

§ 103.8

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §103.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

EFFECTIVE DATE NOTE: At 65 FR 43531, July 13, 2000, in §103.7, (b)(1) was amended by adding the entry for "Form ETA-9079" immediately following "Form EOIR-42", effective Nov. 13, 2000. At 65 FR 67617, Nov. 13, 2000, the effective date of the addition was delayed until Oct. 1, 2001. For the convenience of the user, the added text is set forth as follows:

§ 103.7 Fees.

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(b) \* \* \* (1) \* \* \*
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Form ETA-9079. The fee for filing for a labor certification is designated in 20 CFR 655.100. The fee for filing the Service's petition portion of Form ETA-9079, to classify an agricultural worker as an H-2A non-immigrant, is \$110. The total fee will be the sum of DOL labor certification fee and the Service's fee. There is no additional fee if supplemental Form(s) ETA-9079W is filed with Form ETA-9079. A fee of \$120 is required to file supplemental Form ETA-9079M (the equivalent to Form I-824).

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§ 103.8 Definitions pertaining to availability of information under the Freedom of Information Act.

Sections 103.8, 103.9, and 103.10 of this part comprise the Service regulations under the Freedom of Information Act, 5 U.S.C. 552. These regulations supplement those of the Department of Justice, 28 CFR part 16, subpart A. As used in this part the following definitions shall apply:

(a) The term access means providing a copy of the record requested or affording the opportunity for an in-person review of the original record or a copy thereof. The determination to permit an in-person review is discretionary and will only be made when specifically requested. Whenever providing in-person access will unreasonably disrupt the normal operations of an office, the requester may be sent a copy of the requested records that are nonexempt in lieu of the in-person review.

(b) The term decision means a final written determination in a proceeding

under the Act accompanied by a statement of reasons. Orders made by check marks, stamps, or brief endorsements which are not supported by a reasoned explanation, or those incorporating preprinted language on Service forms are not decisions.

(c) The term records includes records of proceedings, documents, reports, and other papers maintained by the Service.

(d) The term record of proceeding is the official history of any hearing, examination, or proceeding before the Service, and in addition to the application, petition or other initiating document, includes the transcript of hearing or interview, exhibits, and any other evidence relied upon in the adjudication; papers filed in connection with the proceedings, including motions and briefs; the Service officer's determination; notice of appeal or certification; the Board or other appellate determination; motions to reconsider or reopen; and documents submitted in support of appeals, certifications, or motions.

[32 FR 9623, July 4, 1967, as amended at 40 FR 7236, Feb. 19, 1975; 52 FR 2942, Jan. 29, 1987; 58 FR 31148, June 1, 1993]

§ 103.9 Availability of decisions and interpretive material under the Freedom of Information Act.

(a) Precedent decisions. There may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, bound volumes of designated precedent decisions entitled "Administrative Decisions Under Immigration and Nationality Laws of the United States," each containing a cumulative index. Prior to publication in volume from current precedent decisions, known as interim decisions, are obtainable from the Superintendent of Documents on a single copy or yearly subscription basis. Bound volumes and current precedent decisions may be read at principal Service offices.

(b) Unpublished decisions. Each district director in the United States will maintain copies of unpublished Service and Board decisions relating to proceedings in which the initial decision was made in his district. Each regional commissioner will maintain copies of

unpublished decisions made by him. The Central Office will maintain copies on a national basis of unpublished Service decisions.

(c) *Deletion of identifying details.* To the extent that information in decisions is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), the deciding officer shall provide for deletion of identifying details, as appropriate, from copies of decisions made available to the public.

(d) *Statements of policy, interpretations, manuals, instructions to staff.* Statements of policy, interpretations, and those manuals and instructions to staff (or portions thereof), affecting the public, will be made available at district offices in the United States and at the Central Office with an accompanying index of any material which is issued on or after July 4, 1967.

(e) *Public reading rooms.* The Central Office and each district office in the United States will provide a reading room or reading area where the material described in this section will be made available to the public. Additional material will be made available in the public reading rooms, including the immigration and nationality laws, title 8 of the United States Code Annotated, title 8 of the Code of Federal Regulations—Chapter I, a complete set of the forms listed in parts 299 and 499 of this chapter, and the Department of State Foreign Affairs Manual, Volume 9—Visas. Fees will not be charged for providing access to any of these materials, but fees in accordance with § 103.7(b) will be charged for furnishing copies.

[32 FR 9623, July 4, 1967, as amended at 36 FR 20151, Oct. 16, 1971; 40 FR 7237, Feb. 19, 1975; 48 FR 49652, Oct. 27, 1983]

#### § 103.10 Requests for records under the Freedom of Information Act.

(a) *Place and manner of requesting records—(1) Place.* Records should be requested from the office that maintains the records sought, if known, or from the Headquarters of the Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Records are maintained in the Headquarters, regional offices, service centers, district offices and the following suboffices: Agana, Guam; Albany, NY;

Charlotte, NC; Cincinnati, OH; Hartford, CT; Indianapolis, IN; Las Vegas, NV; Louisville, KY; Memphis, TN; Milwaukee, WI; Norfolk, VA; Pittsburgh, PA; Providence, RI; Reno, NV; St. Louis, MO; Salt Lake City, UT; Spokane, WA; and St. Albans, VT. In certain cases, a district director may designate another Service office as a file control office. For locations of the Service's regional offices, service centers, district offices, and sub-offices see 8 CFR 100.4.

(2) *Manner of requesting records.* All Freedom of Information Act requests must be in writing. Requests may be submitted in person or by mail. If a request is made by mail, both the envelope and its contents must be clearly marked: "FREEDOM OF INFORMATION REQUEST" or "INFORMATION REQUEST." Any request for information not marked and addressed as specified will be so marked by Service personnel as soon as it is properly identified and shall be forwarded immediately to the appropriate office designated to control Freedom of Information Act requests. A request will not be deemed to have been received for purposes of the time period under 5 U.S.C. 552(a)(6) until the request has been received by the appropriate office, or would have been received with the exercise of due diligence by Service personnel. Service Form G-639, Freedom of Information/Privacy Act Request, may be used for rapid identification as a Freedom of Information matter and to ensure expeditious handling; however, a request may be submitted in any written form. Each request made under this section pertaining to the availability of a record must describe the record with sufficient specificity with respect to names, dates, subject matter and location to permit it to be identified and located. A request for all records falling within a reasonably specific category shall be regarded as reasonably described if the description enables the records to be identified by any process not unreasonably burdensome. If it is determined that the request does not reasonably describe the records sought, the response rejecting the request on that ground shall specify the reason why the request failed to meet requirements and shall extend to