

Rules and Regulations

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

The **Code of Federal Regulations** is sold by the Superintendent of Documents.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

RIN 1615-AC13

[CIS No. 2658-20 DHS Docket No. USCIS-2020-0018]

Strengthening the H-1B Nonimmigrant Visa Classification Program, Implementation of Vacatur

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

ACTION: Final rule.

SUMMARY: This final rule removes from the **Code of Federal Regulations** an interim final rule (IFR) issued in October 2020, which has since been vacated by a federal district court.

DATES: This rule is effective May 19, 2021.

FOR FURTHER INFORMATION CONTACT: Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Mail Stop 2090, Camp Springs, MD 20588-0009. Telephone Number (240) 721-3000 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Background and Basis for Removal of Regulations

On October 8, 2020, the Department of Homeland Security (DHS) issued an Interim Final Rule (IFR) titled, *Strengthening the H-1B Nonimmigrant Visa Classification Program*.¹ On December 1, 2020, the U.S. District Court for the Northern District of California vacated the IFR.² The Department announced on December 4,

2020, that it would fully comply with the court's decision vacating the October 2020 IFR; however, changes to the regulatory text as set forth in the IFR are still reflected in the **Code of Federal Regulations** (CFR) at 8 CFR 214.2.

This rule removes from the CFR the regulatory text that the Department promulgated in the October 2020 IFR and restores the regulatory text to appear as it did before the October 2020 IFR, and consistent with the rules that remain valid subsequent to the court's vacatur.

DHS is not required to provide notice and comment or delay the effective date of this rule because this rule simply implements the court's vacatur of the IFR and restores the regulatory text so that it correctly reflects the regulatory text that predates the vacatur and remains valid. The changes made by the IFR do not have any legal effect. Moreover, good cause exists here for bypassing any otherwise applicable requirements of notice and comment and a delayed effective date. Notice and comment and a delayed effective date are unnecessary for the implementation of the court's order vacating the rule and would be impracticable and contrary to the public interest in light of the agency's immediate need to implement the final judgment. See 5 U.S.C. 553(b)(B), (d). DHS believes that delaying the ministerial act of restoring the regulatory text in the **Federal Register** is contrary to the public interest because it could lead to confusion, particularly among the regulated public, as to the eligibility requirements for the H-1B classification. DHS has concluded that each of those three reasons—that notice and comment and a delayed effective date are unnecessary, impracticable, and contrary to the public interest—individually provides good cause to bypass any otherwise applicable requirements of notice and comment and a delayed effective date.

List of Subjects in 8 CFR Part 214

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

Accordingly, for the reasons set forth in the preamble, DHS amends chapter I of title 8 of the **Code of Federal Regulations** as follows:

Federal Register

Vol. 86, No. 95

Wednesday, May 19, 2021

PART 214—NONIMMIGRANT CLASSES

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

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

- 2. Amend § 214.2 by:
 - a. Revising paragraph (h)(2)(i)(B);
 - b. Removing paragraph (h)(4)(i)(B)(7);
 - c. In paragraph (h)(4)(ii):
 - i. Removing the definition of “Employer-employee relationship”;
 - ii. Revising the definition of “Specialty Occupation”;
 - iii. Removing the definition of “Third-party worksite”;
 - iv. Revising the definition of “United States employer”; and
 - v. Removing the definition of “Worksite.”
 - d. Revising paragraph (h)(4)(iii)(A);
 - e. Removing paragraph (h)(4)(iv)(C);
 - f. Amending paragraph (h)(9) by:
 - i. Redesignating paragraph (h)(9)(i)(A) as paragraph (h)(9)(i), and removing paragraph (h)(9)(i)(B), and
 - ii. Revising paragraph (h)(9)(iii)(A)(1); and
 - g. Removing and reserving paragraph (h)(24)(ii).

The revisions read as follows:

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

* * * * *

(h) * * *

(2) * * *

(i) * * *

(B) *Service or training in more than one location.* A petition that requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with USCIS as provided in the form instructions. The address that the petitioner specifies as its location on the Form I-129 shall be where the petitioner is located for purposes of this paragraph.

(4) * * *

(i) * * *

(B) * * *

(ii) * * *

¹ 85 FR 63918 (Oct 8, 2020).

² See *JSW Chamber of Commerce of the United States of America et al. v. United States Department of Homeland Security, et al.*, No. 4:20-cv-07331 (N.D. Cal. Dec. 1, 2020).

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

* * * * *

United States employer means a person, firm, corporation, contractor, or other association or organization in the United States which:

(1) Engages a person to work within the United States;

(2) Has an employer-employee relationship with respect to employees under this part; as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and

(3) Has an Internal Revenue Service Tax identification number.

* * * * *

(iii) * * *
(A) *Standards for specialty occupation position.* To qualify as a specialty occupation, the position must meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

* * * * *

(9) * * *
(iii) * * *

(A)(1) *H-1B petition in a specialty occupation.* An approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien in a specialty occupation shall be valid for a period of up to three years but may

not exceed the validity period of the labor condition application.

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Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2021-10489 Filed 5-18-21; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0101; Project Identifier MCAI-2020-01084-T; Amendment 39-21531; AD 2021-09-17]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD-100-1A10 airplanes. This AD was prompted by a report that the inboard multi-function spoiler (MFS) surfaces failed to deploy, which was caused by missing notches on the piston seal of the MFS power control units (PCUs). This AD requires an inspection to determine if affected MFS PCUs are installed, and replacement of affected MFS PCUs. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 23, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 23, 2021.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free phone: 1-866-538-1247 or direct-dial phone: 1-514-855-2999; email: ac.yul@aero.bombardier.com; internet: <https://www.bombardier.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0101.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0101; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Siddeeq Bacchus, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516-228-7362; fax: 516-794-5531; email: 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF-2020-26, dated August 4, 2020 (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Bombardier, Inc., Model BD-100-1A10 airplanes. You may examine the MCAI in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0101.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD-100-1A10 airplanes. The NPRM published in the **Federal Register** on February 26, 2021 (86 FR 11667). The NPRM was prompted by a report that the inboard MFS surfaces failed to deploy, which was caused by missing notches on the piston seal of the MFS PCUs. The NPRM proposed to require an inspection to determine if affected MFS PCUs are installed, and replacement of affected MFS PCUs. The FAA is issuing this AD to address MFS PCUs with improperly configured piston seals, which could cause degraded proportional lift dumping (PLD) function. This condition could hinder the airplane from carrying out an emergency descent, resulting in structural damage and injury to occupants. See the MCAI for additional background information.