

PART 784—[AMENDED]

■ 10. The authority citation for 15 CFR part 784 is revised to read as follows:

Authority: 22 U.S.C. 8101–8181; Executive Order 13458 (February 4, 2008).

■ 11. Section 784.6 is revised to read as follows:

§ 784.6 Post complementary access activities.

Upon receiving the IAEA's final report on complementary access, BIS will forward a copy of the report to the location for its review, in accordance with § 784.3(k)(2) of the APR. Locations may submit comments concerning the IAEA's final report to BIS, and BIS will consider them, as appropriate, when preparing its comments to the IAEA on the final report. BIS also will send locations a post complementary access letter detailing the issues that require follow-up action (see § 783.2(d) of the APR).

PART 785—[AMENDED]

■ 12. The authority citation for 15 CFR part 785 is revised to read as follows:

Authority: 22 U.S.C. 8101–8181; Executive Order 13458 (February 4, 2008).

PART 786—[AMENDED]

■ 13. The authority citation for 15 CFR part 786 is revised to read as follows:

Authority: 22 U.S.C. 8101–8181; Executive Order 13458 (February 4, 2008).

Matthew S. Borman,
Deputy Assistant Secretary for Export Administration.

[FR Doc. 2021–27836 Filed 12–28–21; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 172**

[Docket No. FDA–2021–F–1157]

Lallemand Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Lallemand Inc., proposing that the food additive regulations be amended to provide for the safe use of vitamin D₂ heat-killed

(“inactive”) baker's yeast as a source of vitamin D₂ in specific food categories.

DATES: The food additive petition was filed on September 28, 2021.

ADDRESSES: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and insert the docket number found in brackets in the heading of this document into the “Search” box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Katie Overbey, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–7536.

SUPPLEMENTARY INFORMATION: Under section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(b)(5)), we are giving notice that we have filed a food additive petition (FAP 1A4829), submitted by Lallemand Inc., 1620 rue Prefontaine, Montreal, Quebec, H1W 2N8, Canada. The petition proposes to amend the food additive regulations in 21 CFR part 172, *Food additives permitted for direct addition to food for human consumption*, to allow for the safe use of vitamin D₂ heat-killed bakers yeast as a nutrient supplement in foods to which vitamin D₂ mushroom powder is currently allowed to be added under § 172.382 (21 CFR 172.382), at the maximum level of vitamin D₂ authorized under § 172.382.

The petitioner has claimed a categorical exclusion under 21 CFR 25.32(k) because the substance is intended to remain in food through ingestion by consumers and is not intended to replace macronutrients in food. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist that would warrant at least an environmental assessment (see 21 CFR 25.21). If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: December 21, 2021.

Lauren K. Roth,
Associate Commissioner for Policy.

[FR Doc. 2021–28162 Filed 12–28–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE**22 CFR Part 22**

[Public Notice: 11482]

RIN 1400–AF33**Schedule of Fees for Consular Services—Nonimmigrant and Special Visa Fees**

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State (Department) proposes adjustments to the Schedule of Fees for Consular Services (Schedule of Fees) of the Bureau of Consular Affairs (CA) for several nonimmigrant visa (NIV) application processing fees, the Border Crossing Card (BCC) for Mexican citizens age 15 and over, and the waiver of the two-year residency requirement (J-Waiver) fee. The proposed changes are based on the findings of the most recently approved update to the Cost of Service Model (CoSM). They ensure that the fees for providing these consular services better align with the costs of providing the services.

DATES: The Department of State will accept comments until February 28, 2022.

ADDRESSES: Interested parties may submit comments to the Department by any of the following methods:

- Visit the *Regulations.gov* website at: <http://www.regulations.gov> and search for the Regulatory Information Number (RIN) 1400–AF33 or docket number DOS–2021–0019.

- *Email:* fees@state.gov. You must include the RIN (1400–AF33) in the subject line of your message.

- All comments should include the commenter's name, the organization the commenter represents (if applicable), and the commenter's address. If the Department is unable to read your comment for any reason, and cannot contact you for clarification, the Department may not be able to consider your comment. After the conclusion of the comment period, the Department will publish a Final Rule that will address relevant comments as expeditiously as possible.

During the comment period, the public may request an appointment to review CoSM data on site if certain conditions are met.¹ To request an appointment, please call 202–485–8915

¹ Members of the public meeting the conditions would be permitted to see high-level information, including total cost, total volume, and unit costs.

and leave a message with your contact information.

FOR FURTHER INFORMATION CONTACT:

Johanna Cruz, Management Analyst, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202-485-8915, email: fees@state.gov.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule makes changes to the Schedule of Fees in 22 CFR 22.1. The Department generally sets and collects fees for consular services based on the concept of full cost recovery to the U.S. government. The Department's CoSM uses an Activity-Based Costing (ABC) methodology to calculate annually the direct and indirect costs to the U.S. government associated with each consular good and service the Department provides. The fees are based on these cost estimates and the Department aims to update the Schedule of Fees biennially unless a significant change in costs warrants an immediate recommendation to amend the Schedule. The Department proposes these fee changes based on the results of the most recently approved update to the CoSM, which indicates that the increases are needed to fully recover the costs of providing these services. Specifically, the Department is incurring additional costs attributable to several NIV application processing fees, the adult BCC fee, and the J-Waiver fee that are not reflected in the current fees. To recover the costs of providing these specific consular services, the Department utilized a 10-year demand average to calculate the proposed fees. This was done to reduce the short-term volatility of demand because of the COVID-19 pandemic and stabilize price points for a longer duration of time.

What is the authority for this action?

The Department of State derives the general authority to set and collect fees for consular services it provides from the user charges statute, 31 U.S.C. 9701. *See, e.g.*, 31 U.S.C. 9701(b)(2)(A) ("The head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency . . . based on . . . the costs to the government."). As implemented through Executive Order 10718 of June 27, 1957, 22 U.S.C. 4219 further authorizes the Department to establish fees to be charged for official services provided by U.S. embassies and consulates.

Several statutes address specific fees relating to nonimmigrant visas. For instance, Sec. 140(a) of Public Law 103-

236, 108 Stat. 382, as amended, reproduced at 8 U.S.C. 1351 (note), establishes a cost-based application processing fee for nonimmigrant machine-readable visas (MRV) and BCCs. *See also* 8 U.S.C. 1713(b). Additionally, Sec. 501 of Public Law 110-293, Title V, 122 Stat. 2968, reproduced at 8 U.S.C. 1351 (note), requires the Secretary of State to collect an additional \$2 surcharge (the "HIV/AIDS/TB/Malaria surcharge") on all MRVs and BCCs as part of the application processing fee; this surcharge must be deposited into the Treasury and goes to support programs to combat HIV/AIDS, tuberculosis, and malaria. Furthermore, 8 U.S.C. 1351 establishes a reciprocal NIV issuance fee, requiring that the fee charged an applicant from a foreign country for issuance of an NIV be based, insofar as practicable, on the amount of visa or other similar fees charged to U.S. nationals by that foreign country.

Some people are exempted by law or regulation from paying specific fees. For example, certain individuals who engage in charitable activities or who qualify for diplomatic visas are exempt from the NIV application processing fee. *See* 8 U.S.C. 1351; 22 CFR 41.107(c). Exemptions are included in the Schedule of Fees.

Various statutes permit the Department to retain some of the fee revenue it collects, rather than depositing it into the general fund of the Treasury. As relevant, the Department retains the MRV and BCC processing fees, *see* Public Law 103-236, Title I, Sec. 140(a)(2), 112 Stat. 2681-50, reproduced at 8 U.S.C. 1351 (note) and 8 U.S.C. 1713(d), as well as the J-Waiver fee, *see* 22 U.S.C. 1475e.

The Department last adjusted certain NIV fees and the J-Waiver fee as part of an interim final rule dated August 28, 2014, and those changes to the Schedule of Fees went into effect September 6, 2014 (79 FR 51247). A final rule regarding those fees was published on August 25, 2015 (80 FR 51464). The fees for non-petition-based NIVs (except E category) and other petition-based NIVs (H, L, O, P, Q, and R category NIVs), have not been updated since April 13, 2012 (77 FR 18907). A final rule adjusting these fees was published on September 17, 2012 (FR 57012). Non-petition-based NIVs constitute a significant majority of the overall NIV applications.

Why is the Department adjusting fees at this time?

As a general policy, each recipient should pay a reasonable user charge for government services, resources, or

goods from which he or she derives a special benefit, at an amount sufficient for the U.S. Government to recover the full costs of providing the service, resource, or good. *See* 31 U.S.C. 9701; OMB Circular No. A-25, sec. 6(a)(2)(a). In accordance with this policy, the Department typically sets consular fees at an amount calculated to achieve full recovery of the costs to the U.S. government of providing the service, unless an exception applies. *See, e.g.*, 8 U.S.C. 1351 (noting that NIV reciprocity fees should be set in amounts corresponding to the total charges levied against nationals of the United States by foreign countries). In the case of the MRV fee, the Department is statutorily required to set the fee at cost if the actual cost is higher than \$65. *See* 8 U.S.C. 1713(b).

The Department reviews consular fees periodically, including through the annual update to its CoSM, to determine each fee's appropriateness in light of the OMB guidance. The results of the most recent update form the basis of the changes proposed in this rule. The proposed fees have been rounded up to the nearest \$5 consistent with accepted government fee setting practices, to account for and mitigate against the risk of exchange rate fluctuations.

Activity-Based Costing

To set fees to ensure full cost recovery, the Department must determine the true cost to the U.S. government of providing each consular service. Following guidance provided in "Managerial Cost Accounting Concepts and Standards for the Federal Government," OMB's Statement #4 of Federal Accounting Standards (SFFAS #4), available at <http://www.fasab.gov/pdffiles/sffas-4.pdf>, the Department chose to develop its CoSM using an ABC methodology to determine the true cost of each consular service.

The Government Accountability Office (GAO) defines ABC as a "set of accounting methods used to identify and describe costs and required resources for activities within processes." Organizations can use the same staff and resources (computer equipment, production facilities, etc.) to produce multiple products or services; therefore, ABC models seek to identify and assign costs to processes and activities and then to individual products and services through the identification of key cost drivers referred to as "resource drivers" and "activity drivers." The goal is to proportionally and accurately distribute costs. ABC models require financial and accounting analysis and modeling skills combined with a detailed understanding

of an organization's business processes. SFFAS #4 provides a detailed discussion of the use of cost accounting by the U.S. government.

The ABC approach focuses on the activities required to produce a particular service or product and uses resource drivers to assign costs through activities to services. Resource drivers assign the organization's costs (resources including materials, supplies and labor utilized in the production or delivery of services and products) to activities using business rules that reflect the operational reality of CA and the data available from consular systems, surveys, and internal records. Most resource drivers are based on time spent on each activity. For example, the Consular Overseas Data Collection (CODaC) survey captures how different categories of consular staff spend their time on consular work performed overseas. The information collected through the CODaC is used to populate the CODaC resource driver, which is a model input for time spent on specific activities for several different consular employee types and assigned to different categories of NIVs. Activity drivers differentiate levels of effort associated with activities (the work performed by the organization such as adjudication, printing of visa foils, and performing data intake, etc.) that are applied to each cost object and are often volume driven. For example, the cost of printing NIV visa foils is assigned to the different categories of NIVs based on the total number of NIVs issued for each NIV type.

Here is an example: Imagine a government agency that has a single facility it uses to prepare and issue a single product—a driver's license. In this simple scenario, every cost associated with that facility (the salaries of employees, the electricity to power the computer terminals, the cost of a blank driver's license, etc.) can be attributed directly to the cost of producing that single item. If that agency wants to ensure that it is charging a "self-sustaining" price for driver's licenses, it only has to divide its total costs for a given time period by an estimate of the number of driver's licenses to be produced during that same time period. However, if that agency issues multiple products (driver's licenses, non-driver ID cards, etc.), has employees that work on other activities besides licenses (for example, accepting payment for traffic tickets), and operates out of multiple facilities it shares with other agencies, it becomes much more complex for the agency to determine exactly how much it costs to produce any single product. In those

instances, the agency would need to know what percent of time its employees spend on each service and how much of its overhead (rent, utilities, facilities maintenance, etc.) can be allocated to the delivery of each service to determine the cost of producing each of its various products—the driver's license, the non-driver ID card, etc. Using an ABC model allows the agency to develop those cost estimates.

The Cost of Service Model (CoSM)

The Department has been conducting periodic cost of service studies using an ABC methodology to determine the costs of its consular services since 2009. In 2010, the Department moved to adopt an annually updated CoSM that measures all of its consular operations and costs, including all of the activities needed to provide consular services. The CoSM provides a comprehensive and detailed look at all consular services as well as all services that the Department performs for other agencies in connection with its consular operations. The CoSM now includes approximately 112 distinct activities and enables the Department to model its consular-related costs with a higher degree of precision.

The Department continues to refine and improve the CoSM annually in order to achieve full cost recovery for the U.S. government. Because the CoSM is a complex series of iterative computer processes incorporating more than a million calculations, it is not reducible to a tangible form such as a document. Inputs are formatted in spreadsheets for entry into the ABC software package, which is an industry standard commercial off-the-shelf product licensed through SAP Business Objects. The software's output includes spreadsheets with raw unit costs, validation reports, and management reports.

The Department uses three methods outlined in SFFAS Statement #4 (paragraph 149(2)) to assign resource costs to activities in the model: (a) Direct tracing; (b) assigning costs through estimation based on surveys, interviews, or statistical sampling; and (c) allocations. The Department uses direct tracing to assign the cost of, for example, a physical passport book or the visa foil placed in a visa applicant's passport, to the passport or visa service respectively. Assigning costs to activities such as adjudicating a visa application requires estimation based on surveys, interviews, or statistical sampling to determine who performs an activity and how long it takes (see below

for additional details regarding assigning labor costs).

Indirect costs (overhead) are allocated according to the level of effort needed for a particular activity. Level of effort captures the time spent on an activity in minutes, hours, or number of full-time equivalent (FTE) employees, as measured in the CODaC and domestic task reports. Where possible, the model uses overhead cost pools to assign indirect costs only to related activities. For instance, the cost of rent for domestic visa offices is assigned only to visas, not to passports or other services the Department provides overseas. The Department allocates indirect support costs to each consular activity by the level of effort needed by that consular activity. For example, the model allocates a portion of the cost of the Department's Bureau of Global Talent Management (formerly known as the Bureau of Human Resources) to consular activities as this Bureau supports CA by providing onboarding and administrative support for domestic and overseas consular employees, including support for permanent change of station (PCS) requirements for all consular personnel that ensures timely deployment of personnel, families, and personal effects.

To assign labor costs, the Department relies on a variety of industry-standard estimation methodologies. To document how consular staff divide their time overseas, the Department conducts CODaC surveys at a representative sample of consular sections overseas each year. In response to the survey, consular officers indicate how much time is spent on particular consular activities overseas, such as data intake and review, interview and adjudication, and passback activities. The Department uses survey data from over 200 consular sections in consulates and embassies worldwide in conjunction with volume data from various consular workload systems to develop resource drivers to assign labor costs to activities. For consular activities that take place in the United States, the Department collects volume data from periodic workload reports provided by the directorates managing these consular services. Financial information is gathered from reports in the Department's Global Financial Management System (GFMS) managed by the Bureau of the Comptroller and Global Financial Services (CGFS). The Department converts the cost and workload data into resource drivers and activity drivers for each resource and activity.

The CoSM uses historical workloads (*i.e.*, demand for the service) as well as projected workloads, which are based

on demand projections produced by CA, to estimate the costs of providing consular services. The current model update relied on FY 2019 actual costs and level of effort (*i.e.*, time spent on a specific activity) data, and applied a 10-year average for workload volumes, using historic workload actuals from FYs 2015–2019 and projected workload volumes for FYs 2020–2024. Unit costs for each NIV service are calculated by taking the total calculated costs for the particular service and dividing that cost by the total 10-year average volumes for each particular service. Using a 10-year average of volumes for NIV services reduces the impact of volatility in demand resulting from COVID–19 on the model results, given that the significant reduction in NIV demand resulting from the COVID–19 pandemic is expected to continue for the next few years. Over time, use of a 10-year average is expected to result in full cost recovery once the fee is updated, provided the demand projections used to calculate this average are mostly in line with actual demand during this period and costs remain relatively stable.

Proposed Visa Fee Changes: Nonimmigrant Visa Services

Nonimmigrant Visa Application and Border Crossing Card Processing Fees

The Department proposes to increase the non-petition based NIV fee from \$160 to \$245 per application. Non-petition-based NIVs include a variety of nonimmigrant visas, such as those for business and tourist travel (B1/B2); students and exchange visitors (F, M, and J); crew and transit visas (C and D); representatives of foreign media (I), and other country-specific visa classes, as well as BCCs for applicants age 15 or older who are citizens of and resident in Mexico. “Non-petition” means that these visas do not require separate requests known as “petitions” to be adjudicated prior to the visa application to establish that the individual meets certain qualifying criteria for the relevant status (*e.g.*, that the beneficiary of the petition has the relevant familial relationship to the petitioner). Non-petition based NIVs make up nearly 90 percent of all NIV workload.

The Department also proposes to increase fees for all petition based NIVs related to employment in the United States from \$190 to \$310. Petition-based NIVs include categories for temporary workers and trainees (H); intracompany transferees (L); aliens of extraordinary ability (O); athletes, artists, and entertainers (P); international cultural exchange participants (Q); and religious

workers (R). These NIVs require an approved petition from U.S. Citizenship and Immigration Services (USCIS) prior to applying for a visa and demand significantly more work by the consular officer than non-petition based NIVs.

The Department last updated the non-petition-based and the petition-based NIV fees noted above through rulemaking in 2012, based on the results of the 2011 CoSM. Costs have increased modestly for non-petition based NIVs each year since 2012, an increase of 1.9 percent per year since the fee was last adjusted. Compensation costs for these services have decreased and non-compensation costs have increased. Compensation costs include the salary, benefits, and costs associated with direct-hire full-time domestic and overseas employees including Foreign Service Officers (FSOs), Locally Employed (LE) staff, Eligible Family Members (EFMs), Consular Agents, and Civil Service employees. Non-compensation costs include operating costs like rent, technology costs, contract costs (including contract staff costs, and large support contracts like the Global Support Strategy (GSS) contract), materials (*e.g.*, visa foils) and International Cooperative Administrative Support Services (ICASS) costs. The changes to these categories of costs are largely due to a shift from FSO and LE staff overseas to GSS contract staff spending time on activities associated with this service. GSS provides support services for nonimmigrant and immigrant visa operations at United States consulates and embassies abroad, including but not limited to public inquiry services, appointment services, fee collection services, biometric enrollment services, document delivery services, and data collection services.

Costs have increased slightly for petition-based categories since the last fee updates, from \$149 million to \$175 million, a 1.6 percent increase per year since the fee was last adjusted. As with non-petition based NIVs, compensation costs for these services have decreased and non-compensation costs have increased, largely the result of the shift of certain support activities to the GSS contract as noted above. The expansion of the GSS contract helped reduce time spent by consular officers on non-adjudication tasks, which in turn reduced overall compensation costs while raising the non-compensation costs with increased time spent by contract staff on these tasks.

While costs for the non-petition-based NIV service and the petition-based NIVs noted above have increased steadily and modestly since the last adjustment to

these fees, actual demand has fluctuated more dramatically from year to year and has a greater impact on unit costs.

Fiscal year	Demand
FY2000	9,555,828
FY2001	10,373,274
FY2002	7,965,703
FY2003	6,557,265
FY2004	6,643,800
FY2005	6,941,519
FY2006	7,331,518
FY2007	8,091,366
FY2008	8,169,792
FY2009	7,130,164
FY2010	7,670,062
FY2011	8,832,102
FY2012	10,343,241
FY2013	10,722,905
FY2014	11,734,749
FY2015	13,307,973
FY2016	13,343,570
FY2017	12,339,180
FY2018	11,965,382
FY2019	11,657,163
FY2020 *	5,783,251
FY2021 *	2,200,000
FY2022 *	3,080,000
FY2023 *	4,774,000
FY2024 *	5,967,500

*Projected Demand, in accordance with model, which included predicted volumes for FY 2020–2024.

It is important to capture and analyze these fluctuations in demand to reflect visa demand trends while also approaching fee setting in a moderate and sustainable way. Therefore, as noted above, the proposed NIV fee recommendations use a 10-year average for demand to reduce volatility in unit costs and to prevent the extreme spikes in unit costs that would result if the Department used only demand figures from the lowest levels during the pandemic to set the fee. Because of the dramatic drop in visa demand experienced in FY 2020 due to the pandemic and projected to continue in the coming years, the 10-year average volume used in this calculation is still much lower than demand figures used to calculate this fee in prior models. As a result, the calculated unit cost for these services, which is the total service cost divided by the total service volume, has increased, and has led to the proposed visa application processing fee increases.

The Department also proposes to increase the E category NIV fee from \$205 to \$485. This fee was last adjusted through an interim final rule in 2014 based on the results of the 2012 CoSM. The E category NIV is for traders, investors, and their employees who are in executive and supervisory positions, as well as those who possess skills essential to the firm’s operations from countries that have a qualifying treaty of

commerce and navigation with the United States. These NIV applications have complex requirements that demand extensive review by adjudicators overseas. E visas are used to engage in trade primarily between the United States and the home country and represent less than one percent of all NIVs. The costs for this service have increased significantly while demand has only slightly increased since this fee was last adjusted.

The significant increase in the cost of E Visas is attributable to increased level of effort on the part of the adjudicator as well as refined data collection techniques, which established that consular staff spend significantly more time (level of effort) to provide this service than previously captured. Following updates to the Foreign Affairs Manual, E visa adjudication guidelines now require more extensive officer scrutiny of applicant case files, which increases case-processing times. Applicant interviews are also much longer than the standard interview for non-petition based NIVs.

In addition, the CODaC was moved from a paper-based survey to an online platform in 2017, to remedy errors and difficulties in the user experience. The online platform collects more accurate data because the responses go directly to the online database rather than being manually entered by a person. This, in turn, yields a more precise cost estimate, which better reflects the increased staff resources needed to process and adjudicate E visas. Because the associated costs of providing this service have increased significantly and demand for this service has remained relatively stable, the calculated unit cost increased significantly. As a result, the Department proposes to increase this fee to recover the cost of providing this service. *See* 8 U.S.C. 1713(b) requiring the fee for MRVs, which include E visas, to be set at the higher of \$65 or the actual cost of providing the service).

Proposed Visa Fee Changes: Special Visa Services

Waiver of Two-Year Residency Requirement

The Department proposes to increase the J-Waiver fee from \$120 to \$510. This fee was last adjusted through rulemaking in 2014 based on the results of the 2012 CoSM. Certain categories of exchange visitors (J-1) are subject to a two-year home-country physical presence requirement. Exchange visitor program participants who are subject to the two-year home-country physical requirement must apply for a waiver either to stay in the United States

beyond the end date of their program or if they want to submit an application to USCIS for a change in visa status. Otherwise, the exchange visitor is required to return to their home country for an aggregate of at least two years before applying for another visa to the United States. This two-year residency requirement upon request and approval may be waived in certain circumstances and the Department proposes increasing the associated fee for processing these waiver requests.

The costs for this service have increased while demand has decreased since the last fee adjustment. Since this fee was last updated, CA discovered that not all costs for J-Waivers were being recorded correctly in the Department's GFMS. As a result, the Visa Office worked with CA's Comptroller offices to identify and assign costs correctly. Prior to this update, no operating costs, particularly those for contractors spending time on this service, were recorded and assigned to the Visa Office's Waiver Review division, the division responsible for adjudicating these waivers.

After identifying and properly assigning these costs, all operating costs for J-Waivers have now been properly recorded, including contract costs related to this service. This update has resulted in more accurate cost assignment to this service and has led to an increase of related compensation and non-compensation costs. These cost increases are primarily attributed to the increases in level of effort that have recently been identified and properly assigned to this service. That combined with a significant decrease in demand led to an increase in the calculated unit cost. The unit cost increase is significant because of the increased costs and the relatively low volume for this service during the 10-year demand timeframe used to calculate this fee.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a proposed rule, with a 60-day provision for public comments.

Regulatory Flexibility Act

The Department has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6).

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more

in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501–1504.

Executive Order 12866

Under Executive Order (E.O.) 12866, the Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. 58 FR 51735. Section 3(f) of E.O. 12866 defines a “significant regulatory action” as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of \$100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. *Id.* OIRA reviewed this proposed rule and has determined that it is economically significant under E.O. 12866.

The Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in E.O. 12866. This proposed rule is necessary in light of the CoSM's result that the cost of providing consular services has changed significantly since the last adjustment to these fees and justifies the implementation of new fees through the rulemaking process. The Department is setting the fees in accordance with 31 U.S.C. 9701 and other applicable authorities, as described in more detail above. *See, e.g.,* 31 U.S.C. 9701(b)(2)(A) (“The head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency . . . based on . . . the costs to the Government.”).

The Department has reviewed the potential impact that these NIV application processing fee increases will have on demand and has determined that the impact on those who seek NIVs will be *de minimis* over the lifetime of the approved visa. The Department does not believe that the increased NIV application processing costs will deter

non-U.S. citizens from applying for tourist, work, and business visas.

The following table summarizes the impact of this proposed rule:

TABLE 1—IMPACT OF PROPOSED FEE CHANGES

Item No.	Proposed fee	Current fee	Change in fee	Percentage increase	Projected annual number of applications ¹	Estimated change in annual fees collected ²	Change in state retained fees	Change in remittance to treasury
Schedule of Fees for Consular Services								
Nonimmigrant Visa Services								
21. Nonimmigrant Visa Application and Border Crossing Card Processing Fees (per person)								
(a) Non-petition-based non-immigrant visa (except E category)	\$245	\$160	\$85	53	2,377,236	\$202,065,060	\$202,065,060	\$0
(b) H, L, O, P, Q, and R category nonimmigrant visa	310	190	120	63	239,529	28,743,480	28,743,480	0
(c) E category nonimmigrant visa	485	205	280	137	17,902	5,012,560	5,012,560	0
(e) Border Crossing Card—age 15 and over (10 year validity)	\$245	160	85	53	388,320	33,007,200	33,007,200	0
Immigrant and Special Visa Services								
35. Special Visa Services								
(b) Waiver of two year residency requirement	510	120	390	325	6,291	2,453,490	2,453,490	0
Total						271,281,790	271,281,790	0

¹ Application volume based on FY 2022 projected workload. FY 2022 is the likely year of implementation.

² Change in fee collection is based on FY 2022 projected workload x change to fee.

Economic Impact

In anticipation of questions from the public and various other stakeholders, the Department commissioned a price elasticity of demand study on the proposal for these fee increases. From the perspective of a tourist coming to the United States, the study found that the average cost to travel to the country

is \$4,834 by air. This information came from correspondence with the National Travel & Tourism Office at the Department of Commerce. Assuming that figure does not include the cost of a visa, the proposed fee increase for non-petition based NIVs would raise the total cost of a trip from \$4,994 (\$4,834 + \$160) to \$5,079 (\$4,834 + \$245). This reflects a minimal increase of less than

two percent of the cost of the trip, assuming only one trip is taken during the visa's validity. If two trips are taken, the total cost increase is less than one percent; if more than two trips are taken, the increase is even less. Therefore, we expect this fee increase to have a *de minimis* effect on the demand for travel (see Table 2 below).

TABLE 2—ECONOMIC IMPACT OF NON-PETITION-BASED NIV FEE INCREASE

Number of trips	1	2	5	7	10
Cost Per Trip	\$4,834.21	\$4,834.21	\$4,834.21	\$4,834.21	\$4,834.21
Current Consular Fee	\$160.00	\$80.00	\$32.00	\$22.86	\$16.00
Total Cost of Trip	\$4,994.21	\$4,914.21	\$4,866.21	\$4,857.07	\$4,850.21
Cost per Trip	\$4,834.21	\$4,834.21	\$4,834.21	\$4,834.21	\$4,834.21
Proposed Consular Fee	\$245.00	\$122.50	\$49.00	\$35.00	\$24.50
Total Cost of Trip	\$5,079.21	\$4,956.71	\$4,883.21	\$4,869.21	\$4,858.71
\$ Increase	\$85.00	\$42.50	\$17.00	\$12.14	\$8.50
% Increase	1.70%	0.86%	0.35%	0.25%	0.18%

In a similar manner, the Department assessed the impact on demand that the fee increase might have on individuals coming over on a particular type of petition-based NIV, the H-2A Visa (Temporary Worker Performing Agricultural Services Unavailable in the

United States). The total cost to bring over an agricultural worker is estimated to be \$10,177, or \$10,367 with the current visa fee of \$190. This information came from the U.S. Department of Agriculture. The proposed new fee raises the total cost

from \$10,367 (\$10,177 + \$190) to \$10,487 (\$10,177 + \$310). This increases the total cost of bringing a worker over by just over one percent.

While the study did not cover the increases for other petition-based NIVs, E visas, or J-Waiver requests, similar

logic can be followed. Individuals use a J-Waiver, for example, to transfer to a work visa or a fiancé visa without having to go back to their home countries for two years. Given that the waiver confers a significant economic benefit and that the average cost of international travel to the United States is more than \$510, we expect this fee increase to also have a *de minimis* effect on demand.

Executive Orders 12372 and 13132

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of E.O. 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations

implementing E.O. 12372 regarding intergovernmental consultation on federal programs and activities do not apply to this regulation.

Executive Order 13175

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

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 22

Consular services, Fees.

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

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES— DEPARTMENT OF STATE AND FOREIGN SERVICE

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

Authority: 8 U.S.C. 1101 note, 1153 note, 1157 note, 1183a note, 1184(c)(12), 1201(c), 1351, 1351 note, 1713, 1714, 1714 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 214 note, 1475e, 2504(h), 2651a, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632 (1957); Exec. Order 11295, 31 FR 10603, 3 CFR 1966–1970 Comp. p. 570.

■ 2. Amend the table in 22.1 by revising entries 21 and 35 to read as follows:

§ 22.1 Schedule of Fees.

The following table sets forth the proposed change to the following category listed on the U.S. Department of State's Schedule of Fees for Consular Services:

TABLE 1 TO § 22.1—SCHEDULE OF FEES FOR CONSULAR SERVICES

Schedule of Fees for Consular Services						
Item No.						Fee
Nonimmigrant Visa Services						
21.	Nonimmigrant Visa Application and Border Crossing Card Processing Fees (per person)					
	(a) Non-petition-based nonimmigrant visa (except E category)					\$245
	(b) H, L, O, P, Q and R category nonimmigrant visa					310
	(c) E category nonimmigrant visa					485
	(e) Border crossing card—age 15 and over (10 year validity)					245
Immigrant and Special Visa Services						
35.	Special visa services:					
	(b) Waiver of two-year residency requirement					510

Kevin E. Bryant,

Deputy Director, Office of Directives
Management, U.S. Department of State.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 19–38; FCC 21–120; FR ID
62114]

Partitioning, Disaggregation, and Leasing of Spectrum

AGENCY: Federal Communications
Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) proposed an Enhanced Competition Incentive Program to encourage licensees to offer opportunities for small carriers, Tribal Nations, and entities committing to serve rural areas to obtain spectrum via lease, partition, or disaggregation. The *Further Notice of Proposed Rulemaking* seeks comment on the proposed Enhanced Competition Incentive Program, its incentives, and waste, fraud, and abuse protections, as well as additional proposals including alternative construction benchmarks for all wireless radio service licensees and flexibility to reaggregate licenses.

DATES: Interested parties may file comments on or before February 28, 2022, and reply comments on or before March 29, 2022.

ADDRESSES: You may submit comments, identified by WT Docket No. 19–38, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.