Reporting and recordkeeping requirements.

7 CFR Part 274

Administrative procedures and practices, Food Stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 7 CFR Parts 272 and 274 shall be amended as follows:

1. The authority citation for 7 CFR Parts 272 and 274 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (g)(158)is added to read as follows:

§ 272.1 General Terms and Conditions.

* * * * *

(g) *Implementation.* * * *

(158) *Amendment No. 382.* The provisions of Amendment No.379 are effective and must be implemented March 30, 2000.

PART 274—ISSUANCE AND USE OF COUPONS

3. In § 274.12:

a. Revise the heading of paragraph (j); and

b. Add new paragraph (j)(5).

The revision and addition read as follows:

§ 274.12 Electronic Benefit Transfer Issuance System approval standards.

* * * * *

(j) *Reconciliation, Management Reporting, Examinations and Audits.*

* * *

(5) *Examinations and Audits.*

(i) The state agency must obtain an examination by an independent auditor of the transaction processing of the State EBT service provider regarding the issuance, redemption, and settlement of Food Stamp Program benefits. The examination must be done at least annually and the report must be completed ninety days after the examination period ends. Subsequent examinations must cover the entire period since the previous examination. Examinations must follow the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards No. 70, Service Organizations (SAS No. 70), requirements for reports on controls placed in operation and tests of the operating effectiveness of the controls.

(ii) The examination report must include a list of all States whose systems operate under the same control environment. Auditors conducting the examination must follow EBT guidance contained in the Office of Management and Budget (OMB) Circular A–133 Compliance Supplement to the extent the guidelines refer to FSP benefits. (For availability of OMB Circulars referenced in this section, see 5 CFR 1310.3.)

(iii) The State agency must retain a copy of the SAS No.70 examination report.

(iv) The State agency shall respond to written requests from the Food and Nutrition Service (FNS), USDA Office of the Inspector General (OIG), or the General Accounting Office (GAO) for completed SAS No.70 examination reports by providing the report within thirty days of receipt of the written request.

(v) The State agency shall respond to written requests from FNS, OIG, or GAO to view auditor's workpapers from SAS No. 70 reports by arranging to have workpapers made available within thirty days of receipt of the written request.

(vi) FNS and the USDA OIG shall rely on SAS No. 70 reports on EBT transaction processing services provided by contractors to the State. FNS and USDA OIG reserve the right to conduct other reviews or audits if necessary.

(vii) EBT services provided directly by the State are not subject to SAS No. 70 examination requirements of this section but remain subject to the single audit requirements at 7 CFR 277.7 and the Office of Management and Budget Circular A–133.

* * * * *

Dated: February 17, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–4763 Filed 2–28–00; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 214, and 299

[INS 1962–98]

RIN 1115–AF31

Petitioning Requirements for the H–1B Nonimmigrant Classification Under Public Law 105–277

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts with amendments the interim rule that was published by the Immigration and Naturalization Service (Service) on November 30, 1998. The interim rule implemented certain provisions of the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) by amending the Service's regulations to: Reflect an additional $500 filing fee for certain H–1B petitions filed on or after December 1, 1998, describe the organizations that are exempt from the new fee requirements, and reflect the new annual numerical limits on H–1B classifications.

This final rule discusses the comments received in response to the interim rule and adopts as final the regulatory amendments contained in the interim rule. In addition, this final rule serves as public notice that Form I–129W, ''H–1B Data Collection and Filing Fee Exemption,'' has been revised and approved for use following the Service's request for emergency approval that was published in the **Federal Register** on October 7, 1999 at 64 FR 54646.

DATES: This final rule is effective March 30, 2000. On March 30, 2000, revised Form I–129W must be filed concurrently with all H–1B petitions.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION:

Background

What Is an H–1B Nonimmigrant Alien?

An H–1B nonimmigrant is an alien employed in a specialty occupation or as a fashion model of distinguished merit and ability. A specialty occupation is an occupation that requires theoretical and practical application of a body of specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty as a minimum for admission into the United States.

How Does ACWIA Affect the H–1B Nonimmigrant Classification?

On October 21, 1998, President Clinton signed the ACWIA into law, Public Law 105–277, Div. C, Title IV, 112 Stat. 2681–641. The legislation amended and created several statutory provisions relating to the H–1B nonimmigrant classification. These amendments include, among others:

(1) Revisions to the attestation requirements for labor condition applications (LCA) under section 212(n) of the Immigration and Nationality Act (Act);

(2) Definitions of violations of LCA conditions and new penalties for such violations;

(3) Amendments to prevailing wage computations for academic and research organizations; and

(4) Data collection and reporting requirements.

Did the Service Publish a Rule Prior to Issuing This Final Rule?

On November 30, 1998, the Service published an interim rule in the **Federal Register** (FR), at 63 FR 65657 that implemented only the provisions of section 414(a) and 415(a) of the ACWIA. Specifically, the regulation addressed the new fee for United States employers filing petitions for H–1B nonimmigrant aliens and described the organizations that are exempt from filing this new fee. The interim rule also revised the Service's regulation at § 214.2(h)(8)(i)(A) to reflect an increase in the annual limitation on the number of aliens that can be granted an H–1B visa or accorded H–1B status. Written comments were to be received on or before January 29, 1999. The Service received eight comments from individuals and organizations in response to the interim rule.

What Specific Provisions of the ACWIA Were Contained in the Interim Rule?

Section 414(a) of the ACWIA provides that United States employers must pay the $500 filing fee when they file H–1B petitions on or after December 1, 1999 and before October 1, 2001, for the following purposes;

(1) An initial grant of H–1B status under section 101(a)(15)(H)(i)(b) of the Act;

(2) An extension of stay for individuals currently in H–1B status (unless the employer previously has obtained an extension for such alien); or

(3) Authorization for a change in employers for aliens currently in H–1B status.

Section 415 of the ACWIA also creates a number of exemptions to the filing of the $500 fee. The organizations exempt from paying the $500 fee are:

- Institutions of higher education, as defined in section 101(a) of the Higher Education Act of 1965, or related or affiliated nonprofit entities; and
- Nonprofit research organizations or Governmental research organizations.

The Service proposed definitions for the terms ''nonprofit'' and ''research'' and the phrase ''related or affiliated.'' In drafting these definitions the Service drew on generally accepted definitions of the terms as well as definitions contained in the regulations of the Internal Revenue Service and the Small Business Administration.

In addition, the Service created Form I–129W, now called the ''H–1B Data Collection and Filing Fee Exemption,'' to be filed along with the petition in order for petitioners to be better able to determine if they were exempt from the $500 filing fee. The form also allows the Service to record information on employers that qualify for the exemption, and to collect data for the quarterly congressional reports required by section 416(c) of the ACWIA.

What Is the Purpose of This Final Rule?

This rule discusses the eight comments that were received and the Service's responses to the comments. Many of the commenters addressed more than one issue in their comment. As a result, the number of issues discussed exceeds the actual number of comments received. This rule also draws on the Service's experience in implementing these changes since publication of the interim rule and incorporates a number of streamlined practices based on that experience.

The comments that the Service received came from a variety of sources. They ranged from a single individual to an organization representing thousands of companies. The 8 comments were from the following:

- A non-profit social service agency;
- A national laboratory;
- An organization that represents a large number of attorneys and law professors;
- An organization representing a coalition of more than 90 organizations that advocate immigrant and refugee rights;
- A private immigration attorney;
- A group of organizations that represent a number of public and private higher education institutions as well as a large number of independent nonprofit scientific research organizations;
- A trade organization that represents over 11,000 companies in the information technology industry;
- Two organizations representing approximately 30 corporate and institutional members with an interest in the international movement of personnel and a broad-based industrial trade association.

Discussion of Comments

What Comments Did the Service Receive Regarding the Definitions of Exempt Organization Contained in the Interim Rule?

The Service received 11 specific comments regarding the definitions of exempt organizations contained in the interim rule. In general, eight of the comments suggested that the Service expand, in some way, the definitions contained in the interim rule in order to exempt more organizations from having to pay the additional $500 filing fee. The other three comments suggested that the Service modify the language of the interim rule in order to avoid confusion for prospective H–1B petitioners.

Turning to the specific comments, one commenter suggested that the Service include the complete language of section 101(a) of the Higher Education Act (HEA) in the Service's regulation. The commenter noted that the interim regulation makes reference to the HEA but does not contain the entire statutory language.

The Service will not adopt this suggestion. This rule incorporates by reference the statutory definition of institutions of higher education from section 101(a) of the HEA of 1965. The Service believes that this is sufficient for the public to understand this requirement. It is, therefore, unnecessary for the rule to repeat the entire statutory language of the HEA as part of the rule.

One commenter suggested that the Service allow organizations that are tax exempt under state or local law to qualify as non-profit organizations for the purposes of the ACWIA.

For reasons of legal precedent and the uniform implementation of the H–1B fee exemption provisions, the Service will not adopt this suggestion. In the absence of a plain congressional intent to incorporate diverse state laws into a Federal statute, the meaning of a Federal statute should be dependent on Federal rather than state law. *See Taylor* v. *United States,* 495 U.S. 575, 591–2 (1990); *See also Federal Deposit Insurance Corporation* v. *Philadelphia Gear Corporation,* 476 U.S. 426, 431 (1986). Finally, state laws vary from each other and from the Internal Revenue Code in their definition of ''tax exempt'' entities. The use of each state's particular definition would result in an inconsistent application of the H–1B fee exemption provisions.

One commenter suggested that the Service expand the definition of the organizations considered to be non-profit to include all non-profit organizations, not just non-profit research organizations.

The Service cannot adopt this suggestion because there is no statutory support for the suggestion. Section 415(a) of the ACWIA specifically limits this exemption to non-profit research organizations.

One commenter suggested that the Service include those institutions of higher education described in section 101(b) of the HEA in its definition of

exempt organizations. The commenter asserts that Congress inadvertently omitted the institutions described in section 101(b) of the HEA from the list of institutions exempt from the payment of the $500 filing fee.

The Service will not adopt this suggestion because the statutory language does not support it. Section 415(a) of the ACWIA clearly limits this particular exemption to those institutions described in section 101(a) of the HEA, not section 101(b) of HEA.

One commenter suggested that Federally-Funded Research and Development Centers (FFRDCs) sponsored by an exempt contractor, *e.g.,* institutions of higher education as defined in section 101(a) of the HEA, should be exempt from the $500 filing fee. The commenter suggested that the status of the contractor should determine whether a petition should be exempt from the $500 filing fee.

The Service cannot adopt this suggestion because the statute does not support it. The FFRDCs are organizations that are not operated by a Government agency but, instead, are merely sponsored by a Government agency. It must be noted that only a United States employer as defined in § 214.2(h)(4)(ii) may file a petition for an H–1B nonimmigrant alien. Section 414(a) of the ACWIA requires that the employer of an H–1B alien pay the $500 filing fee and specifically prohibits the employer from passing on the fee to the worker. In the case of FFRDCs, as with all other filing situations, the Service must look to the actual employer of the alien to determine if the employer is exempt from paying the $500 filing fee regardless of whether it is sponsored by a nonexempt government organization. If the FFRDC is an employer and meets the definition of one of the exemptions described in section 415(a) of the ACWIA, then the FFRDC would not be required to pay the additional $500 filing fee. The Service has no authority to create exemptions to the $500 fee other than those specifically provided for in the statute.

Two commenters suggested that the definition of Government research institution should be expanded to include all Federal, state, and local government laboratories conducting scientific and/or scholarly research.

The Service will not adopt this suggestion. It is the Service's opinion, based on a number of judicial determinations, that ''Government'' as used in the statute refers solely to the Federal Government and not to state and local governments. See *Farzad* v. *Chandler,* 670 F. Supp. 690, 692 (N.D. Tex. 1987) and *Kalaw* v. *Ferro,* 651 F. Supp. 1163 (W.D.N.Y. 1987). It is also the opinion of the Service that Congress would have made reference to state and local governments in the statute if it was intended for these types of organizations to be exempt. Further, the Service interprets the statute to limit the number of entities that are exempt from paying the additional $500.

Two commenters provided suggestions regarding the Service's definition of an ''affiliate or related non-profit entity.'' One commenter suggested that the Service expand the definition of an ''affiliate or related non-profit entity'' to include cooperative or joint arrangements that do not rise to the level of a ''cooperative.'' The commenter noted that certain non-profit hospitals or governmental research institutions may have arrangements for the sharing of information, training, or research with educational institutions but are not exempt from paying the $500 filing fee.

The other commenter suggested that a non-profit entity that is connected or associated with a higher education institution through a documental understanding or affiliation should be included in the Service's definition of affiliated or related nonprofit entity even if it lacks shared ownership or control and is not a member of a branch, cooperative, or subsidiary of the higher education institution.

The Service will not adopt either of these suggestions because such expansive definitions of the term ''affiliate or related non-profit entity'' would not reflect congressional intent. Again, the Service interprets the statute to narrowly define those entities exempt from paying the $500 filing fee. In addition, it would be beyond the scope of the Service's delegated administrative authority and institutional expertise to determine and/or investigate the requisite financial or operational cooperation of such entities.

One commenter disagreed with the Service's description of basic research found in the definition of a nonprofit research organization. The definition stated that, ''Basic research also is not research that advances scientific knowledge. * * *'' The commenter stated that the academic community believes that basic research does advance scientific knowledge.

The inclusion of the word ''not'' in the Service's definition in the interim rule of basic research was a typographical error made by the **Federal Register**. On December 24, 1998, the **Federal Register** published a correction at 63 FR 71342, removing the word ''not.''

One commenter noted that the ACWIA exempts research organizations that are nonprofit organizations engaged in research from the $500 filing fee. The commenter suggested that the Service clarify in the final regulation that the nonprofit organization does not have to be affiliated with an institution of higher learning to be exempt fron the fee.

As the commenter noted, section 415(a) of ACWIA exempts nonprofit research institutions from paying the $500 filing fee. Research institutions do not have to be affiliated with an institution of higher learning. In order to ensure that this point is clear, the Service has added the word ''or'' after § 214.2(h)(19)(iii)(B).

Although not specifically addressed in the written comments, the Service has received a number of questions from the public and the field regarding the limitations of the definition of the term ''research'' in the interim rule. The definition of ''research'' in the interim rule did not specifically described to which academic areas the term ''research'' applied. In order to provide additional guidance to the field on this issue, this rule amends the definition of ''research'' found in § 214.2(h)(19)(iii)(C) to advise that the term ''research'' means research conducted in the sciences, social sciences, or humanities.

Why is the Service Modifying Form I–129W?

The Service has modified Form I–129W, ''H–1B Data Collection and Filing Fee Exemption,'' to serve both a mechanism to request a fee exemption and to collect additional data as mandated by the ACWIA. As a result, all petitioners will now be required to submit the form.

In response to the interim rule, the Service received a number of inquiries on when the $500 fee must be paid. The Service has added a new § 214.(h)(19)(vi) to explain the circumstances under which the fee is paid and the requirements for establishing entitlement to the fee exemption. All Form I–129 petitioners requesting a fee exemption or who are not required to pay the $500 fee must complete Part B of Form I–129W and provide information and evidence described on the form. All Form I–129 petitions submitted without completing Part B of Form I–129W must be accompanied by a single remittance of $610. (The remittance may be in the form of two checks, $500 fee +$110.00 for petition.)

Part A of Form I–129W collects data required by the ACWIA. The Service will collect the required data on a single form, Form I–129W, to facilitate entry of

data into Service databases and to minimize the cost of data entry which would otherwise be passed on to petitioners through higher filing fees. If deemed appropriate, the Service will revise and redesign the I–129 at a later time to minimize any burden on the public and to further facilitate the process for qualifying for the H–1B visa classification.

One commenter suggested that the Service modify the language in the interim rule to explain the type of documentation that must be submitted with the Form I–129W to establish that an employer is exempt from the $500 filing fee. The commenter opined that the interim rule does not provide clear guidance on this issue.

Since the publication of the interim rule, the Service has received many questions asking if supporting documentation must be submitted with the Form I–129W. The language on Form I–129W implies that supporting documentation is required but the interim rule itself does not address the issue.

In response to this comment, the Service has added a new § 214.2(h)(19)(vi) that describes the type of documentation that must be submitted with a Form I–129W to establish that the employer is exempt from the $500 filing fee.

The rule now requires that an employer claiming to be exempt from the $500 filing fee must complete both Parts A and B of Form I–129W along with Form I–129. The employer must also submit evidence as described on Form I–129W establishing how it is exempt. A United States employer claiming an exemption from the $500 filing fee on the basis that it is a non-profit research organization is required to submit evidence that it has tax exempt status under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4) or (c)6), 26 U.S.C. 501(c)(3), (c)4) or (c)(6). All other employers claiming an exemption must submit a statement describing why the organization or entity is exempt.

The Service's request for limited evidence to establish an exemption from the $500 filing fee is consistent with the congressional House Report 105–825, October 21, 1998, 2nd. Sess. 1998, that provides that the Service should not impose excessive evidentiary burdens on employers to comply with the statute.

One commenter also suggested that the Service change the language in the interim rule at § 214.2(h)(19)(i)(C) since it implied that amended petitions required the additional $500 filing fee. The commenter noted that the language in the interim regulation makes reference to the term ''change in employment'' and suggested that the term ''change in employers'' would be more appropriate.

The Service will adopt this suggestion since section 414 of the ACWIA, which discusses the filing situations requiring the $500 filing fee clearly uses the term ''change in employers.''

The term ''change in employment'' could be misinterpreted to apply to the filing of amended petitions as described in § 214.2(h)(11)(i)(A). The $500 filing fee is not required when an amended petition is filed unless the amended petition also requests that the Service grant an extension to the alien's temporary stay.

What Comments Were Received Regarding the Payment of the $500 Filing Fee?

The Service received 19 comments addressing the payment of the $500 filing fee and related issues. The majority of commenters stated that the interim regulation did not provide sufficient information describing who is required to pay the $500 filing fee. One commenter actually provided suggested regulatory language to explain who is required to pay the fee and who is not.

The Service will not include the suggested regulatory language provided by the commenter in the final rule. However, as described in the following paragraphs, the Service has revised the language of the rule to clarify both the circumstances in which employers are not required to pay a fee, as well as those employers who are exempt from the fee requirement.

One commenter suggested that the regulation should indicate that a corporate restructuring does not require the filing of an amended petition and would not require the filing of the $500 fee. Another commenter suggested that an amended petition seeking a change in employment with the same employer should not require the filing of the $500 fee if no extension is requested.

Since the publication of the interim rule, the Service has received a number of comments and questions regarding whether the $500 filing fee is required when an amended petition is filed. The interim rule listed the filing situations that required the payment of the $500 filing fee. Amended petitions were not included on this list which means that the fee was not required when an amended petition was filed without a request for an extension of stay. Further, the Conference Report and section 414(a) of the ACWIA clearly indicate that the $500 filing fee is not required in the case of an amended petition unless an extension of the alien's stay is also requested.

In response to the comments and the volume of questions that the Service has received on this issue since publication of the interim rule, the Service has added a new § 214.2(h)(19)(v) that specifically discusses, among other things, the filing of amended petitions. The final rule states that the $500 filing fee is not required when an amended petition is filed unless the amended petition includes a request for an extension of stay.

In addition, the Service has modified Form I–129W in response to a number of comments regarding the filing of amended petitions. These comments are discussed later in this regulation.

The Service will not adopt the comment that makes reference to corporate restructuring in the final rule because a corporate restructuring may require the filing of either a new or an amended petition. The issue of when an amended petition must be filed is discussed in § 214.2(h)(11)(i)(A) and is outside the scope of this regulation. The final rule states that the $500 filing fee is not required when an amended petition is filed unless the amended petition includes a request for an extension of stay.

Two commenters suggested that the $110 and the $500 filing fee should not be required with a petition filed for the purpose of correcting a Service error.

The Service agrees with this suggestion. On occasion, the Service has erroneously admitted an H–1B alien for a period of time less than requested or permitted by the supporting petition. While not specifically discussed in the interim rule, the Service has, in practice, adopted the procedure discussed by the commenter. The policy has now been incorporated in the final rule at § 214.2(h)(19)(v)(B)

One commenter suggested that the $500 filing fee be called a 'training fee'' to distinguish the $500 filing fee from the normal $110 filing fee.

The Service will not adopt this suggestion. Sections 414(a) and 414(b) of the ACWIA provide that the $500 filing fee is to be used for a number of provisions that do not involve training. On the basis of the statutory language, the Service will continue to call the additional $500 fee a filing fee.

Two commenters suggested that the Service develop a procedure to reimburse petitioners when the alien beneficiary does not appear for work. The Service will not adopt this suggestion. Under existing regulations, 8 CFR 103.2(a)(1), all filing fees and fingerprint fees are nonrefundable. There is nothing unique about this

situation that would justify making an exception to this policy. As a general matter, the Service relies upon monies deposited into the Examinations Fee Account to defray the costs of processing applications and petitions for immigration benefits, and does not receive appropriated funds for these purposes. In particular, the Congress has already specified the distribution of the additional $500 filing fees for H–1B petitions. Since the Service will be incurring the costs of processing the H–1B petitions, and Congress has already determined how the $500 filing fee will be distributed, the Service could not refund the filing fee for the processing of an application merely because an employer ultimately was not able to hire an intended alien beneficiary.

One commenter also discussed whether the $110 filing fee can be refunded in the case of a petition filed to correct a Service error.

Yes, the filing fee of $110.00 may be refunded in a case involving Service error. A refund may be obtained by writing to the Immigration and Naturalization Service Office where a petition was filed. A detailed explanation of the circumstances justifying the refund should be included. This information is now included on the instructions of Form I–129W.

The Service received a number of comments regarding the issue of who can write the checks for the filing fees.

Two commenters suggested that petitioners be permitted to submit two checks to cover the two filing fees, one in the amount of $500 and the other in the amount of $110. Another commenter suggested that the final rule contain language indicating that an attorney who represents both the employer and the beneficiary should be permitted to write the check for the $500 filing fee. Similarly, another commenter suggested that the Service should reject the $500 filing fee only when an attorney who represents the beneficiary writes the check. One commenter suggested that the final regulation indicate that the beneficiary may pay the $110 filing fee.

In order to clarify this issue, the Service has amended § 214.2(h)(19)(ii) to indicate that a petitioner may submit two checks to cover the filing fee as long as both checks are remitted at the same time. In such a case, one check will be for the amount of $500 and the other for the amount of $110. This would constitute a ''single remittance'' for the purpose of § 214.2(h)(19)(ii).

However, since it is less expensive for the Service to process one check instead of two, the Service would prefer that petitioners submit one check in the amount of $610. The rule also states that the employer or its representative must pay the $500 filing fee. Petitioners are reminded that section 413(a) of the ACWIA prohibits an employer from requiring an alien beneficiary to reimburse, or otherwise compensate the employer for part or all of the cost of the $500 filing fee.

One commenter suggested that the final rule contain language indicating that a petition filed for a change of employers that does not contain a request for an extension of stay should not require the filing of the $500 fee.

The Service cannot adopt this suggestion because it is contrary to the statutory language. Section 414(a) of the ACWIA clearly requires that a new employer of an H–1B nonimmigrant alien must pay the $500 filing fee regardless of whether or not an extension of stay is requested.

Two commenters suggested that the final rule include language reflecting that a petitioner may be reimbursed by a third party for the $500 filing fee.

The Service will not adopt this suggestion because there is no support in the statute for such a provision. Again, section 413(a) of the ACWIA prohibits an employer from requiring an alien beneficiary to reimburse, or otherwise compensate the employer for part or all of the cost of the $500 filing fee. However, the ACWIA does not discuss the issue of third party reimbursements. Therefore, the issue of third party payments is outside the scope of this rule.

One commenter suggested that the final rule include language that the $500 filing fee relates to the actions of the employer, not the beneficiary. Another commenter suggested that the final rule contain language indicating that a second extension of stay filed after December 1, 1998, does not require the filing of the $500 fee regardless of whether the employer paid the $500 filing fee for the initial petition or fist extension of stay.

In response to these comments, the Service had added § 2142(h)(19)(v) in the final rule to describe a number of filing situations where the $500 filing fee is not required. Section 214.2(h)(19)(v) reflects that the fee for the extension of stay relates to the actions of the employer not the beneficiary. It also provides pursuant to section 414(a) of the ACWIA, that a second extension of stay filed by an alien's employer never requires the filing of a $500 fee. The fee is not required even if the employer did not pay the $500 filing fee on the initial petition or first extension of stay for the alien that it filed for the beneficiary.

Another commenter suggested that a company which petitioned for an alien who was previously accorded H–1B status based on a petition filed by another company, should not be required to pay the $500 filing fee when it applies for the alien's first extension of stay.

The Service will not adopt this comment. As previously discussed, section 414(a) of the ACWIA provides that the $500 filing fee relates to the employer, not the alien. As a result, on or after December 1, 1998, the first extension of stay filed by an employer for an alien requires the filing of the $500 fee regardless of whether the beneficiary was previously petitioned as an H–1B nonimmigrant alien by another employer.

How Will the Service Petitions Where the Check for the Filing Fee Is Returned as Non-Payable?

Since promulgation of the interim rule, a number of checks for the $500 filing fee have been returned to the Service as non-payable. As a result, it is important to remind the public of the provisions of 8 CFR 103.2(a)(7)(ii) that provides if a check for a filing fee is returned to the Service as non-payable, a pending petition will be rejected as improperly filed. If the petition has already been approved, the petition shall be automatically revoked.

In addition, an H–1B alien who continues his or her employment with the petitioner after the supporting petition is revoked may be subject to removal proceedings. An employer who knowingly continues to employ an alien who is not authorized to work may be liable for sanctions including civil fines and criminal penalties pursuant to section 274A of the Immigration and Nationality Act.

Finally the Service may take action under the Debt Collection ACt of 1982 to collect the filing fee to include penalties and cost for collection on returned checks.

What Comments Did the Service Receive Regarding Form I–129W?

In order to assist employers in determining whether they are required to pay the $500 filing fee, the Service developed Form I–129W. The Service received nine comments regarding the form.

One commenter suggested that the form should be revised to include the name of the petitioner. Two commenters suggested that Part B of the form, which provides information on the required documentation necessary to establish tax exempt status, be modified to discuss the evidence required to

establish eligibility for the other exemptions. One commenter stated that the wording on the form implies that all employers claiming exemption from paying the $500 filing fee must submit information regarding whether they enjoy tax exempt status. Two commenters noted that the form does not accommodate the filing of amended petitions and suggested that the form be accordingly modified.

The Service will modify Form I–129W and has adopted the above suggestions. The new version of Form I–129W will now have a block for the petitioner's name. Form I–129W now contains additional information regarding the evidence to be submitted to establish exemption from the $500 filing fee. The form has also been modified to reflect that the $500 filing fee is not required when an amended petition which does not involve an extension of stay is filed.

One commenter suggested that the form be changed so that a petition filed for a change of employers without an extension of stay will not required the filing of the $500 filing fee.

As previously noted, section 414(a) of the ACWIA clearly requires that a petitioner seeking a change of employers must submit the $500 filing fee. Therefore, the Service will not adopt this suggestion.

One commenter suggested that the Service allow employers to submit copies of previously submitted Forms I–129W in support of a Form I–129 petition.

The Service requires current information from an employer an original Form I–129W in support of an I–129 petition. The Service has included the requirement that an employer submit an original Form I–129W at § 214.2(h)(19)(vii). It must be noted that the Service, pursuant to section 416(c) of the ACWIA, is required to report to Congress on a quarterly basis the number of employers claiming an exemption. As a result, the Service requires the submission of a current Form I–129W.

One commenter suggested that exempt employers should not be required to submit supporting evidence with the Form I–129W.

The Service will not adopt this comment. In order to avoid potential delays in the adjudication process, the Service requires that employers submit supporting evidence establishing their eligibility for the claimed exemption. The Service's evidentiary requirements regarding this provision are minimal and are consistent with the discussion contained in the conference report dealing with limiting the evidentiary burden to employers.

What Additional Changes Did the Service Make in the Final Rule?

The Service has also amended 8 CFR 103.7(b)(1) to reflect that not all Form I–129 petitions must be accompanied by a $500 filing fee. The regulation now provides that only certain H–1B petitions must be submitted with the $500 filing fee.

Regulatory Flexibility Act

The Commissioner, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although there is a $500 filing fee which may have an economic impact on small entities, sections 414(a) and 415(a) of the ACWIA established the new $500 filing fee and exemptions that are effective December 1, 1998. This regulation merely implements procedures for submission of the new $500 filing fee for Form I–129, H–B nonimmigrant petitions.

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 1 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 in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to complete with foreign-based companies in domestic and export markets. While this rule is not a major rule, the Service recognizes that all businesses, regardless of size, whose hiring practices involve H–1B aliens, are affected by this rule in that they will be required to submit an additional $500 per petition, unless exempt. It is anticipated that the effect on the economy for fiscal year 2000 will be $88,550,000 and $82,775,000 for fiscal year 2001. Further, as previously stated in the supplement to this rule, sections 414(a) and 415(a) of the ACWIA established the new $500 filing fee and exemptions that became effective December 1, 1998. This regulation merely implements procedures for the submission of the new $500 filing fee for H–1B nonimmigrant petitions.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMBN) for review.

Executive Order 13132

The 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 Executive Order 13132, it is 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 E.O. 12988.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements. The information collection requirements contained in this rule were previously approved for use by the Office of Management and Budget (OMB) under emergency procedures and will be submitted again under normal procedures within 6 months. The OMB control number for this collection will continue to be listed in 8 CFR 299.5, Display or control numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of Information, Privacy, Reporting and record keeping requirements, Surety bonds.

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Reporting and record keeping requirements.

8 CFR Part 299

Immigration, Reporting and record keeping requirement.

Accordingly, the interim rule amending 8 CFR parts 103, 214, and 299 which was published at 63 FR 65657, on November 30, 1998, is adopted as a final rule with the following changes:

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, 552(a); 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 revising the entry for ''Form I–129'', to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–129. For filing a petition for a nonimmigrant worker, a base fee of $110. For filing an H–1B petition, a base fee of $110 plus an additional $500 fee in a single remittance of $610. The remittance may be in the form of two checks (one in the amount of $500 and the other in the amount of $110). Payment of this additional $500 fee is not waivable under § 103.7(c)(1). Payment of this additional $500 fee is not required if an organization is exempt under § 214.2(h)(19)(iii) of this chapter. Payment of this additional $500 fee is not required if an organization is exempt under § 214.2(h)(19)(iii) of this chapter, and this additional $500 fee also does not apply to certain filings by any employer as provided in § 214.2(h)(19)(v) of this chapter.

* * * * *

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

4. Section 214.2 is amended by:

a. Revising paragraph (h)(19)(i)(C);

b. Revising paragraph (h)(19)(ii);

c. Adding the word ''or'' at the end of paragraph (h)(19)(iii)(B);

d. Revising paragraph (h)(19)(iii)(C);

e. Revising paragraph (h)(19)(iv); and by

f. Adding new paragraphs (h)(19)(v), (vi), and (vii); to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(19) * * *

(i) * * *

(C) Authorization for a change in employers, as provided in paragraph (h)(2)(i)(D) of this section.

(ii) A petitioner must submit the $110 filing fee and additional $500 filing fee in a single remittance totaling $610. Payment of the $610 sum ($110 filing fee and additional $500 filing fee) must be made at the same time to constitute a single remittance. A petitioner may submit two checks, one in the amount of $500 and the other in the amount of $110. The Service will accept remittances of the $500 fee only from the United States employer or its representative of record, as defined under 8 CFR part 292 and 8 CFR 103.2(a).

(iii) * * *

(C) *A nonprofit research organization or governmental research organization.* A nonprofit research organization is an organization that is primarily engaged in basic research and/or applied research. A governmental research organization is a United States Government entity whose primary mission is the performance or promotion of basic research and/or applied research. Basic research is general research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research is also research that advances scientific knowledge, but does not have specific immediate commercial objectives although it may be in fields of present or potential commercial interest. It may include research and investigation in the sciences, social sciences, or humanities. Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services. It may include research and investigation in the sciences, social sciencies, or humanities.

(iv) *Non-profit or tax exempt organizations.* For purposes of paragraphs (h)(19)(iii) (B) and (C) of this section, a nonprofit organization or entity is:

(A) Defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4) or (c)(6), 26 U.S.C. 501(c)(3), (c)(4) or (c)(6), and

(B) Has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service.

(v) *Filing situations where the $500 filing fee is not required.* The $500 filing fee is not required:

(A) If the petition is an amended H–1B petition that does not contain any requests for an extension of stay;

(B) If the petition is an H–1B petition filed for the sole purpose of correcting a Service error; or

(C) If the petition is the second or subsequent request for an extension of stay filed by the employer regardless of when the first extension of stay was filed or whether the $500 filing fee was paid on the initial petition or the first extension of stay.

(vi) *Petitioners required to file Form I–129W.* All petitioners must submit Form I–129W with the appropriate supporting documentation with the petition for an H–1B nonimmigrant alien. Petitioners who do not qualify for a fee exemption are required only to fill our Part A of Form I–129W.

(vii) *Evidence to be submitted in support of the Form I–129W.* (A) Employer claiming to be exempt. An employer claiming to be exempt from the $500 filing fee must complete both Parts A and B of Form I–129W along with Form I–129. The employer must also submit evidence as described on Form I–129W establishing that it meets one of the exemptions described at paragraph (h)(19)(iii) of this section. A United States employer claiming an exemption from the $500 filing fee on the basis that it is a non-profit research organization must submit evidence that it has tax exempt status under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4) or (c)(6), 26 U.S.C. 501(c)(3), (c)(4) or (c)(6). All other employers claiming an exemption must submit a statement describing why the organization or entity is exempt.

(B) Exempt filing situations. Any non-exempt employer who claims that the $500 filing fee does not apply with respect to a particular filing for one of the reasons described in § 214.2(h)(19)(v), must submit a statement describing why the filing fee is not required.

* * * * *

PART 299—IMMIGRATION FORMS

5. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

6. Section 299.1 is amended in the table by revising the entry for Form ''I–129W'' to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	*
I–129W	12–22–99	H–1B Data Collection and Filing Fee Exemption.
*	*	*

7. Section 299.5 is amended in the table by revising the entry for Form ''129W'' to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB Control No.
*	*	*
I–129W	H–1B Data Collection and Filing Exemption	1115–0225
*	*	*

Dated: February 24, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–4766 Filed 2–28–00; 8:45 am]

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DEPARTMENT OF ENERGY

[Docket No. FM–RM–99–RPROP]

10 CFR PART 770

RIN 1901–AA82

Transfer of Real Property at Defense Nuclear Facilities for Economic Development

AGENCY: Department of Energy.

ACTION: Interim final rule and opportunity for public comment.

SUMMARY: The Department of Energy (DOE) is establishing a process for disposing of unneeded real property at DOE's defense nuclear facilities for economic development. Section 3158 of Public Law 105–85, the National Defense Authorization Act for Fiscal Year 1998, directs DOE to prescribe regulations which describe procedures for the transfer by sale or lease of real property at such defense nuclear facilities. Transfers of real property under these regulations are intended to offset negative impacts on communities caused by unemployment from related DOE downsizing, facility closeouts and work force restructuring at these facilities. Section 3158 also provides discretionary authority to the Secretary to indemnify transferees of real property at DOE defense nuclear facilities. This regulation sets forth the indemnification procedures.

EFFECTIVE DATE: This rule is effective February 29, 2000. Comments on the interim final rule should be submitted by April 14, 2000. Those comments received after this date will be considered to the extent practicable.

ADDRESSES: Send comments (3 copies) to James M. Cayce, U.S. Department of Energy, Office of Management and Administration, MA–53, 1000 Independence Avenue, SW, Washington, D.C. 20585. The comments will be included in Docket No. FM–RM–99–PROP and they may be examined between 9:00 a.m. and 4:00 p.m. at the U.S. Department of Energy Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–6020.

FOR FURTHER INFORMATION CONTACT: James M. Cayce, U.S. Department of Energy, MA–53, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–0072.

SUPPLEMENTARY INFORMATION:

I. Background

DOE's real property consists of about 2.4 million acres and over 21,000 buildings, trailers, and other structures and facilities. In the eight years since the end of the Cold War, DOE has been engaged in a two-part process in which DOE reexamines its mission need for real property holdings, and then works to clean up the land and facilities that have been contaminated with hazardous chemicals and nuclear materials. The end result will be the availability, over time and to widely varying degree at DOE sites, of real property for transfer. DOE may sell or lease real property under a number of statutory authorities. The primary authorities are section 161g of the Atomic Energy Act (42 U.S.C. 2201(g)) and sections 646(c)–(f) (also known as the ''Hall Amendment'') and 649 of the Department of Energy Organization Act, as amended (42 U.S.C. 7256(c)–(f) and 7259). Section 161g of the Atomic Energy Act broadly authorizes DOE to transfer real property by sale or lease to another party. Section 649 applies to leasing of underutilized real property. Section 646(c)–(f) applies to specific facilities that are to be closed or reconfigured. In addition, DOE may declare real property as ''excess, underutilized or temporarily underutilized,'' and dispose of such real property under provisions of the Federal Property and Administrative Services Act, 40 U.S.C. 472 *et seq.* With the exception of sections 646(c)–(f) of the DOE Organization Act, these authorities do not deal specifically with transfer of real property for economic development.

In section 3158 of the National Defense Authorization Act for Fiscal Year 1998 (''Act''), Congress directed DOE to prescribe regulations specifically for the transfer by sale or lease of real property at DOE defense nuclear facilities for the purpose of permitting economic development (42 U.S.C. 7274q(a)(1)). Section 3158 also provides that DOE may hold harmless and indemnify a person or entity to whom real property is transferred against any claim for injury to person or property that results from the release or threatened release of a hazardous substance, pollutant or contaminant as a result of DOE (or predecessor agency) activities at the defense nuclear facility (42 U.S.C. 7274q(b)). The indemnification provision in section 3158 is similar to provisions enacted for the Department of Defense Base Realignment and Closure program under Section 330 of the Defense Authorization Act for Fiscal Year 1993, Public Law 102–484.

The indemnification provisions in section 3158 aid these transfers for economic development because, even at sites that have been remediated in accordance with applicable regulatory requirements, uncertainty and risk to capital may be presented by the possibility of as-yet undiscovered contamination remaining on the property. Potential buyers and lessees of real property at defense nuclear facilities have sometimes expressed a need to be indemnified as part of the transfer. Furthermore, indemnification often is requested by lending or underwriting institutions which finance the purchase, redevelopment, or future private operations on the transferred property to protect their innocent interests in the property. Indemnification may be granted under this rule when it is deemed essential for facilitating local reuse or redevelopment as authorized under 42 U.S.C. 7274q.

This rule is not intended to affect implementation of the Joint Interim Policy that DOE and the Environmental Protection Agency (EPA) entered into on June 21, 1998, to implement the consultation provisions of the Hall Amendment (42 U.S.C. 7256(e)). The Joint Interim Policy provides specific direction for instances in which Hall Amendment authority is used by DOE to enter into leases at DOE sites which are on the EPA's National Priorities List. As