(e) The peppers must be safeguarded against fruit fly infestation from harvest to export. Such safeguarding includes covering newly harvested peppers with fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packing the peppers in fruit fly-proof cartons, or cartons covered with fruit-fly proof mesh or plastic tarpaulin, and placing those cartons in enclosed shipping containers for transit to the airport and subsequent shipment to the United States;

(f) The peppers must be packed for shipment within 24 hours of harvest;

(g) During shipment, the peppers may not transit other fruit fly-supporting areas unless shipping containers are sealed by MAFF with an official seal whose number is noted on the phytosanitary certificate; and

(h) A phytosanitary certificate issued by MAFF and bearing the declaration, ''These peppers were grown in registered greenhouses in Almeria Province in Spain,'' must accompany the shipment.

Done in Washington, DC, this 19th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–31713 Filed 11–27–98; 8:45 am]

BILLING CODE 3410–34–P

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: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service's (Service) fee schedule and regulations with respect to filing requirements for Form I–129, Petition for H–1B Nonimmigrant Worker, for alien workers coming to perform services in a specialty occupation. Specifically, this rule amends the regulations to reflect an additional $500 billing fee, added by the American Competitiveness and Workforce Improvement Act (ACWIA), for H–1B petitions filed on or after December 1, 1998. This rule also describes the organizations that are exempt from the new fee requirements. Finally, this rule amends the regulations to reflect the new annual numerical limits on H–1B classification.

DATES: *Effective date:* This rule is effective December 1, 1998.

Comment date: Written comments must be submitted on or before January 29, 1999.

ADDRESSES: Please submit the original and two copies of written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS No. 1962–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Benefits Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1998, Congress enacted the American Competitiveness and Workforce Improvement Act of 1990 (ACWIA), as Title IV of Div. C of Public Law 105–277. This new 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 (INA);

(2) new penalties and definitions of violations of LCA conditions;

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

(4) data collection and reporting requirements.

The Department of Labor is primarily responsible for administration and enforcement of the labor condition application and associated penalties. Therefore, as a number of these provisions require close coordination between the Department of Labor and the Service, they will be the subject of a separate rulemaking.

For this rulemaking, the Service is implementing only the provisions of section 414(a) and 415(a) of ACWIA, addressing the new fees for United States employers filing petitions for H–1B nonimmigrants and the organizations that are exempt from the new fee requirements. The Service is also revising the regulations at § 214.2(h)(8)(i)(A) to reflect the increase in the annual limitations on the number of aliens who can be granted an H–1B visa or otherwise accorded such status.

What Is the New Fee Required by H–1B Petitions?

ACWIA requires certain H–1B petitioners to pay an additional fee of $500, in addition to the standard $110 filing fee for Form I–129 petitions. This $500 fee will be disbursed between the Department of Labor and National Science Foundation for job training, low-income scholarships, grants for mathematics, engineering, or science enrichment courses, systematic reform activities, and administration and enforcement of the H–1B program. The Service will receive 1.5 percent of the fee as reimbursement for the costs of collection and processing of H–1B nonimmigrant petitions.

Who Is Required to Pay This Fee?

The new $500 filing fee must be paid by United States employers when they file H–1B petitions on or after December 1, 1998, and before October 1, 2001, for any of the following purposes:

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

(2) an extension of stay for individuals currently in H–1B status; or

(3) authorization for a change in employment for individuals currently in H–1B status.

All United States employers seeking authorization for a change in employment (e.g., a change from one specialty occupation to another specialty occupation) for an H–1B nonimmigrant must pay the additional $500 fee, regardless of whether the request for change in employment is the first request for such a change or a subsequent request for the same H–1B nonimmigrant. For employers seeking an extension of stay under § 214.2(h)(15)(i), the additional $500 fee only applies to the *first* extension request. However, in instances where a new employer has received approval for a change in employment for an H–1B nonimmigrant and subsequently seeks an extension of stay for that H–1B worker, the new employer must also pay the additional $500 filing fee for its *first* request for extension of stay, regardless of whether the prior employer had requested an extension of stay for the H–1B nonimmigrant. Finally, the additional fee will not be required for employers filing amended petitions under § 214.2(h)(2)(i)(E), unless the

petition has the effect of extending the alien's status and is the first petition that the employer has filed to extend that alien's status.

Employers should note that the additional $500 filing fee is not waivable under § 103.7(c)(1).

What Are the Application Procedures for H–1B Petitions in Light of the New Fee Requirements?

All H–1B petitions filed on or after December 1, 1998, for new H–1B employment, concurrent employment, sequential employment, and the first extension of stay filed by an employer for the alien, must be filed in accordance with § 103.2(a), at the Service Center having jurisdiction over the area where the alien will perform the specialty occupation services. The completed Form I–129 must be accompanied by the required $110 filing fee and an additional $500 fee in a single remittance (one check or money order) of $610, unless the United States employer is an ''exempt organization'' as defined under § 214.2(h)(19)(iii).

Those United States employers claiming exemption from the additional $500 filing fee should submit a completed Form I–129, the $110 filing fee, the Form I–129W, Petition for Nonimmigrant Worker, Filing Fee Exemption, and evidence that their organization is an ''exempt organization'' as defined in § 214.2(h)(19)(iii).

Employers should note that under section 413(a) of ACWIA, which amends section 212(n)(2)(C) of the INA, an employer may not require an alien beneficiary to reimburse or otherwise compensate the employer for all or part of an H–1B petition filing fee. Therefore, the Service will reject remittances from an alien beneficiary or the alien's representative that accompanies an H–1B petition.

Who Is Exempt From the $500 Filing Fee?

The only organizations exempt from paying the additional $500 fee for filing H–1B petitions are:

(1) institutions of higher education, as defined in section 101(a) of the Higher Education Act of 1965, or related or affiliated nonprofit entities, and

(2) nonprofit or governmental research organizations.

The Service has created preliminary definitions for the terms ''nonprofit'' and ''research'' and the phrase ''related or affiliated,'' drawing on generally accepted definitions of the terms. In addition, the Service has drawn from definitions of the terms. In addition, the Service has drawn from definitions contained in the regulations of the Internal Revenue Service (IRS), 26 CFR 1.501(c)(3)–1, (c)(4)–1, and (c)(6)–1, and Small Business Administration, 13 CFR 121.103. The Service also consulted with the Department of Labor and nonprofit and academic organizations for assistance in developing the definitions reflected in this rulemaking. In addition, these definitions will be the subject of a separate rulemaking proceeding with an opportunity for public comment when the Service and the Department of Labor address section 415 and subtitle C of ACWIA. The definitions are set forth in new § 214.2(h)(19)(iii). We invite public comment on this section.

Which H–1B Petitions Are Affected by ACWIA?

The new law only applies to petitions filed on or after December 1, 1998, and before October 1, 2001. For purposes of determining whether a petition is filed on or after December 1, 1998, the Service will rely on its existing regulation at § 103.2(a)(7), under which ''filing'' occurs on the date of receipt. As Senator Abraham stated in the House Conference Report 105–825, October 21, 1998, 2nd. Sess. 1998, ACWIA was the product of combined efforts by Congress and the business industry to implement changes in the H–1B nonimmigrant program. The Service believes that United States employers filing for H–1B nonimmigrant workers are well aware of the new fee requirements and the December 1, 1998, effective date for the new fee. In addition, since the Service has existing regulations governing filing and receipt of benefit applications, and employers of H–1B nonimmigrant workers are familiar with these regulations, United States employers should not have difficulty complying with the new fee requirement.

In the rulemaking, the Service also is requiring that a United States employer claiming to be an ''exempt organization'' must provide the Service with evidence of its section 501 (c)(3), (c)(4), or (c)(6) tax exempt status. The Service understands from the IRS that certain organizations (e.g., churches) qualify for nonprofit status even without a notice from the IRS confirming such status. The Service, however, believes that most employers of specialty occupation workers claiming an exemption will be able to meet this evidentiary requirement, either with a notice from the IRS or other documents demonstrating the United States employer's nonprofit status. In addition, the Service believes that information to be submitted with the H–1B petition, as provided in this interim rule, should provide sufficient evidence that the employer is an institution of higher education or research institution. The Service is not imposing any additional evidentiary requirements at this time; however, the Service may invoke its existing authority under § 103.2(b)(8) to request additional evidence if there is a question of eligibility for exemption from the filing fee. This is consistent with conference report language at House Report 105–825, October 21, 1998, 2nd Sess. 1998.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B). Sections 414(a) and 415(a) of ACWIA became effective immediately upon enactment on October 21, 1998. Publication of this rule as an interim rule will expedite implementation of these sections. It also will inform the public about the new $500 filing fee for H–1B petitions for nonimmigrant workers and allow the Service to begin collecting this fee for H–1B petitions filed on or after December 1, 1998.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. Sections 414(a) and 415(a) of ACWIA established the new $500 filing fee and exemptions that are effective December 1, 1998. This regulation implements procedures for submission of the new $500 filing fee for Form I–129, H–1B 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 compete with foreign-based companies in domestic and export markets. While the 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 this rule will result in an estimated annual effect on the economy of $75,050,000 for the first year. It is anticipated that the effect on the economy for the second year will be $88,550,000. Further, as previously stated in the supplement to this rule, sections 414(a) and 415(a) of ACWIA establish the new $500 filing fee and exemptions that are 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 for review.

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—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

Under ACWIA, on or after December 1, 1998, a United States employer must file an additional $500 fee for all petitions to classify an alien as an H–1B nonimmigrant worker. Institutions of higher education or related or affiliated nonprofit entities, and nonprofit or governmental research organizations, are exempt from this new fee requirement. United States employers claiming to be an exempt organization must complete Form I–129W, Petition for Nonimmigrant Worker, Filing Fee Exemption, and submit it to the Service. This attachment is considered an information collection covered under the Paperwork Reduction Act (PRA). The estimated burden hours for the first year are 38,500 which lead to a cost of $385,000. The additional costs of the collection total $75,050,000 for the first year. The estimated burden hours for the second year are 46,000 which lead to a cost of $460,000. The additional costs of the collection for the second year total $88,550,000.

Accordingly, the Service will be submitting an information collection package to the Office of Management and Budget (OMB) for review and approval in accordance with 8 CFR part 1320.13.

List of Subjects

8 CFR Part 103

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

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

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

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

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

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

2. Section 103.7 is amended as follows:

a. In paragraph (b)(1), remove the entries for ''Form I–129H'' and ''Form I–129L'' from the listing of fees;

b. Revise in paragraph (b)(1) the entry for ''Form I–129''; and

c. In paragraph (c)(1) add a new sentence at the end of the paragraph, 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 plus an additional $500 fee in a single remittance of $610. 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 waivable under § 103.7(c)(1).

* * * * *

(c) * * *

(1) * * * The payment of the additional $500 fee prescribed by section 214(c)(9) of the Act when applying for petition for nonimmigrant worker under section 101(a)(15)(H)(i)(b) of the Act may not be waived.

* * * * *

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)(8)(i)(A); and by

b. Adding a new paragraph (h)(19); to read as follows:

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

* * * * *

(h) * * *

(8) * * *

(i) * * *

(A) Aliens classified as H–1B nonimmigrants, excluding those involved in Department of Defense research and development projects or coproduction projects, may not exceed:

(*1*) 115,000 in fiscal year 1999;

(*2*) 115,000 in fiscal year 2000;

(*3*) 107,500 in fiscal year 2001; and

(*4*) 65,000 in each succeeding fiscal year.

* * * * *

(19) *Additional fee for filing certain H–1B petitions*—(i) A United States employer (other than an exempt employer as defined in paragraph (h)(19)(iii) of this section) who files a Form I–129, on or after December 1, 1998, and before October 1, 2001, must include the additional fee required in § 103.7(b)(1) of this chapter, if the petition is filed for any of the following purposes:

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

(B) An initial extension of stay, as provided in paragraph (h)(15)(i) of this section; or

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

(ii) The service will accept remittances of the additional 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)(3).

(iii) The following exempt organizations are not required to pay the additional fee:

(A) *An institution of higher education,* as defined in section 101(a) of the Higher Education Act of 1965;

(B) *An affiliated or related nonprofit entity.* A nonprofit entity (including but not limited to hospitals and medical or research institutions) that is connected or associated with an institution of higher education, through shared ownership or control by the same board or federation operated by an institution of higher education, or attached to an institution of higher education as a member, branch, cooperative, or subsidiary;

(C) *A nonprofit research organization or governmental research organization.* A research organization that is either a nonprofit organization of entity that is primarily engaged in basic research and/or applied research or a United States Government entity whose primary mission is the performance or promotion of basic research and/or applied research. Basic research is research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research also is not 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. 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.

(iv) For purposes of paragraphs (h)(19)(iii)(B) and (C) of this section, a nonprofit organization or entity is one that is qualified as a tax exempt organization under section 501(c)(3), (c)(4), or (c)(6) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3), (c)(4) or (c)(6)) and has received approval as a tax exempt organization from the Internal Revenue Service, as it relates to research or educational purposes.

* * * * *

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 adding the Form ''I–129W'' in numerical order to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	* * *
I–129W ..	11–24–98	Petition for Nonimmigrant Worker, Filing Fee Exemption.
*	*	* * *

7. Section 299.5 is amended in the table by adding Form ''I–129W'' in numerical order to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
*	*	* * *
I–129W ..	Petition for Nonimmigrant Worker, Filing Fee Exemption	1115–0225
*	*	* * *

Dated: November 25, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–31953 Filed 11–25–98; 3:36 pm]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1026]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to decrease the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act, from $47.8 million to $46.5 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board is increasing from $4.7 million to $4.9 million the amount of reserveable liabilities of each depository institution that is subject to a reserve requirement of zero percent. This action is required by section 19(b)(11)(B) of the Federal Reserve Act, and the adjustment is known as the reserveable liabilities exemption adjustment. The Board is also increasing the deposit cutoff levels that are used in conjunction with the reserveable liabilities exemption to determine the frequency of deposit reporting from $78.9 million to $81.9 million for nonexempt depository institutions and from $50.7 million to $52.6 million for exempt institutions. (Nonexempt institutions are those with total reserveable liabilities exceeding the amount exempted from reserve requirements ($4.9 million) while exempt institutions are those with total reserveable liabilities not exceeding the amount exempted from reserve requirements.) Thus, beginning in September 1999, nonexempt institutions with total deposits of $81.9 million or more will be required to report weekly while nonexempt institutions with total deposits less than $81.9 million may report quarterly, in both cases on form FR 2900. Similarly, exempt institutions with total deposits of $52.6 million or more will be required to report quarterly on form FR 2910q while exempt institutions with total deposits less than $52.6 million may report annually on form FR 2910a.

DATES: *Effective date:* December 1, 1998.

Compliance dates: For depository institutions that report weekly, the low reserve tranche adjustment and the reserveable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 1, 1998, and the corresponding reserve maintenance period that begins Thursday, December 31, 1998. For institutions that report quarterly, the low reserve tranche adjustment and the reserveable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 15, 1998, and the corresponding reserve maintenance period that begins Thursday, January 14, 1999. For all depository institutions, the deposit cutoff levels will be used to screen institutions in the second quarter of 1999 to determine the reporting