit costs of the INS adjudicators who processed immigration adjudication and naturalization applications and petitions, and did not recover the full cost of service.

In 1989, Congress established the Examinations Fee Account. In the first year of the Account's existence, the INS retained the appropriation that funded the processing of immigration adjudication and naturalization applications and petitions. During that year, fees collected for these applications and petitions were used to enhance the adjudication and naturalization program (although Congress did temporarily direct the INS to deposit $50 million of the fee revenue into the General Fund of the Treasury). In the subsequent years, fees deposited into the Account have been the sole source of funding for immigration adjudication and naturalization services, and other programs as directed by Congress, and replaced the annual appropriation that the INS received for such services. When the Account was first established, the INS revised its fee-setting methodology to include a component for indirect costs. In subsequent legislation, Congress directed the INS to use revenue in the Examinations Fee Account to fund the cost of asylum processing and other services provided to immigrants at no charge. Consequently, the INS began to add a ''surcharge'' to the immigration adjudication and naturalization fees to recover these additional costs.

Currently, the Examinations Fee Account is funded by a variety of fees charged to persons who apply for specific adjudication and naturalization services by filing various applications and petitions with the INS or the Executive Office of Immigration Review (EOIR). Examples of these applications and petitions include, but are not limited to, applications for permanent resident status, petitions for relatives, employment authorization applications, reentry permits, and extensions of temporary stay. The current fees range from $65.00 to $155.00 and were last revised on July 14, 1994.

C. Sufficiency of the Current Fee Schedule

In FY 1998, the INS may experience a shortfall of revenue to expenses in the Examinations Fee Account because the current fees do not recover the full cost of processing immigration adjudication and naturalization applications and petitions. Based on the current fee schedule and a projected fee-paying volume of 4.3 million applications, immigration adjudication and naturalization fees will generate $368.4 million in revenue for FY 1998. For the same period, the estimated cost of processing immigration adjudication and naturalization applications and petitions is $638.6 million. This would cause a shortfall of revenue to expenses of $270.2 million.

In addition, recent legislative changes to the Immigration and Nationality Act (INA) have reduced the amount of section 245(i) penalty fees that had been available to enhance the revenue in the Examinations Fee Account. Previously, certain aliens could apply for adjustment of status under section 245(i) of the INA by paying a $650.00 penalty fee, in addition to the base applications fee. Both the base application fee and the penalty fee were deposited into the Account and were available to fund immigration adjudication and naturalization programs. The amendments to section 245(i) have sharply limited the amount of penalty revenue available to the Examinations Fee Account for immigration adjudication and naturalization services. Virtually all of the penalty fee is now deposited into the Immigration Detention Account and available for only detention and deportation activities. In FY 1998, the Examinations Fee Account will experience a decrease of approximately $129.2 million in projected penalty fees due to changes in the law.

Another factor that had contributed to the insufficiency of the current fees is the increased cost of providing asylum and refugee services. Congress has authorized the INS to fund its asylum and refugee programs, and Cuban and Haitian entrant relocation program from the Examinations Fee Account. Since the last fee adjustment, funding levels for the International Affairs program, which administers these programs, have increased. These increases include the transfer of the Cuban-Haitian Entrant Program from the Community Relations Service to the INS on March 31, 1996, which added $10.2 million and 21 positions to the Account, and the recent transfer of additional asylum and refugee costs from the Violent Crime Trust Fund to the Account. This transfer added costs of $29.6 million and 388 positions to the Account. Overall, funding for the International Affairs program from the Account has risen from $40.7 million in FY 1994 to a proposed $92.8 million in FY 1998.

D. Programs and Services Funded through the Examinations Fee Account

The Examinations Fee Account provides approximately 20% of the INS' funding; funds from the Account are dispersed to virtually every program within the INS. Figure 1 illustrates the proposed FY 1998 funding for the various INS programs through the Examinations Fee Account, along with the full time equivalents (FTE) supported by this funding (in thousands of dollars).

FIGURE 1.

Program	FY 1998 Resource amount ($000)	FY 1998 FTE level
Inspections	$28,618	405
Investigations	9,930	92
Intelligence	1,139	13
Adjudication and Naturalization	259,696	3,226
International Affairs	92,799	756
Training	4,275	25
Data and Communications	94,555	70
Information and Records Management	128,836	787
Construction and Engineering	1,270	1
Legal Proceedings	6,816	55
Management and Administration	18,982	141
Total	$646,916	5,571

The major programs, activities and services funded by the Examinations Fee Account are discussed below.

Inspections. Applications and petitions for a full range of benefits under the immigration laws are adjudicated by inspection personnel during periods of stand-by time at most ports-of-entry during non-peak workload hours. Certain types of applications, such as the Form I–193, Application for Waiver of Passport and/or Visa, are presented directly at land border ports-of-entry located on the United States borders, where they are adjudicated by inspection personnel. The Inspection program receives approximately 6% of its total funding from the Examinations Fee Account.

Investigations. Resources from the Examinations Fee Account provided to the Investigations program are focused on the detection and deterrence of fraud and to protect the integrity of benefits and documents legitimately provided by the INS to authorized aliens. The Investigations program's concentration on individual applications has led to the identification of large-scale production of fraudulent documentation. Examinations Fee Account funds are used to target complex criminal organizations involved in immigration benefits fraud for prosecution. The Investigations program receives approximately 4% of its total funding from the Examinations Fee Account.

Intelligence. This program provides strategic and tactical intelligence support to INS offices enforcing the provisions of the INA, and assists other Federal agencies in addressing national security issues. The INS's Forensic Document Laboratory is a critical component of the Intelligence program. Intelligence program support funding from the Examinations Fee Account is used to detect fraudulent documents and false claims to citizenship and other immigration benefits and privileges. The Intelligence program receives approximately 8% of its total funding from the Examinations Fee Account.

Adjudication and Naturalization. The adjudication and naturalization program processes, adjudicates, and ultimately grants or denies applications and petitions for benefits provided under the INA. The Adjudications program is responsible for processing applications and petitions for immigration and naturalization benefits, including, but not limited to: applications for permanent resident status, applications for work authorization, petitions for relatives, applications and petitions for immigrant and nonimmigrant workers, applications for travel documents, and applications for extensions of temporary stay by nonimmigrants in the United States. Naturalization processes include the examination of aliens to determine their qualifications for naturalization, the issuance of citizenship documents, the appearance of INS officials and the conduct of administrative naturalization oaths, and the appearance of INS officials at Federal and state courts that administer naturalization oaths. The Adjudications and Naturalization program operates in field offices located throughout the United States, and in four service centers located in California, Texas, Nebraska, and Vermont. Applications for immigration, nationality and citizenship benefits, and naturalization are received and adjudicated by a corps of immigration adjudication officers, and adjudication support personnel. District officers adjudicate cases that may require personal appearances by applicants and petitioners. Service center operations concentrate on cases that can be processed without individual appearances and that benefit from the economies generated by large volume, production-oriented processing, where immigration adjudication officers can conduct their reviews without interruptions caused by telephone inquiries and meetings with applicants.

Examinations Fee Account revenue is used to process and adjudicate applications and petitions for benefits provided under the INA, along with providing responses to inquires from the public and private sectors. The INS uses funds from the Examinations Fee Account for the entire benefits delivery process, from initial information dissemination and forms distribution, through the records and files activities, case adjudication, and the final close-out of the case and file. In the proposed FY 1998 Examinations Fee Account Budget, the adjudications and naturalization program requested resource enhancements that support the agency's strategic plan and permit the INS to build on the progress begun with previous enhancements. These resources will support and expand the contract with private vendors to provide the records maintenance services necessary to maintain pace with expected workload in FY 1998 and the ability to meet the challenges posed by new legislation and the associated increased demand for a broad range of information. These resources will support and expand on the records services provided to the key Districts (New York, Los Angeles, Miami, Chicago, and San Francisco), extend the direct mail program for naturalization applications to additional districts, provide funding for expanding capacity in the service centers, and develop pilot automation procedures in the benefits process. The direct mail program was instituted by the INS to allow the public to mail certain applications and petitions directly to service centers

where they are receipted and processed on the Computer Linked Application Information Management System (CLAIMS); when necessary, the applications and petitions are then transferred to district offices for interviews and adjudication. Currently, the INS has instituted the direct mail program for naturalization applications in four districts: New York, Los Angeles, Miami, and Chicago. Additional funding will allow for expansion of this program to other INS district offices. Service centers will expand capacity and infrastructure so that direct mail and CLAIMS may be extended to more districts. CLAIMS is a local area network and mainframe system that records and tracks cases for immigration and benefits. CLAIMS also includes a receipt tracking system in which an application or petition is receipted and then adjudicated.

The resources from the Examinations Fee Account will provide naturalization case support to the service centers by modifying CLAIMS and re-engineering the naturalization process by developing a naturalization module (NATS), within the CLAIMS environment. In addition, the Examinations Fee Account will provide resources to improve the INS' response to inquiries from the public and private sectors and the various branches of government, by telephone, in-person, and in writing by expanding and consolidating current telephone improvement efforts to establish a single 1–800 line that would act as a front-end to all immigration benefit and naturalization questions. The single 1–800 line would enable the INS to provide information on the status of applications and petitions, accept forms requests, and provide information on the requirements for filing an application and petition. This 1–800 line will increase the accessibility and availability of adjudication and naturalization forms and information without the necessity of multiple telephone inquiries. Fee revenues will be used to fund the naturalization reengineering project being conducted by the INS, the DOJ, and a private contractor. The naturalization reengineering will develop pilot programs to evaluate options for improving the timeliness and quality of naturalization services. The reengineering project will allow the INS to encourage and promote naturalization through community outreach and public education programs.

The Adjudications and Naturalization program receives approximately 99% of its total funding from the Examinations Fee Account.

International Affairs. The function of this program is to adjudicate refugee and asylum applications (which includes conducting FBI fingerprint checks of applicants), conduct investigations for preference and relative visa petitions, and conduct other records checks and background investigations as are required at overseas INS offices. Officers assigned to this program also provide assistance to citizens and lawful permanent residents abroad regarding adoptions, immigration, or parole of alien spouses and children, and other benefits under the INA. They also review requests for the Attorney General to grant humanitarian parole into the United States for deserving persons. The Congress transferred the cost of the Cuban and Haitian Entrant Program (CHEP) from the Community Relations Service to the INS Examinations Fee Account in 1996. Through grants and cooperative agreements, CHEP has responsibility for: (1) The primary Resettlement Program, which provides transitional community-based resettlement services to Cubans and Haitians paroled from INS detention; (2) the secondary Resettlement Program, which provides resettlement services, including employment placement and retention at specialized sites outside the state of Florida for those Cubans and Haitians whose initial resettlement in South Florida did not lead to self-sufficiency; and (3) the unaccompanied minors program, which provides foster care, residential shelter care, and health, counseling, educational, recreational, and family reunification services to unaccompanied Cuban and Haitian minors.

The International Affairs program receives approximately 90% of its total funding from the Examinations Fee Account.

Training. The Training program provides the staff and resources necessary to maintain an employee development program that meets the training needs of the INS' adjudications and naturalization workforce. The Training program provides services through a variety of ways, including initial training for Asylum, Immigration Adjudications, and Immigration Information Officers that is currently conducted at the four INS Service Centers; journeyman-level training for the asylum, adjudications, and naturalization workforce at the Federal Law Enforcement Training Center facility in Artesia, New Mexico; programs conducted by other Federal agencies; programs conducted by private contractors; and combined presentations using INS and non-INS resources. The Examinations Fee Account provides the Training program with resources to fund the costs the program incurs for providing adjudication and naturalization workforce training. The Training program receives approximately 14% of its total funding from the Examinations Fee Account.

Data and Communications. The Data and Communications program develops and operates INS automated information systems that support the adjudications and naturalization program, and operates the identification card production facility. Adjudications and naturalization support systems are currently being integrated and consolidated into CLAIMS, which provides adjudication support to service centers, district offices, and ports-of-entry. The system, which is operating in the service centers and is being installed in other field offices, reduces application processing time and response time to inquiries. The Data and Communications program also provides the administrative support functions for the INS through various management systems, both financial and administrative. The Data and Communications program receives approximately 25% of its total funding from the Examinations Fee Account.

Information and Records Management. The Information and Records Management program provides a variety of services critical to the adjudication and naturalization processes. These services include: creation of records; records maintenance, storage and tracking; response to Freedom of Information Act and Privacy Act requests; provision of information, including application forms, to the public, both in-person and by telephone, on immigration-related matters; compilation, analysis, publication, and issuance of INS statistical data. The processing of immigration adjudication and naturalization applications and petitions places a high demand for the services of the Information and Records Management program; in FY 1998, approximately 64% of the program's total resources will be funded through the Examinations Fee Account.

Construction and Engineering. The function of this program is to provide for the acquisition, design, construction, alteration, repair, maintenance, and management of all buildings, structures, and facilities that the INS owns or leases, some of which are involved in the processing of immigration adjudication and naturalization applications and petitions. The Construction and Engineering program

receives approximately 2% of its total funding from the Examinations Fee Account.

Legal Proceedings. Within the Legal Proceedings program, INS attorneys provide support to and/or represent the INS in asylum, rescission, naturalization, visa petition, adjustment of status cases, registry, sections 212(c) and 241(f), and other examination-related cases and matters. In FY 1998, the Legal Proceedings program will receive approximately 9% of its total funding from the Examinations Fee Account.

Management and Administration. The purpose of the Management and Administration program is to develop, implement, direct, operate, and evaluate the administrative support systems and services that meet internal operational and managerial needs and externally mandated requirements. Included in this program is the responsibility to provide executive direction and control of the INS; furnish accurate and prompt responses to Congressional and public inquires; administer and maintain effective budget and financial management systems; perform audits; conduct internal investigations to provide informational responses to inquires from the GAO, Office of Inspector General, and OMB, and DOJ offices; and develop and evaluate policies and systems to improve the effectiveness of INS programs. The major administrative functions within this program include personnel; accounting; budgeting; equal employment opportunity; procurement; property management; fleet management; security; safety and health; and other general services that support all programs within the INS. These services provide necessary support functions to the personnel and offices involved in the processing of immigration adjudication and naturalization applications and petitions. The Examinations Fee Account provides a portion of the funding for the Management and Administration program. In FY 1998, the Management and Administration program will receive approximately 11% of its total funding from the Examinations Fee Account.

The Immigration Examinations Fee Account Study

In the proposed rule that preceded the July 1994 fee adjustment, the INS acknowledged deficiencies in its fee development process and pledged to undertake a process of continuous improvement in the management of its fee accounts and the development of its fee schedules. In the January 10, 1994 proposed rule, the INS stated:

> INS has initiated a process of continuous improvement in the management of the finances of the fee accounts and the development of fee schedules. Areas that are being addressed over a projected multi-year time horizon include: Identifying the INS resources consumed in providing services to our customers which by law must be recovered through fee revenues; refining definitions of direct and indirect costs; and refining cost measurement systems, in concert with wider Department of Justice initiatives to improve financial management information systems. (**Federal Register**, Volume 59, Number 6, January 10, 1994, pg. 1308)

A. Composition of the Fee Study Team

As part of the process of continual improvement, the INS formed a Fee Study Team composed of INS personnel with expertise in budget, accounting, finance, rate setting, and immigration adjudication and naturalization processes. This team was supplemented with contracted technical support in the areas of Activity-Based Costing (ABC), activity process decomposition, and statistical sampling. From July 1995 until November of 1996, the Fee Study Team conducted a thorough review of the activities and costs of the immigration adjudication and naturalization services funded through the Examinations Fee Account. As a result of this study, the INS determined that the fee schedule of the Examinations Fee Account should be revised to reflect the current, full cost of immigration adjudication and naturalization services. A copy of this study will be provided upon request. Please see the ''For Further Information'' section of this rule for details on obtaining a copy of the study.

B. INS Fee Setting Methodology

The INS Fee Study Team employed an ABC methodology to determine the cost of the immigration adjudication and naturalization services for which a fee is charged. ABC relies on the premise that managers do not manage resources directly, but rather manage the activities that consume resources. The ABC approach measures costs across an organization without regard to functional boundaries and aggregates activities into logical process flows that ultimately deliver a product, service, or benefit. ABC allows an organization to identify costs from start to finish and associates those costs with the activities performed by that organization. Through this cross-functional process analysis, ABC focuses on the causal relationship of costs to activities. The FASAB *Statement of Federal Financial Accounting Standards Number 4, Managerial Cost Accounting Concepts and Standards for the Federal Government,* encourages the Federal agencies to use ABC ''to study its potential within their own operations.'' (section 142, pg. 60). The FASAB also notes that ABC has ''gained broad acceptance by manufacturing and service industries as an effective managerial tool.'' (Id.)

The ABC methodology uses a two stage approach to assigning costs. The first stage assigns resource costs to activities; the second stage assigns activity costs to cost objects (for the INS, the cost objects are the immigration adjudication and naturalization applications and petitions for which a fee is charged). To implement this two stage approach, ABC requires: the identification and definition of the activities involved in processing immigration adjudication and naturalization applications; the examination of budgetary and financial records to identify the resources required to conduct immigration adjudication and naturalization services; the assignment of these resources to the defined activities; and the assignment of activity costs to defined immigration adjudication and naturalization applications and petitions for which a fee is charged.

The Fee Study Team also selected a commercially-available ABC software to use in computing the immigration adjudication and naturalization application and petition fees. This software application was specially designed to assign resource costs through activities to final cost objects (applications and petitions). The data entered into the software was tailored to INS specifications using the pre-existing software structure. The software application was a fee calculation tool; the Fee Study Team performed the analysis necessary to identify the resources consumed in the processing of the various immigration adjudication and naturalization applications and petitions, define the application and petition processing activities, and develop the causal relationships between the resources, the activities, and the applications and petitions.

C. Fee Setting Assumptions

In calculating the proposed fees, the INS matched the resources needed to receive and process the new application and petition with the workload expected to be received in FY 1998. The adjudications process is continuous cycle. At any point in time, there will be applications in various stages of processing. This fee study attempted to

match the resources required to completely process approximately 5 million applications (of which 4.3 million will be fee-paying applications). At the time of the fee study, the INS had a ''backlog'' of uncompleted applications in excess of 1.5 million. The cost to process this backlog was not included in the resource base for this fee study. The cost to process these applications will be paid through the carry-over balance in the Examinations Fee Account. This carry over balance consists of revenue from backlogged applications and section 245(i) penalty fees. (The section 245(i) penalty fee is the amount that Congress allowed the INS to levy on certain adjustment of status applicants. The revenue from the section 245(i) penalty fee was used to subsidize the cost of processing immigration adjudication and naturalization applications and petitions. In January 1997, Congress redirected the use of most of this penalty fee to purposes other than immigration adjudication and naturalization application and petition processing. The section 245(i) penalty fee was discussed in more detail in the section of this document titled ''Sufficiency of the Current Fee Schedule.'')

Defining Immigration Adjudication and Naturalization Activities

In ABC, activities are the critical link to assigning resources to cost objects (applications and petitions for which the INS charges a fee). For purposes of the Fee Study, a generic model was constructed to demonstrate by use of a flowchart the activities involved in processing INS applications and to assist in identifying the resources these activities and tasks consume. This flowchart, and its accompanying text, is the Application Process Model (APM). The APM is a narrative and graphical representation of the activities (and their component tasks) necessary to process an application or petition. Linked together in logical sequence, these activities form a model of the application process. The APM models all the possible activities and tasks that are involved in processing immigration adjudication and naturalization applications and petitions; it does not model a specific application or petition. Individual activities or tasks may or may not occur in the processing of each application and may depend on the application type and the location (i.e., district office, service center) where processing occurs. The APM serves as the framework for accumulating activity costs. The activity costs are then assigned to each specific application and petition based on cycle times. (Cycle times measure the frequency and intensity of the demand for activity cost by each specific application or petition. Cycle times are discussed later in this document.)

To develop the APM, the INS Fee Study Team visited all of the four service centers and eight district offices, taking notes, conducting interviews, observing, and dissecting each of the activities involved in processing the INS applications and petitions for which fees are charged. The Fee Study Team consolidated the results of the observations during a series of focus sessions held shortly after the end of the field visits. During these sessions, the observed activities were arranged sequentially to illustrate the processing flow of an application, activities and their component tasks were defined, and the inputs and outputs of each activity were identified. To ensure the accuracy of the resulting APM, the Fee Study Team validated the results with INS and contractual personnel with extensive experience in processing immigration adjudication and naturalization applications and petitions. These validation sessions were held at INS headquarters and at selected field locations. After each validation session, the APM was modified and updated.

The development of the APM focused on actions, not on organizational structure or the person or group of persons performing the activity. An activity had to be an operationally-related set of tasks that occurred over time, have a definite beginning and end point, and consume at least five percent and no more than 40 percent of the Examinations Fee Account resources. Each activity was defined only once, although it was realized that certain activities (or component tasks) could occur more than once in processing a specific application or petition (this type of application-specific processing would be captured in the cycle time analysis).

The APM attempts to model the logical flow of an application or petition from the time it is received by the INS to its final disposition. However, the APM may not map tasks exactly in the sequence they occur in a specific INS office. A significant criterion for an accurate APM is that the activities and their corresponding tasks reasonably represent complete work steps. The operational sequence is of secondary importance. In visits to the district offices, variations in the operational sequence of tasks performed among offices were observed. Therefore, when composing the APM, the placement of a task (or sequence of tasks) within one named activity rather than another activity reflects the Study Team's best judgment of how and where the sequence occurred in most district offices or service centers.

During the development of the APM, it was assumed that as long as all tasks are accounted for, the sequence in which they occur would not materially affect the outcome of the Study. Within each activity, discrete, measurable tasks were identified. Activity and task names were chosen to describe clearly definable actions. There is a wide variety of terms used within various INS offices for a particular activity or task. The Fee Study Team attempted to define each activity using a commonly understood term. While a few activity and/or task names may not be recognized by practitioners in the field, the descriptions of each activity and its subordinate tasks should be familiar. The APM must be viewed as a whole with both the graphical representation and the accompanying textual definitions.

The major immigration adjudication and naturalization activities defined in the APM are:

Receive application and petitions, which includes the tasks of receiving, opening, screening, batching, and assembling application and petitions;

Record fee, which includes the task of receipting fees, reconciling registers, preparing and making deposits, and recording fee information into INS program and financial systems;

Input application data, which includes the tasks of entering data from application and petitions into program systems, verifying data, and printing current system data;

Manage records, which includes the tasks of searching and requesting files from other INS offices; creating temporary and/or permanent alien files; consolidating files; connecting returned evidence with application or petition files; pulling, storing, and moving files upon request; auditing and updating INS systems on the location of files; and archiving inactive files;

Adjudicate application, which includes the tasks of distributing workload; scheduling and conducting interviews, when necessary; reviewing, examining, and adjudicating applications and petitions; making and recording adjudicative decisions; requesting and reviewing additional evidence; and consulting with supervisors, legal counsel, and researching applicable laws and decisions on non-routine adjudications;

Prepare outgoing correspondence, which includes the tasks of preparing

interview schedules; coordinating requests for inter and intra-agency reports; preparing decision letters and requests for additional information; mailing all outgoing correspondence; sending requested files to other INS offices; preparing visa packages; and preparing and sending cables to United States consulates and INS offices in foreign locations;

Issue end product, which includes the tasks of entering alien registration, employment authorization, naturalization, or certificate of citizenship information into the appropriate INS system; producing the card or certificate, including printing, laminating, and inspection; scheduling and conducting naturalization ceremonies; and distributing the card or certificates to authorized beneficiaries; and

Respond to inquiry, which includes the tasks of receiving and responding to inquiries on the status of applications and petitions filed, or on how to obtain and file the various INS applications and petitions. Inquiries can be from applicants, legal representatives, or members of Congress and made through telephone calls, written correspondence, or walk-in inquiries.

These definitions are important in understanding the processes occurring at each activity and task level and how each process adds value to the application or petition.

The APM includes a detailed definition for each identified task. These definitions are important to understanding the processing that occurs in each activity and are an integral part of the APM. As noted previously, detailed documentation of the Fee Study is available upon request, including the complete APM with definitions. Please refer to the ''For Further Information'' section of this proposed rule for instructions on obtaining this information.

Identifying FY 1998 Examinations Fee Account Resources

The second step in implementing an ABC methodology is to identify the total resources of an organization and to assign these resources to the defined organizational activities. The Fee Study Team determined that the FY 1998 Congressional Budget for the Examinations Fee Account was the best available source of data for determining the cost of immigration adjudication and naturalization services.

A. Sources of Cost Information

Although the INS prepares financial statements for past fiscal years, there are problems with relying on financial statements as the sole source of resource data. Financial statements are inherently historically-focused. They record past events. While financial statement analysis can be a useful tool for determining historical spending patterns, financial statements do not incorporate anticipated program changes, staffing level fluctuations, or planned infrastructure improvements. Budgets, on the other hand, formally quantify management plans. Federal budgets reflect both policy decisions and program operational plans that have received the approval of both the Administration and Congress. In the Federal sector, budgets are rigorously examined at all levels of agency management, by the Administration through OMB reviews, and by the Congress. For these reasons, the INS relied on the FY 1998 Congressional Budget for the Examinations Fee Account as the base for determining the full cost of providing immigration adjudication and naturalization services for the ensuing fiscal years (FY 1998 and beyond).

As discussed earlier, the INS must follow Federal guidance in determining its fees for service. Both the FASAB Managerial Cost Accounting Standards and OMB Circular A–25, User Charges, require agencies to base fees and reimbursements on the ''full'' cost of the goods or services provided. The FY 1998 Congressional Budget for the Examinations Fee Account was the basis for determining the cost of immigration adjudication and naturalization service. However, several adjustments to this budget base were made to arrive at the ''full'' cost of immigration adjudication and naturalization services. These adjustments included deducting amounts from the Examinations Fee Account Budget that were not attributable to immigration adjudication and naturalization services and adding unfunded costs (i.e., bad debt expense, annual leave liability, and contingent liabilities) to the budget base. The budget base also includes the cost of asylum and refugee processing and the cost of applications processed at no charge to the applicant. These services consume resources but do not produce revenue; as such, asylum, refugee, and fee-waived costs can also be considered ''unfunded.''

B. Adjusting for Land Border Costs

Two types of fees are deposited into the Examinations Fee Account: (1) Fees for services related to immigration adjudication and naturalization services, and (2) fees for adjudication services provided at land border ports-of-entry into the United States (Land Border Services). Fees are charged at the northern and southern United States land borders for the processing and issuance of land border travel documents, including: non-immigrant records of arrival and/or departure, visa waiver non-immigrant records of arrival and/or departure, Canadian Border boat landing permits, and the replacements of a lost, stolen, or mutilated nonresident alien Mexican or Canadian border crossing cards. These land border fees were implemented in October of 1996 and were considered too new to be included in this Fee Study. (Both the CFO Act and OMB Circular A–25 require a bi-annual review of fees for services; the INS will review the adequacy of these fees at the appropriate time.) The FY 1998 Examinations Fee Account budget, however, is based on anticipated program f unding levels for services related to both fee types. To determine the budgeted funding level for immigration adjudication and naturalization services, amounts budgeted for Land Border Services were subtracted from the total FY 1998 Examinations Fee Account budget.

C. Determining Unfunded Items

Federal budgets are based on the amount of obligations that an agency plans to incur within the current fiscal year. Federal agencies often incur liabilities for actions or events that take place in the current fiscal year, but the obligations for those actions or events occur in subsequent fiscal years. These unbudgeted expenses are called ''unfunded items.'' Since the obligation and payment of these amounts will take place in future periods, they are not included—or ''funded''—in the current period budget, hence the name ''unfunded'' items. The INS must include amounts for unfunded items in its fees to generate sufficient revenue in the Examinations Fee Account to provide funding for these items when payment becomes due. The INS must recognize three categories of unfunded items: contingent liabilities, annual leave, and bad debt expense. Annual leave is vacation time earned by INS employees. While annual leave may be earned in one year, it may not actually be used until future periods. An amount must be added to the resource base to fund the cost of annual leave earned this year, but used in another year. A contingent liability is an event or existing condition that may result in a financial loss. For the INS, contingent liabilities are usually personnel actions, legal actions, or contract disputes for which the INS may make a financial settlement or perform an additional service. (For example, an employee may

file a personnel action that results in the payment of back wages, or an interest group may bring a legal action to have the INS re-adjudicate certain classes of applications without the payment of additional fees.) When a contingent liability is reasonably probable and ''estimatable,'' an agency must record the liability in its official books and records and set aside an amount to fund the liability when it becomes due and payable. Bad debt expense is incurred when an applicant submits an application or petition with a non-negotiable check. The INS has instituted procedures to prevent, as much as possible, the processing of applications and petitions presented with a non-negotiable check. However, due to the time lag between the deposit of the check and the return for non-negotiability, the INS usually incurs some processing costs. Most often, the INS has processed the application through the mail room, data entry, and records management areas. Holding applications until the accompanying checks are cleared would unfairly penalize the vast majority of clients who present negotiable checks. However, the fees are calculated at a level that recovers the full cost of immigration adjudication and naturalization services provided, even those that are provided when a non-negotiable check is presented. For that reason, a bad debt expense must be calculated and added to the budget base.

D. Total FY 1998 Immigration Adjudication and Naturalization Resources

The total resource base for FY 1998 immigration adjudication and naturalization services is the FY 1998 Examinations Fee Account Budget adjusted for the cost of Land Border Services, plus the unfunded items discussed previously. The resulting total is the estimated FY 1998 resources to fund the cost of processing the various immigration adjudication and naturalization services for which the INS charges a fee, plus the cost of similar services provided at no cost. The calculation of total immigration adjudication and naturalization application and petition processing resources that were assigned to the various applications and petitions is illustrated in Figure 2.

FIGURE 2.—RESOURCE BASE—PROCESSING IMMIGRATION ADJUDICATION AND NATURALIZATION APPLICATIONS AND PETITIONS ($000)

FY 1998 Proposed Examinations Fee Account Budget	$646,916
Less: Land Border Costs	(14,623)
Add: Bad Debt Expense	446
Contingent Liabilities	2,500
Unfunded Annual Leave	3,390
Total FY 1998 Resource Base	$638,629

Recommended Cost Assignment Methods

Once the resource base was determined, the Fee Study Team examined each resource type to determine the cost assignment method that best links the resource to an activity performed in the processing of immigration adjudication and naturalization applications and petitions. Activity costs were then assigned to the various applications and petitions based on the demand for the activity by the applications or petitions. Determining a cost assignment method is important to producing accurate results. Cost assignment methods are determined by carefully studying the factors that cause a resource to be consumed by an activity, and the consumption of activity costs by cost applications. The FASAB, in its *Statement of Federal Financial Accounting Standards Number 4, Managerial Cost Accounting Concepts and Standards for the Federal Government,* section 11, pg. 3, recognizes three types of cost assignments: direct tracing, cause-and-effect, and allocation. Determining a cost assignment method depends on (1) the materiality of the cost being assigned, and (2) the amount of precision gained by using a particular assignment method. The precision of the results must be weighed against the time and resources that must be expended to develop a cost assignment method. *Direct Tracing Cost Assignment.* When the relationship of the cost to the cost object is readily identifiable and measurable, direct tracing is the preferred method of cost assignment. An example of direct tracing is direct labor. The time and resources devoted to a specific task, product, or service can be observed and measured.

Cause-and-Effect Cost Assignment. When the relationship of the cost to the cost object is not readily observable, but can be assumed and measured based on another factor, it is called cause-and-effect cost assignment. For example, the cost of automated data processing can be assumed relational to the number of lines of data entered. A cost assignment can be developed using the percentage of lines of data entered to total cost.

Allocation Cost Assignment. In some cases, however, no relationship can be developed between the cost and the cost object. For example, the cost of a firm's chief executive officer may not be related through either direct-tracing or cause-and-effect to the firm's activities or cost objects.

Yet the cost of a chief executive officer, and the cost to maintain staff, is vital to the continued operation of the company for, among other services, strategic planning, policy decisions, and financing. When neither a direct-tracing nor cause-and-effect relationship can be established, a cost allocation is used. Allocation is a fair and reasonable assignment of cost based on a consistent factor, such as number of employees, department budgets, or actual costs. Cost allocation can also be used when the costs being assigned are not material and it is not cost-beneficial to determine a more precise assignment method.

Determining the Amount of Resource Costs to be Assigned to Activities

This section describes how the various cost assignment methods were used to distribute costs from the FY 1998 resource base to the immigration adjudication and naturalization activities. (See the section entitled ''Defining Immigration Adjudication and Naturalization Activities'' for a discussion of how the Fee Study Team identified and defined these activities.) Several resource costs, however, were not assigned to the immigration adjudication and naturalization activities. These resources included asylum and refugee costs, resources attributable to applications and petitions for which the INS is not proposing a fee increase, and any resources that could be immediately assigned to a specific immigration adjudication and naturalization application or petition.

A. Costs for Asylum and Refugee Services

Of the $638,629,299 resource base, $92.8 million represents funding for the asylum and refugee programs administered by the INS' International Affairs program. Applicants for asylum and refugee benefits are processed without charge to individuals seeking such benefits. Therefore, these costs, and the cost of other refugee and asylum benefits, are not classified as direct costs. Congress has directed the INS to

set its immigration adjudication and naturalization fees at a level that recovers sufficient revenue to provide asylum and refugee services. The cost of the refugee and asylum programs are allocated to the fee-based immigration adjudication and naturalization applications and petitions as a surcharge. The method used to assign this surcharge is discussed later in this proposed rule.

B. Applications and Petitions for Which the INS is not Proposing a fee Increase

The intent of the Fee Study was to determine the full cost of the immigration adjudication and naturalization applications and petitions for which the INS charges a fee, and to adjust the fees charged for these applications and petitions based on cost. There are over 40 immigration adjudication and naturalization applications within the Examination Fee Account Fee Schedule. Some of these applications are filed in large numbers. For example, 11 applications and/or petitions types account for more than 97% of the total volume of applications and petitions filed annually. The remaining applications and petitions are filed much lower volumes.

This Fee Study was based, in large part, on the actual observation and measurement of the time needed to perform the various immigration adjudication and naturalization activities. Since these ''small volume'' applications are filed much less frequently, actual observation of the processing of these applications by the Fee Study Team was difficult. The Fee Study Team could not observe a sufficient number of these ''small volume'' applications to satisfy statistical sample requirements. Some of these ''small volume'' applications were so infrequent that it was impossible for the Fee Study Team to find a service center or district office that processed the application within the past year. For example, in FY 1995, only one office reported receiving the Form N–644, Application for Posthumous Naturalization. Since these ''small volume'' applications are filed infrequently, the INS determined that the most reasonable approach was not to revise the fees for these applications as part of the recently completed fee study. These ''small volume'' applications may be reviewed and their fees may be revised as the result of future fee studies.

There are also certain applications that have an altogether different and complex process. These applications are appeals of previously adjudicated applications, and motions to reopen or reconsider a case. Applications for appeals and motions to reopen can be received by either the INS or the Executive Office of Immigration Review (EOIR), and are adjudicated by either the Board of Immigration Review or Immigration Judges. Adjudication of these forms involve numerous organizations within the INS, and different agencies within the DOJ. Because of their scope, variation, and complexity, these forms were not reviewed during the recently completed Fee Study. A thorough review of the processes and costs of the appeals and motions to reopen is required and will be performed in a subsequent study.

The applications and petitions for which the INS is not proposing a fee increase in this proposed rule include: Form EOIR–26, Appeal of decision of Immigration Judge over which the Board of Immigration Appeals has appellate jurisdiction; Form EOIR–29, Appeal of decision of INS over which the Board of Immigration Appeals has appellate jurisdiction; Form I–256A, Application of Suspension of Deportation under section 244 of the Act; Form I–290B Notice of Appeals to the Administrative Appeals Unit; Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant; Form I–821, Application for Temporary Protected Status; Form N–300, Application to File Declaration of Intention; Form N–336, Request for Hearing on a Decision in Naturalization Proceedings under section 336 of the Act; Form N–470, Application to Preserve Residence for Naturalization Purposes; and Motions to Reopen.

The amount of resources attributable to these ''small volume'' applications, and applications for appeals and motions to reopen had to be deducted from the total FY 1998 immigration adjudication and naturalization resource base. If such resources were not deducted, the INS would have attributed all immigration adjudication and naturalization resources to the fees that were the subject of this Study. As a result, the cost of the revised fees would have been overstated. To avoid this potential ''double charging,'' the INS projected the number of ''small volume'' applications, applications for appeals, and motions to reopen that it expects to be filed in FY 1998. This projected volume was multiplied by the current fee for these applications to approximate FY 1998 costs (using the assumption that for these applications, appeals, and motions to reopen, revenue equals costs). This amount, $6.5 million, was deducted from the FY 1998 immigration adjudication and naturalization resource base.

C. Resources Immediately Assignable to Specific Applications and Petitions

Additionally, there were also several budgeted items that could be assigned immediately to an application or petition, or a specific group of applications and petitions, without first being assigned to an activity. These costs were specifically identified in budget proposals. The costs immediately attributable to a specific application or group of applications are:

$32,548,000 to improve the direct mail initiative to improve efficiency of service center operations; this amount was assigned to all applications received at the INS service centers;

$17,800,000 to improve Records Management at INS district offices; this amount was assigned to all applications received at INS district offices;

$26,922,000 to improve the automated application processing infrastructure; this amount was assigned to all immigration adjudication and naturalization applications;

$4,210,000 to enhance computer systems that provide naturalization support; $29,866,000 to increase naturalization processing, including additional funding for Federal Bureau of Investigation clearances, increased funding for ceremonies and oaths, and contract support for improved automated case management; and $1,940,000 to maintain naturalization processing at FY 1997 levels; these amounts were assigned directly to the N–400, Application for Naturalization; and

$1,000,000 to enhance the computer system that provides case tracking and interview scheduling for adjustment of status applications; and $5,804,000 for increased processing of adjustment of status cases; these amounts were assigned directly to the Form I–485, Application to Register Permanent Residence or Adjust Status.

D. Amount of FY 1998 Immigration Adjudication and Naturalization Resources Assigned to Activities

The amount of immigration adjudication and naturalization resources that were assigned to activities was determined by subtracting from the resources base the resources immediately assignable to specific applications or petitions and the imputed costs attributable to small volume applications, appeals, and motions to reopen. The cost of asylum and refugee services was assigned to each application and petition using an allocation cost assignment method. The allocation method used for asylum and refugee cost is discussed later in this proposed rule.

Assigning Immigration Adjudication and Naturalization Costs From Resources to Activities

A. Assigning Personal Services and Benefits Costs

The single most significant resource consumed in providing immigration adjudication and naturalization services is Personal Services and Benefits (PS&B) costs. PS&B is composed of the salary paid to INS employees (both permanent and temporary) to perform immigration adjudication and naturalization services, plus the government share of benefits accrued by INS employees. These benefits include, but are not limited to, retirement, health insurance, life insurance, and social security payments. For FY 1998, PS&B costs account for approximately 45% of immigration adjudication and naturalization resources ($280.5 million of the total resource base of $638.6 million).

To achieve a high level of precision in assigning resource costs to activities, the INS assigned PS&B resource costs to the pre-defined immigration adjudication and naturalization activities by job series. In the Federal sector, each personnel position is identified by a job series number and description. This job series designation defines the duties required and the performance expected for each Federal personnel position. Personnel assigned to each job series have differing responsibilities in the immigration adjudication and naturalization processes. For example, Immigration Adjudication Officers devoted more time adjudicating applications and petitions than clerical positions; Immigration Information Officers may spend more time responding to inquiries than an Immigration Adjudication Officer; supervisory personnel usually expend their time in very different patterns than those they supervised, and so on. It was logical to assume that attributing PS&B costs by job series would result in more precise cost assignment than if the PS&B costs were assigned as a single cost pool.

To make PS&B resource assignments by job series, the Study Team determined the amount of PS&B costs budgeted for each job series in FY 1998. The Study Team then determined the average percentage of time each job series spent on the eight pre-defined immigration adjudication and naturalization activities. The INS does not develop its budget by job series costs; rather, each program estimates an aggregate PS&B costs when formulating their budget. To assign PS&B costs by job series, the budgeted FY 1998 PS&B costs had to first be assigned to each job series based on historic obligation percentages. (Obligations are binding agreements that will result in the expenditure of budgetary resources, either immediately or in the future.) PS&B obligations are incurred each time the INS pays it employees for services. Each pay period during the fiscal year, the INS updates its Pay Database with the current amount of PS&B that has been obligated and paid. In simplest terms, the budget provides the spending authority and the spending plan, the Pay Database tracks what has been spent. The INS Pay Database tracks actual PS&B obligations by account, program, job series, FTE, and amount. The INS Pay Database provided an excellent source of data to determine actual PS&B obligation patterns. These patterns, expressed as percentages, were used to dis-aggregate the FY 1998 PS&B costs from program and OMB Object Class detail to job series detail, by amount and FTE.

Once determined, the estimated FY 1998 PS&B job series amounts were assigned to the eight pre-defined immigration adjudication and naturalization activities. These activities are an ABC tool and were defined and created as a part of this Study. These activities are not data elements for either preparing the INS budget or for tracking obligations and expenditures in the Pay Database. Assigning PS&B job series costs to the immigration adjudication and naturalization activities required determining the amount, or percentage, of time personnel in each job series spent performing the various activities. Since no reports existed that would provide us with this information, the Study Team developed a survey to gather this information.

A representative sample of the INS personnel in each job series completed these surveys. The Study Team conducted extensive field visits to gather the cycle time data to assign activity costs to applications. To prevent bias in data collection, all sites visited were randomly selected. During the site visits, Study Team members also conducted interviews with representative personnel from the various job series. The Study Team asked the persons interviewed to provide their expert opinion on the amount of time spent performing the various pre-defined activities. The responses were then weighted by the application volumes of each office. Since the responses were representative samples, a response from an office that processes a high volume of immigration adjudication and naturalization applications and petitions should have a correspondingly higher weight than responses from an office that processes smaller volumes. For example, estimates of activity time for job series 1801, Adjudication Officers, assigned to Miami (with a total of 132,213 applications processed) was given greater weight in the calculation than the estimate from an Adjudication Officer assigned to Omaha (11,785 applications processed). The final step in assigning PS&B costs required applying PS&B amounts in each job series to the immigration adjudication and naturalization activities based on the weighted average percent derived from the time usage survey.

B. Assigning General Expense Costs to Activities

For the purpose of this study, General Expenses (GE) represent all costs other than PS&B costs. The INS budgets, monitors, and reports its GE costs by OMB Object Class Codes. OMB Object Class Codes are used throughout the Federal government to budget and report costs by the nature of the service or goods procured. Segregating costs by OMB Object Class Codes provided the Fee Study Team with an excellent method of analyzing costs by their specific nature and determining an assignment method that is best related to how the resource costs are consumed by activities. Some GE costs could be directly traced to a specific immigration adjudication and naturalization activity, while others could be assigned by a cause and effect assignment methods. When analysis did not provide a means for either direct tracing or cause and effect assignment, costs were assigned using an allocation method based on the total PS&B costs assigned to each activity. (See the previous discussion of PS&B cost assignment.)

The Fee Study Team reviewed the FY 1998 Examinations Fee Account Budget to determine which GE items could be directly traced from the resource base to the immigration adjudication and naturalization activities. The following costs were assigned directly to immigration adjudication and naturalization activities:

$3,000,000 for the cost of enhancements to fingerprint collection and clearance process were assigned direction to the ''Adjudicate Application'' activity;

$1,250,000 for the cost of enhancements to the Central Index System, and $2,643,00 for the Cost of hardware and software to enhance the records management infrastructure were assigned directly to the ''Manage Records'' activity;

$4,262,262 for the cost of postage were assigned directly to the ''Prepare Outgoing Correspondence'' activity;

$13,989,000 for the cost of card production were assigned directly to the ''Issue End Product'' activity; and

$4,243,000 for the cost of improving public access to information and forms, $2,113,000 for the cost to create, train, and support 50 positions that will specialize in improving community and customer relations as well as train other INS service providers, and $9,500,000 for the cost of creating a single INS 1–800 telephone line that will act as a front end to all non-enforcement related questions were assigned directly to the ''Respond to Inquiry'' activity.

Facilities and Utilities costs were assigned to the immigration adjudication and naturalization activities using a cause-and-effect cost assignment method based on the amount of space used by each activity. To determine the square footage of space by specific activity, the Fee Study Team devised a square footage survey. The square footage survey was conducted at all four INS service centers, and at district offices located in Los Angeles, Phoenix, San Antonio, Miami, Omaha, Kansas City, Philadelphia, and Boston. These district offices were randomly selected as sites for cycle time data collection (discussed later in this document) and were assumed to be representative of all INS district offices. The square footage survey was conducted by interviewing administrative officers at the various sites, observing space usage, and reviewing site-specific floor plans.

The survey results were analyzed and converted into percentages that were used to assign facilities and utility costs to the various immigration adjudication and naturalization activities. The percentage of floor space dedicated to a particular activity was weighted by relative size of the facility. For example, at the California Service Center, 143,338 total square feet, has ten percent of its floor space dedicated to the ''Receive Application'' activity, whereas the Philadelphia District Office, 41,380 total square feet, has five percent of its floor space dedicated to the same activity. A simple average of the two percentages ((10% + 5%)/2=7.5%) does not take into account the relative size of the offices. When weighted by applications processed, the resulting percent for ''Receive Application'' square footage for all facilities surveyed was 9%.

The remainder of GE costs were assigned using an allocation method. This method was based on the percentages derived from the PS&B labor survey. The following is a brief discussion of the various types of GE costs assigned to activities by cost allocation:

Costs incurred for the transportation of Government employees, and their per diem allowances, are only authorized for payment when travel is for missions of public service.

Costs are incurred for the freight and express transport of government equipment, authorized movement of employees' household goods and parcel post and express mail transportation. Historically, 87 percent of these costs are related to the transportation of employees' property; the use of the PS&B resource assignment method was determined to be the best assignment method.

The INS receives three types of telecommunication's bills: Federal Telephone System local, data communications, and long-distance voice toll calls. The General Services Administration bills these services to the INS through the DOJ. Both the GSA and DOJ add a service charge to the communications billing to cover their administrative costs. The amount assigned to each INS fee account is based on the number of INS employees budgeted to each account. Within the Examination Fee Account the cost of communication was allocated to each activity based on the PS&B labor survey.

Costs incurred for contractual printing by the Government Printing Office and commercial printers were examined to determine if a relationship could be established between this cost category and the specific applications and petitions under review for this Study. Since no relationship could be established, the Fee Study team used the PS&B percentages as an equitable method for assigning these costs to the immigration adjudication and naturalization activities.

The Fee Study Team carefully examined the amounts budgeted for OMB Object Class 25.0, Other Services, and was able to directly trace a significant portion of these costs to a particular immigration adjudication and naturalization activity, application or petition, or group of applications and petitions. These costs have been previously discussed in this proposed rule.

All remaining costs budgeted under this OMB Object Class were assigned using the PS&B percentages, a consistent and equitable cost assignment method.

Supplies and materials are costs for consumable commodities that are ordinarily used within one year of purchase. Supplies and Materials include office supplies, ADP supplies, and miscellaneous supplies and materials. While examining the underlying accounting records related to supply and material resources consumed, the Fee Study Team determined that these costs were not directly traceable to the applications under review for this Study. As a result, use of PS&B percentages was used as a reasonable and consistent cost assignment method for this cost category.

Equipment costs include the purchase of property that is normally expected to have a period of service of a year or more. While examining the underlying accounting records related to the purchase of equipment, the Fee Study Team determined that the purchase of most equipment, particularly computer hardware, provides a benefit for all application and petitions. However, certain equipment purchases were directly traceable to specific activities or applications and petitions, and have been discussed previously.

Once PS&B and GE costs were assigned to activities, the ABC methodology dictates that the activity cost should then be assigned to the cost objects. (For purposes of this Fee Study, the cost objects are the immigration adjudication and naturalization applications and petitions for which the INS charges a fee.) The cost assignment method used to ''drive'' activity costs to the immigration adjudication and naturalization applications and petitions was cycle times. The following sections discuss the cycle times and the data gathering necessary for their development.

Cycle Time Development

As stated previously, ABC uses a two-step cost assignment process. Costs are first assigned from resource pools to activities, and then activity costs are assigned to cost objects. (For the purposes of this Study, the activities are those defined in the APM that were discussed previously in this proposed rule, and the cost objects are the various immigration adjudication and naturalization applications and petitions for which the INS charges a fee.) The Fee Study Team used cycle times as a cause-and-effect assignment method to distribute activity costs to the various immigration adjudication and naturalization applications and petitions. Cycle times measure the frequency and intensity of the consumption of activity costs by the various immigration adjudication and naturalization applications and petitions. Cycle times are the ''drivers'' that assign activity costs to the various applications and petitions. The cycle

time measures the amount of time needed to complete each activity in the processing of the various immigration adjudication and naturalization applications and petitions. Developing cycle times that accurately reflected application and petition processing times involved the following: developing a statistically-valid sampling plan, the random selection of a representative sample of INS offices from which to collect cycle time data, the development of data collection procedures to control sampling bias, the actual collection of cycle time data, the review and analysis of the cycle time data collected, and the use of the cycle time data to assign activity costs to the immigration adjudication and naturalization applications and petitions for which the INS charges a fee.

A. Developing the Statistical Sampling Plan

To ensure the representativeness, accuracy, and defensibility of the cycle times used in activity cost assignments, the data collected during this effort had to be randomly selected and unbiased. The Fee Study Team devised a statistical sampling plan for cycle time data collection that ensured the integrity of the data, standardized data collection procedures, and eliminated bias in data collection. The statistical plan outlined the Team's methodology for determining the sampling method, clustering, selecting sites and applications to be observed, assigning the number of observations, controlling for sample bias, and making adjustments.

Sample Size. Statistical sampling assumes that a representative sample of a population has the same characteristics of the population as a whole. A statistical sampling plan must include a sample size that ensures that the samples observed do, indeed, reflect the characteristics of the total population. Several factors influence the size of the sample: the desired confidence level, the size of the population samples, the expected rate of data collection (or the ''miss rate''), and the number of activities observed.

Confidence Interval. By using a statistical formula with a 95% confidence interval, the Fee Study Team determined that 200 observations were necessary for each of the common and unique activities. Establishing a level of precision or a confidence interval of 95% ensures confidence that the data collection was both representative and statistically significant. This level of confidence was selected for its high reliability, accuracy, and acceptability in organizational research. Selecting a confidence interval of 95% places a high level of confidence in the results, provides the precision of measurement necessary for extrapolating the results, and is sufficient in cases of legal defensibility. The INS sampling plan guarantees that the number of required cycle times for the Fee Study is statistically correct.

Population Size. For this Study, the statistical sample included all applications and petitions with FY 1995 completed volumes of greater than 10,000, as reported in the Performance Analysis System (PAS). (The PAS is a management and work load measurement system that records application volumes and associated work hours.) The Fee Study Team used FY 1995 PAS data, the most recent complete year of data available during the conduct of the Fee Study. The applications and petitions with a volume of 10,000 annually represent 99.5% of all applications and petitions processed by the INS, and were the focus of the on-site observations for cycle time data gathering. For the most part, the Study did not include applications with a volume of less than 10,000 completions because of the low probability of actually observing cycle times in statistically sufficient numbers for these applications. Also, these applications account for less than 1% of the total revenue deposited into the Examinations Fee Account each year. The Fee Study Team developed alternate methods to determine cycle times for the unobserved applications and petitions. Methods used to develop cycle times for the lower volume applications included the use of expert opinion to determine when to apply observed cycle times to similarly processed applications and petitions that were not observed, and the use of experts to provide estimated cycle times for the lower volume applications. Figure 3 lists the applications observed in the cycle time data gathering phase of the fee study.

FIGURE 3.—LIST OF THE APPLICATIONS AND PETITIONS OBSERVED

I–90	Application to Replace Alien Registration Card.
I–102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Document.
I–129 [1]	Petition for Nonimmigrant Worker/Classify Nonimmigrant as Temporary Worker or Trainee/Employ Intracompany Transferee.
I–129F ...	Petition for Alien Fiance(e).
I–130	Petition for Alien Relative.
I–131 [2]	Application for Travel Document.

FIGURE 3.—LIST OF THE APPLICATIONS AND PETITIONS OBSERVED—Continued

I–140	Immigrant Petition for Alien Worker.
I–485	Application to Register Permanent Residence or Adjust Status.
I–539	Application to Extend/Change Nonimmigrant Status.
I–600 [3]	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition.
I–724 [4]	Waiver Forms.
I–751	Petition to Remove the Conditions on Residence.
I–765	Application for Employment Authorization.
I–817	Application for Voluntary Departure under the Family Unity Program.
I–824	Application for Action on an Approved Application or Petition.
N–400	Application for Naturalization.
N–565	Application for Replacement Naturalization/Citizenship Document.
N–600	Application for Certification of Citizenship.
N–643 [5] ..	Application for Certificate of Citizenship in Behalf of an Adopted Child.

[1] The I–129 includes the I–129, I–129H, and I–129L.
[2] The I–131 includes the Reentry Permit and Advanced Parole.
[3] The I–600 includes the I–600A.
[4] The I–724 includes all six of the Waiver Forms—I–191, I–192, I–193, I–212, I–601, and I–612.
[5] N–643 fell below the 10,000 volume limit for population size; however, during our visit to the Buffalo District Office sufficient N–643 applications were available for sampling.

''Miss'' Rate. The Fee Study Team allowed for the possibility of data collection ''misses'' in the statistical sampling plan and ''built in'' additional observations above the 200 needed for a 95% confidence level to guarantee that a statistically valid sample size would be obtained. Data collection ''misses'' constitute possible observations discarded as a result of inconsistencies in recording cycle times, incomplete observations due to faulty equipment or interruptions that caused the timer to halt an observation, and the possibility that applications and petitions scheduled to be timed may not have been available in sufficient numbers at the planned site visits. The Fee Study Team recognized that at any scheduled site the number of applications and petitions available for processing may not match the number anticipated in the statistical sample plan. This could happen for a number of reasons, such as applicants failing to appear for scheduled interviews, applications and petitions not being filed in the numbers anticipated while the Fee Study Team

was on-site, or the actual applications available for processing during site visits varied from the applications reported as available during the time when the sample plan was developed. (The Fee Study Team observed applications and petitions that were available and scheduled for processing while on-site; they did not interrupt the normal work flow at the various INS district offices or service centers.) Each application had a reserved ''miss'' rate based on the volume of applications required for the statistical sample; the higher the application volume, the lower the assigned ''miss'' rate. Increasing the lower volume of application sample sizes to hedge for ''misses'' was necessary to ensure that adequate sample sizes would be collected.

Common and Unique Activities. The Fee Study Team divided the sample into two categories based on the APM: common activities and unique activities. Common activities are those activities that are completed in the same amount of time regardless of the type of application or petition. For example, the amount of time required to open an envelope containing an application or petition is basically the same for all application and petition types; the amount of time to record a fee is the same regardless of form type, and the time required to request a file is similar for all applications and petitions. Regardless of the type of application or petition, the time to perform an activity or task is similar. With unique activities, the processing time is directly linked to the type of application or petition filed. For example, adjudication of each type of application and petition is based on specific sections in the INA, and requires specific documentation and adjudicative review. This, logically, makes the ''Adjudicate Application'' activity unique depending on the type of application or petition observed. Some applications require the production of a certificate or card that identifies the bearer as eligible for a specific benefit (such as Form I–766, Employment Authorization Document, or a N–550, Certificate of Naturalization). The time to produce an ''End Product'' is unique to the type of card or certificate created. Of the eight immigration adjudication and naturalization activities, six were designated as ''common'' and two as ''unique.'' The six common activities are: Receive Application/Petition, Record Fee, Input Application Data, Manage Records, Prepare Outgoing Correspondence, and Respond to Inquiry. The two unique activities are: Adjudicate Application and Issue End Product.

The designation of ''common'' or ''unique'' had a direct bearing on the sample size. As stated earlier, each activity required a sample size of 200 for a 95% confidence level. For each common activity, the total sample size which includes all applications and petitions was 200. For unique activities, the total sample size was 200 for each type of application and petition observed. Since the Fee Study Team observed 18 application and petition types, the sample size for the two unique activities, Adjudicate Application, and Issue End Product, was much larger. For the ''Adjudicate Application'' activity, the sample size was 3,600 (the 18 observed applications and petitions times 200). For the ''Issue End Product'' activity, the sample size was 1,400 (the seven applications or petition types that require an end product multiplied times 200).

B. Site Selection

Clustering. Determining which sites to visit for data collection was based on clustering. Clustering, the grouping of similar items, is a widely accepted technique used to achieve the most representative sample of a population (total set of items to analyze). For this study, INS offices of comparable size were grouped together into four clusters based on operating environments and the volume of applications and petitions processed: service centers, large district offices, medium district offices, and small district offices. The large district office cluster included those offices with a processed volume of more than 50,000 applications annually, the medium district office cluster included offices that processed more than 20,000 applications annually, but less than 50,000, and the small district office cluster included offices that processed less than 20,000 applications annually. After determining the four cluster groups, the Fee Study Team randomly selected 15% of the offices within each cluster to visit for data collection. Selecting 15% of offices within each cluster ensured that the data gathered from the sites were representative of the different size offices. The 15% selection rate is commonly accepted in statistical sampling for selecting samples within a cluster, and helped insure that a representative sample of office sizes was selected for data gathering. Without clustering, the possibility existed that large, medium, or small size district offices could have been overly represented in the number of offices chosen. This may have skewed the sample and increased the potential for cycle time biases. The combination of clustering and randomly selecting 15% of each cluster also served to reduce the cost and time of gathering data when sampling a large and widely dispersed population.

Selecting 15% of offices within each cluster resulted in the random selection of two sites from the large district office cluster, three sites from the medium district office cluster, and two sites from the small district office cluster. The sites selected included: Miami and Los Angeles as large district offices; Honolulu, San Antonio, and Phoenix as medium district offices; and Kansas City and Omaha as small district offices.

Adjustments to the Site Selections. The site selections were adjusted for various reasons: cost considerations, geographical representation, or insufficient data collection as the site visits proceeded. After reviewing the geographical dispersion of the original sites selected, the Fee Study Team determined that district offices located in the northeastern United States were not represented, even though a large number of immigration adjudication and naturalization applications and petitions are received and processed by offices located in the northeast. To ensure geographical representation, an additional office was randomly selected from a pool of district offices located in the northeastern United States. The Boston District Office was randomly selected through this process. The Honolulu District Office was removed from the site selection list due to cost and time constraints involved in visiting that office. From the pool of offices remaining in the medium district office cluster, the Fee Study Team randomly selected the Philadelphia District Office to replace the Honolulu District Office. The Baltimore District Office was added to the medium district office list to observe its use of CLAIMS. The Baltimore District Office is piloting CLAIMS at the district office level. At the conclusion of the site visits, the Fee Study Team discovered that they had observed an unacceptably low number of the Form N–565, Application for a Naturalization or Citizenship Paper, and the Form N–600, Application for Certification of Citizenship. To bring the sample size to acceptable levels, the Buffalo District Office was visited to collect additional data on these applications. The Buffalo District Office was chosen for the Form N–565 and Form N–600 data collection because they had these forms available in sufficient numbers for observation. Visiting the Buffalo District Office also afforded the Fee Study Team the opportunity to visit the Toronto, Canada

pre-inspection site to observe processing of the Form I–192, Application for Advanced Permission to Enter as Nonimmigrant. This additional visit was required because the planned site visits did not encompass a field office with an available supply of this waiver form for the Fee Study Team to observe and time. Toronto is the predominant INS office for processing the Form I–192 and sufficient numbers of these forms were available for observation to develop a statistically sound sample size.

Service Center Site Visit Selection. Service centers were clustered separately. Since service centers process high volumes of applications, their operating procedures were very different from district offices. In addition, service centers usually process applications that do not require an interview and are not usually processed in district offices. The INS has four service centers; only one service center had to be visited to satisfy the 15% representation rule. The Nebraska Service Center, unlike the district offices visited, was not randomly selected for a site visit. The Fee Study Team decided to select the Nebraska Service Center since the Nebraska Service Center was the only service center that processed all types of applications, including the Form I–131, Application for Travel Document. To ensure that there was no bias in the data due to possible differences in operating procedures in the various service centers, the Fee Study Team decided to visit the other three service centers to collect a pro-rata share of common activity observations and a limited number of unique observations for specific applications and petitions.

Site-Specific Sampling Plans. After determining the number of observations needed for each of the common and unique activities and determining the sites to visit, observations were divided by activity among the field sites. This process required distributing the number of observations needed among the selected sites based on the volume of each application and petition processed at each selected site. This was accomplished by establishing a ratio of the processing volume for each selected site using the FY 1995 PAS data. As field office data collection progressed, the sampling plan was adjusted, as necessary, to ensure adequate data collection. If the required number of applications and petitions were not available at a planned site visit, the shortage was pro-rated to the future site visit sampling plans. For example, prior to the Miami District Office site visit, the sampling plan was adjusted to increase the number of planned observations of the N–565, Application for Replacement Naturalization Citizenship Document and Form N–600, Application for Certification of Citizenship, to reflect the shortage of data collection for those forms at other sites. The site specific sampling plans are available for public inspection. Please refer to the **FOR FURTHER INFORMATION CONTACT** section for instruction on obtaining this information.

C. Controlling Sampling Bias

The Study Team took precautions to ensure that all data collectors maintained a high level of consistency and accuracy when gathering cycle time data. This was achieved through standard operating procedures, training, uniform timing equipment, and the random selection of applications and personnel observed at each site.

Training. To ensure consistency in data collection, the Fee Study Team developed standard operating procedures for data collection and provided training on cycle time data collection procedures. All data collectors were required to attend the training, which was conducted by contracted statistical sampling specialists. Participants received instructions on standard procedures for measuring and recording data, including an overview of how to control response and observation biases. To reduce the response bias, the training provided the data collectors with guidelines on how to interact with personnel being timed, their role as a data collector, and the purpose of the observations. Data collection bias was also reduced through the use of uniform and consistent measuring equipment and a uniform recording medium (optical scan forms). Data collectors were also trained on the use of the Activity/Task Definition Report to identify the specific activities/tasks being timed and standard start and stop points for each observation. Procedures were also developed to help data collectors identify anomalies that may compromise an observation, such as interruption in the work flow, and how to manage such situations.

Selection of Observed Employees. The personnel observed at site were selected randomly. All site personnel had an equal chance for selection, regardless of their work experience. The Fee Study Team randomly selected employees to be observed using a list of employees provided by site management and a random number table to select employees from the list. Participation by site personnel was voluntary and no identifying information on the personnel observed, other than length of experience, was placed on the optical scan form. This procedure helped reduce any bias on the part of the personnel observed.

Selection of Observed Applications/Petitions. The Fee Study Team recorded observations at the randomly selected sites, with any application or petition having an equal chance of being observed. Applications and petitions are processed at INS offices in a first-come, first-served manner. That order was preserved for the Fee Study observations. Applications or petitions were observed in the order they were received at the various offices visited. Individual applications or petitions were not reviewed by any INS official or Fee Study Team member to determine whether they would or would not be observed.

Recording Data. To standardize cycle time data collection, the Fee Study Team developed an optical scan form that lists the activities and tasks of the APM and provides areas for the data collectors to record the Activity/Task Observed, Decision, Application type, Number of Employees Observed, Batch Size, Time, Employee Experience, Date, Location, and Timer Code. The Activity/Task Definition Report was extremely important to obtain consistent and accurate cycle times. The definitions provided the timers with the information required to ensure that the data collectors placed their observations under the proper activity/tasks.

D. Collection of Cycle Time Data

From June to September 1996, the Fee Study Team collected data at the district offices and services centers selected for cycle time data gathering. During this period, the Fee Study Team made over 50,000 observations of the various tasks and activities involved in processing immigration adjudication and naturalization applications and petitions. The data was collected by office, common and unique activities, and application and/or petitions observed. Detailed information on cycle time data gathering is available upon request. Please refer to the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for instructions on how to obtain this information.

E. Data Normalization and Weighting

After collecting and recording the data on optical scan forms, the Fee Study Team developed cycle times for each type of application and petition observed. The Fee Study Team constructed an analysis process for computing the specific time required to process each application through the

normalization of data at the task level and compiled these tasks into a cycle time at the activity level. (As stated earlier, each activity consists of various numbers of sub-component tasks.) For each task observed, the Fee Study Team developed an average time. This normalized data was used to develop activity cycle times for each of the eight activities. When appropriate, each task was weighted by the rate of denials, approvals, requests for additional evidence (RFAE), and, for applications that could be processed at either a district office or service center, a percent weight based on volumes processed at each type of office.

The Fee Study Team reviewed all optical scan forms entered into the computer database. Data anomalies were resolved and discrepancies clarified according to pre-defined procedures. For example, if a data collector recorded the time in numerals in the ''Time'' section of the optical scan form, but they did not darken the corresponding ovals for the optical scanner to read, the written time had to be recorded in the database. Other types of anomalies included the data collector failing to record batch size, which resulted in an aggregate time from several applications read as a single time, or a data collector darkening two ovals from one observation. Each identified anomaly was researched by interviewing the data collector. For those anomalies that were unsatisfactorily resolved, that scan form and all corresponding data were eliminated from the database. Less than 1% of the total 5,000 scan forms were voided.

The optical scan form also contained a section for written comments that had to be reviewed to determine their impact on the data. For example, a data collector often recorded on a single scan form several tasks that were performed concurrently. The data collector would provide a breakdown of each task and its respective time in the written comments section of the optical scan form. These types of observations had to be reviewed and added to the data base.

The Fee Study Team also performed an ''outlier'' analysis. All cycle times were plotted to uncover the outlier(s). An outlier was an observation that fell outside two standard deviations from the average of all observations for a particular task. When an outlier was identified, the observation had to be analyzed to determine if the timing pattern was reasonable. Usually, the original data collector was contacted, if possible, to determine the reasonableness of the observation and timing pattern. Often, human error was not the cause of an outlier; rather the outlier was usually an exceptionally complicated or difficult case that resulted in an activity or task taking longer than the average time. For example, interview times often varied depending on the applicant's language ability, the complexity of the application, and/or the questions regarding the materials submitted with the application. An outlier may be the result of an observation of a particularly long interview. Most outliers were valid observations and remained in the database. Occasionally, cycle time formulas were developed to help determine the average time for specific activities because some cycle times needed additional calculations to get a complete cycle time for a task. For example, the creation of the alien registration receipt form (''Issue End Product'' activity) for the Form I–90, Application to Replace Alien Registration Card, Form I–485, Application to Register Permanent Residence or Adjust Status, and Form I–751, Petition to Remove the Conditions on Residence, requires that the process begin at the district offices with taking fingerprints and collecting photos. The process is finalized at the Immigration Card Facility with the photo scanning step, etc., and the actual production of the card. These three steps were timed separately and added to produce a single task time.

After valid task times were produced through the normalization process, these task times were grouped by activity to create an overall activity cycle time. Just as data normalization was performed at the task level, data analysis occurred at the activity level. The Study Team designed a three-step method of computation to ensure that each piece of data was fairly represented and carried the observation weight through the analysis process to the final time determination. Special protocol for recording and developing the cycle times for the approval, denial, and RFAE data were established. Percentages for application specific denial, approval, and RFAEs were accumulated at the service centers and district offices and then incorporated into the respective activity cycle times. For example, the percentage of applications that require additional information was calculated into the cycle time. Processing for incomplete applications had to be accounted for since the set of tasks and thus the time to complete these tasks differed from an approved or denied application. The same weighting process occurred for the approval and denial rate of the various applications and petitions. Since the time to process an application is different depending on the adjudicative decision, the approval and denial rates for each application or petition type was obtained and weighted to determine the final cycle time. This is important because both approval and denial rates are associated with different tasks. Approved applications may require the issuance of a card or certificate, while denied applications require a letter stating the reason for the denial. These processing differences were accounted for by weighting various activities and tasks.

Applications such as the Form I–751, Form I–90, and Form I–131, Application for Travel Document, are processed at both the service centers and district offices. Observations were collected at both service centers and district offices and weighted accordingly to calculate activity cycle times that represented the dual processing of these applications. For example, approximately 36% of the Forms I–751 filed require interviews that are conducted at district offices. Specific task average times to conduct an interview were weighted by 36% and then added to the other tasks in the timing pattern to get a complete cycle time for adjudicating a Form I–751. Likewise, the Form I–90 had dual processing in the service center and district office. Approximately 4% of the tasks involved with adjudicating a Form I–90 take place at a district office and the remaining 96% of the tasks take place at the service center. These percentages were weighted with average cycle times for the corresponding tasks and then combined to develop the complete cycle time for that activity.

Weighting also occurred with the ''common'' activity of ''Manage Records.'' Although the ''Manage Records'' activity was determined to be a common activity, application-specific cycle times were developed by weighting the tasks of the ''Manage Records'' activity. For example, the creation of an alien file (A-file) varies according to the application or petition file. Since not all applications result in an A-file creation, this task had to be weighted to produce an application or petition-specific cycle time.

Cycle times for the unique activities for applications that were not observed as a result of low volume and lack of opportunity to observe were developed in two ways: (1) Using average observed timings of similarly processed applications or (2) using expert opinion. The Fee Study Team used the average cycle time of producing a naturalization certificate for the ''Issue End Product'' activity for the Form N–643, Application for Certificate of

Citizenship in Behalf of an Adopted Child, since the Team was unable to observe the creation of a naturalization certificate for that form. The Fee Study Team did, however, observe the actual adjudication of a representative sample of the Form N–643; the cycle time for ''Adjudicate Application'' for the Form N–643 is based on those observations. Cycle times for the Form I–17, Petition for Approval of School for Attendance by Nonimmigrant Students, Form I–526, Immigrant Petition by Alien Entrepreneur, and Form I–829, Petition by Entrepreneur to Remove Conditions (applications and petitions processed at volumes too low to qualify for statistical sampling) were based on expert opinion of INS subject matter experts from both the field and headquarters who contributed their knowledge of application processing to develop cycle times for these applications.

The cycle times that resulted from the data gathering and data normalization stages of the Fee Study were used as the activity ''drivers'' to assign costs from activities to cost objects. Detailed information on the cycle time development process is available from the INS upon request. Please refer to the ''For Further Information Contract'' section of this proposed rule for instructions on obtaining this information.

Determining Application and Petition Volumes

The Service estimated FY 1998 application and petition volumes by performing regression analysis on five years of actual receipt data obtained from the PAS data base. As stated earlier, the PAS is an INS system that provides operational statistics for a broad range of services, including the numbers of immigration adjudication and naturalization applications and petitions received and processed. The INS'' Workload Projection Group reviews immigration and naturalization application and petition volume projections and will adjust them, either upward or downward, when it is determined that legislative changes, policy decisions, operational changes, or other factors would significantly affect the number of immigration adjudication and naturalization applications and petitions filed. The FY 1998 projected volumes for the applications and petitions that were reviewed during the Fee Study are presented in Figure 4.

FIGURE 4.—PROJECTED FY 1998 APPLICATION/PETITION VOLUMES AND WAIVER PERCENTAGES

Form No.	Description	Projected FY 1998 volume	Waiver percentage	Fee-waived volume	Fee-paying volume
I–17	Petition for Approval of School Attendance by Non-immigrant Student.	800	20%	160	640
I–90	Application to Replace Alien Registration Card	275,500	5%	13,775	261,725
I–102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Document.	8,000	0%	0	8,000
I–129/I–129H/I–129L	Petitions for Nonimmigrant Worker	253,500	15%	38,025	215,475
I–129F	Petition for Alien Fiance(e)	109,000	0%	0	109,000
I–130	Petition for Alien Relative	657,000	0%	0	657,000
I–131	Application for Travel Document	365,000	0%	0	365,000
I–140	Immigrant Petition for Alien Worker	56,000	0%	0	56,000
I–485	Application to Register Permanent Residence or Adjust Status.	423,930	0%	0	423,930
I–526	Immigrant Petition by Alien Entrepreneur	500	0%	0	500
I–539	Application to Extend/Change Nonimmigrant Status	206,9001	10%	20,690	186,210
I–600/I–600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition.	14,000	0%	0	14,000
I–724	Waiver Applications [1]	27,000	2%	540	26,460
I–751	Petition to Remove the Conditions on Residence	130,000	0%	0	130,000
I–765	Application for Employment Authorization	972,000	50%	486,000	486,000
I–817	Application for Voluntary Departure under the Family Unity Program.	22,000	0%	0	22,000
I–824	Application for Action on an Approved Application or Petition.	44,000	0%	0	44,000
I–829	Petition by Entrepreneur to Remove Conditions	403	0%	0	403
N–400	Application for Naturalization	1,306,900	17%	222,173	1,084,727
N–565	Application for Replacement of Naturalization/Citizenship Document.	16,700	0%	0	16,700
N–600	Application for Certification of Citizenship	32,700	0%	0	32,700
N–643	Application for Certification of Citizenship in Behalf of an Adopted Child.	7,400	0%	0	7,400

[1] Waiver Applications include the Forms I–191, Application for Advance Permission to Return to Unrelinquished Domicile; I–192, Application for Advance Permission to Enter as a Non-immigrant; I–193, Application for Waiver of Passport and/or Visa; I–212, Application to Reapply for Admission into the U.S. After Deportation; I–601, Application for Waiver on Grounds of Excludability; and I–612, Application for Waiver of the Foreign Residence Requirement.

Assigning Activity Costs to Immigration Adjudication and Naturalization Applications and Petitions

The cycle times for each activity were converted to percentages to assign activity costs to the various applications and/or petitions that consume the resources of that activity. Cycle time assignment percentages were calculated for each activity. The assignment percentages were applied to total activity costs to determine an application or petition's pro-rata share of the activity cost. Each application or petition could have up to eight different activity costs. Each application or petition's pro-rata share of the activity cost was then divided by its anticipated FY 1998 volume to arrive at a per application or petition activity cost. The activity cost for each application or petition was totaled, along with any application-specific cost assigned directly, to arrive at the total processing cost for each application or petition. Figure 5 displays the processing costs for each application and petition by activity. In order to arrive

at a final fee amount, however, an amount to recover fee waiver and exempt costs, and the asylum and refugee surcharge must be added to the application and petition processing costs.

FIGURE 5.—IMMIGRATION ADJUDICATION AND NATURALIZATION APPLICATION AND PETITION PROCESSING COSTS APPLICATION PROCESS MODEL

Form No.	Activity costs									Unit processing cost
	Receive application	Record fee	Input application data	Manage records	Adjudicate application	Prepare outgoing correction	Issue end product	Respond to inquiry	Application specific costs	
I–17	$1.91	$1.09	$3.52	$10.37	$99.60	$6.60	$0.00	$10.43	$9.61	$143.13
I–90	1.94	1.30	3.55	10.83	22.68	6.88	5.58	10.59	16.13	79.48
I–102	1.91	1.37	3.52	10.03	12.87	6.60	0.00	10.43	16.01	62.74
I–129	1.94	1.15	3.55	9.76	26.08	8.31	0.00	10.59	16.11	77.49
I–129F	1.91	1.36	3.49	19.85	9.96	7.89	0.00	10.43	12.56	67.45
I–130	1.94	1.37	3.55	10.50	27.79	6.88	0.00	10.59	16.13	78.75
I–131	1.94	1.37	3.55	9.33	10.13	6.88	8.12	10.59	16.07	67.98
I–140	1.94	1.37	3.55	10.64	29.92	7.08	0.00	10.59	16.78	81.87
I–485	1.94	1.37	3.55	21.28	58.79	12.49	5.58	10.59	43.15	158.74
I–526	1.91	1.36	3.49	10.45	200.36	6.55	0.00	10.43	16.06	250.61
I–539	1.91	1.24	3.52	9.46	36.75	6.60	0.00	10.43	16.31	86.22
I–600/I–600A	19.18	3.50	0.98	13.76	69.88	59.86	5.55	98.26	20.58	291.55
I–724 [1]	1.91	1.34	3.52	9.19	55.98	11.90	0.00	10.43	27.00	121.27
I–751	1.94	1.37	2.69	16.39	28.93	6.88	5.55	10.59	16.31	90.65
I–765	1.94	0.68	3.55	10.19	12.13	6.88	11.76	10.59	16.07	73.79
I–817	2.54	1.36	4.57	9.63	13.98	3.61	13.04	10.43	27.00	86.16
I–824	1.91	1.37	3.52	9.74	18.40	11.90	0.00	10.43	27.80	85.07
I–829	1.91	1.36	2.65	10.68	200.36	6.55	0.00	10.43	16.03	249.97
N–400	1.94	1.16	3.55	16.96	47.08	12.51	15.44	10.59	54.59	163.82
N–565	1.91	1.37	3.52	11.10	32.83	6.60	13.23	10.43	16.02	97.01
N–600	1.91	1.37	3.52	11.58	49.99	7.95	13.23	10.43	16.66	116.64
N–643	1.91	1.37	3.52	10.33	12.51	7.95	23.93	10.43	18.90	90.85

[1] Waiver Forms Include: I–191, Application for Advance Permission to Return to Unrelinquished Domicile; I–192, Application for Advance Permission to Enter as a Nonimmigrant; I–193, Application for Waiver of Passport and/or Visa; I–212, Application to Reapply for Admission into the U.S. After Deportation; I–601, Application for Waiver on Grounds of Excludability; and I–612, Application for Waiver of the Foreign Residence Requirement.

Waiver/Exempt Costs and the Asylum and Refugee (International Affairs) Surcharge

The final step in calculating the immigration adjudication and naturalization fees is to add amounts to recover waiver/exempt costs, and the surcharge to recover the cost of asylum and refugee services funded by the Examinations Fee Account. For purposes of this document, the surcharge that recovers the cost of the International Affairs program is known as the asylum and refugee surcharge. As stated earlier in this proposed rule, P.L. 101–515 authorizes the INS to set the immigration adjudication and naturalization fees at a level that will recover the costs of providing all immigration adjudication and naturalization services ''including the costs of similar services provided without charge to asylum applicants or other immigrants.'' (8 U.S.C. 1356(m)) The INS adds a surcharge to its immigration adjudication and naturalization fees to recover the cost of providing asylum and refugee services, and adds an additional amount to each fee to recover the cost of application and petitions that the INS processes at no charge, either through exempting certain classes of applicants from paying a fee or waiving the fee for those applicants for whom paying the fee would constitute a financial hardship.

Previously, the INS had assigned waiver/exempt costs and the asylum and refugee surcharge as a flat ''per application'' amount. While this method produced a single surcharge amount, the total percent of the surcharge to each fee type varied greatly. For example, as a result of the last fee adjustment in July 1994, the asylum and refugee surcharge was determined to be $9.00 per application. This $9.00 surcharge represented an assessment of 10% for an application costing $90.00, but it was an assessment of nearly 30% for an application costing $30.00. Audits of the INS fee setting methodology had been critical of this method of assigning the surcharge and other costs. The auditors felt that a more equitable method for assigning these amounts would be to base them on the relationship of the cost of the various applications and petitions. To prevent the disparity in the percentage of an application's or petition's fee that was attributable to the surcharge and waiver/exempt amount, the INS now assesses it waiver/exempt costs and surcharge as a flat percentage of each application's or petition's processing costs. While the amount of the waiver/exempt cost and surcharge will vary between fee types, the percentage of cost is constant.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) states that ''asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State. . .'' (INA, section 208(d)(5)(A)(I)) Under this provision, fingerprint checks will have to be completed prior to approving any asylum application. This requirement was not effective during the fee study, and is not reflected in the asylum and refugee surcharge. This requirement may result in additional resource requirements for the International Affairs program and an increase in the asylum and refugee surcharge amount to recover these resources.

The INS specifically solicits comments on whether a flat rate or

percentage should be used to assign waiver costs.

A. Waiver/Exempt Costs

The INS provides the initial Form I–765, Application for Employment Authorization, at no charge to persons granted asylum or refugee status, or when the INS cannot adjudicate an asylum or refugee application within 180 days of filing. For FY 1998, the INS estimates that approximately 50% of the Form I–765 applications will be processed at no charge to applicants, at a total cost of $35.9 million. In addition, persons filing certain applications or petitions may apply for a waiver of the fee when paying the fee would constitute a financial hardship. For FY 1998, the INS estimates that it will incur costs of approximately $42.3 million to process applications and petitions for which the fee has been waived. As stated previously, the revenue generated from the immigration adjudication and naturalization fees is the sole source of funding for these services. The INS does not receive appropriated funds (tax dollars) to provide these services. As a result, the fees must be set at a level that will recover the full cost of processing immigration adjudication and naturalization applications and petitions, including those applications and petitions for which the fees have been waived. The waiver/exempt costs were assessed to the various application and petition types in relation to the total cost assigned to each application/petition type; this amount was then divided by the estimated fee-paying volume of for each application/petition type to determine the per application/petition amount.

The INS is currently evaluating under what conditions a waiver of the fee should be granted. The INS specifically seeks comments on setting standards for application fee waivers.

B. Asylum and Refugee Surcharge

As noted previously, Congress has directed the INS to set its fees at a level that will generate sufficient revenue to fund the processing of asylum and refugee applications. Within the INS, the International Affairs program administers the adjudication of asylum and refugee applications. Approximately 15% of the total immigration adjudication and naturalization resource base funds asylum and refugee adjudications administered by the INS' International Affairs program. This amount is recovered through the fees by adding a surcharge to the immigration adjudication and naturalization fees. This surcharge is calculated similar to the assignment of waiver/exempt costs. The total amount of the International Affairs program is assigned to each application/petition type in the same ratio as their total processing costs. The amount assigned to each application/petition type is then divided by the total volume of applications/petitions expected to be received for the application/petition type to arrive at a per application/petition surcharge amount.

Proposed Fee Adjustments

The INS is proposing to increase 30 fees on the Examinations Fee Account fee schedule. The INS must adjust its fee schedule due to the increased costs experienced since the last fee adjustment in July 1994, which was based on resource requirements of $331 million. The INS estimates resource requirements in FY 1998 of $638.6 million for the processing of immigration adjudication and naturalization applications and petitions. Revenue projections for FY 1998, based on the current fee schedule and an estimated fee-paying volume of 4.3 million applications, are only $368.4 million. Increases in fees are necessary to generate sufficient revenue to ensure that funds are available to continue providing services to customers.

The INS performed a thorough review of its immigration adjudication and naturalization resources and activities, and the relationship of these resources and activities to the various applications and petitions for which a fee is charged. The resources were assigned to applications and petitions based on causal relationships, with the exception of the waiver/exempt costs, and the asylum and refugee surcharge. These costs were assigned to each application and petition based on their relationship to processing costs. The proposed adjustments to the fee schedule of the Examinations Fee Account is the total resource costs assigned to each application and petition type, plus the pro-rata share of waiver/exempt costs and the asylum and refugee surcharge. This amount is then rounded to the nearest whole five-dollar amount. The proposed adjusted fee schedule for the Immigration Examinations Fee Account is illustrated in Figure 6. Figure 6 provides information on the application or petition the INS proposes to adjust, the total processing costs assigned to each application or petition, the asylum and refugee surcharge, the amount for waiver/exempt costs, and the total costs per application and petition. The proposed rounded fees are compared to the current fee. (A summary of the approach and methodology used in the fee study is explained in this proposed rule. A comprehensive Fee Study report is available upon request. Please refer to the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for instructions on obtaining a copy of the fee schedule.)

FIGURE 6.—IMMIGRATION EXAMINATIONS FEE ACCOUNT PROPOSED FEE SCHEDULE ADJUSTMENTS

Application No.	Description	Processing cost	Waiver/exempt cost	Asylum and refugee surcharge	Total cost	Proposed fee	Current fee
I–17	Petition for Approval of School for Attendance by Non-immigrant Student.	$143.13	$24.71	$30.84	$198.68	$200.00	$140.00
I–90	Application to Replace Alien Registration Card.	79.48	13.72	17.12	110.32	110.00	75.00
I–102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record.	62.74	10.83	13.52	87.09	85.00	65.00
I–129/I–129H/I–129L	Petitions for Nonimmigrant Worker.	77.49	13.38	16.69	107.56	110.00	[1] 75.00
I–129F	Petition for Alien Fiance(e)	67.45	11.64	14.53	93.62	95.00	75.00
I–130	Petition for Alien Relative	78.75	13.59	16.96	109.30	110.00	80.00
I–131	Application for Travel Document.	67.98	11.73	14.64	94.35	95.00	70.00
I–140	Petition for Alien Worker	81.87	14.13	17.64	113.64	115.00	75.00

FIGURE 6.—IMMIGRATION EXAMINATIONS FEE ACCOUNT PROPOSED FEE SCHEDULE ADJUSTMENTS—Continued

Application No.	Description	Processing cost	Waiver/exempt cost	Asylum and refugee surcharge	Total cost	Proposed fee	Current fee
I–485	Application to Register Permanent Residence or Adjust Status.	158.74	27.40	34.19	220.33	220.00	130.00
I–526	Immigrant Petition by Alien Entrepreneur.	250.61	43.26	53.99	347.86	350.00	155.00
I–539	Application to Extend/Change Nonimmigrant Status.	86.22	14.88	18.58	119.68	120.00	75.00
I–600/I–600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of Orphan Petition.	291.55	50.33	62.81	404.69	405.00	155.00
I–724	Waiver Forms [2]	121.27	20.93	26.13	168.33	170.00	95.00
I–751	Petition to Remove the Conditions of Residence.	90.65	15.65	19.53	125.83	125.00	80.00
I–765	Application for Employment Authorization.	73.79	12.74	15.90	102.43	100.00	70.00
I–817	Application for Voluntary Departure under the Family Unity Act.	86.16	14.87	18.56	119.59	120.00	80.00
I–824	Application for Action on an Approved Application or Petition.	85.07	14.68	18.32	118.07	120.00	30.00
I–829	Petition by Entrepreneur to Remove Conditions.	249.97	43.15	53.85	346.97	345.00	90.00
N–400	Application for Naturalization	163.82	28.28	35.29	227.39	225.00	95.00
N–565	Application for Replacement Naturalization/Citizenship Document.	97.01	16.74	20.90	134.65	135.00	65.00
N–600	Application for Certification of Citizenship.	116.64	20.13	25.13	161.90	160.00	100.00
N–643	Application for Certificate of Citizenship on Behalf of an Adopted Child.	90.85	15.68	19.57	126.10	125.00	80.00

[1] This amount represents the base fee currently charged for the Form I–129. In addition to the base fee, petitioners are currently required to add additional amounts depending upon the number of non-immigrant workers on each petition, or whether the petition is for an extension of stay, change of status, reclassification as a temporary worker or trainee, or to employee an intracompany transferee. The INS has simplified this fee structure by charging a uniform fee for each type of non-immigrant worker petition filed.

[2] Waiver Forms Include: I–191, Application for Advance Permission to Return to Unrelinquished Domicile; I–192, Application for Advance Permission to Enter as a Nonimmigrant; I–193, Application for Waiver of Passport and/or Visa; I–212, Application to Reapply for Admission into the U.S After Deportation; I–601, Application for Waiver on Grounds of Excludability; and I–612, Application for Waiver of the Foreign Residence Requirement.

Impact on Applicants and Petitioners

The INS recognizes that this proposed rule will have an impact on persons who file the effected applications and petitions, with a total impact in excess of $100 million annually. The fee increases will affect the over 4 million applicants who file immigration adjudication and naturalization applications and petitions each year. The financial impact on persons who file these applications and petitions will vary; the proposed fee increases range from $20.00 to $255.00 depending on the type of application or petition filed. Three fees will increase by amounts between $20.00 and $25.00; 11 fees will increase by amounts between $30.00 and $45.00; seven fees will increase by amounts between $60.00 and $75.00; four fees will increase by amounts between $80.00 and $90.00; and five fees will increase by amounts in excess of $100.00. (Please refer to Figure 6 for details on the proposed fee increases.)

During this fee setting process the INS used statistically valid methods to determine the processing time and the related costs of providing immigration adjudication and naturalization services. These processing times include the time necessary to receive applications, process data, manage records and files, adjudicate applications (including interviewing), provide clerical support, produce cards and certificates, and respond to inquiries. Prior fee setting efforts only considered the adjudicative and clerical time as direct costs of the immigration adjudication and naturalization applications and petitions. For this reason, some applications and petitions may increase more dramatically than others. These applications, particularly the Form N–400, Application for Citizenship, and the Form I–600, Petition to Classify Orphan as an Immediate Relative, require considerable time and attention to receive, process, and adjudicate. In past fee setting efforts, any costs that were not direct adjudicative, clerical, or card production costs were assigned to an indirect cost pool and spread evenly over all application and petitions types. This method obscured the true full cost of the individual applications and petitions. The current fee setting effort more closely aligns costs to application and petition type.

The fee increases are necessary to fund the various immigration adjudication and naturalization services provided by the INS. The INS does not receive an appropriation (tax dollars) to fund these activities and must rely on the revenue generated from its various immigration adjudication and naturalization fees to continue providing such services. The favorable

adjudication of immigration and naturalization applications and petitions results in the granting of status, rights, and benefits upon which it is difficult to place a monetary value. The INS accepts and adjudicates applications and petitions that: confer legal permanent resident, asylee, and refugee status; allow for family reunification; permit non-immigrants to enter the United States for employment purposes; allow legal permanent residents, asylees, and refugees to seek employment in the United States; allow foreign students to enter the United States for educational purposes; allow for the classification of non-resident orphans as immediate relatives for the purpose of adoption; provide reentry rights into the United States for persons who may otherwise be excludable; and allow immigrants to apply for and become citizens of the United States and partake of the benefits of a democratic society.

Without the funding provided through these fees, the INS could not continue to provide such services. The INS conducted a lengthy and thorough review of the costs of providing immigration adjudication and naturalization services and assigned those costs to the various immigration adjudication and naturalization applications and petitions in accordance with legislative intent and Federal cost accounting guidelines. The fee setting process is explained in this proposed rule and detailed documentation of the Fee Study is available from the INS upon request. The INS attempted to set each fee at the cost of resources consumed to providing specific services and without unduly burdening any particular class of applicants or petitioners. The INS has also established procedures by which applicants and petitioners may apply for a waiver of certain fees when paying the fee constitutes a financial hardship.

Changes in Certain Specific Fees

The INS is proposing to change the structure and eliminate several fees. The fee for the Form I–485A, Application to Register Permanent Residence or Adjust Status—Cuban Refugees, has been eliminated because the INS has rescinded the use of this form.

The maximum amount payable for families filing the Form I–817, Application for Voluntary Departure under the Family Unity Act, is also being eliminated. The INS is changing the processing procedures for the Form I–817. (New procedures for filing the I–817 will be addressed in a separate rule.) Previously, applicants for Family Unity benefits who desired employment authorization were required to file a separate Form I–765, Application for Employment Authorization, and pay the appropriate fee for that form. As part of the new processing procedures for the Form I–817, the INS will now issue an Employment Authorization Card (EAD) to each approved Form I–817 applicant. Family Unity applicants will no longer be required to file a Form I–765 and pay the additional fee in order to obtain an EAD. The INS had previously established a maximum fee amount for families of four or more that filed Forms I–817 concurrently. Most families of four or more members who filed for Family Unity benefits had heads of households, spouses, or minor children that wished to obtain employment authorization. The INS recognized that the cost of filing the Forms I–817 and I–765 concurrently for multiple family members would be a financial hardship. To mitigate this financial hardship, the INS capped the amount of the Form I–817 fee for families of four at $225.00.

With the new procedure of issuing an EAD with each approved Form I–817 application, the INS' processing costs will increase, but the burden on families of four or more filing concurrent Forms I–817 will decrease since these families will no longer be required to file the Form I–765 and pay the additional fee.

The INS has also simplified the fee structure for the Form I–129, Petition for Non-Immigrant Worker. Previously, the INS charged an additional fee for petitions with named beneficiaries requesting consulate or port-of-entry notification, and additional fees for workers requesting a change of status or extension of stay. Since the Form I–129 allows a petitioner to apply for several benefits on the same form, petitioners found the fee structure very confusing, and often submitted petitions with the wrong fee amount. This caused delays in adjudication since any application or petition filed with the wrong fee amount must be returned to the applicant or petitioner with a request to re-submit the application with the correct fee. To mitigate this confusion and prevent any delays in processing, the INS is proposing a single fee for each Form I–129 filed, regardless of the type of benefit requested. Future fees studies will further examine the fee structure of the Form I–129 and refine the fee structure, if necessary. For the same reasons, the INS is eliminating the co-applicant fee on the Form I–539, Application to Extend or Change Nonimmigrant Status.

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and by approving it has determined that this rule will not have a significant economic impact on a substantial number of small entities. The INS does acknowledge, however, that a number of small entities, particularly those filing business-related applications and petitions such as the Form I–129, Petition for Nonimmigrant Worker, may be affected by this rule. For FY 1998, the INS projects that approximately 254,000 Forms I–129 will be filed. However, this volume represents petitions filed by a variety of businesses, ranging from large multi-national corporations to small domestic businesses. The INS does not have statistics on the number of small businesses that may be affected by this rule. The INS tracks the number of petitions filed; these volume statistics do not indicate which types of businesses file petitions, or the size of the businesses filing the Form I–129.

The INS conducted an exhaustive review of the costs incurred by the INS for the processing the various immigration adjudication and naturalization applications and petitions. The INS believes that, as a result of this study, the proposed fees reflect, as closely as possible, the full cost of providing the specific service provided through the filing of an application or petition. The INS conducted its review and adjusted its fees in accordance with statutory mandates and Federal cost accounting standards. These statutes and standards require the INS to recover the full cost of providing services that confer a benefit that does not accrue to the public at large. The Form I–129 will increase from the current base fee of $75.00 to $110.00, an increase of $35.00. While this increase is notable, it is important to note that the immigration adjudication and naturalization fees have not increased in the past three years; during the same period the INS has experienced a significant increase in its costs. Additionally, the increased cost for the Form I–129 is modest indeed in the context of the total costs businesses incur in relocating non-immigrant workers to the United States.

Unfunded Mandates Reform Act of 1995

This rule will not impose a mandate or enforceable duty on State, local and tribal governments, in the aggregate, or on the private sector, and it will not significantly or uniquely affect small governments. This rule will only affect persons who file applications or petitions for immigration benefits. The increase in fees is necessary to defray the higher costs of adjudicating and

granting the benefits sought. The **SUPPLEMENTARY INFORMATION** portion of this rule explains in detail the basis for calculating these fee increases. No further actions are 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 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 fund the increased expenses of the INS adjudication and naturalization program. The increased fees will be paid by persons who file applications or petitions to obtain immigration benefits.

Executive Order 12866

This rule is considered by the Department of Justice to be an economically ''significant regulatory action'' under Executive Order 12866, Regulatory Planning and Review, section 3(f), because it will have an annual effect on the economy of $100 million or more. Without the proposed increases, the INS estimates that it will collect $368.4 million in fees for immigration adjudication and naturalization services in FY 1998; with the proposed increase, the INS will collect approximately $648.7 million. The implementation of this proposed rule will provide the INS with an additional $280.3 million in revenue over the revenue that would be collected under the current fee structure. This increase in revenue will be used to fund the processing of immigration adjudication and naturalization applications and petitions. The revenue increase is based on INS costs and workload volumes that were available at the time of the fee study. The volume of applications and petitions filed is projected based on a regression analysis of a five-year history of actual applications and petitions received by the INS. The regression analysis is adjusted for any anticipated or actual changes in laws, policies, or procedures that may affect future filing patterns. The proposed fees will be paid by an estimated 4.3 million individuals and businesses filing immigration adjudication and naturalization applications and petitions. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulations proposed herein 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 Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, 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 OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

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

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by removing the entry for ''Form I–485A'' and revising the entries for the following forms listed, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–17. For filing an application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof—$200.00.

* * * * *

Form I–90. For filing an application for Alien Registration Receipt 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-$110.00.

* * * * *

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—$85.00.

Form I–129. For filing a petition for a non-immigrant worker—$110.00.

Form I–129F. For filing petition to classify nonimmigrant as fiancee or fiance under section 214(d) of the Act—$95.00.

Form I–129H. For filing a petition to classify nonimmigrant as temporary worker or trainee under section 214(c) of the Act—$110.00.

Form I–129L. Petition to employ intracompany transferee—$110.00.

Form I–130. For filing a petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act—$110.00.

Form I–131. For filing an application for travel documents—$95.00.

Form I–140. For filing a petition to classify preference status of an alien on basis of profession or occupation under section 204(a) of the Act—$115.00.

* * * * *

Form I–191. For filing applications for discretionary relief under section 212(c) of the Act—$170.00.

Form I–192. For filing 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—$170.00.

Form I–193. For filing an application for waiver of passport and/or visa—$170.00.

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—$170.00.

* * * * *

Form I–485. For filing application for permanent resident status or creation of a record of lawful permanent residence—$220.00 for an applicant 14 years of age or older; $160.00 for an applicant under the age of 14 years.

* * * * *

Form I–526. For filing a petition for an alien entrepreneur—$350.00.

* * * * *

Form I–539. For filing an application to extend or change nonimmigrant status—$120.00.

* * * * *

Form I–600. For filing a petition to classify orphan as an immediate relative for issuance of 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.)—$405.00.

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.)—$405.00.

Form I–601. For filing an application for waiver of ground of inadmissability 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 sub-sections.)—$170.00.

Form I–612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—$170.00.

* * * * *

Form I–751. For filing a petition to remove the conditions on residence, based on marriage—$125.00.

Form I–765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—$100.00.

* * * * *

Form I–817. For filing an application for voluntary departure under the Family Unity Program—$120.00.

* * * * *

Form I–824. For filing for action on an approved application or petition—$120.00

Form I–829. For filing petition by entrepreneur to remove conditions—$345.00.

* * * * *

Form N–400. For filing an application for naturalization—$225.00. For filing an application for naturalization under section 405 of the Immigration Act of 1990, if the applicant will be interviewed in the Philippines—$250.00.

* * * * *

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(b) or (d) 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(c) of the Act—$135.00.

Form N–600. For filing an application for certificate of citizenship under section 309(c) or section 341 of the Act—$160.00.

Form N–643. For filing an application for a certificate of citizenship on behalf of an adopted child—$125.00.

* * * * *

Dated: January 5, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–576 Filed 1–9–98; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 304, 305, 327, 335, 381, and 500

[Docket No. 95–025P]

RIN 0583–AC34

Rules of Practice

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to consolidate and amend its regulations concerning the rules of practice that apply to refusal, suspension, or withdrawal of inspection services. FSIS also is proposing to add specific language regarding the refusal, suspension, or withdrawal of inspection services when the Agency determines that an establishment's Hazard Analysis and Critical Control Point (HACCP) system is inadequate, an establishment is not meeting the *Salmonella* pathogen reduction performance standards, an establishment's Sanitation Standard Operating Procedures (Sanitation SOP's) are inadequate or ineffective, or an establishment is not complying with generic *E. coli* testing requirements. This proposal is part of FSIS's ongoing efforts to consolidate, streamline, and clarify the meat and poultry product inspection regulations.

DATES: Comments on the proposed regulations must be received on or before March 13, 1998.

ADDRESSES: Please send an original and two copies of comments to: FSIS Docket Clerk, Docket No. 95–025P, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Stolfa, Assistant Deputy Administrator, Office of Policy, Program Development and Evaluation, FSIS, Room 402, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA), FSIS can refuse to grant inspection, suspend inspection, or withdraw inspection services from establishments based on unsanitary conditions (9 CFR 335.13 and 381.234), inhumane livestock slaughtering (9 CFR 335.30–.32), or unfitness to engage in business because of prior criminal convictions (9 CFR 335.10 and 381.231). Inspection services also can be suspended or withdrawn if establishments fail to destroy condemned product (9 CFR 335.11 and 9 CFR 381.232), or if establishment personnel assault, intimidate, or interfere with inspection service employees (9 CFR 335.20–.21 and 381.235–.236). Additionally, FSIS can rescind approval of any marking, labeling, or container that is false or misleading (9 CFR 335.12 and 381.233).

As discussed in the ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) System'' final rule (61 FR 38806), FSIS also can refuse to grant, suspend, or withdraw the grant of inspection if an establishment has failed to: (1) Develop and implement a HACCP plan or operate in accordance with 9 CFR Part 417; (2) develop, implement, and maintain Sanitation SOP's in accordance with 9 CFR part 416; (3) conduct generic *E. coli* testing in accordance with 9 CFR 310.25(a) or 381.45(a); or (4) meet the pathogen reduction performance standard for *Salmonella* or, after failing two sample sets, reassess its HACCP plan in accordance with 9 CFR 310.25(b) or 381.94(b).

When FSIS determines to refuse to grant an application for inspection, to withdraw a grant of inspection, or to rescind or refuse to approve markings, labels or containers, the Agency initiates an administrative action under USDA's Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR subtitle A, part 1, subpart H), as supplemented by its own ''Rules of Practice,'' which are set out in 9 CFR part 335 or part 381, subpart W. The Department's uniform Rules of Practice contain the procedures applicable to formal adjudicatory proceedings under various USDA implemented statutes, including specified sections of the FMIA and PPIA. The Department's Rules of Practice contain procedures that FSIS follows when filing a complaint with the Department's Hearing Clerk and requesting a hearing before an Administrative Law Judge. FSIS's current supplemental Rules of Practice regulations provide establishments an opportunity to correct problems before the Agency files a complaint to withdraw the establishment's grant of inspection. However, FSIS may suspend inspection services until the problem is corrected.

Generally, FSIS initially uses ''withholding actions'' to withhold the mark of inspection from an establishment's products that are deficient. A U.S. Retain Tag is placed on deficient product or a U.S. Rejected Tag is attached to deficient equipment. The withholding action is discontinued when the deficiencies are corrected.

In most cases, FSIS suspends inspection services only after repeated violations. A suspension may affect an entire establishment or may be limited to a specific process or production line within the establishment. A suspension will last until the establishment achieves compliance with the applicable laws and regulations. If the suspension involves an entire establishment, FSIS removes inspection personnel unless there is reason to believe that corrective action can be completed in a timeframe that is