

INTERIM MEMO FOR COMMENT

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Comment period ends: 07-27-2011

This memo is in effect until further notice.

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

July 7, 2011

PM-602-0040

Policy Memorandum

SUBJECT: Change in Standard Timeframes for Applicants or Petitioners to Respond to Requests for Evidence; Revisions to *Adjudicator's Field Manual (AFM)* Chapter 10.5(b), Chapter 25.2(e)(3), Chapter 38.1(e)(6), and Appendix 10-9; *AFM* Update AD11-36

Purpose

This Policy Memorandum (PM) changes the amount of time U.S. Citizenship and Immigration Services (USCIS) officers may provide an applicant or petitioner to respond to a Request for Evidence (RFE). It amends previous RFE guidance by eliminating the tiered approach to establishing RFE response times and also provides applicants and petitioners responding from outside the United States additional mailing time.

Scope

This PM applies to all USCIS employees.

Authority

Title 8, Code of Federal Regulations (8 CFR) 103.2(b); 8 CFR 103.5a(b).

Background

On April 17, 2007, USCIS published a final rule in the *Federal Register* eliminating the standard 12-week response time previously given to respond to RFEs and permitting USCIS to assign flexible response times for applicants and petitioners to respond to an RFE or to a NOID.¹

On June 1, 2007, USCIS issued a memorandum revising the *AFM* in light of the final rule.² The guidance included the addition of Appendix 10-9 to the *AFM*, which established general timeframes that applicants and petitioners were to be given to respond to RFEs.

Policy

Previous guidance provided USCIS officers the flexibility to determine individual response times for RFEs tailored to the circumstances of each case. However, this delegated flexibility has led to inconsistencies in the RFE process.

Among USCIS's top goals is the initiative to improve consistency in our policies and how they are implemented. This PM seeks to provide greater consistency in the issuance of RFEs by amending the

¹ Removal of the Standardized Request for Evidence Processing Timeframe, 72 FR 19100 (April 17, 2007). The rule became effective on June 18, 2007.

² Removal of the Standardized Request for Evidence Processing Timeframe-Final Rule, 8 CFR 103.2(b). (June 1, 2007).

standard timeframes USCIS will provide for responding to RFEs and by limiting the use of discretion to reduce the response time from the standard timeframes.

The standard timeframes listed in Appendix 10-9 of the *AFM* are amended to include:

- A standard timeframe of 30 days for Form I-539; and
- A standard timeframe of 84 days for all other form types, regardless of whether the request is for initial or additional evidence, or whether the evidence is available in the United States or is obtained from overseas sources.

USCIS officers may reduce the response time from the standard timeframes only after obtaining supervisory concurrence. This discretion should be used on a case-by-case basis when warranted by circumstances as determined by the adjudicator and the supervisor.

The maximum response time for an RFE may not exceed 12 weeks (84 days). However, when an RFE is served by mail, USCIS officers should include additional mailing time for the RFE to reach the applicant/petitioner and for the response to reach USCIS. The standard mailing time established by regulation is three days. 8 CFR 103.5a(b). As a matter of policy, USCIS has determined that the mailing time should be longer when the applicant or petitioner is residing outside the United States. Appendix 10-9 of the *AFM* is amended to include appropriate mailing times in addition to standard response times.

This PM does not apply to asylum applications or applications for relief under Section 203 of the Nicaraguan Adjustment and Central American Relief Act (“NACARA 203”). Pursuant to 8 CFR 208.9(e), an asylum officer may, as a matter of discretion, grant a brief extension of time following an interview during which the asylum applicant may submit additional evidence. A similar provision exists for NACARA 203 applicants. See 8 CFR 240.67(b)(6).

Implementation

The *AFM* is revised as follows:

☞ (1) Chapter 10.5(b)(2) and (3) are revised as follows:

(b) Flexible Response Times Permitted When Requesting Additional Evidence.

* * *

(2) Flexible Response Times. [Chapter 10.5(b)(2) update effective 7/7/2011.]

The regulations permit USCIS to assign flexible times for applicants and petitioners to respond to a Request for Evidence (RFE). The significant amendments to the RFE process appear in **8 CFR 103.2(b)(8), (b)(11), and (b)(13)**, revised *AFM* **Chapters 10.5(a), (b)**, and *AFM Appendix 10-9*. Appendix 10-9 sets forth general timeframes for applicants or petitioners to respond to RFEs.

To ensure consistency, adjudicators must follow the standard timeframes, but may reduce the response time on a case-by-case basis after obtaining supervisory concurrence. This

discretion should only be used when warranted by circumstances as determined by the adjudicator and the supervisor.

(3) Maximum Response Times.

The maximum response time is 12 weeks for an RFE. Extensions of time to submit evidence beyond the 12-week limit for RFEs or the 30-day period for NOIDs are not permitted. The regulations state that when an RFE is served by mail, the response is timely filed if it is received no more than three days after the due date. **8 CFR 103.5a(b)**. USCIS has determined that as a matter of policy that additional mailing time should be given to applicants/petitioners residing outside the United States. See **Appendix 10-9** for standard mailing times.

☞ (2) Chapter 25.2(e)(3) is revised as follows:

(3) Request for Evidence. [Chapter 25.2(e)(3) update effective 7/7/2011.]

In situations where all required initial evidence is submitted but does not establish eligibility, USCIS may deny the petition for ineligibility. **8 CFR 103.2(b)(8)(iii)**.

Alternatively, USCIS may request more evidence. *AFM Appendix 10-9* sets general timeframes for applicants or petitioners to respond to RFEs. Adjudicators must follow the standard timeframes, but may reduce the response time on a case-by-case basis after obtaining supervisory concurrence. This discretion should be used when warranted by circumstances as determined by the adjudicator and the supervisor. The maximum time to respond, however, cannot exceed 12 weeks. **8 CFR 103.2(b)(8)(iv)**. See *AFM Chapter 25.2* for instructions regarding receipt of a conditional resident's response to an RFE.

If an applicant or petitioner does not respond to an RFE by the required date, USCIS may summarily deny the application or petition as abandoned or deny the application or petition on the record. Where applicable, USCIS should deny the application or petition for both reasons and explain the basis for both an abandonment and substantive denial.

Note

See **Chapter 10.5** for a detailed explanation of requests for evidence and responses to a notice to deny.

☞ (3) Chapter 38.1(e)(6) is revised as follows:

(6) Request for Evidence. [Chapter 38.1(e)(6) update effective 7/7/2011.]

If the evidence submitted with the initial application was incomplete and did not support an approval, USCIS has decided as a matter of policy that generally it will send a Request for Evidence (RFE) to the applicant or petitioner. If the petitioner or applicant has a representative, USCIS will send the RFE to the representative. However, the representative must have submitted a Form G-28, Notice of Appearance of Attorney or Legal Representative; otherwise, USCIS will be unable to send the RFE to the representative. USCIS may deny outright without RFE on a case-by-case basis upon obtaining supervisory concurrence.

The request for evidence must indicate the deadline for response. See **8 CFR 103.2(b)(8)**. For RFEs, adjudicators must follow the standard timeframes listed in **Appendix 10-9**, but may reduce the response time on a case-by-case basis after obtaining supervisory concurrence. This discretion should only be used when warranted by circumstances as determined by the adjudicator and the supervisor.

The maximum response time for a request for evidence cannot exceed 12 weeks, and for a notice of intent to deny cannot exceed 30 days. This does not include additional time provided when the RFE is served by mail. See **8 CFR 103.5a(b)** and Appendix 10-9. Additional time to respond to a request for evidence may not be granted. **8 CFR 103.2(b)(8)**.

Note
See Chapter 10.5 for a detailed explanation of requests for evidence and responses to a notice to deny.

(4) Appendix 10-9 is revised as follows:

Appendix 10-9 Standard Timeframes for Applicants or Petitioners to Respond to Requests for Evidence (RFE) [Appendix effective 7/7/2011.]

In compliance with **8 CFR 103.2(b)(8)**, **(11)**, and **(13)** the guidelines below provide general timeframes for applicants or petitioners to respond to RFEs. The maximum response time for an RFE remains 12 weeks (84 days).

Due to the relatively short processing times required by the Form I-539 Request to Extend/Change Nonimmigrant Status, a response time of only 30 days will apply to RFEs related to Form I-539 filings.

The standard response time for all other form types is 84 days. Adjudicators may reduce the standard response time only after obtaining supervisory concurrence. This discretion should be used on a case-by-case basis when warranted by circumstances as determined by the adjudicator and the supervisor.

In any case where an RFE is served by mail, the regulations already provide an applicant or petitioner an additional three days to respond. **8 CFR 103.5a(b)**. As a matter of policy, USCIS has determined that mailing time should be greater for applicants and petitioners residing outside the United States. The table below includes additional mailing time that should be added to the prescribed response time.

Circumstance	Standard Response Time (calendar days)	Additional Mailing Time When Residing	
		In U.S.	Outside U.S.
To submit evidence that Form I-539 (extension of stay or change in status) requires.	30	3	N/A
To submit evidence for all other form types regardless of			

whether the request is for initial or additional evidence, or whether the evidence is available in the United States or from overseas sources.	84	3	14
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- ☞ (5) The *AFM* **Transmittal Memoranda** button is revised by adding, in numerical order, a new entry to read:

AD11-36 7/7/2011	Chapter 10.5(b)(2) and (3); Chapter 25.2(e)(3); Chapter 38.1(e)(6); and Appendix 10-9	Amends standard timeframes for applicants and petitioners to respond to requests for evidence, limits the discretion to reduce the response time from the standard timeframe, and clarifies when additional time is given in response to a request served by mail.
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Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to Service Center Operations.

