Code, if the service had been covered under chapter 84 of title 5, United States Code, plus interest.

(iii) The department or agency must remit the amount of Government contributions under this section to OPM at the same time it remits the employee deposit for this service to OPM in accordance with instructions issued by OPM.

(9) *Interest.* Interest must be computed as described under paragraphs (2) and (3) of 5 U.S.C. 8334(e). Interest must be computed for each distinct period of service from the midpoint of each distinct period of service. The interest accrues annually on the outstanding deposit and is compounded annually, until the deposit is paid.

(10) *Effect of deposit.* An individual completing a deposit under this section will receive retirement credit for the service covered by the deposit when OPM receives certification that the deposit has been paid in full, and the deposit payment and agency contributions are remitted to the Civil Service Retirement and Disability Fund.

(11) *Appeal rights.* When the department or agency processing an application for deposit under this section determines that the individual is not eligible to make a deposit for a period of service, it must provide the individual with a written decision explaining the reason for the decision and explaining the individual's right to appeal the decision to the Merit Systems Protection Board.

[FR Doc. 05–17053 Filed 8–26–05; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 103

[CIS No. 2245–02 and Docket No. DHS–2004–0021]

RIN 1615–AA88

Adjustment of the Appeal and Motion Fees To Recover Full Costs

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule adjusts the fee for filing appeals of, and motions to reopen or reconsider, any decision under the immigration laws in any type of proceeding other than those described at 8 CFR 1003.1(b), over which the Board of Immigration Appeals (BIA) in the Department of Justice (DOJ) has appellate jurisdiction. The rule also adds a non-substantive modification to the language of the fee regulation in order to enhance clarity.

This rule applies to fees for appeals and motions relating to the types of cases under the jurisdiction of the Administrative Appeals Office (AAO). The AAO is an appellate office of U.S. Citizenship and Immigration Services (USCIS). The BIA remains a component of DOJ, and has appellate jurisdiction over the orders of immigration judges, denials of relative immigrant visa petitions (Form I–130), and decisions involving administrative fines and penalties. This rule does not apply to, or affect in any manner, the fees associated with the BIA. Appeals from denials of all other types of applications, such as Applications for Temporary Protected Status (Form I–821), and petitions, such as Petitions for Amerasian, Widow(er), or Special Immigrant (Form I–360), and any subsequently filed motions, are under the jurisdiction of the AAO.

The fees, deposited into the Immigration Examinations Fee Account (IEFA), are adjusted from $110 to $385 to recover the full costs associated with the processing of an appeal, motion to reopen or motion to reconsider. Federal statutes authorize USCIS to establish and collect fees to recover the full cost of processing immigration benefit applications, rather than supporting these services with tax revenue.

Finally, the rule replaces a reference in the regulations to an obsolete form with a reference to the revised version of that form.

DATES: *Effective Date:* This final rule is effective September 28, 2005.

Compliance Date: Applications mailed, postmarked, or otherwise filed, on or after September 28, 2005 require the new fee.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Director, Office of Budget, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 4th Floor, Washington, DC 20529, telephone (202) 272–1930.

SUPPLEMENTARY INFORMATION:

I. Introduction

USCIS published a proposed rule in the **Federal Register** on November 30, 2004, at 69 FR 69546, to adjust the fees for processing of an appeal, motion to reopen or motion to reconsider. The proposed rule was published with a 30-day comment period, which closed on December 30, 2004. USCIS received 14 comments pertaining to the adjustment of the fees for processing of an appeal or motion to reopen or motion to reconsider.

Comments were received from 13 concerned individuals and one association. All of the relevant comments were carefully considered before preparing this final rule. USCIS' responses to the concerns raised by the commenters primarily are based upon the November 2002 fee review report provided by KMPG Consulting.

The following is a discussion of the comments received for the November 30, 2004 proposed rule and USCIS' response.

II. Summary of Comments

A. Why Is the Fee Increase Necessary?

Eight comments were received expressing dissatisfaction with the size of the fee increase. Three commenters also stated that the increase in appeals and motions of 12% over the last 10 years does not justify the proposed increased fees. USCIS notes, however, that the fee increase is not based upon the 12% increase in the filing of motions and appeals. While the fees for other applications have increased more than threefold during this time, the appeal and motion fee has remained the same.

The increase in fees is necessary so that USCIS can recover the full costs of processing appeals and motions.

Three commenters asserted that the increase in fees should also increase the timeliness and quality of the decisions rendered. Similarly, one commenter suggested that the AAO be added to the USCIS backlog reduction plan, while another indicated support for the proposed increase with the stipulation that the increase be used to fund additional resources for the AAO.

USCIS agrees with commenters that the timeliness and quality of the decisions is important, as are increases in personnel and resources and notes that such considerations were taken into account during the fee review. In response to the commenter's suggestion that the AAO be added to the USCIS backlog reduction plan, we note that the AAO has been a part of the backlog reduction plan since its inception. As indicated in the proposed rule, based on the increase in motion and appeal filings from 1993 to 2002, a fee review was conducted by a consulting firm to determine the fee necessary to ensure that USCIS was able to collect the full cost for processing motions and appeals. According to Office of Management and Budget (OMB) Circular A–25, the ''full

cost'' includes direct and indirect personnel costs, physical overhead, consulting, and other indirect costs (*e.g.*, material and supply costs, utilities, insurance, travel and rents), management and supervisory costs, and the costs of collection, research, and regulation. Included as part of the fee study was a determination of increased staffing necessary to meet the President's 5-year goal of processing immigration benefit applications in 6 months or less, as well as the cost of labor-intensive activities such as legal research, decision writing, and decision review.

Three commenters opposed the proposed fee increase because USCIS provides no recourse to waive fees or refund fees in order to correct an obvious error on the part of USCIS. Examples of obvious errors include an erroneous finding that an appeal or motion was not timely filed or an erroneous finding related to statutory eligibility such as age or marital status. Additionally, one commenter suggested that USCIS waive or refund fees when a decision is reversed on a motion to reconsider due to USCIS error.

In response to these comments, USCIS notes that it does have the authority to reopen a case sua sponte and utilizes this ability in instances where, in its discretion, it determines that there is an obvious error. An applicant may bring such an error to the attention of the AAO, and the AAO may reopen the case on its own motion. In such cases, the applicant does not need to submit any fee for the motion, so that waiver of the fee or refund of the fee is not an issue. In instances where an applicant pays a fee for a motion to reopen or reconsider, without first attempting to resolve the error with the AAO, the AAO may refund the fee if, in its discretion, it determines that there clearly was an error in the AAO's original decision. Service centers and district offices also have procedures in place to issue refunds in certain instances where USCIS error can be demonstrated.

One commenter stated that the administrative costs for processing one particular type of appeal should not be ''anything close to'' $385, because the decisions of the AAO often ''fail to address the issues presented, fail to provide any legal or factual analysis, fail to cite any legal authority, inconsistently apply general principles to identical factual situations, and completely disregard various contractual obligations of the DHS.'' USCIS and the AAO are very careful about the quality of appellate decisions. Decisions are reviewed before issuance to ensure that there are no such failings. Moreover, as indicated above and in the proposed rule, the $385 fee is necessary to maintain USCIS appellate operations without passing costs on to taxpayers.

B. Why Doesn't USCIS Charge a Lower Fee for Motions to Reconsider?

Five comments were received opposing the increase in fees for so-called ''simpler'' appeals and motions to reconsider, while supporting the fee increase for more complex appeals and motions to reopen. USCIS does not accept the premise that there is a standard by which the complexity of appeals can be measured, or that the differences between the two types of motions can be apportioned in order to justify separate fees.

USCIS regulations set forth a uniform appeals process. Appeals are considered on a case-by-case basis. Each case has unique substantive components that impact the ease or complexity of review. A motion to reconsider can, in a particular case, consume more USCIS resources than a motion to reopen. The process, however, is consistent throughout. In each case, the adjudicating office initially reviews each Form I–290B (Notice of Appeal to the AAO) on a case-by-case basis. The adjudicating office then decides the next appropriate step (*i.e.*, forward the matter to AAO for review, re-adjudicate and approve, or re-adjudicate and issue another request for evidence). Depending upon the timeframe and action, additional background checks may also be required.

This procedure does not vary significantly by application or petition type. It is true that in certain cases an application or petition is not forwarded to the AAO for review, but the conclusion that this path would mean a significantly lower administrative cost to USCIS does not necessarily follow. A service center or district office, after the preliminary review of the material provided, must complete many of the same tasks normally completed by the AAO: Data entry, additional review of the record, security checks, and issuance of a decision. These offices may even have to issue an additional Request For Evidence.

A more varied fee structure that accommodated perceived differences in the degree of complexity for appeals would be more difficult to administer and could, itself, increase costs. These increased costs would necessarily be reflected in higher overall fees.

Although there are 66 separate petitions or applications which may underlay the actual appeal or motion, because the processes for an appeal and motion are similar, USCIS and the consulting firm treated them similarly for purposes of the fee review and arrived at a statistically meaningful average processing time due to the fact that the appeals and motion process is singular as set forth in the regulations.

Similarly, despite the fact that the regulations provide different eligibility requirements for the filing of a motion to reopen versus a motion to reconsider, because the process for filing and adjudicating each motion is the same, a separate fee is not warranted. It is common practice with other USCIS applications and petitions to charge one standard application processing fee despite the fact that one application or petition may be used for the adjudication of benefits under several different statutory and/or regulatory provisions and may require the demonstration of various, unique eligibility requirements.

For example, the Form I–485, Application to Register Permanent Residence or Adjust Status, covers not only family as well as employment-based and Diversity Visa adjustment of status, but also adjustment under Registry, the Haitian Refugee Immigration Fairness Act (HRIFA), the Nicaraguan Adjustment and Central American Relief Act (NACARA), the Legal Immigration and Family Equity (LIFE) Act, the Cuban Adjustment Act and others. The Form I–129, Petition for a Nonimmigrant Worker, likewise covers change or extension of nonimmigrant status as well as the beneficiary's eligibility for a variety of classifications of nonimmigrant status. Nonetheless, one application processing fee is charged. One fee will similarly be assessed for the Form I–290B.

Another commenter stated that, despite the statement to the contrary in the proposed rule, the new fee will have a negative impact on small businesses. The commenter challenges the validity of the small business analysis in the proposed rule, and recommends that USCIS ''take into consideration the levels at which small companies are not appealing denials.'' It would be possible for USCIS to examine the percentage of denials for which no appeal is filed, but it would not be practical or cost effective for USCIS to assess the extent to which the fee for the appeal served as the basis for the decision to not file an appeal. The Regulatory Flexibility Act portion of this rule discusses more fully USCIS' perspective on how the appeal fee increase may or may not affect the decision to pursue an appeal. The commenter also recommended that the number of denials of Form I–129, Petition for Nonimmigrant Worker, be included in the analysis of the effect of

this rule on small businesses. That recommendation has been adopted.

Another comment noted that the proposed rule failed to remove reference to the obsolete Form I–290A in all pertinent areas of the regulation. The commenter is incorrect, because the listing for the Form I–290A in 8 CFR 103.7(b) was removed by the Final Rule published April 15, 2004 (69 FR 20527).

Finally, several additional comments were received that were beyond the scope of the proposed rule and, therefore, are not mentioned herein.

Accordingly, this final rule implements the new fees as outlined in the proposed rule, without substantive change. Any applications or petitions mailed, postmarked, or otherwise filed, on or after September 28, 2005 will require the new fee.

III. Fee Adjustments

The fee adjustments, as adopted in this rule, are shown as follows:

Description	Fee
Appeal/Motion Fee	$385.00

IV. Technical Improvements

This rule also clarifies that the fee amount of $385 also applies when an appeal is filed based on the denial of a petition with multiple beneficiaries, provided they are all beneficiaries of the same petition, and therefore affected by the same decision. In so doing, it corrects a transcription error in the Code of Federal Regulations in 1989 that failed to amend the fee amount from $50 to $110 for two or more aliens when the aliens are covered by one decision at the same time that the base fee (for one alien) was raised from $50 to $110, as provided in the final rule dated April 4, 1989 (54 FR 13513). The error resulted in an unintended discrepancy between the base fee, and the fee for two or more aliens when the aliens are covered by one decision. Notwithstanding this transcription error, the form instructions reflected the proper fee amount. Accordingly, affected aliens have been properly charged, and the former Immigration and Naturalization Service as well as USCIS have collected the correct fee since the 1989 amendment. This rule corrects the discrepancy in 8 CFR 103.7(b)(1) and brings this fee as properly amended ($50 to $110) from $110 to $385 so that both fees are now equal as intended.

Finally, this final rule also makes a conforming change to 8 CFR 103.5(a)(1)(iii) to replace an obsolete reference to a withdrawn form, Form I–290A, with a reference to Form I–290B.

Regulatory Flexibility Act

DHS has reviewed this regulation in accordance with 5 U.S.C. 605(b), and by approving it, DHS has determined that this rule will not have a significant economic impact on a substantial number of small entities since a majority of motions and appeals are submitted by individuals and not small entities as that term is defined in 5 U.S.C. 601(6).

DHS acknowledges, however, that some small entities, particularly those filing appeals of and/or motions to reopen or to reconsider denials of business-related petitions, such as the Form I–140, Immigrant Petition for Alien Worker; Form I–526, Immigrant Petition for Alien Entrepreneur; Form I–129, Petition for Nonimmigrant Worker; and Form I–829, Petition for Entrepreneur to Remove Conditions; may be affected by this rule. USCIS does not collect data on the size of the businesses filing appeals or motions related to employment-based petitions, and therefore does not know the precise number of small businesses that may be affected by this rule (as the majority of petitions are filed by individuals). USCIS records indicate that the following numbers of business-related petitions were denied during the Fiscal Year 2003/2004 biennial period:

Form I–140, Immigrant Petition for Alien Worker (35,866 denials)

Form I–526, Immigrant Petition by Alien Entrepreneur (217 denials)

Form I–829, Petition by Entrepreneur to Remove Conditions (174 denials)

Form I–129, Petition for Nonimmigrant Worker (171,154 denials)

Based on these figures, the volume of denied petitions that might be appealed to the USCIS over a two-year period is 207,411. During the fiscal years 2003 and 2004, the AAO received approximately 50,000 appeals.

USCIS is unable to determine how many of these petitioners are small businesses. In the past, some large employers have filed hundreds of petitions in a single year. Therefore, the number of small entities that have filed petitions and subsequently, appeals, is less than 207,411 and 50,000, respectively. Nevertheless, even assuming that all of these petitioners were small entities, economic impact on those businesses would not be substantial within the meaning of the Regulatory Flexibility Act.

According to the Bureau of Labor Statistics, the average wage of a worker in the United States in 2002 was $36,764. Cost to an employer would include benefits, social security, payroll taxes and other items not reflected in the wage itself.

It is reasonable to assume that a small business would be less likely to expend resources pursuing appeals or litigating decisions regarding lower-paid and less skilled immigrant employees. Accordingly, small businesses which choose to file appeals on behalf of immigrant employees are likely to do so only for more skilled, and therefore higher paid, immigrant employees. Such employees, presumably, would be paid in excess of the $36,764 average wage. Thus, the $275 increase in fees imposed by this rule would represent well under one percent of the total annual wage cost of the employee on whose behalf the pleading was filed and would represent an even smaller percentage of the cost of the employee's combined salary and benefits.

Moreover, based upon the appeals received by the AAO, we note that the majority of small businesses impacted by this rule would have more than one employee; in all probability, a minority of those employees would require the filing of one of the pleadings impacted by this rule. The overall economic impact of this rule on affected small businesses would therefore amount to substantially less than one percent of overall payroll and benefit expenses and an even smaller percentage of overall revenues.

Accordingly, the degree of economic impact resulting from this rule would not be deemed significant under the Regulatory Flexibility Act. Therefore, an analysis of the economic impact on a substantial number of small entities under 5 U.S.C. 603 is not required for this rule.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more, a major increase of costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by DHS to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review. DHS has assessed both the costs and benefits of this rule as required by section 1(b)(6) of Executive Order 12866 and has made a determination that, although increasing the fee to $385 will increase the cost to the individual applicant and/or petitioner, USCIS must establish and collect fees to recover the full costs of processing immigration benefit applications, as required by the authorizing statute, the INA. The implementation of this rule also will provide USCIS with an additional $6.7 million in FY 2005 over the fee revenue that would be collected under the current fee structure. If USCIS does not adjust the current fees to recover the full costs of processing immigration benefit applications, our programs will not be fully funded and we will not be able to process applications in a timely manner. Thus, the backlog will likely increase. The results of the review showed that if the AAO's staffing increased, processing times would likely meet the President's mandate regarding backlog reduction. The revenue increase is based on USCIS costs and projected volumes that were available at the time of this rule.

Executive Order 13132

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

Executive Order 12988: Civil Justice Reform

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

Paperwork Reduction Act

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

However, it should be noted that USCIS solicited public comments on the change of fees in the proposed rule that was published in the **Federal Register** on November 30, 2004. Because the change to the fees requires a change to Form I–290B, USCIS submitted a change request to OMB indicating the fee change from $110 to $385. OMB has approved changes to this form, consistent with the provisions in this final rule. The fee change is now reflected on USCIS Form I–290B.

List of Subjects in 8 CFR Part 103

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

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

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

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

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

■ 2. In § 103.5(a)(1)(iii), the introductory text is revised to read as follows:

§ 103.5 Reopening or reconsideration.

(a) * * *

(1) * * *

(iii) *Filing Requirements*—A motion shall be submitted on Form I–290B and may be accompanied by a brief. It must be:

* * * * *

■ 3. Section 103.7(b)(1) is amended by:

■ a. Revising the entry for the form ''I–290B''; and by

■ b. Revising the fee ''$110'' to read ''$385'' wherever that fee appears in the entry for ''Motion.''

The revision reads as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–290B. For filing an appeal from any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction—$385.00 (the fee will be the same when an appeal is taken from the denial of a petition with one or multiple beneficiaries, provided that they are all covered by the same petition, and therefore, the same decision).

* * * * *

Dated: August 22, 2005.

Michael Chertoff,

Secretary.

[FR Doc. 05–17132 Filed 8–26–05; 8:45 am]

BILLING CODE 4410–10–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH70

List of Approved Spent Fuel Storage Casks: VSC–24 Revision, Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of September 13, 2005, for the direct final rule that was published in the **Federal Register** on June 30, 2005 (70 FR 37647). This direct final rule amended the NRC's regulations to revise the VSC–24 cask system listing to include Amendment No. 5 to Certificate of Compliance (CoC) No. 1007.

EFFECTIVE DATE: The effective date of September 13, 2005, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

SUPPLEMENTARY INFORMATION: On June 30, 2005 (70 FR 37647), the NRC published a direct final rule amending its regulations in 10 CFR Part 72 to