

# Rules and Regulations

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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.

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## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Part 204

[CIS No. 2277-03; DHS-2004-0013]

RIN 1615-AB14

#### Classification of Certain Scientists of the Commonwealth of Independent States of the Former Soviet Union and the Baltic States as Employment-Based Immigrants

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule implements changes to the Soviet Scientists Immigration Act of 1992 (SSIA), Public Law 102-509, made by the Foreign Relations Authorization Act, Fiscal Year 2003, Public Law 107-228. The SSIA, as amended, reinstates the authority to allot visas under section 203(b)(2)(A) of the Immigration and Nationality Act to eligible scientists or engineers of the independent states of the former Soviet Union and the Baltic states with expertise in nuclear, chemical, biological, or other high-technology field or defense projects. This rule amends the Department of Homeland Security (DHS) regulations to codify the new sunset date of September 30, 2006 and the new numerical limit of 950 visas (excluding spouses and children if accompanying or following to join). The rule also modifies the evidence eligible scientists or engineers must submit to establish their expertise or work experience in such high technology fields or defense projects.

**DATES:** *Effective date:* This interim rule is effective May 25, 2005.

*Comment date:* Comments must be submitted on or before June 24, 2005.

**ADDRESSES:** You may submit comments, identified by CIS No. 2277-03 or DHS 2004-0013, 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.

- *E-mail:* [rfs.regs@dhs.gov](mailto:rfs.regs@dhs.gov). When submitting comments electronically, please include CIS No. 2277-03 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., 2nd Floor, Washington, DC 20529. To ensure proper handling, please reference CIS No. 2277-03 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 docket number (if available) or Regulatory Information Number (RIN) for this rulemaking. 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 office of 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 CIS No. 2277-03 on your correspondence.

#### FOR FURTHER INFORMATION CONTACT:

Efren Hernandez, Chief, Business and Trade Branch, Program and Regulation Department, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 616-7959.

#### SUPPLEMENTARY INFORMATION:

##### 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. USCIS also invites comments that relate to the economic, environmental, or federalism affects 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.

##### What Is the Soviet Scientists Immigration Act of 1992?

The Soviet Scientists Immigration Act of 1992 (SSIA) provided that up to 750 immigrant visas may be allotted under section 203(b)(2)(A) of the Immigration and Nationality Act (Act) to eligible scientists or engineers of the independent states of the former Soviet Union and the Baltic states (excluding spouses and children if accompanying or following to join), if the scientists or engineers had expertise in nuclear, chemical, biological or other high technology fields or were working on such high technology defense projects, as defined by the Attorney General. This program expired on October 24, 1996.

##### What Changes to the Soviet Scientists Immigration Act Were Made by the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107-228)?

Section 1304 of the Foreign Relations Authorization Act, Fiscal Year 2003, amended the SSIA by:

(1) Reinstating the classification authority for eligible scientists and engineers under section 203(b)(2)(A) of the Act;

(2) Reopening the eligibility period for filing petitions for 4 years from the date of enactment of the Foreign Relations Authorization Act (September 30, 2002);

(3) Raising the numerical limit for visas under the program from 750 to 950;

(4) Precluding any scientist previously admitted for lawful permanent residence from benefits under the SSIA as amended; and

(5) Requiring the Secretary of Homeland Security to consult with the Secretary of State, Secretary of Defense, Secretary of Energy, and other heads of appropriate agencies regarding previous experiences with implementation of the SSIA and any recommended changes in the regulations prescribed under the SSIA.

#### **What Changes Is USCIS Making to Its Regulations?**

USCIS is amending § 204.10 as follows:

##### *8 CFR 204.10(a)*

Section 204.10(a) is amended to reflect the new sunset date of September 30, 2006 and numerical limit of 950 for the number of visas that may be allotted under section 203(b)(2)(A) of the Act (excluding spouses and children if accompanying or following to join).

##### *8 CFR 204.10(b) and (c)*

Current § 204.10(b) is redesignated as § 204.10(c) and amended to address filing requirements and to specify which USCIS office will have jurisdiction over Form I-140s filed under the SSIA. New § 204.10(b) will now contain the definitions governing this provision.

##### *8 CFR 204.10(d)*

Current § 204.10(c) is redesignated as § 204.10(d) and addresses the priority dates of any petition filed for this classification.

##### *8 CFR 204.10(e)*

Current § 204.10(e) is amended to reflect new evidentiary requirements for petitions filed by scientists and engineers under the SSIA. Under the original program (SSIA 1992-1996), the regulations required applicants to submit documentation relating to their particular scientific expertise and prior work experience. This required documentation often proved difficult not only to obtain but also to assess to determine eligibility.

Based on discussions with the Department of State, USCIS has determined that a more effective administration of the new program (SSIA 2002-2006) can be achieved by requiring each applicant to submit a statement, signed by the Department of State's Bureau of Nonproliferation, attesting to his or her qualifications or expertise in nuclear, chemical,

biological or other high technology fields or verifying his or her work on such high technology defense projects. The Bureau of Nonproliferation has been in close contact with this group of scientists and with organizations that have employed them for a number of years and is better suited to represent the individual applicant's qualifications to USCIS. In addition, the Department of State's Visa Office usually coordinates with the Bureau of Nonproliferation and other appropriate agencies during the security advisory opinion process when a visa application involves a scientist or engineer from the former Soviet Union. USCIS has determined that this coordination, and resulting assessment by Department of State, is sufficient to meet the consultation requirements of the SSIA.

Accordingly, § 204.10(e) provides that the signed statement issued by the Department of State's Bureau of Nonproliferation will be considered in lieu of the evidence of qualifications previously required under the old program. USCIS, however, reserves the right to consult independently with the Secretary of Defense, Secretary of Energy and other appropriate agency heads on the qualifications or expertise of a potential applicant under the SSIA and to accept favorable reports from such agencies in addition to the letter from the Department of State, Bureau of Nonproliferation.

##### *8 CFR 204.10(f) and (g)*

USCIS is retaining current § 204.10(f) and modifying § 204.10(g) to provide that USCIS, in addition to consulting with the Department of State's Bureau of Nonproliferation, in its discretion may consult with other appropriate government agencies and use favorable reports from such agencies in addition to the statement from the Bureau of Nonproliferation.

##### *8 CFR 204.10(h) and (i)*

Current § 204.10(h) is redesignated as § 204.10(i) and divided into two sections addressing approval and denial of petitions. New § 204.10(h) codifies section 4(a) of the SSIA, as amended, which prohibits scientists previously admitted to lawful permanent residence from receiving benefits under the new SSIA program.

##### *8 CFR 204.10(j)*

USCIS creates a new § 204.10(j) that provides for the rejection and fee refund of any petition once the program sunsets or the numerical limits for the program have been reached.

#### **How Can Potential Applicants Obtain a Letter From the Department of State Verifying Their Previous Work Experience?**

Before submitting the petition to USCIS, the applicant must obtain a letter from the Department of State's Bureau of Nonproliferation. Applicants should submit a written request to the Department of State indicating that they are seeking to immigrate to the United States or adjust status under the SSIA program and requesting verification of their relevant qualifications, expertise, and work experience. Written requests should be submitted to: Coordinator for Science Centers, Office of Proliferation Threat Reduction, NP/PTR, Room 3327, U.S. Department of State, Washington, DC 20520.

The Bureau of Nonproliferation will review the alien's expertise and prior work experience and determine if the expertise and experience are, in fact, qualifying under the program. If the Bureau determines that the applicant has the requisite expertise and experience, the Bureau of Nonproliferation will issue a letter to that effect for submission with the Form I-140 visa petition.

#### **Good Cause Exception**

The Department of Homeland Security (DHS) has determined that good cause exists under 5 U.S.C. 553(b)(B) to make this rule effective May 25, 2005, for the following reasons: Section 1304 of the Foreign Relations Authorization Act, Fiscal Year 2003 became effective immediately upon enactment on September 30, 2002, and will sunset by September 30, 2006. The delay in publication of this interim rule for consideration of public comments prior to the effective date of the rule would only serve to further limit the remaining period within which qualifying scientists or engineers may file a Form I-140 petition for an immigrant visa (or seek adjustment of status to lawful permanent residence) prior to September 30, 2006. DHS also believes that pre-promulgation comment is unnecessary because of the limited number of individuals who may qualify for or be affected by the SSIA (estimated at 500); the non-controversial nature of the implementation procedures; and the security interests that are facilitated by having a process in place for vetting scientists and engineers who might be authorized to work in the high-technology fields or on the defense projects that qualify under the SSIA program. Publication of this rule as an interim rule also will expedite implementation of section 1304 by

allowing aliens covered by the law to apply for and obtain the benefits available under the SSIA.

Accordingly, DHS finds that it would be impracticable and contrary to the public interest to delay implementation of this rule to allow the prior notice and comment period normally required under 5 U.S.C. 553(b)(B). DHS nevertheless invites written comments on this interim rule and will consider any timely comments in preparing the final rule.

#### Regulatory Flexibility Act

DHS has reviewed this regulation in accordance with the Regulatory and Flexibility Act (5 U.S.C. 605(b)), and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The SSIA, as amended, is limited to 950 eligible independent states and Baltic scientist. Form I-140s generally will be filed by individual aliens, or U.S. government entities filing on behalf of such individuals, seeking classification under section 203(b)(2)(A) of the Act. These petitioners are not considered small entities as that term is defined in 5 U.S.C. 601(6).

#### 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 Fairness 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 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 (OMB) for review.

DHS 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 the benefits of this regulation justify its costs. Briefly, that assessment is as follows: The rule will enhance the ability of DHS to administer this very limited program. There are no costs to the public associated with this rule, except the fee for filing the Form I-140 petition which is borne by the applicant. The \$190 fee for the Form I-140 petition was established to cover the administrative costs of processing the petition. DHS estimates that there are approximately 500 visa numbers available under this program: 300 unused visas from the initial SSIA program before it expired and 200 new visas based in the increase in the numerical limit from 750 to 950. DHS estimates that the total cost for this program will be \$95,000 (500 × \$190 filing fee for the Form I-140). The program benefits the individual scientist-beneficiaries who gain access to the U.S. job market and other benefits available to permanent resident aliens. Also, the security of the United States is enhanced because the skills and knowledge of these scientists can be used within the United States rather than by governments or other organizations potentially inimical to the national security.

#### 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, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### Executive Order 12988 Civil Justice Reform

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

#### Paperwork Reduction Act

This interim rule requires a petitioner to submit a letter from the Department of State, Bureau of Nonproliferation, addressing the petitioner's scientific or engineering qualifications. Previously USCIS captured this information under the Form ETA 750B, OMB No. 44-R1301, as part of the evidence

requirements contained in the instructions to the Form I-140. The State Department letter will be used in lieu of the Form ETA 750B. Therefore, petitioners will no longer be required to provide information in support of, or complete, the Form ETA 750B, and the burden hours associated with the Form ETA 750B for this program are removed. Since the letter will be generated by the Department of State and issued to the petitioner for submission with the Form I-140, there are no additional information collections. Also, there are no additional information collections associated with the Form I-140 (OMB No. 1615-0015).

#### List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and record keeping requirements.

■ Accordingly, part 204 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

#### PART 204—IMMIGRANT PETITIONS

■ 1. 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.

■ 2. Section 204.10 is revised to read as follows:

#### § 204.10 Petitions by, or for, certain scientists of the Commonwealth of Independent States or the Baltic states.

(a) *General.* A petition to classify an alien under section 203(b)(2) of the Act as a scientist or engineer of the eligible independent states of the former Soviet Union or the Baltic states must be filed on Form I-140, Immigrant Petition for Alien Worker. The petition may be filed by the alien, or anyone in the alien's behalf. USCIS must approve a petition filed on behalf of the alien on or before September 30, 2006, or until 950 petitions have been approved on behalf of eligible scientists, whichever is earliest.

(b) *Definitions.* As used in this section the term:

*Baltic states* mean the sovereign nations of Latvia, Lithuania, and Estonia.

*Eligible independent states and Baltic scientists* means aliens:

(1) Who are nationals of any of the independent states of the former Soviet Union or the Baltic states; and

(2) Who are scientists or engineers who have expertise in nuclear, chemical, biological, or other high-technology field which is clearly applicable to the design, development, or production of ballistic missiles, nuclear, biological, chemical, or other

high-technology weapons of mass destruction, or who are working on nuclear, chemical, biological, or other high-technology defense projects, as defined by the Secretary of Homeland Security, that are clearly applicable to the design, development, and production of ballistic missiles, nuclear, biological, chemical, or other high-technology weapons of mass destruction.

*Independent states of the former Soviet Union* means the sovereign nations of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

(c) *Filing requirements.* (1) *Application form and time limits.* A petition to classify an alien under section 203(b)(2)(A) of the Act as a scientist from the eligible independent states of the former Soviet Union or the Baltic states must be filed on Form I-140, Immigrant Petition for Alien Worker. The petition may be filed by the alien, or by anyone on the alien's behalf. Such petition must be properly filed with all initial evidence described in paragraph (e) of this section by September 30, 2006 or before the limit of 950 visas has been reached, whichever is earliest. To clarify that the petition is for a Soviet scientist, the petitioner should clearly print the words "SOVIET SCIENTIST" in Part 2 of Form I-140 and check block "d", indicating the petition is for a member of the professions holding an advanced degree or an alien of exceptional ability.

(2) *Jurisdiction.* Form I-140 must be filed with the service center having jurisdiction over the alien's place of intended residence in the United States.

(d) *Priority date.* The priority date of any petition filed for this classification is the date the completed, signed petition (including all initial evidence as defined in paragraph (e) of this section and the correct fee) is properly filed with the USCIS.

(e) *Initial evidence.* The petition must be accompanied by:

(1) Evidence that the alien is a national of one of the independent states of the former Soviet Union or one of the Baltic States as defined in paragraph (b) of this section. Such evidence may include, but is not limited to, identifying page(s) from a passport issued by the former Soviet Union, or by one of the independent or Baltic states; and

(2) A letter from the Department of State, Bureau of Nonproliferation that verifies that the alien possesses expertise in nuclear, chemical, biological, or other high-technology field or who has prior or current work

experience in high-technology defense projects which are clearly applicable to the design, development, or production of ballistic missiles, nuclear, biological, chemical, or other high-technology weapons of mass destruction and endorses the applicant as having exceptional ability in one or more of these fields. Such endorsement shall establish that the alien possesses exceptional ability in the relevant field.

(f) *No offer of employment required.* Neither an offer of employment nor a labor certification is required for this classification.

(g) *Consultation with other United States Government agencies.* USCIS may consult with other United States Government agencies, such as the Departments of Defense and Energy or other relevant agencies with expertise in nuclear, chemical, biological, or other high-technology defense projects. USCIS may, in its discretion, accept a favorable report from such agencies as evidence in addition to the documentation prescribed under paragraph (e) of this section.

(h) *Aliens previously granted permanent residence.* No alien previously granted lawful permanent residence may request or be granted classification or any benefits under this provision.

(i) *Decision.* (1) *Approval.* If the petition is approved and the beneficiary is outside the United States the applicant will be notified of the decision and the petition will be forwarded to the National Visa Center. If the beneficiary is in the United States and seeks to apply for adjustment of status, the petition will be retained by USCIS.

(2) *Denial.* If the petition is denied, the petitioner will be advised of the decision and of the right to appeal in accordance with 8 CFR part 103.

(j) *Rejection.* Petitions filed under this provision on or after September 30, 2006 or after the limit of 950 visas has been reached will be rejected and the fee refunded.

Dated: April 15, 2005.

**Michael Chertoff,**  
Secretary.

[FR Doc. 05-8176 Filed 4-22-05; 8:45 am]

**BILLING CODE 4410-10-P**

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 229

[Regulation CC; Docket No. R-1228]

#### Availability of Funds and Collection of Checks

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Board of Governors is amending appendix A of Regulation CC to delete the reference to the Salt Lake City branch office of the Federal Reserve Bank of San Francisco and reassign the Federal Reserve routing symbols currently listed under that office to the Denver branch office of the Federal Reserve Bank of Kansas City. These amendments will ensure that the information in appendix A accurately describes the actual structure of check processing operations within the Federal Reserve System.

**DATES:** The final rule will become effective on June 18, 2005.

**FOR FURTHER INFORMATION CONTACT:** Jack K. Walton II, Assistant Director (202/452-2660), or Joseph P. Baressi, Senior Financial Services Analyst (202/452-3959), Division of Reserve Bank Operations and Payment Systems; or Adrienne G. Threatt, Counsel (202/452-3554), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263-4869.

**SUPPLEMENTARY INFORMATION:** Regulation CC establishes the maximum period a depository bank may wait between receiving a deposit and making the deposited funds available for withdrawal.<sup>1</sup> A depository bank generally must provide faster availability for funds deposited by a local check than by a nonlocal check. A check drawn on a bank is considered local if it is payable by or at a bank located in the same Federal Reserve check processing region as the depository bank. A check drawn on a nonbank is considered local if it is payable through a bank located in the same Federal Reserve check processing region as the depository bank. Checks that do not meet the requirements for local checks are considered nonlocal.

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods

<sup>1</sup> For purposes of Regulation CC, the term "bank" refers to any depository institution, including commercial banks, savings institutions, and credit unions.