

Form I-129 Public Comments
Summary of Comments During the 60-Day Comment Period and Responses

I-129 Instructions		
<i>Section/Part/ Number</i>	<i>Comment ID #</i>	<i>Comment and USCIS Response</i>
General Comment on the Instructions	USCIS- 2005-0030- 0230	<p>Comment: The commenter states that the proposed revisions to the I-129 instructions will increase the page count from 24 to 29 pages. USCIS should seek to reduce the length of the instructions by eliminating redundant and lengthy explanations and replace them with applicable citations to the Immigration and Nationality Act and Title 8 of the Code of Federal Regulations. Form instructions in general should focus on tips for answering individual questions and each section of the form, and procedural aspects of filing such as where to file, calculating filing fees, etc. Practical aspects of filing should also be highlighted, such as how to label and attach exhibits, acceptable forms of payment, and other useful tips to help ensure proper receipt by the USCIS lockbox and to ease the adjudication process. This would help improve the quality of filings and reduce the rate of Request for Evidence (RFE) issuance. Along with the list of supporting evidence required for each visa category, the form instructions should also clearly delineate the required form supplements.</p> <p>Response: The increase in the number of pages primarily results from formatting changes to make the document easier to read. Changes include reduction from two columns to one as well as increased font size. Expanded explanations in the instructions include relevant and necessary content to help all interested parties understand how to complete the form. Additional filing tips are also located on our website at: www.uscis.gov.</p>
General Comment on the Instructions	USCIS- 2005-0030- 0229	<p>Comment: The commenter is of the opinion that “[the United States] does not need any farm workers, nurses, models, or any of the other classifications. Immigrant labor is being used to break wages of American workers.”</p> <p>Response: The commenter requested that DHS suspend temporary employment-based immigration in order to preserve jobs for U.S. citizen workers. The 60-day information collection notice requested comments on whether the proposed changes to this information collection is necessary for the proper performance of the functions of the agency; on the accuracy of the agency’s estimate of the burden of the proposed collection of information; on enhancing the quality, utility, and clarity of the information to be collected; and on minimizing the burden of the collection of information on the public. This comment is beyond the scope of this information collection. Since this commenter does not request any changes to the I-129 collection, USCIS will not be making any changes as a result of this comment.</p>

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General Filing Instructions	USCIS-2005-0030-0232	<p>Comment: The commenter suggests that USCIS focus the instructions on the details of how to submit the petition rather than copying or paraphrasing legal requirements that can be found in the statute and/or regulations. The commenter further proposes that USCIS eliminate detailed but incomplete descriptions of the visa classifications and filing requirements and redundant and confusing explanatory information that can be found in the regulations and policy guidance.</p> <p>Response: USCIS has determined that it is necessary to include a plain language description of the legal requirements in form instructions so that the public has a better understanding of what is required for proper completion of the form. Detailed descriptions are included in an effort to add context to the data fields. USCIS has carefully reviewed the instructions for accuracy and completeness. Please bring to our attention specific areas in the form instructions that you feel are misleading.</p>
Q-1 Classification	USCIS-2005-0030-0232	<p>Comment: The commenter indicates that the proposed instructions on page 20 which state that the classification is for aliens participating in exchange programs “approved by USCIS for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien’s nationality” is misleading. It implies that a separate approval process exists for the exchange program itself. The language should be modified to clarify that the qualifications of both the program itself and the beneficiary are reviewed simultaneously as part of the Form I-129 adjudication process.</p> <p>Response: This is a comment regarding “participating exchange programs approved by USCIS” and the commenter believes the language to be misleading in the instructions. USCIS agrees that this may lead to unnecessary confusion and as a result, USCIS has considered making the appropriate revisions to the instructions to clarify this requirement.</p>
E Classifications (not including E-2 CNMI)	USCIS-2005-0030-0232	<p>Comment: The commenter points out that the information on filing E3’s from inside the United States should be included in the instructions.</p> <p>Response: This is a comment regarding missing information in the I-129 form instructions for the E-3 Specialty Occupation Visa for Nationals of Australia. As noted on item 4b of Part 2 of the Form I-129, a petition is not required for individuals seeking an E-3 visa abroad.</p>
Written Consultation for O and P Nonimmigrants	USCIS-2005-0030-0232	<p>Comments: The commenter states that “written consultation requirements for O visas are confusing in both the regulations and the form I-129 instructions. The requirements for O-1A continue to reference consultations from ‘management organizations’ even though these consultations are required only for O-1B. The requirements for O-1B consultations are difficult to understand.”</p> <p>Response: The consultation language used in O-1A section of the I-129 Form instructions follows the general consultation language found in the regulations. More information on the consultation requirements for the different O categories can be found at www.uscis.gov.</p>

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I-129 Form		
Section/Part/ Number	Comment ID #	Comment and USCIS Response
General Comment on the new form layout	USCIS-2005-0030-0235	<p>Comment: The commenter “commend[s] [USCIS] for the general layout of the form and for avoiding the use of two column formatting. One column is easier to follow and is consistent with the current form.”</p> <p>Response: USCIS thanks the commenter for the comment on form layout.</p>
Part 1 Item 3	USCIS-2005-0030-0231; USCIS-2005-0030-0235	<p>Comment: The commenters state that the item requesting the petitioner’s primary address is unclear because the instructions do not define what is meant by “primary.” The commenters request that USCIS provide guidance on what it believes to constitute a “primary” office.</p> <p>Response: USCIS takes this comment into consideration and will make the appropriate changes to the form.</p>
Part1 Item 5	USCIS-2005-0030-0231; USCIS-2005-0030-0235	<p>Comment: The commenters state that this item requests the “Federal Identification Number, ” but it is unclear what Federal Identification Number refers to. If the petitioner is being asked to list its Internal Revenue Service issued “Employer Identification Number,” then the form should request an EIN.</p> <p>Response: USCIS has taken this recommendation regarding the Federal Employer Identification Number (FEIN) into consideration and has changed it as appropriate to clarify.</p>
Part1 Item 5	USCIS-2005-0030-0230	<p>Comment: The commenter requests that the heading “Federal Identification Number” be changed to “Federal Employer Identification Number (FEIN),” the term used on the current version of the form. The commenter states that “Federal Employer Identification Number” is the standard term for an employer federal tax identification number as issued by the Internal Revenue Service. Petitioners will not be familiar with the term “Federal Identification Number” and its use will likely cause confusion. Similarly, the term “Individual IRS Tax Number” should be changed to “Individual Taxpayer Identification Number (ITIN).”</p> <p>Response: USCIS takes these recommendations into consideration and as a result, it has made changes as appropriate to provide clarification.</p>

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Part1 Item 5	USCIS-2005-0030-0230	<p>Comment: The commenter believes some petitioners might not be familiar with a “DUNS Number” so it would be helpful to indicate exactly what that is. We suggest relabeling that item “Dun & Bradstreet (DUNS) Number (if applicable).”</p> <p>Response: USCIS will consider this comment in the future. USCIS will hold off for now on inclusion of the DUNS number on the Form I-129 until the form is incorporated into USCIS’ Electronic Immigration System (USCIS ELIS) or USCIS is able to make modifications to current systems.</p>
Part1 Item 5	USCIS-2005-0030-0231	<p>Comment: Here, the commenter states that under the heading “Other Information” there is a field for “DUNS Number (if any).” The form instructions should provide detailed instructions on how to obtain a DUNS number. Furthermore, since USCIS adjudicators use the DUNS number to verify the legitimacy and existence of petitioners, the time and effort petitioners expend in securing a DUNS number and verifying the information reported by the Dun & Bradstreet database should be accounted for in USCIS’s calculation of public reporting burden.</p> <p>Response: USCIS will keep this comment it in consideration for future use. USCIS has determined to hold off on inclusion of the DUNS number on the Form I-129 until the form is incorporated into USCIS’ Electronic Immigration System (USCIS ELIS) or USCIS is able to make modifications to current systems.</p>
Part1 Item 5	USCIS-2005-0030-0235	<p>Comment: The commenter recommends that “[t]he form instructions should provide detailed instructions to petitioners who may be unfamiliar with the “Data Universal Numbering System” on how a number may be assigned free of charge by Dunn and Bradstreet, a private company.”</p> <p>Response: USCIS will consideration this comment in the future. USCIS proposes to hold off on inclusion of the DUNS number on the Form I-129 until the form is incorporated into our USCIS’ Electronic Immigration System (USCIS ELIS) or USCIS is able to make modifications to current systems.</p>
Part1 Item 5	USCIS-2005-0030-0235	<p>Comment: The commenter states that “[s]ince USCIS adjudicators are said to use the DUNS number in conjunction with a tool to verify the legitimacy and existence of petitioners, the time and effort petitioners expend in securing a DUNS number and verifying information contained in the D&B database should be accounted for in the USCIS’s calculation of the public reporting burden.”</p> <p>Response: USCIS will consider this comment for future use. USCIS proposes to hold off on inclusion of the DUNS number on the Form I-129 until the form is incorporated into our USCIS’ Electronic Immigration System (USCIS ELIS) or USCIS is able to make modifications to current systems.</p>

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Part 2 Header	USCIS-2005-0030-0231; USCIS-2005-0030-0235	<p>Comment: The commenter pointed out that there is a possible typographical error. The header for Part 2 reads “Information About This Petitioner.” Commenters suggest it should read “Information About This Petition.”</p> <p>Response: USCIS has corrected “Petitioner” to read “Petition.”</p>
Part 2. Item 4(a)	USCIS-2005-0030-0230	<p>Comment: The commenter suggests that the “NOTE” in this item be edited to read: <i>NOTE: A petition is not required for E-1, E-2, E-3, H-1B1 Chile/Singapore, or TN visa beneficiaries. (remove “an”)</i></p> <p>Response: USCIS has removed “an.”</p>
Part 2. Item 4(b)	USCIS-2005-0030-0230	<p>Comment: The commenter recommends that this item be changed so that the phrasing is consistent with 4(c), 4(d), 4(e) as follows: <i>Change the status and extend the stay of each beneficiary since the beneficiary(ies) are now in the United States in another status (see instructions for limitations). This is available only when you check “New Employment” in</i> Item Number 2, above.</p> <p>Response: USCIS has taken this recommendation into consideration and it has made the appropriate changes.</p>
Part 3. Item 6	USCIS-2005-0030-0231	<p>Comment: The commenter indicates that question 6 requests the beneficiary’s “Current Physical U.S. Address (if applicable)” and asks that USCIS clarify whether it seeks the beneficiary’s residential address or if the correct response is literally the beneficiary’s “current” whereabouts on the date the petition is signed by the petitioner or its representative.</p> <p>Response: USCIS has taken this comment into consideration and has made the appropriate changes.</p>
Part 4. Item 6	USCIS-2005-0030-0230	<p>Comment: The commenter states that the “current version of the I-129 simply asks if any beneficiary is in removal proceedings and if so, to explain in an attachment. However, USCIS proposes to amend this question to read, “Is any beneficiary in removal proceedings? Y/N. If yes, how many?” Rather than asking how many beneficiaries are in removal proceedings, it would appear to be most helpful to USCIS to receive the names of the individuals in proceedings, along with an explanation in Part 9 of the I-129. We suggest that the language in the current form be retained as it pertains to this question.”</p> <p>Response: USCIS has taken this comment into consideration and has made the appropriate changes</p>

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Part 4. Item 9	USCIS-2005-0030-0230	<p>Comment: The commenter states that “[t]his question, as currently phrased, is partially redundant as it pertains to Item #7 in Part 4: <i>Have you ever previously filed a petition for this beneficiary?</i> To avoid any redundancy, we suggest that this question be rewritten to read: <i>Have you ever previously filed a nonimmigrant petition for this beneficiary?</i>”</p> <p>Response: USCIS has taken this comment into consideration and has made the appropriate changes</p>
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<p>H Classification Supplement to Form I-12: Item 7.a.</p>	<p>USCIS-2005-0030-0231; USCIS-2005-0030-0235</p>	<p>Comment: The commenter considers this language “[o]verly broad and burdensome. Unclear how the information would assist in adjudication. A response would relate to status at time of filing. Seems to be of little use in determining whether a bona fide employeremployee relationship will exist during the requested petition validity dates. After review of the evidence USCIS still has questions about whether a bona fide employeremployee relationship will be established upon the beneficiary’s admission to the United States in an employment based nonimmigrant classification, it can issue an RFE. Also, foreign national may have ownership in mutual funds, which, in turn may own shares in the Petitioner. It would be disruptive and time consuming, especially for publicly traded companies, to ask foreign nationals to review their entire investment portfolio and to predict whether on the date of filing they had any interest in the petitioner. Question puts petitioners in the untenable position of verifying under penalty of perjury the truth of a matter over which they have no control or firsthand knowledge.”</p> <p>Response: USCIS will take it into consideration and has made changes as appropriate to help mitigate concerns regarding possible Request for Evidence (RFE) issuance. USCIS has moved this question to the H Classification Supplement to Form I-129. The information gained from the question is useful as it assists USCIS in identifying entrepreneur petitions.</p>
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<p>Part 6. Certification re Controlled Technology</p>	<p>USCIS-2005-0030-0231; USCIS-2005-0030-0235</p>	<p>Comment: The commenters propose that this certification be eliminated from the form. USCIS has not provided adequate justification as to how a petitioner’s response relates to its adjudication of a benefit under the Immigration and Nationality Act (INA). The form instructions provide that the “U.S. Government requires each company or other entity that files a Form I129” to certify its review and compliance with the EAR and ITAR. There is no citation to any provision of the INA, Title 8 of the Code of Federal Regulations, or any other provision of law for the proposition that the Form I129 is the vehicle to capture this information. In addition, based on this logic, the USCIS could ask a petitioner about it compliance with any matter over which some component of the U.S. Government has jurisdiction. The inclusion of Part 6 is inconsistent with the spirit, if not the terms, of efforts to reduce and eliminate unnecessary data collection. The information collected by Part 6 has not been shown to be necessary to the “proper performance of the functions of the” USCIS and should therefore be eliminated.</p> <p>Response: This section of Form I-129 is an attestation regarding the release of controlled technology or technical data to foreign persons in the United States. It requires petitioners to affirm that they have reviewed the export control regulations. It further requests petitioners to indicate whether a license is required from either the Department of Commerce (DOC) or the Department of State (DOS) to release technology or technical data to the beneficiary of the petition. If a license is required, the petitioner must certify that the beneficiary will not access such technology or data until the license has been obtained.</p> <p>In 2002, the U.S. Government Accountability Office (GAO) reported that vulnerabilities in the deemed export licensing system could allow technology transfers to countries of concern (GAO-02-972). The GAO reported that DOC was not sufficiently coordinating its efforts with those of INS (now USCIS) to identify and follow up on foreign nationals who change their immigration status to obtain jobs that could involve dual-use technology controlled under the Export Administration Act.</p> <p>In addition, an April 2004 report (OIG-04-23) issued by the Inspectors General of several departments -- including DOS, DOC and Homeland Security found that USCIS did not include the protection of controlled technology as part of its process of adjudicating change-of-status applications submitted by foreign nationals in the United States.</p> <p>This section of the Form I-129 was a solution for addressing the issues raised in these two reports.</p>
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<p>Part 8. Preparer's Declaration</p>	<p>USCIS-2005-0030-0235</p>	<p>Comment: The commenter is of the opinion that it is “unnecessary to require affirmation under penalty of perjury that the form was prepared “on behalf of the petitioner” because attorney conduct is governed by state and federal professional conduct rules. The affirmation interferes with the attorneyclient relationship by requiring attorneys to disclose the contents and details of privileged and confidential attorneyclient communication. Unless ordered by a tribunal of competent jurisdiction, an attorney is duty bound to keep confidential the contents of his or her communication with a client. No provision in the INA or regs which prohibits a beneficiary from retaining his or her own counsel to advise and assist a petitioner in the preparation of an I129. Rules of professional conduct may deem such assistance as creating an attorneyclient relationship between the attorney and the petitioner. However, the creation of such putative relationship would not change the essential fact that the attorney prepared the form on behalf of the beneficiary. It is of little relevance on whose behalf the attorney prepared the form and the declaration should be modified.”</p> <p>Response: USCIS has been working closely with the Department of Justice (DOJ) to revise the language on USCIS forms in order to ensure the integrity of the immigration process. Depending on the facts, persons and entities other than the actual petitioner or applicant may be held criminally or civilly liable for misrepresentations, fraud, or false filings made to the U.S. Government in connection with requests for benefits. In this regard, DOJ has asked USCIS to revise the signature and attestation sections on all forms to make it clear that applicants, preparers, interpreters, and representatives all have legal responsibilities with respect to the proper and truthful filing of benefit requests. In certain cases, where a preparer, interpreter, or attorney/accredited representative has been involved in a false or improper filing, petitioners and/or applicants have raised concerns that they did not see the completed form, understand the questions or review the responses included in the form, or did not authorize the attorney, preparer or interpreter to complete the form on their behalf. Accordingly, an affirmation is necessary to ensure that applicants, preparers, and other persons or entities are on notice of their legal responsibilities with respect to the filing of requests for benefits. These requirements are consistent with the rules of professional conduct that govern attorney-client relationships and do not interfere with any of the requirements for protection of privileged communications between an attorney and client.</p>
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Part 8. Preparer's Declaration	USCIS-2005-0030-0231	<p>Comment: Unnecessary to require affirmation under penalty of perjury that the form was prepared “on behalf of the petitioner” because attorney conduct governed by state and federal professional conduct rules. There is no provision in the INA or Title 8 of the Code of Federal Regulations which prohibits a beneficiary of a visa petition from retaining his or her own counsel to advise and assist a petitioner in the preparation of an I-129. The declaration should be modified because it is of little relevance on whose behalf the attorney prepared the form.</p> <p>Response: USCIS has been working closely with the Department of Justice (DOJ) to revise the language on USCIS forms in order to ensure the integrity of the immigration process. Depending on the facts, persons and entities other than the actual petitioner or applicant may be held criminally or civilly liable for misrepresentations, fraud, or false filings made to the U.S. Government in connection with requests for benefits. In this regard, DOJ has asked USCIS to revise the signature and attestation sections on all forms to make it clear that applicants, preparers, interpreters, and representatives all have legal responsibilities with respect to the proper and truthful filing of benefit requests. In certain cases, where a preparer, interpreter, or attorney/accredited representative has been involved in a false or improper filing, petitioners and/or applicants have raised concerns that they did not see the completed form, understand the questions or review the responses included in the form, or did not authorize the attorney, preparer or interpreter to complete the form on their behalf. Accordingly, an affirmation is necessary to ensure that applicants, preparers, and other persons or entities are on notice of their legal responsibilities with respect to the filing of requests for benefits.</p>
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<p>Part 8. Preparer's Declaration</p>	<p>USCIS-2005-0030-0232</p>	<p>Comment: The commenter requests that USCIS simplify the petitioner's declaration by allowing the signatory to simply attest that the answers are truthful: to "attest" that the signatory reviewed the petition with the petitioner, and the petitioner "agreed" is burdensome and impractical. The commenter proposes a requirement that petitioner designates a person to have sufficient knowledge of standing information for preparation of the form and that person would declare agreement with the answers.</p> <p>Response: USCIS has been working closely with the Department of Justice (DOJ) to revise the language on USCIS forms in order to ensure the integrity of the immigration process. Depending on the facts, persons and entities other than the actual petitioner or applicant may be held criminally or civilly liable for misrepresentations, fraud, or false filings made to the U.S. Government in connection with requests for benefits. In this regard, DOJ has asked USCIS to revise the signature and attestation sections on all forms to make it clear that applicants, preparers, interpreters, and representatives all have legal responsibilities with respect to the proper and truthful filing of benefit requests. In certain cases, where a preparer, interpreter, or attorney/accredited representative has been involved in a false or improper filing, petitioners and/or applicants have raised concerns that they did not see the completed form, understand the questions or review the responses included in the form, or did not authorize the attorney, preparer or interpreter to complete the form on their behalf. Accordingly, an affirmation is necessary to ensure that applicants, preparers, and other persons or entities are on notice of their legal responsibilities with respect to the filing of requests for benefits.</p>
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<p>Part 8. Preparer's Declaration</p>	<p>USCIS-2005-0030-0230</p>	<p>Comment: The commenter states that the “[I]anguage in preparer’s declaration is repetitive, confusing, and imposes a burdensome and unnecessary process for preparing and reviewing the I-129 petition. Preparers are already required, under applicable regulations, to attest to the veracity and truth of what is submitted. Concerns about fraud detection/ prevention are covered in the existing regulations. It is beyond the authority of USCIS to stipulate a specific review procedure for attorneys and their clients and require that it be followed. The Preparer’s Declaration impinges on the rights of petitioners and their legal representatives to determine their own legitimate procedures in the preparation of petitions for immigration benefits. Request USCIS remove the following language from the Preparer’s Declaration:</p> <p style="text-align: center;"><i>I completed the form based only on responses the petitioner provided to me. After completing the form, I reviewed it and all of the petitioner’s responses with the petitioner, who agreed with every answer he or she provided for each question on the form, and, when required, supplied additional information to respond to a question on the form.</i></p> <p>In addition, the remaining language of the Preparer’s Declaration should be amended to eliminate repetition and avoid confusion. We suggest that the language be changed to read:</p> <p style="text-align: center;"><i>By my signature, I certify, swear, or affirm, under penalty of perjury, that I prepared this form on behalf of the petitioner, or another individual authorized to sign this form pursuant to form instructions. I prepared this form at his or her request, and with his or her express consent, and I understand that the preparation of this form does not grant the petitioner or beneficiary any immigration status or benefit.”</i></p> <p>Response: USCIS has been working closely with the Department of Justice (DOJ) to revise the language on USCIS forms in order to ensure the integrity of the immigration process. Depending on the facts, persons and entities other than the actual petitioner or applicant may be held criminally or civilly liable for misrepresentations, fraud, or false filings made to the U.S. Government in connection with requests for benefits. In this regard, DOJ has asked USCIS to revise the signature and attestation sections on all forms to make it clear that applicants, preparers, interpreters, and representatives all have legal responsibilities with respect to the proper and truthful filing of benefit requests. In certain cases, where a preparer, interpreter, or attorney/accredited representative has been involved in a false or improper filing, petitioners and/or applicants have raised concerns that they did not see the completed form, understand the questions or review the responses included in the form, or did not authorize the attorney, preparer or interpreter to complete the form on their behalf. Accordingly, an affirmation is necessary to ensure that applicants, preparers, and other</p>
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Part 8. Preparer's Declaration	USCIS-2005-0030-0230	<p>Comment: The commenter states that it is “[u]nclear who is required to complete Part 8. The “Note” at the top of Part 8 states: “If you are an attorney or accredited representative, DO NOT complete this section. Complete the Preparer’s Declaration below.” However, Item #2 instructs accredited representatives to provide the name of their BIA recognized organization and the Preparer’s Declaration is within the referenced section, so this instruction contradicts itself. It is unclear why attorneys or accredited representatives would not complete this section if they are in fact the preparers.”</p> <p>Response: The “Note” was inadvertently placed in the incorrect place on the Form. USCIS has made appropriate changes.</p>
Part 9	USCIS-2005-0030-0230	<p>Comment: The commenter states that it is unclear if the new layout of the “Additional Information About Your Petition for Nonimmigrant Worker” section will improve layout of the comparable section on the current I-129. The new format limits each explanation to seven lines. The commenter recommends retaining the current format which provides more flexibility for petitioners to use this page as they deem necessary to provide adequate and complete information to USCIS.”</p> <p>Response: The new layout of the “Additional Information” page is based on USCIS standardized form changes to help us identify the information that is being added to the petition. As before, additional copies may be made if more space is needed. No changes are being made as a result of this comment.</p>
E Supplement	USCIS-2005-0030-0235	<p>Comment: Same comments about this declaration as about preparer’s declaration.</p> <p>Response: There is no preparer’s declaration on the E supplement.</p>

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<p>Trade Agreement Supplement, Sec. 3</p>	<p>USCIS-2005-0030-0230</p>	<p>Comment: Same comment as Part 8—“Declaration, Signature, and Contact Information of Person Preparing Form, If Other Than Above.”</p> <p>Response: USCIS has been working closely with the Department of Justice’s (DOJ) to revise the language on USCIS forms in order to ensure the integrity of the immigration process. Depending on the facts, persons and entities other than the actual petitioner or applicant may be held criminally or civilly liable for misrepresentations, fraud, or false filings made to the U.S. Government in connection with requests for benefits. In this regard, DOJ has asked USCIS to revise the signature and attestation sections on all forms to make it clear that applicants, preparers, interpreters, and representatives all have legal responsibilities with respect to the proper and truthful filing of benefit requests. In certain cases, where a preparer, interpreter, or attorney/accredited representative has been involved in a false or improper filing, petitioners and/or applicants have raised concerns that they did not see the completed form, understand the questions or review the responses included in the form, or did not authorize the attorney, preparer or interpreter to complete the form on their behalf. Accordingly, an affirmation is necessary to ensure that applicants, preparers, and other persons or entities are on notice of their legal responsibilities with respect to the filing of requests for benefits.</p>
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Trade Agreement Supplement, Sec. 3	USCIS-2005-0030-0232	<p>Comments: Simplify the petitioner’s declaration by allowing the signatory to simply attest that the answers are truthful: to “attest” that the signatory reviewed the petition with the petitioner, and the petitioner “agreed” is burdensome and impractical. Proposes a requirement that petitioner designates a person to have sufficient knowledge of standing information for preparation of the form and that person would declare agreement with the answers.</p> <p>Response: USCIS has been working closely with the Department of Justice’s (DOJ) to revise the language on USCIS forms in order to ensure the integrity of the immigration process. Depending on the facts, persons and entities other than the actual petitioner or applicant may be held criminally or civilly liable for misrepresentations, fraud, or false filings made to the U.S. Government in connection with requests for benefits. In this regard, DOJ has asked USCIS to revise the signature and attestation sections on all forms to make it clear that applicants, preparers, interpreters, and representatives all have legal responsibilities with respect to the proper and truthful filing of benefit requests. In certain cases, where a preparer, interpreter, or attorney/accredited representative has been involved in a false or improper filing, petitioners and/or applicants have raised concerns that they did not see the completed form, understand the questions or review the responses included in the form, or did not authorize the attorney, preparer or interpreter to complete the form on their behalf. Accordingly, an affirmation is necessary to ensure that applicants, preparers, and other persons or entities are on notice of their legal responsibilities with respect to the filing of requests for benefits.</p>
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<p>H Classification Supplement, Section 2, Item 7.a.</p>	<p>USCIS-2005-0030-0236</p>	<p>Comment: The commenter recommends substitution language for Supplement H, Section 3. Specifically, Item 7.a.: USCIS should require a response to this item. Proposed language: <i>You must provide all of the requested information for Item Number 7.a. Did you or do you plan to use a staffing, recruiting, and/or similar placement service of agent to locate the H-2A/H-2B workers that you intend to hire by filing this petition? Yes/No. If yes, list the name and address of all recruiters and agencies service used below. [Followed by spaces for multiple name and address entries and the option to attach an addendum at 7.a.1. and 7.a.2.]</i> Failure to reply must result in a denial of the I-129 petition. A response of “yes” to 7.a. must precipitate a response to 7.a.1. and 7.a.2. Failure to respond to 7.a.1. and 7.a.2 after responding “yes” to 7.a. must result in a denial of the petition. Use of a recruiter and/or staffing agency, and the name and address of that recruiter and/or staffing agency, must be collected by USCIS and should be released to the public. Collection and release of this data will serve the practical purpose of enabling migrant workers to search for legitimate and reputable employment in the United States. The data is essential to transparency in the H-2 programs. Response: USCIS provided clarification to item 7a. As in other places on the form, additional responses or information can be included in Part 9.</p>
<p>H Supp, Section 2, Item 8(a)</p>	<p>USCIS-2005-0030-0230</p>	<p>Comment: Language relating to what does and does not constitute “fees or other compensation” is separated between the two parts to this question and is confusing. The commenter suggests amending the language to read: <i>... The phrase “fees or other compensation” includes, but is not limited to, petition fees, attorney fees, recruitment costs, and any other fees that are a condition of a beneficiary’s employment that the employer is prohibited from passing to the H-2A or H-2B worker by statute or under U.S. Department of Labor rules. “Fees or other compensation” does not include reasonable travel expenses and certain government-mandated fees (such as passport fees) that are not prohibited from being passed to the H-2A or H-2B worker by statute, regulation, or any other law....</i> <i>If yes, list the types and amounts of fees that the worker(s) paid or will pay</i> Response: USCIS will take your suggestion into consideration and make the changes as appropriate.</p>

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<p>H Classification Supplement, Section 2, Item 8.a.</p>	<p>USCIS-2005-0030-0236</p>	<p>Comment: The commenter states that USCIS should separately itemize the types of fees listed in Item 8.a. such that the data can be disaggregated and analyzed. As it is currently written, petitioners would list the types of fees using the terminology of its own choosing, resulting in less useful data. Also, the costs associated with recruitment vary (some workers pay the recruiter/agency a lump sum for the visa, transportation, and room and board during travel to the work site, while other workers pay each cost separately. USCIS should require the petitioner to separately answer “yes” or “no” for each itemized type of fee, and state the amount beside the response. USCIS should separate the terms (1) recruitment fees (paid to a recruiter or staff agency), (2) travel expenses, and (3) transportation costs.</p> <p>Because the ban on payment of fees by H-2B workers arises under the DHS rules rather than the DOL rules, Item 8.a should state ‘under law under U.S. Department of Labor <i>and Department of Homeland Security rules.</i>’”</p> <p>In the section, ‘if yes, list the types and amounts of fee [...]’, USCIS should list <i>all</i> types of fees paid to a third-party recruiter of staffing agency, including transportation costs, travel expenses, and visa fees.”</p> <p>Response: USCIS believes that an itemized list of prohibited fees would be lengthy and make it difficult for petitioners to report fees not included in an itemized list but that could still be considered prohibited. USCIS will not be making any changes as a result of this comment.</p>
<p>H Classification Supplement, Section 2, Item 8.a.</p>	<p>USCIS-2005-0030-0234</p>	<p>Comment: The commenter supports the revisions to the H Classification Supplement to I-129. Specifically, on the questions that relate to whether the applicant, or his or her agent, has charged or plans to charge recruitment fees to H-2A and H-2B temporary guest workers. The commenter believes that the new question more accurately describes which fees are prohibited from being charged and supports changes to require that any recruitment or related fees that workers have paid be listed in the petition.</p> <p>Response: USCIS thanks the commenter for supporting the revisions to the H supplement.</p>
<p>H Classification Supplement, Section 2, Item 8.b.</p>	<p>USCIS-2005-0030-0234</p>	<p>Comment: The commenter supports splitting question 8 into two questions (8.b and 8.c) which allows USCIS to collect better data on the collection of fees in the recruitment process, which is helpful for transparency in the system and the prevention of abuses in the international labor recruitment process.</p> <p>Response: USCIS thanks the commenter for supporting the revisions to question 8.</p>

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<p>H Classification Supplement, Section 2, Item 8.b.</p>	<p>USCIS-2005-0030-0236</p>	<p>Comment: The commenter requests that USCIS add a corollary Item 8.b.1. regarding when the worker was or will be reimbursed. The commenter further requests that USCIS add a corollary 8.b.2. asking if all reimbursement were or will be made “free and clear,” as opposed to reimbursements in the form of a new loan or lien on future wages.</p> <p>Response: If additional documentary evidence regarding the terms and conditions of the reimbursement is needed, USCIS may, in its discretion, issue a Request for Evidence. As such, the proposed language will remain unchanged.</p>
<p>H Classification Supplement, Section 2, Item 8(b) and 8(c)</p>	<p>USCIS-2005-0030-0230</p>	<p>Comment: The commenter states that “[t]hese two items as currently written are confusing and 8(c) appears to contradict itself. They should be amended to read:</p> <p style="padding-left: 40px;">8.b <i>If the workers paid any fee or compensation, were they reimbursed?</i></p> <p style="padding-left: 80px;">Y/N</p> <p style="padding-left: 40px;"><i>If yes, submit evidence of reimbursement</i></p> <p style="padding-left: 40px;">8.c. <i>If the workers agreed to pay a fee that they have not yet paid, was the agreement terminated?</i></p> <p style="padding-left: 80px;">Y/N</p> <p style="padding-left: 40px;"><i>If yes, submit evidence of termination of the agreement.”</i></p> <p>Response: USCIS believes that the question is clear as written and will not be making any change to the form at this time. If the petitioner indicates that any fees were collected, USCIS may, in its discretion, issue a Request for Evidence for additional documentation and/or clarification regarding the terms and conditions of the reimbursement.</p>

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<p>H Classification Supplement, Section 2, Item 9.</p>	<p>USCIS-2005-0030-0234</p>	<p>Comment: The commenter supports the new question in Item 9 but suggests that it could be phrased more affirmatively as to the employer’s responsibilities. The commenter states that “[a]s written there no repercussions for an employer who checks “no”. Also, there is no indication of what factors may lead to denial or revocation of the petition. And, while a denial or revocation of a petition prior to the payment of recruitment fees is an appropriate penalty for an employer charging these fees, there is concern that a denial or revocation of the petition to those workers who have already paid recruitment fees means the worker will lose the chance to recover those fees that they have paid. Workers will have little incentive to come forward to report violations.”</p> <p>The commenter further recommends “DHS require employers to repay any recruitment fees or other forms of compensation and interest accrued and/or paid by the recruited workers. Employers should also be required to pay a penalty to deter future violations of the program’s requirements.</p> <p>Response: Thank you for your comment. Your concerns about DHS requiring employers to repay any recruitment or compensation fees have been noted.”</p> <p>Response: In accordance with 8 C.F.R. 214.2(h)(5)(xi)(A)(4) for H-2A petitions, 8 C.F.R. 214.2(h)(6)(i) (B) for H-2B petitions, and as stated in the filing instructions, if USCIS determines that the petitioner knew or had reason to know that the beneficiary paid any prohibited fees, then the petition will be denied or revoked. Each petition is adjudicated on a case-by-case basis; therefore, if USCIS has reason to believe that the petitioner had knowledge that prohibited fees were collected, then it may issue a Request for Evidence for additional documentation.</p>
<p>H Classification Supplement, Section 2, Item 9</p>	<p>USCIS-2005-0030-0236</p>	<p>Comment: The commenter supports Item 9 because it puts pressure on petitioners to investigate whether fees were paid.</p> <p>Response: USCIS thanks the commenter for supporting the phrasing of Item 9.</p>
<p>H Classification Supplement, Section 2, Item 9.</p>	<p>USCIS-2005-0030-0233</p>	<p>Comment: The commenter supports the inclusion of Item 9 in Section 2, on whether an applicant has made reasonable inquires to determine whether the recruiter it used has collected, or will collect, recruitment fees from workers.</p> <p>Response: USCIS thanks the commenter for supporting the phrasing of the question in Item 9.</p>

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H-1B Data Collection, Section 2, Item 8	USCIS-2005-0030-0230	<p>Comment: The commenter notes that the instruction to ‘answer Item Number 9 of Form I-129’ if they answered no to all of the preceding questions 1 through 8. However, the relevant Item Number 9 is not on Form I-129, but is rather the next question on the H-1B/H-1B1 Data Collection and Fee Supplement. This should be amended to read, ‘If you answered no to all questions, answer the following Item Number 9.’”</p> <p>Response: The form has been modified accordingly for clarity.</p>
H-1B and H-1B1 Data Collection Supp, Sec. 3, Num. Lim Info, Subsec 3, para g	USCIS-2005-0030-0231	<p>Comment: The commenter states that this sections wording is better than the current version regarding those that may have received a cap exempt number versus a cap subject.</p> <p>Response: USCIS thanks the commenter for providing this remark.</p>
H1B Data Collection Supp, Sec 3, Part G	USCIS-2005-0030-0235	<p>Comment: The commenter believes new wording is an improvement as it relates to those that may have received a cap exempt number versus a cap subject.</p> <p>Response: USCIS thanks the commenter for providing this observation.</p>
L Supp, Section 1	USCIS-2005-0030-0231	<p>Comment: The commenter states: “[i]t appears that this section does not request proof of time spent in H or L status via I-94, I-797, unlike the H-Supplement which remains unchanged. This is inconsistent and would possibly require more work for those requesting additional H time or would provoke a Request for Evidence for those that are trying to show L and H time used for an L-1 extension.”</p> <p>Response: USCIS agrees with the commenter, and as a result, USCIS has made edits to the form.</p>
L Supp, Section 1	USCIS-2005-0030-0235	<p>Comment: The commenter states that this section “[d]oes not request proof of time spent in H or L status via I94, I797, unlike the HSupplement which remains unchanged. This is inconsistent and would possibly require more work for those requesting additional Htime or would provoke a Request for Evidence for those that are trying to show L and H time used for an L1 extension.”</p> <p>Response: USCIS agrees with the commenter, and as a result, USCIS has made edits to the form.</p>

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L Supp, Section 1, Item 2	USCIS-2005-0030-0230	<p>Comment: Here, the commenter indicates: “[w]hile we understand that USCIS needs to know how much time the principal beneficiary has spent in H or L status in order to determine the petition validity, the history of the derivative family members is irrelevant to this calculation. We recommend removing this requirement for derivative family members.”</p> <p>Response: USCIS agrees with the commenter in that time spent as an L-2 dependent is irrelevant in determining valid periods of time for an L-1 principal beneficiary. For clarity and consistency, USCIS has edited Section 1, Question 2 of the L Classification Supplement to Form I-129.</p>
L Supp, Section 1, Items 13(b) and 13(c)	USCIS-2005-0030-0230	<p>Comment: The commenter states that “[a]ll other sections of the form reference Part 9 of Form I-129 when the petitioner needs additional space to explain an answer. Items 13(b) and 13(c), however, instruct the petitioner to attach a separate sheet of paper and include the petitioner’s name, the page number, part number, and item number. If this is an error, it should be corrected. If not, it would seem to make more sense for the process to be consistent throughout the form and supplements.”</p> <p>Response: USCIS agrees that questions found in the rest of Form I-129 refer to using the Explanation Page (Part 9) when an extra answer space is needed. For consistency we will edit questions 13(b) and 13(c) of the L Classification Supplement directing applicants to the Explanation Page (Part 9) for additional answer space.</p>
R-1 Supp	USCIS-2005-0030-0231	<p>Comment: The commenter notes that the R-1 supplement has a proposed attestation regarding the authenticity of photocopies. This is the only Form I-129 supplement that has this language. In light of language in the Adjudicator’s Field Manual (“AFM”) Chapter 11-1, this attestation appears unnecessary and overly broad.</p> <p>Response: One of the purposes of this supplement is to ensure that the petitioner is aware of the information and evidence that is required to adjudicate the petition. Petitioners are not expected to read the Adjudicator’s Field Manual. Additionally, the Adjudicator’s Field Manual Chapter 11.1 provides guidance to adjudicators for requesting and/or accepting originals and photocopies. It specifically addresses the authenticity of photocopies to the extent that photocopies of public records must be certified. It does not address the authenticity of non-public records or the requirement to produce exact photocopies of unaltered original documents. The proposed attestation addresses all photocopies and ensures the petitioner is aware of the obligation to submit exact photocopies.</p>

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R-1 Supp	USCIS-2005-0030-0235	<p>Comment: The commenter states that the: “[n]ew attestation for R supplement is greatly expanded. This is the only Form I129 supplement that has language regarding certification of photocopies. AFM discusses these requirements, therefore photocopies language appears unnecessary. The statement is also overly broad regarding release of information and should indicate that USCIS will take care in its use of private information in compliance with the Privacy Act of 1974 and to consult with established codes of Fair Information Practice to balance the need for information to carry forth US immigration laws while protecting privacy. See Executive Office of the President, Office of Management and Budget, Jeffrey D. Zients, Deputy Director for Management and Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Memo M1102, November 3, 2010, entitled: ‘Sharing Data While Protecting Privacy’.”</p> <p>Response: USCIS has made revisions to the Form I-129 and R supplement attestations to address your concerns by deleting this language. Please note that page 28 of the Instructions to Form I-129 provides the USCIS Privacy Act Statement which includes the authorities, purpose, disclosure, and uses of the information obtained in the petition.</p>
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