Regulatory Flexibility Analysis to be performed.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase 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.

Executive Order 12866

This rule is considered by DHS to be ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review. DHS has assessed both the costs and benefits of this rule as required by section 1(b)(6) of Executive Order 12866 and has made a determination that, although increasing the fee to $385 will increase the cost to the individual applicant and/or petitioner, USCIS must establish and collect fees to recover the full cost of processing immigration benefit applications, rather than supporting these services with tax revenue. There are no identifiable alternatives associated with this fee increase. The implementation of this rule also will provide USCIS with an additional $6.7 million in FY 2005 over the fee revenue that would be collected under the current fee structure. If USCIS does not adjust the current fees to recover the full costs of processing immigration benefit applications, the backlog will likely increase. The revenue increase is based on USCIS costs and projected volumes that were available at the time of this rule.

Executive Order 13132

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

Executive Order 12988: Civil Justice Reform

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. This rule proposes that the fees for motions and appeals be increased. Since an increase of these fees will increase the cost burden on the public, DHS will submit the required Paperwork Reduction Change Worksheet (OMB–83C) to the Office of Management and Budget (OMB) reflecting the new fees and cost burdens on the public. It should also be noted that changes to the fees require changes to the application form (Form I–290B) to reflect the new fees. USCIS will submit a notification to OMB with respect to any such changes.

List of Subjects in 8 CFR Part 103

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

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

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

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

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

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

§ 103.5 Reopening or reconsideration.

(a) * * *

(1) * * *

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

* * * * *

§ 103.7 [Amended]

3. In § 103.7(b)(1):

a. The entry for ''Form I–290B'' is amended by revising the fee ''$50'' to read: ''$385.00'', and by revising the fee ''$110.00'' to read: ''$385.00''; and

b. The entry for ''Motion'' is amended by revising the fee ''$110'' to read: ''$385'', wherever that fee appears in the entry.

Dated: November 18, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–26370 Filed 11–29–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 204, 214, 245, and 245a

[CIS No. 2287–03; Docket No. DHS 2004–0020]

RIN 1615–AB13

Removal of the Standardized Request for Evidence Processing Timeframe

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

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend Department of Homeland Security (Department) regulations by removing the absolute requirement for, and the fixed regulatory time limitations on responses to, a U.S. Citizenship and Immigration Services (USCIS) issued Request for Evidence (RFE) or Notice of Intent to Deny (NOID). These changes will enable USCIS to set an appropriate deadline for responding to an RFE or NOID, specific to the type of case, benefit category, or classification, and thus improve the process of adjudication of applications and petitions by reducing the time a case is held awaiting evidence, and by reducing average case processing time. This rule will result in improved efficiency in the USCIS adjudication process.

In addition, this rule also replaces references to the Immigration and Naturalization Service (Service) with references to USCIS in light of implementation of the Homeland

Security Act of 2002, Public Law 107–296. This rule also removes obsolete regulatory language related to the Replenishment Agricultural Worker (RAW) program under section 210A of the Immigration and Nationality Act (Act), which was repealed by section 219(ee)(1) of the Immigration and Technical Corrections Act of 1994, Public Law 103–416. The rule further removes references to the use of qualified designated entities for filing of applications for adjustment of status in the Seasonal Agricultural Workers (SAW) and legalization programs under section 210 and 245A of the Act.

DATES: Written comments must be submitted on or before January 31, 2005.

ADDRESSES: You may submit comments, identified by DHS Docket No. DHS–2004–0020, 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. The Department of Homeland Security has joined the Environmental Protection Agency (EPA) online public docket and comment system on its Partner Electronic Docket System (Partner EDOCKET). The Department of Homeland Security and its agencies (excluding the United States Coast Guard and Transportation Security Administration) will use the EPA Federal Partner EDOCKET system. The USCG and TSA (legacy Department of Transportation (DOT) agencies) will continue to use the DOT Docket Management System until full migration to the electronic rulemaking federal docket management system in 2005.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *rfs.regs@dhs.gov.* When submitting comments electronically, please include Docket No. DHS–2004–0020 in the subject line of the message.
- Mail: The Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference Docket No. DHS–2004–0020 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., 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 514–3048.

Instructions: All submissions received must include the agency name and Docket No. DHS–2004–0020 for this rulemaking. All comments received will be posted without change to *http://www.epa.gov/feddocket,* including any personal information provided.

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 Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference Docket No. DHS–2004–0020 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Rodger Pitcairn, Program and Regulations Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 514–2685.

SUPPLEMENTARY INFORMATION:

Who Is Affected by This Rule?

This proposed rule would affect those petitioners and applicants who submit applications/petitions for immigration benefits and receive requests for evidence (RFEs) or notices of intent to deny (NOIDs) from the Department.

What Is an RFE?

An RFE, described in current regulations at 8 CFR 103.2(b)(8), is a request, issued by an adjudicating immigration officer, for the applicant or petitioner to provide initial or additional evidence in support of an application or petition. RFEs usually are in writing and request missing documentary evidence. The documentary evidence requested may consist of basic documents that were specified in the application/petition forms and/or instructions but which were not submitted by the applicant or petitioner. The RFE may also be a request for original documents or proper translations, or for other documents not specifically identified in the form's instructions but determined by the adjudicator to be relevant to the adjudication of the application/petition.

What Is a Notice of Intent To Deny?

A notice of intent to deny (NOID) is a written notice issued to an applicant or petitioner when USCIS has made a preliminary decision to deny the application or petition. NOIDs may be based on evidence of ineligibility and/or on derogatory information of which the applicant or petitioner is unaware.

What Is the Current Process for Issuing an RFE or NOID?

Under 8 CFR 103.2(b)(8), USCIS is required to issue an RFE when initial evidence is missing. Initial evidence is evidence specified in the regulations and on the application or petition and accompanying instructions. USCIS, in its discretion, may also issue an RFE for additional evidence. In either case, if USCIS issues an RFE, USCIS must provide a standard response period of 12 weeks.

There are various provisions throughout 8 CFR that authorize or require USCIS to issue a NOID to an applicant or petitioner before rendering a final decision on the case. NOIDs are designed to provide the applicant or petitioner with an opportunity to inspect and rebut the evidence in a certain period of time, usually 30 days from the date of notice.

Why Is USCIS Changing the Current Process and How Will RFE or NOID Issuance Occur Under the Proposed Rule?

USCIS recognizes that while RFEs are sometimes necessary, RFE issuance slows the adjudication process. Some RFEs are simple enough to require resubmission within a few weeks; others may require more time. USCIS proposes to replace the current 12-week response period reflected in 8 CFR 103.2(b)(8) with a more flexible approach, setting response periods based on various factors such as the type of benefit sought; the type of application or petition filed; the type of evidence needed for adjudication; the source and availability of documentation (both foreign and domestic); the effect of denial of an application or petition on the applicant, petitioner and/or beneficiary (*e.g.*, loss of long-held priority dates, loss of valid status or interim benefits); the delivery mechanisms to be used for an RFE or NOID; and other case-specific factors. USCIS also proposes to remove most provisions that require issuance of an RFE or NOID in order to allow USCIS greater flexibility in deciding cases based on the information received, including initial evidence and other relevant materials. Generally, USCIS anticipates that the response times for most RFEs or NOIDs that are set by USCIS under this proposed rule will not be less than 30 days. In addition, USCIS will issue RFEs or NOIDs as written notices, clearly stating what evidence or information is required, to give the

applicant or petitioner adequate notice and sufficient information to respond to any request.

The goal for redesigning the RFE and NOID issuance process is to allow USCIS flexibility in determining whether to issue RFEs and NOIDs and in setting RFE and NOID response periods, mainly through implementing field guidance that will address specific circumstances encountered by USCIS. Clearly approvable cases should be promptly approved, without the need for an RFE. Clearly ineligible cases should be denied without an RFE or NOID, even if required initial evidence has not been submitted. USCIS also retains its discretion to issue an RFE, NOID or deny a case when initial evidence is missing or there is insufficient evidence to establish eligibility. The current rule at 8 CFR 103.2(b)(16)(i) requiring opportunity to rebut derogatory information of which the applicant or petitioner is unaware will remain.

USCIS welcomes comments on all aspects of this rule, and specifically requests proposals on appropriate standards for RFE or NOID issuance as well as for determining appropriate periods for RFE and NOID responses. USCIS also welcomes suggestions on actual timeframes that should be adopted based on either the application or petition being filed or the documentary evidence generally required for a particular benefit category. Based on the comments received and USCIS' own experience in case adjudication, USCIS will develop timeframes and standards for RFE and NOID issuance.

What Other Changes Does This Rule Propose To Make?

This rule clarifies 8 CFR 103.2(b)(5) to reflect that official documents issued by the Department (or the former Immigration and Naturalization Service) need not be submitted in the original unless required by USCIS. Original documents submitted to USCIS (or the former Immigration and Naturalization Service) will be returned upon request, but USCIS is not precluded from making subsequent requests to reexamine original documents.

This rule expands and restructures current 8 CFR 103.2(b)(8) to reflect more accurately the process of responding to an RFE. This change is intended to facilitate a respondent's ability to understand and address a request for evidence.

This rule amends 8 CFR 103.2(b)(8) by removing the mandatory requirement that USCIS issue an RFE for initial evidence. Instead, USCIS, in its discretion, may deny a petition or application when required initial evidence is missing. If an applicant or petitioner fails to submit the required initial evidence, and USCIS decides to deny the application or petition rather than issue an RFE, the applicant or petitioner may file a motion to reopen, with fee, as provided under 8 CFR 103.5 or file a new application or petition. The applicant or petitioner may also file an appeal of the denial if other regulatory or statutory authority exists for such appeal.

This rule also preserves USCIS' discretion to issue an RFE or NOID if USCIS determines that the record raises questions of eligibility. If USCIS issues an RFE or NOID for additional evidence and a response is received, USCIS will adjudicate the application based on the required initial evidence and the requested information submitted in response to the RFE or NOID. If the applicant or petitioner does not respond to the RFE or NOID, USCIS will treat the failure to respond as a statement by the applicant or petitioner that he or she believes the record as it stands establishes eligibility. Upon passing of the deadline for submission of the requested evidence, USCIS will adjudicate the application and/or petition based on the record then existing before USCIS (*e.g.*, the application or petition and the required initial evidence).

Finally, this rule divides current 8 CFR 103.2(b)(17) into two separate paragraphs for improved ease of use and to clarify which official records will be accepted to establish lawful admission for permanent residence.

In addition to the proposed changes regarding RFE requests, USCIS is making numerous technical changes to 8 CFR 103.2 necessary to reflect the recent organizational changes resulting from implementation of the Homeland Security Act of 2002, Public Law 107–296.

Are Fee Waivers Available if a Petitioner or Applicant Is Required To File a New Application or Petition or, if Eligible, a Motion To Reopen?

Fee waiver requests may be granted when it has been established that the individual is unable to pay the required filing fees, including filing fees for motions to reopen. *See* 8 CFR 103.7(c). To apply for a fee waiver, an individual must comply with the provisions of 8 CFR 103.7(c). The individual may submit an affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, that is signed, dated, and certified under penalty of perjury, and which states the reasons why the individual is unable to pay the filing fee. USCIS will take note of any evidence or documentation that is submitted in support of the individual's claim that he or she is unable to pay the filing fee. For more detailed information on the fee waiver request process please visit the USCIS Web site at *http://www.uscis.gov*.

Regulatory Flexibility Act

DHS has reviewed this rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), and, by approving it, DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although some petitions may be submitted by small entities, namely U.S. employers seeking nonimmigrant or immigrant labor, this rule is intended to be more flexible in setting time limits for RFEs or NOIDs, thereby reducing the timeframe for adjudicating these petitions without imposing costs. USCIS recognizes that this change may have a small impact on small business practices or productivity due to the change in timeframes for responses to RFEs or NOIDS. However, USCIS believes these changes ultimately will benefit affected small businesses, namely because the reduction in adjudication timeframes will allow U.S. employers to receive the benefit sought at an earlier date (*i.e.*, the ability to hire temporary or permanent foreign employees). USCIS intends to set response times for RFEs or NOIDs generally at not less than 30 days. USCIS welcomes suggestions on actual timeframes that should be adopted based on either the application or petition being filed or the documentary evidence generally required for a particular benefit category. Based on the comments received and USCIS' own experience in case adjudication, USCIS will develop timeframes and standards for RFE and NOID issuance.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and 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.

Executive Order 12866

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

The Department has assessed both the costs and the benefits associated with this proposed rule. There are no identifiable alternatives associated with RFE or NOID issuance. In addition, there are minimal costs to the Department associated with instructing adjudicators about the options for dealing with inadequate information. There are benefits to both USCIS and the public. USCIS will reduce the number of RFEs and NOIDs and the cycle time for responses to such notices, potentially reducing the pending backlog of cases. The public will receive fewer and more specific RFE or NOID notices and benefit from faster approval of applications and petitions. USCIS welcomes comments specifically on the impact on U.S. employers who file employment-related applications or petitions and on any potential costs that may be associated with implementation of this rule.

Executive Order 13132

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

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

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

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 214

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

8 CFR Part 245

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

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

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

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

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

2. Section 103.2 is amended by:

a. Revising the term ''INS office or Service Center'' to read ''USCIS office'' in paragraph (a)(6);

b. Revising the term ''Service Center'' to read ''service center'' wherever that term appears in the last sentence of paragraph (a)(7)(i);

c. Revising paragraph (b)(1);

d. Revising paragraph (b)(4);

e. Revising paragraph (b)(5);

f. Revising paragraph (b)(8);

g. Revising paragraph (b)(11);

h. Removing the term ''initial'' in paragraph (b)(12), first sentence of text;

i. Revising paragraph (b)(13);

j. Revising term ''regional commissioner'' to read ''USCIS Director or his or her designee'' in paragraph (b)(16)(iii);

k. Revising the term ''regional commissioner'' to read ''USCIS Director or his or her designee'' in the second sentence, and the term ''regional commissioner's'' to read ''USCIS Director's or his or her designee's'' in the third sentence in paragraph (b)(16)(iv);

l. Revising paragraph (b)(17); and by

m. Removing and reserving paragraphs (c) and (d); The revisions read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(b) * * * (1) *Demonstrating eligibility at time of filing.* An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Failure to submit with the petition or application all of the initial evidence that is required by the applicable regulations or form instructions may result in denial of the petition or application without further notice to the petitioner or applicant. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

* * * * *

(4) *Submitting copies of documents.* Application and petition forms, and documents issued to support an application or petition, such as labor certifications, Form IAP–66, medical examinations, affidavits, formal consultations, letters of current employment and other statements, must be submitted in the original unless previously filed with USCIS. Official documents issued by the Department need not be submitted in the original unless required by USCIS. Unless otherwise required by the applicable regulation or form's instructions, a legible photocopy of any other supporting document may be submitted.

(5) *Request for an original document.* USCIS may, at any time, request submission of an original document for review. The request will state a deadline for submission of the original document. Failure to submit the requested original by the deadline may result in denial or revocation of the underlying application or benefit. An original document submitted in response to such a request, when no longer required by USCIS, will be returned to the petitioner or

applicant upon completion of the adjudication.

* * * * *

(8) *Request for evidence.* (i) *Evidence of eligibility or ineligibility.* If the preponderance of the evidence submitted with the application or petition establishes eligibility, USCIS will approve the application or petition, except that in any case in which the applicable statute or regulation makes the approval of a petition or application a matter entrusted to USCIS discretion, USCIS will approve the petition or application only if the preponderance of the evidence of record establishes not only that the petitioner or applicant is eligible for the benefit sought but also that the petitioner or applicant warrants a favorable exercise of discretion. If there is evidence in the record that establishes ineligibility, the application or petition will be denied on that basis.

(ii) *Action on insufficient initial evidence.* If the evidence submitted does not fully establish eligibility, USCIS may, according to the agency's implementing guidance: Deny the application or petition for lack of initial evidence or for ineligibility; request more information or evidence from the applicant or petitioner within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition and of the basis for the proposed denial and require a response within a specified period of time as determined by USCIS. If USCIS issues a RFE or NOID, the RFE or NOID will be in writing and specify the type of evidence required or the bases for denial to give the applicant or petitioner adequate notice and sufficient information to respond to such notice. The time allowed for response to a request for evidence or notice of intent to deny generally will not be less than thirty (30) days.

* * * * *

(11) *Responding to a request for evidence or notice of intent to deny.* If USCIS issues a request for evidence or a notice of intent to deny, the applicant or petitioner may respond at any time prior to the deadline set by USCIS. An applicant or petitioner may also withdraw the application or petition at any time during the period provided for response. All requested materials should be submitted together at one time, along with the original USCIS request for evidence or notice of intent to deny. Submission of only some of the requested evidence will be considered a request for a decision on the record. After the deadline for response, or after USCIS' receipt of a response, the application or petition will be adjudicated based on the record then existing (*e.g.* the application or petition, required initial evidence and any relevant information submitted in response to the request for evidence or notice of intent to deny).

* * * * *

(13) *Effect of failure to respond to a request for evidence or a notice of intent to deny or to appear for interview or fingerprinting.* (i) *Failure to submit evidence or respond to a notice of intent to deny.* If any requested evidence or a response to a notice of intent to deny is not submitted by the required date, the failure to submit such evidence or response shall be treated as a request for a decision based on the record then existing (*e.g.* the application or petition and required initial evidence) and the application or petition shall be adjudicated accordingly.

(ii) *Failure to appear for fingerprinting or interview.* Except as provided in 8 CFR 335.6, if an individual requested to appear for fingerprinting or for an interview does not appear and USCIS has not received either a request for rescheduling by the date of the fingerprinting appointment or interview, or a withdrawal of the application or petition, the application or petition shall be considered abandoned and denied accordingly.

* * * * *

(17) *Verifying claimed citizenship or permanent resident status.* (i) *Department records.* The status of an applicant or petitioner who claims that he or she is a permanent resident of the United States or was formerly a permanent resident of the United States will be verified from official Department records. These records include alien and other files, arrival manifests, arrival records, Department index cards, Immigrant Identification Cards, Certificates of Registry, Declarations of Intention issued after July 1, 1929, Permanent Resident Cards (Form I–551), Alien Registration Receipt Cards (Form I–151), other registration receipt forms (Form AR–3, AR–3a, and AR–103, provided that such forms were issued or endorsed to show admission for permanent residence), passports, and reentry permits. An official record of a Department index card must bear a designated immigrant visa symbol and must have been prepared by an authorized official of the Department in the course of processing immigrant admissions or adjustments to permanent resident status. Other cards, certificates, declarations, permits, and passports must have been issued or endorsed to show admission for permanent residence. Except as otherwise provided in 8 CFR part 101, and in the absence of countervailing evidence, such official records will be regarded as establishing lawful admission for permanent residence.

(ii) *Assisting self-petitioners who are spousal abuse victims.* If a self-petitioner filing a petition under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act is unable to present primary or secondary evidence of the abuser's status, USCIS will attempt to verify electronically the abuser's citizenship or immigration status from information contained in the Department's automated or computerized records. Other Department records may also be reviewed at the discretion of the adjudicating officer. If USCIS is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

* * * * *

§ 103.2 [Amended]

3. Section 103.2 is further amended by:

a. Revising the terms ''the Service'' or ''Service'' to read ''USCIS'' wherever those terms appear in the following paragraphs:

—Paragraph (a)(7)(i) first sentence and first time it appears in the last sentence;
—Paragraph (b)(2)(ii) in the last sentence;
—Paragraph (b)(2)(iii);
—Paragraph (b)(3);
—Paragraph (b)(6);
—Paragraph (b)(7);
—Paragraph (b)(9) introductory text;
—Paragraph (b)(10);
—Paragraph (e)(1);
—Paragraph (e)(2);
—Paragraph (e)(3) introductory text;
—Paragraph (e)(3)(iii);
—Paragraph (e)(4)(i);
—Paragraph (e)(4)(iii) introductory text;
—Paragraph (e)(4)(iii)(C);
—Paragraph (e)(4)(iv) second sentence;
—Paragraph (f)(1) in the third sentence;
—Paragraph (f)(1), the first time the term appears in the fourth sentence;
—Paragraph (f)(2), the first time the term appears in the first sentence;
—Paragraph (f)(3), the first and last time the term appears in the last sentence;
—Paragraph (f)(4), the first time the term appears in the first sentence;
—Paragraph (f)(4), the first time the term appears in the second sentence; and
—Paragraph (f)(4), in the third sentence.

b. Revising the term ''Service's'' to read ''USCIS''' in the following paragraphs:

—Paragraph (b)(15);
—Paragraph (e)(3)(iii); and
—Paragraph (e)(4)(iii)(C).

* * * * *

PART 204—IMMIGRANT PETITIONS

4. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

§ 204.1 [Amended]

5. Section 204.1 is amended by removing paragraph (h).

§ 204.2 [Amended]

6. Section 204.2 is amended by:

a. Removing paragraph (c)(3)(ii) and by redesignating (c)(3)(iii) as (c)(3)(ii);

b. Removing paragraph (e)(3)(ii) and by redesignating (e)(3)(iii) as (e)(3)(ii).

PART 214—NONIMMIGRANT CLASSES

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

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to Executive Order 13323, published January 2, 2004), 1186a, 1187, 1221, 1281, 1282, 1301–1305; 1372; 1379; 1731–32; sec. 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.

§ 214.2 [Amended]

8. Section 214.2 is amended by:

a. Removing paragraph (h)(10)(ii) and by redesignating (h)(10)(iii) as (h)(10)(ii);

b. Removing paragraph (k)(10)(iii);

c. Removing paragraph (l)(8)(i) and by redesignating (l)(8)(ii) and (l)(8)(iii) as (l)(8)(i) and (l)(8)(ii) respectively;

d. Revising paragraph (o)(7); and by

e. Revising paragraph (p)(9).

The revisions read as follows:

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

* * * * *

(o) * * *

(7) The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under 8 CFR part 103.

* * * * *

(p) * * *

(9) The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under 8 CFR part 103. There is no appeal from a decision to deny an extension of stay to the alien or a change of nonimmigrant status.

* * * * *

8. Section 214.11 is amended by revising paragraph (k)(2) to read as follows:

§ 214.11 Alien victims of severe forms of trafficking in persons.

* * * * *

(k) * * *

(2) *Determination by USCIS.* An application for T–1 status under this section will not be treated as a bona fide application until USCIS has provided the notice described in paragraph (k)(3) of this section. In the event that an application is incomplete or if the application is complete but does not present sufficient evidence to establish prima facie eligibility for each required element of T nonimmigrant status, USCIS will follow the procedures provided in 8 CFR 103.2(b)(8) for requesting additional evidence, issuing a notice of intent to deny, or adjudicating the case on the merits.

9. Section 214.15 is amended by revising the second sentence of paragraph (d) to read as follows:

§ 214.15 Certain spouses and children of lawful permanent residents.

* * * * *

(d) *The definition of ''pending''.* * * * In addition, the petition must have been properly filed according to 8 CFR 103.2(a), and if, subsequent to filing, USCIS returns the petition to the applicant for any reason or makes a request for evidence or issues a notice of intent to deny under 8 CFR 103.2(b)(8), the petitioner must comply with the request within the time period set by USCIS. * * *

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

10. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

§ 245.18 [Amended]

11. Section 245.18 is amended by removing and reserving paragraph (i).

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

12. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

13. Section 245a.20 is amended by revising paragraph (a)(2) to read as follows:

§ 245a.20 Decisions, appeals, motions, and certifications.

(a) * * *

(2) *Denials.* The alien shall be notified in writing of the decision of denial and of the reason(s) therefor. An applicant affected under this part by an adverse decision is entitled to file an appeal on Form I–290B, Notice of Appeal to the Administrative Appeals Office (AAO), with required fee specified in 8 CFR 103.7(b)(1). Renewal of employment authorization issued pursuant to § 245a.13 will be granted until a final decision has been rendered on appeal or until the end of the appeal period if no appeal is filed. After exhaustion of an appeal, an alien who believes that the grounds for denial have been overcome may submit another application with fee, provided that the application is submitted on or before June 4, 2003.

* * * * *

§ 245a.33 [Amended]

14. Section 245a.33 is amended by removing the second sentence of paragraph (b).

Dated: November 18, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–26371 Filed 11–29–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19577; Airspace Docket No. 04–ACE–67]

Proposed Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Independence, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to create a Class E surface area at Independence, KS. It also proposes to modify the Class E5 airspace at Independence, KS.

DATES: Comments for inclusion in the Rules Docket must be received on or before January 10, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC