

Rules and Regulations

Federal Register

Vol. 70, No. 86

Thursday, May 5, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 214

[CIS No. 2347-05]

[DHS Docket No. DHS-2005-0014]

RIN 1615-AB32

Allocation of Additional H-1B Visas Created by the H-1B Visa Reform Act of 2004

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

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements certain changes made by the Omnibus Appropriations Act for Fiscal Year 2005 to the numerical limits of the H-1B nonimmigrant visa category and the fees for filing of H-1B petitions. This interim rule also notifies the public of the procedures U.S. Citizenship and Immigration Services will use to allocate, in fiscal year 2005 and in future fiscal years starting with fiscal year 2006, the additional 20,000 H-1B numbers made available by the exemption created pursuant to that Act. This interim rule amends and clarifies the process by which U.S. Citizenship and Immigration Services, in the future, will allocate all petitions subject to numerical limitations under the Immigration and Nationality Act. This interim rule also notifies the public of additional fees that must be filed with certain H-1B petitions.

DATES: This rule is effective May 5, 2005. Written comments must be submitted by July 5, 2005.

ADDRESSES: You may submit comments, identified by DHS Docket No. DHS-

2005-0014, by one of the following methods:

- EPA Federal Partner EDOCKET Web site: <http://www.epa.gov/feddoCKET>. Follow instructions for submitting comments on the Web site.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: The Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. DHS-2005-0014 on your correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.
- Hand Delivery/Courier: U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529. Contact Telephone Number (202) 272-8377.

Instructions: All submissions received must include the agency name and DHS Docket No. DHS-2005-0014. All comments received will be posted without change to <http://www.epa.gov/feddoCKET>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.epa.gov/feddoCKET>. You may also access the Federal eRulemaking Portal at <http://www.regulations.gov>. Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529. To make an appointment please contact the Regulatory Management Division at (202) 272-8377.

FOR FURTHER INFORMATION CONTACT: Kevin J. Cummings, Adjudications Officer, Business and Trade Services Branch/Program and Regulation Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts

Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 353-8177.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

- I. Public Participation
- II. Background and Statutory Authority
 - A. H-1B Nonimmigrant Classification
 - B. H-1B Visa Reform Act of 2004
- III. Effect of the H-1B Visa Reform Act of 2004 on FY 2005 Filings
- IV. General Process for FY 2005 H-1B Filings
- V. General Process for FY 2006 and Subsequent Fiscal Year H-1B Filings
- VI. Allocation of H-1B Numbers in FY 2005, FY 2006 and Subsequent Fiscal Years
- VII. Special Filing Procedures for Additional FY 2005 H-1B Numbers
 - A. Date of Filing
 - B. Filing Location and Method of Filing
 - C. Required Forms
 - D. Availability of Premium Processing Program
 - E. Filing Fees
 - F. Requested Start Dates
- VIII. Special Additional Filing Procedures for FY 2006
 - A. Method of Filing
 - B. Upgrading FY 2006 Petitions
 - C. Required Forms
 - D. Availability of Premium Processing Program
 - E. Filing Fees
- IX. Section-by-Section Analysis
- X. Regulatory Requirements
 - A. Administrative Procedure Act (Good Cause exception)
 - B. Regulatory Flexibility Act
 - C. Unfunded Mandates Reform Act of 1995
 - D. Small Business Regulatory Enforcement Fairness Act of 1996
 - E. Executive Order 12866 (Regulatory Planning and Review)
 - F. Executive Order 13132 (Federalism)
 - G. Executive Order 12988 (Civil Justice Reform)
 - H. Paperwork Reduction Act

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. U.S. Citizenship and Immigration Services (USCIS) also invites comments that relate to the economic or federalism effects that might result from this interim rule. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See

ADDRESSES above for information on how to submit comments.

II. Background and Statutory Authority

A. H-1B Nonimmigrant Classification

Under Section 101(a)(15)(H) of the Immigration and Nationality Act (INA) and 8 CFR 214.2(h)(4), an H-1B nonimmigrant is an alien employed in a specialty occupation or 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 degree or higher degree in the specific specialty as a minimum qualification for entry into the United States.

Section 214(g) of the INA provides that the total number of nonimmigrant aliens who may be issued H-1B visas, or otherwise granted H-1B status, may not exceed 65,000 during any fiscal year. Under the INA, the 65,000 cap does not include H-1B nonimmigrant aliens who are employed by, or have received offers of employment at: (1) An institution of higher education, or a related or affiliated nonprofit entity; or (2) a nonprofit research organization or a governmental research organization.

On October 1, 2004, USCIS issued a press release announcing that USCIS had received a sufficient number of H-1B petitions to reach the statutory cap for fiscal year (FY) 2005, and that beginning October 2, 2004, USCIS would not accept for adjudication any H-1B petition for new employment containing a request for a work start date prior to October 1, 2005. A Notice to this effect subsequently was published in the **Federal Register** on November 23, 2004 at 69 FR 68154.

B. H-1B Visa Reform Act of 2004

On December 8, 2004, the President signed the Omnibus Appropriations Act (OAA) for Fiscal Year 2005, Public Law 108-447, 118 Stat. 2809. Among the provisions of OAA is the H-1B Visa Reform Act of 2004. The H-1B Visa Reform Act of 2004 amends section 214(g)(5) of the INA by adding a third exemption, (C), to the H-1B cap:

(5) "The numerical limitations contained in paragraph (1)(a) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 1101(a)(15)(H)(i)(b) of this title who * * *

* * * * *

(C) has earned a masters' or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000."

This amendment became effective 90 days after enactment, March 8, 2005. Although there is no direct legislative history for this provision, it has the purpose of expanding the availability of needed professional workers for employers in the United States.

The H-1B Visa Reform Act of 2004 also imposed two additional fees that must be filed with H-1B petitions. First, section 214(c)(9) of the INA was amended to reinstitute and modify the additional fees previously imposed by the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), Title IV of Div C., Public Law 105-277, which are used for scholarships for U.S. low income students and for job training for U.S. workers. (The ACWIA fees expired effective October 1, 2003). The H-1B Visa Reform Act of 2004 raised the ACWIA fee to \$1,500 or \$750, depending on the size of the employer. Therefore, effective December 8, 2004, employers with 26 or more U.S. full-time-equivalent employees, including all affiliated or subsidiary entities, who seek to employ an H-1B nonimmigrant must pay \$1,500, in addition to the base filing fee of \$185 for a Form I-129, Petition for Temporary Nonimmigrant Worker. For employers with 25 or fewer U.S. full-time-equivalent employees, including all affiliated or subsidiary entities, the fee is \$750, in addition to the base filing fee of \$185 for a Form I-129.

Second, the H-1B Visa Reform Act of 2004 amended section 214(c) of the INA by adding a new subsection (c)(12) which imposes a \$500 fraud prevention and detection fee on certain employers filing H-1B petitions. Effective March 8, 2005, employers seeking an initial grant of H-1B nonimmigrant status or authorization for an existing H-1B (or L-1 alien seeking to become an H-1B nonimmigrant) to change employers must submit the \$500 fraud prevention and detection fee. The \$500 fee does not need to be submitted by: (1) Employers who seek to extend a current H-1B alien's status where such an extension does not involve a change of employers, (2) employers who are seeking H-1B1, Chile-Singapore Free Trade Act nonimmigrants, or (3) dependents of H-1B principal beneficiaries.

These fees must be filed to USCIS in addition to the base filing fee (currently \$185) for the Form I-129, Petition for Temporary Nonimmigrant Worker. Payment for the \$185 petition filing fee and the \$1,500 (or \$750) additional ACWIA fee may be made in the form of a single check or money order for the total amount due or two checks or money orders. Those petitioners who

must pay the \$500 fraud prevention and detection fee must pay with a check or money order that is separate from the additional ACWIA application fees of \$1,500 (or \$750) and the \$185 petition filing fees. Thus, in certain instances petitioners may have to, or elect to, file three separate checks or money orders—one for the \$185 Form I-129 petition fee; one for the \$1,500 or \$750 additional ACWIA fee; and one for the \$500 fraud prevention and detection fee.

The new ACWIA and Fraud Detection and Prevention fees are statutorily-mandated and do not require a separate rulemaking to implement the new fee provisions. However, USCIS, in a future rulemaking, will codify these new fees on H-1B petitions and the associated exemptions in the regulations to provide a place for affected petitioners to find all fee-related information in one place. USCIS specifically will amend 8 CFR 214.2(h)(19), which currently addresses the fees initially required pursuant to ACWIA, to reflect the enhanced ACWIA fees of \$1,500 (or \$750) and to codify the new fraud prevention and detection fees (\$500) affecting all H and L petitioners.

III. Effect of H-1B Visa Reform Act of 2004 on FY 2005 Filings

To implement the H-1B Visa Reform Act of 2004, USCIS had to consider the plain language of the statute which specifically limited the new exemption to aliens who have earned a U.S. master's degree or higher. USCIS has determined that it is a reasonable interpretation of the H-1B Visa Reform Act of 2004 to make available 20,000 new H-1B numbers in FY 2005, limited to H-1B nonimmigrant aliens who possess a U.S. earned master's or higher degree.

USCIS will allocate the 20,000 new H-1B numbers authorized by the H-1B Visa Reform Act of 2004 in this manner for the following reasons. Congress left to the Secretary of Homeland Security broad discretion, through his authority under sections 103 and 214 of the INA, to prescribe regulations and procedures for the admission of nonimmigrant aliens, such as H-1B nonimmigrants. Thus, USCIS has broad discretion and authority to implement the H-1B Visa Reform Act of 2004.

The H-1B Visa Reform Act of 2004 was enacted after the start of FY 2005 and after the receipt of all petitions necessary to reach the existing 65,000 H-1B cap for FY 2005. The amendment to section 214(g) of the INA, authorizing the cap exemption of 20,000 H-1B nonimmigrant aliens with U.S. master's or higher degrees, did not become effective until March 8, 2005. Congress

did not specify any procedures for implementation or dictate the manner in which USCIS should allocate H-1B numbers made available pursuant to the new exemption. Congress specifically did not require USCIS to "reopen" its review of H-1B petitions already received and re-characterize the petitions that would have qualified for the new exemption had it been in effect at the time the petitions were received. Thus, in order to give full effect to the newly created exemption, it is reasonable to do so going forward only, applying the exemption to up to 20,000 petitions seeking work start dates during FY 2005. It also appears that Congress intended for the fees for 20,000 new petitions to be generated during FY 2005 to serve the important purposes of supporting the development of the U.S. labor market and the detection and prevention of immigration fraud.

USCIS has never previously been required to collect data concerning whether beneficiaries of H-1B petitions possess master's or higher degrees earned in the United States. While USCIS did collect information about the highest level of education of the beneficiary, it did not specifically collect information about whether the beneficiary had a U.S. masters or higher degree or whether the degree was earned from a U.S. institution. Thus, as to FY 2005, USCIS cannot accurately count the petitions already filed for FY 2005 on behalf of beneficiaries who have earned masters or higher degrees at U.S. institutions. USCIS has made amendments to its recordkeeping and data collection systems that will allow it, prospectively, to accurately capture the data needed to assess the exact number of H-1B nonimmigrant aliens who have a U.S. master's or higher degree.

In light of the above reasons, for FY 2005, USCIS has determined that the only appropriate way to implement the H-1B Visa Reform Act of 2004 is to apply the 20,000 exemptions prospectively.

IV. General Process for FY 2005 H-1B Filings

USCIS will reopen the FY 2005 H-1B filing period, effective May 12, 2005, and make available 20,000 new H-1B numbers for FY 2005. These additional H-1B numbers will be limited to U.S. employers seeking an H-1B nonimmigrant alien who has earned a master's or higher degree from a U.S. institution of higher education, as the statute provides.

U.S. employers seeking an H-1B nonimmigrant alien for FY 2005 will file H-1B petitions through a special

process, submitting the Form I-129 petition at a single USCIS service center—Vermont Service Center—at the address noted in section VII, paragraph A below. USCIS will accept and adjudicate properly filed H-1B petitions on a first-in, first-out basis until USCIS has allocated all 20,000 H-1B exemption numbers authorized, as provided in section VI below.

As noted below in section VII, paragraph B, USCIS will not accept FY 2005 petitions via electronic filing ("e-filing"). USCIS is precluding e-filing for FY 2005 petitions because of the need to quickly and accurately identify those petitions that will be subject to the 20,000 numerical limit. Allowing e-filing would complicate this effort due to the additional DHS administrative burden associated with matching e-filed petitions with separately filed (through paper) signed labor condition applications (LCA) and evidence of required degrees (which in general cannot be submitted electronically).

V. General Process for FY 2006 and Subsequent Fiscal Year H-1B Filings

For FY 2006 and future fiscal years, U.S. employers seeking an H-1B nonimmigrant alien, regardless of whether the alien has a master's or higher degree, will file for an H-1B number through the normal process, submitting the Form I-129 petition at the USCIS Service Center with jurisdiction over the place of intended employment.

For FY 2006 only, U.S. employers who already have filed an FY 2006 H-1B petition which USCIS has approved or which is still pending with USCIS, will be given the option to upgrade such petitions and receive an FY 2005 H-1B, if any are available, in accordance with the procedures noted in section VIII, paragraph B below.

For FY 2006 and future fiscal years, USCIS will accept and adjudicate properly filed H-1B petitions on a first-in, first-out basis and will track those H-1B petitions that qualify for the U.S. master's or higher degree exemption under the H-1B Visa Reform Act of 2004 as cases are received and adjudicated. Petitions that are eligible for the first two exemptions, applicable to petitioners who are employed at institutions of higher learning, or in nonprofit research, will not count against the 65,000 cap or against the numerical limitation on the new exemption. Similarly, H-1B nonimmigrant aliens that are exempt under the H-1B Visa Reform Act of 2004 will not be counted towards the fiscal year numerical limit of 65,000. USCIS will continue to exempt such

aliens until USCIS has allocated all 20,000 H-1B exemption numbers authorized, as provided in section VI below. Thereafter, any H-1B petition granted for an H-1B nonimmigrant alien who has earned a U.S. master's or higher degree, unless otherwise exempt, will be counted against the fiscal year numerical limitations.

As noted below in section VIII, paragraph A, USCIS is temporarily suspending electronic filing ("e-filing") of FY 2006 petitions until USCIS has received all petitions that would apply to the FY 2005 numerical limits, including any upgraded applications. USCIS is temporarily suspending e-filing for FY 2006 petitions because of the need not only to quickly and accurately identify those petitions that will be subject to the FY 2005 numerical limits, including requests for upgrades from FY 2006 filings, but also to determine which petitions will apply against the FY 2006 U.S. master's or higher degree exemption. USCIS will provide notice, via the USCIS website, indicating when e-filing will be resumed for FY 2006.

In general, USCIS will require use of the Form I-129 (OMB 1615-0009) in the filing of H-1B petitions; however, for FY 2005 and 2006 filings, USCIS has made the additional accommodation for petitioners to utilize alternate versions of the form as noted in Sections VII and VIII below.

VI. Allocation of H-1B Numbers in FY 2005, FY 2006 and Subsequent Fiscal Years

In the past, USCIS has faced two primary challenges in actual cap counting: (1) Anticipating when the cap will be hit and (2) monitoring of the inflow of H-1B petition filings. To address the second challenge, USCIS has implemented new technology and enhanced its systems capability to allow USCIS to monitor H-1B petition receipts on a daily basis.

The first challenge however remains: Picking the number of petitions necessary for the cap to be reached. USCIS cannot wait until the petitions received have been adjudicated to make this decision, because during the time the adjudications are being completed and an exact count obtained, the cap would be exceeded by these petitions already received and unnecessarily processed. Petitioners whose petitions were received and initially processed after the point at which the cap would be found to have been reached would have gained an unrealistic expectation of having a chance at an H-1B number, and either such petitioners would lose significant filing fees without

substantive adjudication or USCIS would expend unnecessary resources on initially processing such petitions and fees and then returning those petitions and refunding the fees. Therefore, estimating and projecting rates of approval of petitions is required. Through experience of several years, USCIS has gained some statistical understanding of various factors that play into the cap, including the number of petitions already approved, denied, and still pending, the period of time that unadjudicated petitions have been pending, and the education level of the petitions that are pending. USCIS can apply different projected rates of approval (including reversal of denials on appeal) to groups of cases based on these factors. None of these factors or rates can be projected precisely, and therefore determining when the cap will be reached unavoidably involves estimation. The specific factors and rates may vary from year to year and will be applied in USCIS' discretion with assistance of the DHS Office of Statistics. The interim final rule acknowledges USCIS' unavoidable use of projection and estimation in cap management.

To ensure the fair and orderly allocation of numbers in a particular classification subject to numerical limits, USCIS will employ a random selection process. USCIS' random selection process will be computer-generated and validated by the Office of Immigration Statistics. When calculating the numerical limitations for a given fiscal year, USCIS will make numbers available to petitions in the order in which the petitions are filed. USCIS will make projections of the number of petitions necessary to achieve the numerical limit of approvals, taking into account historical data related to approvals, denials, revocations, and other relevant factors. USCIS will monitor the number of petitions received (including the number of beneficiaries when necessary) and will notify the public of the date that USCIS has received the necessary number of petitions (the "final receipt date"). The date of publication will not control the final receipt date.

During the random selection process, USCIS will randomly select from among the petitions received on the final receipt date the remaining number of petitions deemed necessary to generate the numerical limit of approvals. Petitions not selected, and petitions received after the final receipt date, will be rejected. If the final receipt date is the same as the first date on which petitions subject to the applicable cap

may be filed (*i.e.*, if the cap is reached on the first day filings can be made), USCIS will randomly apply all of the numbers among the petitions filed on the final receipt date and the following day.

DHS seeks comment on the methodology to approve eligible H-1B petitions in circumstances where such petitions were received on the day the annual cap was forecasted to be reached.

VII. Special Filing Procedures for Additional FY 2005 H-1B Numbers

A. Date of Filing

U.S. employers seeking one of the new FY 2005 H-1B numbers made available pursuant to the H-1B Visa Reform Act of 2004 may file H-1B petitions beginning May 12, 2005. Any petition requesting new FY 2005 H-1B employment received before May 12, 2005 will be rejected and returned, along with the associated filing fees, to the petitioner or representative.

B. Filing Location and Method of Filing

Under the authority created by this interim rule, USCIS is hereby advising petitioners seeking an FY 2005 H-1B number that they must submit the H-1B petition to the following address: USCIS Vermont Service Center, 1A Lemnah Drive, St. Albans, VT 05479-7001.

Only H-1B petitions received at this specific address at the Vermont Service Center will be deemed eligible for an FY 2005 number. Filings may not be personally delivered and must be submitted by U.S. mail, express shipping services, or by other courier companies normally servicing the Vermont Service Center. Any petition seeking an FY 2005 H-1B number filed or received at another USCIS Service Center will be rejected and returned, along with the associated filing fees, to the petitioner or representative. USCIS will not accept any FY 2005 petitions by electronic filing ("e-filing").

C. Required Forms

U.S. employers seeking one of the new FY 2005 H-1B numbers made available pursuant to the H-1B Visa Reform Act of 2004 may file the new Form I-129, Petition for Nonimmigrant Worker (edition date 3-17-05, OMB 1615-0009), which incorporates the Form I-129W, H-1B Data Collection and Filing Fee Exemption, as well as the H and H-1B Supplements. Petitioners should note that as of May 30, 2005, all H-1B submissions must be made on the new Form I-129 (edition date 3-17-05, OMB 1615-0009).

U.S. employers may also file the old Form I-129 (edition date 12-10-01,

OMB 1115-0168, OMB 1615-0093) and the old Form I-129W (edition date 2-14-02, OMB 1115-0225). U.S. employers filing the old Form I-129 (edition date 12-10-01, OMB 1115-0168, OMB 1615-0093) must complete the data field in Part 5, marked "Current number of employees". Petitioners filing the old Form I-129W (edition date 2-14-02, OMB 1115-0225) must complete Part A, section "Beneficiary's Highest Level of Education", by: (1) Checking the appropriate box indicating Master's, Professional or Doctorate degree; (2) clearly annotating next to the selection the phrase—"U.S. earned"; and (3) providing the name and location of the U.S. institution of higher education.

Petitioners seeking FY 2005 H-1B numbers also may file one of a few additional versions of the Form I-129 that were posted on USCIS' Web site during March 2005 before the 3-17-05 version was finalized. Regardless of which version of the Form I-129, U.S. employers choose to file, a certified Labor Condition Application (LCA) from the Department of Labor valid for the period of requested employment must be submitted with the Form I-129.

D. Availability of Premium Processing Program

USCIS recognizes that many H-1B petitioners seeking an FY 2005 H-1B number desire the beneficiary to begin work as soon as possible. USCIS therefore will allow petitioners to file for the additional FY 2005 numbers using the Premium Processing Program.

E. Filing Fees

Petitioners are reminded that the Form I-129 must be filed with the base filing fee of \$185, the ACWIA fees of \$1,500 (for employers with 26 or more U.S. full-time-equivalent employees) or \$750 (for employers with 25 or less U.S. full-time-equivalent employees, including all affiliated or subsidiary entities), the \$500 fraud prevention and detection fee (as applicable), as well as the Form I-907 and premium processing fee of \$1,000. Payment for the \$185 petition filing fee and the \$1,500 (or \$750) additional ACWIA fee may be made in the form of a single check or money order for the total amount due or two checks or money orders to the Department of Homeland Security, in accordance with the instructions on the revised Form I-129. Those petitioners who must pay the \$500 fraud prevention and detection fee must pay with a check or money order that is separate from the additional ACWIA application fees of \$1,500 (or \$750) and the \$185 petition filing fees. Similarly, any premium processing fee of \$1,000

must be paid by separate check. Thus, in certain instances petitioners may need to file up to four separate checks or money orders: One for the \$185 Form I-129 petition fee; one for the \$1,500 or \$750 additional ACWIA fee (which may be combined with the \$185 fee); one for the \$500 fraud prevention and detection fee; and one for the \$1,000 premium processing fee (if applicable).

F. Requested Start Dates

USCIS anticipates that it will receive a large volume of petitions from U.S. employers seeking an FY 2005 number for an H-1B nonimmigrant who has earned a U.S. master's degree or higher and that there will likely be more petitions filed than there are numbers available. USCIS anticipates that many U.S. employers will have already filed H-1B petitions seeking an FY 2006 number or will be filing an H-1B petition seeking an FY 2006 number. USCIS also anticipates that petitioners who do not receive an FY 2005 number likely will seek an FY 2006 number or be willing to accept an FY 2006 number if available.

To facilitate processing of FY 2005 numbers, to avoid the filing of multiple petitions on behalf of the same alien for the same employment starting on different possible dates, and to properly segregate FY 2005 petitions, USCIS will assume that petitioners who are filing for a FY 2005 number are willing to receive an FY 2006 number and start date (October 1, 2005) if an FY 2005 number is unavailable and if the petitioner still seeks an alien for employment in FY 2006. Petitioners who seek an FY 2005 number only must, in addition to indicating a start date for employment prior to October 1, 2005, clearly annotate the top of the first page of the Form I-129 with the phrase "FY 2005 only." Such petitions that are found to exceed the numerical limit will be returned to the petitioner, and any associated filing fees will be returned or refunded.

VIII. Special Additional Filing Procedures for FY 2006

A. Method of Filing

Until further notice, USCIS has temporarily suspended electronic filing ("e-filing") of FY 2006 H-1B petitions. U.S. employers seeking an FY 2006 number, however, may file H-1B petitions for an FY 2006 number by U.S. mail, express shipping services, or by other courier companies normally servicing the USCIS Service Center with jurisdiction over the place of intended employment according to the normal procedure. Such petitions may not be

personally delivered to the applicable USCIS Service Center.

B. Upgrading FY 2006 Petitions

USCIS is aware that some H-1B petitioners who have already filed H-1B petitions for FY 2006 employment may wish to convert an approved or pending petition into an FY 2005 filing to allow the alien beneficiary to commence employment at an earlier date. USCIS will permit petitioners to "upgrade" a pending or approved FY 2006 H-1B petition if the beneficiary has a U.S. master's degree or higher degree from a U.S. institution and the petition is otherwise approvable. Such a petition will be treated as a request for an FY 2005 number and start date and, in the event that an FY 2005 number is not available, as an alternative request for an FY 2006 number with an October 1, 2005 start date for employment.

In order to upgrade an FY 2006 H-1B petition, the petitioner must submit to USCIS: (1) A letter requesting the upgrade; (2) either (a) a copy of the approval notice for the FY 2006 petition, (b) a copy of the receipt notice for the FY 2006 petition, (c) a copy of the first two pages of the related Form I-129 if a receipt notice has not yet been received, or (d) a new Form I-129; and (3) a certified Labor Condition Application (LCA) from the Department of Labor valid for the period of requested employment (or copy thereof if not already provided with the FY 2006 petition).

Petitioners seeking an upgrade must submit the required documentation to the following address: USCIS Vermont Service Center, 1A Lemnah Drive, St. Albans, VT 05479-7001. There is no fee to upgrade a previously filed or approved FY 2006 petition. Upgrade filings may not be personally delivered and must be submitted by U.S. mail, express shipping services, or by other courier companies normally servicing the Vermont Service Center.

Any request to upgrade a FY 2006 for purposes of a FY 2005 filing will be treated as having been filed on the date of receipt at the Vermont Service Center address and is subject to the same timing rules for full petitions submitted for FY 2005 as set forth in Section VII, paragraph A above. In the event that a FY 2005 number is not available for an upgrade request, the original petition will be deemed as having been filed for an FY 2006 number on the date the petition was initially filed at one of the four service centers.

C. Required Forms

U.S. employers seeking FY 2006 H-1B numbers may file the new Form I-129,

Petition for Nonimmigrant Worker (edition date 3-17-05, OMB 1615-0009), which incorporates the Form I-129W, H-1B Data Collection and Filing Fee Exemption, as well as the H and H-1B Supplements. Petitioners should note that as of May 30, 2005, all H-1B submissions must be made on the new Form I-129 (edition date 3-17-05, OMB 1615-0009).

U.S. employers may also file the old Form I-129 (edition date 12-10-01, OMB 1115-0168, OMB 1615-0093) and the old Form I-129W (edition date 2-14-02, OMB 1115-0225). U.S. employers filing the old Form I-129 (edition date 12-10-01, OMB 1115-0168, OMB 1615-0093) must complete the data field in Part 5, marked "Current number of employees". Petitioners filing the old Form I-129W (edition date 2-14-02, OMB 1115-0225) must complete Part A, section "Beneficiary's Highest Level of Education", by: (1) Checking the appropriate box indicating Master's, Professional or Doctorate degree; (2) clearly annotating next to the selection the phrase—"U.S. earned"; and (3) providing the name and location of the U.S. institution of higher education.

Petitioners may file also one of a few additional versions of the Form I-129 that were posted on USCIS' Web site during March 2005 before the 3-17-05 version was finalized. Regardless of which version of the Form I-129, U.S. employers chose to file, a certified Labor Condition Application (LCA) from the Department of Labor valid for the period of requested employment must be submitted with the Form I-129.

D. Availability of Premium Processing Program

FY 2006 petitions may be filed via the Premium Processing Program and should include the required Form I-907, Request for Premium Processing, along with the \$1,000 premium processing fee.

U.S. employers who: (1) Have already filed an FY 2006 H-1B petition with premium processing, (2) whose FY 2006 H-1B petition is still pending adjudication, and (3) who now seek an upgrade for an FY 2005 number, do not need to submit a new Form I-907 or new premium processing fee.

U.S. employers who: (1) Have already filed an FY 2006 H-1B petition without using premium processing, (2) whose FY 2006 H-1B petition is still pending adjudication, and (3) who now seek an upgrade for an FY 2005 number, must include with the upgrade request a Form I-907, Request for Premium Processing, along with the premium processing fee.

U.S. employers who: (1) Have already filed an FY 2006 H-1B petition that has been approved, regardless of whether premium processing was requested, and (2) who now seek an upgrade for an FY 2005 number, do not need to submit a new Form I-907 or new premium processing fee.

E. Filing Fees

Petitioners are reminded that the Form I-129 must be filed with the base filing fee of \$185, the ACWIA fees of \$1,500 (for employers with 26 or more U.S. full-time-equivalent employees) or \$750 (for employers with 25 or less U.S. full-time-equivalent employees, including all affiliated or subsidiary entities), the \$500 fraud prevention and detection fee (as applicable), as well as the Form I-907 and premium processing fee of \$1,000, if applicable. Payment for the \$185 petition filing fee and the \$1,500 (or \$750) additional ACWIA fee may be made in the form of a single check or money order for the total amount due or two checks or money orders. Those petitioners who must pay the \$500 fraud prevention and detection fee must pay with a check or money order that is separate from the additional ACWIA application fees of \$1,500 (or \$750) and the \$185 petition filing fees. Similarly, any premium processing fee of \$1,000 must be paid by separate check. Thus, in certain instances petitioners may need to file up to four separate checks or money orders: One for the \$185 Form I-129 petition fee; one for the \$1,500 or \$750 additional ACWIA fee (which may be combined with the \$185 fee); one for the \$500 fraud prevention and detection fee; and one for the \$1,000 premium processing fee (if applicable).

IX. Section-by-Section Analysis

USCIS is revising 8 CFR 214.2(h)(2)(i)(A) to provide that USCIS may set alternate filing locations via notice in the **Federal Register**.

USCIS is revising 8 CFR 214.2(h)(8)(ii) in its entirety to properly reflect that USCIS tracks petitions or applications subject to numerical limits, not by individual petition receipt numbers, but by monitoring the total number of petitions (including the number of beneficiaries when necessary) filed within a given fiscal year. This revision applies to all H nonimmigrant classifications subject to numerical limits. In calculating when the numerical limits have been or will likely be reached, USCIS will make projections of the number of petitions necessary to achieve the numerical limit of approvals, taking into account historical data related to approvals,

denials, revocations, and other relevant factors. USCIS will continue to count H-1B petitions on a first-in, first-out basis and monitor the number of petitions received, approved, and pending adjudication to determine when USCIS is likely to reach or exceed the numerical limits in a given fiscal year.

As discussed above in Section VI, USCIS also is amending 8 CFR 214.2(h)(8)(ii)(B) to authorize random selection of H-1B numbers in FY 2005, FY 2006 and future fiscal years when USCIS determines that the numerical limits in a particular category will be reached.

USCIS recognizes that, given the period of time that has passed since cap-subject H-1B filings last were received, the anticipated high demand for immediate validity dates is substantial and may even exceed the 20,000 newly available numbers for FY 2005 on the first day. Therefore, any petitioner who desires an FY 2005 number must consider the importance of having the petition (or "upgrade" of an already filed FY 2006 petition) delivered on the first day on which filings will be accepted. Petitioners likely will send the petition or upgrade on the day before that date by overnight delivery to ensure arrival at the Vermont Service Center on the first day.

In order to reduce petitioners' concern that even an overnight delivery service from a remote location might not actually deliver the package on the first day, USCIS has decided that, in the event that the final receipt date is the same as the first date on which petitions may be filed (*i.e.* if the cap is reached on the first day filings can be made for FY 2005), USCIS will randomly apply all of the numbers among the petitions filed on the final receipt date and the following day. In such cases, no advantage will be gained by the particular time of day a filing is received. USCIS has concluded that such a commitment best ensures general fairness and orderly procedures for allocations of petitions subject to numerical limits.

X. Regulatory Requirements

A. Administrative Procedure Act (Good Cause Exception)

Implementation of this rule without notice and the opportunity for public comment is warranted under the "good cause" exception found under the Administrative Procedure Act (APA) at 5 U.S.C. 553(b). USCIS has determined that delaying implementation of this rule to await public notice and comment is impracticable and contrary to the

public interest. The H-1B Visa Reform Act of 2004 was enacted on December 8, 2004. The provisions related to the H-1B numerical limitations and new fraud prevention and detection fees became effective March 8, 2005.

Immediate implementation of this rule is in the public interest, specifically that of U.S. employers, students and workers. While processing for the FY 2006 H-1B cap began on April 1, 2005, U.S. employers have been unable to hire new H-1B workers since October 1, 2004. A worker with an FY 2006 cap number cannot begin work until October 1, 2005, the date on which FY 2006 begins. In order to provide U.S. employers with the ability to address their employment needs as soon as possible and to alleviate the burdens imposed on their ability to hire H-1B workers since October 1, 2004, USCIS must issue this interim rule to implement immediately these provisions and notify the public of the process by which the remaining H-1B numbers for FY 2005 will be made available. This interim rule is necessary to allocate fairly and equitably the new FY 2005 H-1B numbers in an expeditious manner. In addition, the new fees to be generated by the FY 2005 filings will be allocated to public purposes of low-income student education, job training, and fraud prevention and detection, and further delay of the FY 2005 filings would delay the funding of those purposes. It is therefore impracticable and contrary to the public interest to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b).

USCIS also finds that good cause exists under the Congressional Review Act, 5 U.S.C. 808, to implement this interim rule immediately upon publication in the **Federal Register**.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). Because good cause exists for issuing this regulation as an interim rule, no regulatory flexibility analysis is required under the RFA.

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA),

2 U.S.C. 1531–1538, requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector of more than \$100 million in any one year (adjusted for inflation with 1995 base year). Before promulgating a rule for which a written statement is needed, section 205 of UMRA requires an agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome option that achieves the objective of the rule. Section 205 allows an agency to adopt an alternative, other than the least costly, most cost-effective, or least burdensome option if DHS publishes an explanation with the final rule.

As discussed below under Executive Order 12866, this action will result in the expenditure by the private sector of \$100 million or more in any one year, but these fees are mandated by statute and USCIS is obligated to implement the law as enacted by the OAA. Further, these costs do not accrue to the general public, but only those who choose to participate in the H–1B program, nor will they result in expenditures in excess of \$100 million a year by State, local, or tribal governments.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This interim rule is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This interim rule will result in an annual effect on the economy of more than \$100 million.

E. Executive Order 12866

This interim final rule is considered by DHS to be an economically “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review. The implementation of this interim rule will provide USCIS with an additional \$36,200,000 in FY 2005 in annual fee revenue over the fee revenue that would be collected under the current fee structure, based on a projected annual fee-paying volume of 20,000 approved petitions. This interim rule would provide USCIS with \$138,425,000 in FY 2006 annual fee revenue, based on a projected annual fee-paying volume of 85,000 approved petitions (20,000 new exemptions and 65,000 petitions). This increase in revenue pursuant to the OAA (and ACWIA as amended), will be used to fund grants for training in high-growth industries, job training services

and related activities, and programs and activities to prevent and detect fraud with respect to H and L petitions.

Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for clearance.

USCIS is issuing this rule in order to provide for a fair and equitable allocation of additional H–1B numbers made available for FY 2005 by Congress.

USCIS has assessed both the costs and benefits of this rule as required by Executive Order 12866, section 1(b)(6), and has made a reasoned determination that this rule will result in additional costs to petitioning employers. The additional costs to employers are due to the new statutory requirement that H–1B petitioners must now pay an additional fee of either \$1,500 or \$750 per petition, depending upon the size of the business, unless otherwise exempt. In addition to the \$1,500 or \$750 fee, as of March 8, 2005, H–1B petitioners must also pay a separate fee of \$500 per petition to assist federal agencies in fraud prevention and detection.

USCIS estimates that for FY 2005, all of the aforementioned new fees will cost H–1B petitioning employers an additional \$36,200,000. DHS reached this conclusion by estimating that approximately half of the 20,000 new H–1B petitions that will be approved for FY 2005 employment will be for businesses with 25 or less full-time equivalent employees ($750 \times 10,000 = \$7,500,000$), while the other half will be for businesses with 26 or more full-time equivalent employees ($1,500 \times 10,000 = \$15,000,000$). USCIS has also included in this estimate the new \$500 Fraud Prevention and Detection Fee applicable to the forthcoming 20,000 new H–1B petition approvals for FY 2005 employment ($500 \times 20,000 = \$10,000,000$).

There will also be an additional 20,000 I–129 petitions approved for new H–1B employment in FY 2005 at a base filing fee cost of \$185 per Form I–129, which adds an additional cost to H–1B petitioners ($185 \times 20,000 = \$3,700,000$). Therefore, the total additional cost to the public during FY 2005 is \$36,200,000.

In future fiscal years, the additional cost to H–1B petitioners is estimated to be \$138,425,000 each fiscal year. USCIS reached this conclusion by estimating that approximately half of the 85,000 H–1B petitions approved per fiscal year will be for businesses with 25 or less full-time equivalent employees ($750 \times 42,500 = \$31,875,000$), while the other half will be for businesses with 26 or more full-time equivalent employees ($1,500 \times 42,500 = \$63,750,000$). USCIS includes in this estimate the fact that an

additional 20,000 petitions for H–1B classification will be filed each fiscal year at a base filing fee cost of \$185 per I–129 petition ($185 \times 20,000 = \$3,700,000$). USCIS has also included in this estimate the new \$500 Fraud Prevention and Detection Fee applicable to 78,200 new H–1B petitions approved per fiscal year ($500 \times 78,200 = \$39,100,000$). USCIS notes that the \$500 Fraud Prevention and Detection Fee is not required for Chileans and Singaporeans entering the United States under the Free Trade Agreements. Therefore, USCIS estimates that the total additional cost to the public in the future each fiscal year will be \$138,425,000.

Although this interim rule will result in additional costs to H–1B petitioners that may deter some employers from seeking H–1B nonimmigrant workers, USCIS notes that these fees and the specific amounts of these fees are mandated by statute. USCIS is obligated to implement the law as enacted by the OAA.

The benefit of this interim rule is that affected employers will be able to address inconveniences and difficulties caused by the reaching of the FY 2005 H–1B, and USCIS will be able to facilitate that process in a manner that is fair to all employers. This interim rule will also facilitate the hiring of H–1B nonimmigrant aliens by U.S. employers who have not been able to fill jobs due to the H–1B cap being reached early in recent fiscal years and who demonstrate that they are willing to offer the same prevailing wage and working conditions as those of U.S. workers. The fees imposed will benefit congressional purposes of education for low-income students, job training for U.S. workers, and fraud detection and prevention in immigration programs.

USCIS will receive a larger number of filings subject to the increased filing fees than the number of petitions that ultimately will be approved. Almost all of such filings, however, will be those received in excess of the applicable numerical limits, and USCIS will be rejecting or refunding fee payments for such petitions. Petitions that are exempt from the cap, because they are for beneficiaries who are already in H–1B status and were previously been counted against the cap, are also exempt from the ACWIA fees. Such petitions, the number of which is unpredictable, are not exempt from the \$500 fraud prevention and detection fee. Also a somewhat unpredictable number of petitions subject to the new ACWIA and fraud detection and prevention fees will be filed for initial petitions that will be denied or withdrawn, and those will be

in excess of the 85,000 set forth above. These petitions will impose costs on the employers that result from the OAA and this interim final rule, but funds will be applied to the congressionally required, publicly beneficial purposes of low-income student education, job training, and fraud detection and prevention. During fiscal years 2001, 2002 and 2003, an average of less than 2.5 percent of initial petitions were denied; thus, this cost factor is relatively insignificant.

The additional fees mandated by the OAA are not being codified by USCIS within the context of this rulemaking. However, USCIS, in a future rulemaking, will amend 8 CFR 214.2(h)(19), which currently addresses the fees initially required pursuant to ACWIA, to reflect the enhanced ACWIA fees of \$1,500 (or \$750) and to codify the new fraud prevention and detection fees (\$500) affecting all H and L petitioners. USCIS notes, however, that

the Form I-129 has recently been revised to comport with the provisions of the OAA by adding a supplement titled H-1B Data Collection and Filing Fee Exemption. The inclusion of the H-1B Data Collection and Filing Fee Exemption supplement within the revised Form I-129 has rendered the previous Form I-129W moot, as it captures the required information previously obtained via the Form I-129W. Therefore, the Form I-129W has been removed from the USCIS forms inventory. OMB has approved the revised Form I-129 for official use by the public and USCIS has released the revised Form I-129 for official use as of March 11, 2005. Petitioners are urged to consult and comply with the instructions on the revised I-129 and the H-1B Data Collection and Filing Fee Exemption supplement when filing their petitions for H-1B nonimmigrant workers.

Accounting Statement

As required by OMB Circular A-4 (available at <http://www.whitehouse.gov/omb/circ>), in Table 1, USCIS has prepared an accounting statement showing the classification of the expenditures associated with the Allocation of Additional H-1B Visas created by the H-1B Visa Reform Act of 2004. The table provides our best estimate of the dollar amount of these costs and benefits, expressed in 2005 dollars, at three percent and seven percent discount rates. We estimate that the cost of this interim rule will be approximately \$125 million annualized (7 percent discount rate) and approximately \$127 million annualized (3 percent discount rate). The non-quantified benefit is compliance with the OAA.

TABLE 1.—ACCOUNTING STATEMENT: CLASSIFICATION OF EXPENDITURES, FY 2005 THROUGH FY 2014
[2005 dollars]

Three Percent Annual Discount Rate	
BENEFITS	
Annualized monetized benefits	
(Un-quantified) benefits: compliance with the law; funding of congressionally mandated programs; acquisition of needed professional workers	
COSTS	
Annualized monetized costs: \$127 million	
Annualized quantified, but un-monetized costs	
Qualitative (un-quantified) costs	
Seven Percent Annual Discount Rate	
BENEFITS	
Annualized monetized benefits	
(Un-quantified) benefits: compliance with the law; funding of congressionally mandated programs; acquisition of needed professional workers	
COSTS	
Annualized monetized costs: \$125 million	
Annualized quantified, but un-monetized costs	
Qualitative (un-quantified) costs	

In accordance with the provisions of E.O. 12866, this regulation was reviewed by the Office of Management and Budget.

F. Executive Order 13132

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

G. Executive Order 12988 Civil Justice Reform

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

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to OMB, for review and approval, any reporting and recordkeeping requirements inherent in a rule. This interim rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. As previously stated under Executive Order 12866, the Form I-129, Petition for Nonimmigrant Worker (OMB 1615-0009), has recently been revised to include the H-1B Data Collection and

Filing Fee Exemption supplement to comport with the provisions of the OAA. These revisions include amendments to the H-1B Data Collection and Filing Fee Exemption Supplement to capture information about the beneficiary's level of education and whether the degrees were earned from a U.S. institution of higher education; to assist U.S. employers in assessing whether they are subject to the new \$1,500 (or \$750) ACWIA and \$500 Fraud Detection and Prevention fees; and to assist U.S. employers in assessing whether they are eligible for the numerical limit exemptions provided under section 214(g)(5) of the INA. OMB has approved the revised Form I-129 for official use by the public (OMB Control Number 1615-0009); however, USCIS will continue to accept the prior paper

editions of Form I-129 until May 30, 2005. In addition, by increasing the number of Forms I-129 and Forms I-907 being submitted as a result of the OAA, USCIS has submitted to OMB for emergency clearance the Paperwork Reduction Change Worksheet (OMB-83C) increasing the total annual burden hours. Further, USCIS has submitted to OMB for emergency clearance Paperwork Reduction Act Submission (OMB 83-I) to permit USCIS to concurrent use of the Form I-129 (edition date 3-17-05, OMB 1615-0009 and the old Form I-129 (edition date 12-10-01, OMB 1115-0168, OMB 1615-0093) until May 30, 2005. Due to this temporary information collection, USCIS submitted the OMB 83-I to formally request that OMB adjust the burden hours for the use of the 12-10-01 version of the Form I-129. The public should reference the **Federal Register** notice contained at 70 FR 20590 (Apr. 20, 2005) for information about this collection. Please note however that USCIS hereby extends the deadline for comments solicited in that notice until May 30, 2005.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

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

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1186a, 1187, 1221, 1281, 1282, 1301-1305, 1372, 1379, 1731-32; section 643, Pub. L. 104-208, 110 Stat. 3009-708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively, 8 CFR part 2.

■ 2. Section 214.2 is amended by

- (a) Revising (h)(2)(i)(A);
- (b) Revising (h)(8)(ii)(B);
- (c) Removing (h)(8)(ii)(C) and redesignating (h)(8)(ii)(D) through (F) respectively as (h)(8)(ii)(C) through (E);
- (d) Revising the last sentence of newly designated (h)(8)(ii)(C) to read as follows:

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

* * * * *

(h) * * *

(2) * * *

(i) * * *

(A) *General.* A United States employer seeking to classify an alien as an H-1B, H-2A, H-2B, or H-3, temporary employee shall file a petition on Form I-129, Petition for Nonimmigrant Worker, only with the USCIS Service Center which has jurisdiction in the area where the alien will perform services, or receive training, even in emergent situations, except as provided in this section or as specifically designated by USCIS via notice in the **Federal Register**.

* * * * *

(8) * * *

(ii) * * *

(B) When calculating the numerical limitations for a given fiscal year, USCIS will make numbers available to petitions in the order in which the petitions are filed. USCIS will make projections of the number of petitions necessary to achieve the numerical limit of approvals, taking into account historical data related to approvals, denials, revocations, and other relevant factors. USCIS will monitor the number of petitions (including the number of beneficiaries requested when necessary) received and will notify the public of the date that USCIS has received the necessary number of petitions (the "final receipt date"). The date of publication will not control the final receipt date. When necessary to ensure the fair and orderly allocation of numbers in a particular classification subject to numerical limits, USCIS may randomly select from among the petitions received on the final receipt date the remaining number of petitions deemed necessary to generate the numerical limit of approvals. This random selection will be made via computer-generated selection as validated by the Office of Immigration Statistics. Petitions not randomly selected, and petitions received after the final receipt date, will be rejected. If the final receipt date is the same as the first date on which petitions subject to the applicable cap may be filed (*i.e.*, if the cap is reached on the first day filings can be made), USCIS will randomly apply all of the numbers among the petitions filed on the final receipt date and the following day.

(C) * * * The petition shall be revoked pursuant to paragraph (h)(11)(ii) of this section and USCIS will take into account the unused number during the appropriate fiscal year.

* * * * *

Dated: May 2, 2005.

Michael Chertoff,

Secretary.

[FR Doc. 05-8992 Filed 5-2-05; 3:58 pm]

BILLING CODE 4410-10-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NE-41-AD; Amendment 39-14015; AD 2005-06-07]

RIN 2120-AA64

Airworthiness Directives; General Electric Company (GE) CF6-80A1/A3 and CF6-80C2A Series Turbofan Engines, Installed on Airbus Industrie A300-600 and A310 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2005-06-07. That AD applies to GE CF6-80A1/A3 and CF6-80C2A series turbofan engines. We published AD 2005-06-07 in the **Federal Register** on March 21, 2005, (70 FR 13365). A service bulletin number in the compliance section is incorrect. This document corrects that service bulletin number. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective May 5, 2005.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7192; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc. 05-5299, that applies to GE CF6-80A1/A3 and CF6-80C2A series turbofan engines, was published in the **Federal Register** on March 21, 2005, (70 FR 13365). The following correction is needed:

PART 39—[CORRECTED]

§ 39.13 [Corrected]

■ On page 13368, in the first column, in compliance section paragraph (i)(2), in the sixth line, "No. CF6-80C2A SB 78A4022, Revision 2," is corrected to read "No. CF6-80C2A SB 78A1081, Revision 2".