

Comments are requested concerning the proposed establishment of the national marketing quotas for the subject tobaccos at the following levels:

(1) *Fire-Cured (Type 21) Tobacco*. The 1998-crop national marketing quota for fire-cured (type 21) tobacco will range from 2.4 to 3.0 million pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.2.

(2) *Fire-Cured (Types 22-23) Tobacco*. The 1998-crop national marketing quota for fire-cured (types 22-23) tobacco will range from 43.0 to 47.0 million pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.1.

(3) *Dark Air-Cured (Types 35-36) Tobacco*. The 1998-crop national marketing quota for dark air-cured (types 35-36) tobacco will range from 10.0 to 11.0 million pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.1.

(4) *Virginia Sun-Cured (Type 37) Tobacco*. The 1998-crop national marketing quota for Virginia sun-cured (type 37) tobacco will range from 150,000 to 165,000 pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.1.

(5) *Cigar-Filler and Binder (Types 42-44 and 53-55) Tobacco*. The 1998-crop national marketing quota for cigar-filler and binder (types 42-44 and 53-55) tobaccos will range from 8.0 to 8.8 million pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.1.

(6) *Maryland (Type 32) Tobacco*. The national acreage factor for the 1998 MY will be 1.0 and the national marketing quota will be approximately 6.0 million pounds.

(7) *Pennsylvania Filler (Type 41) Tobacco*. The national acreage factor for the 1998 MY will be 1.0 and the national marketing quota will be approximately 1.4 million pounds.

(8) *Cigar-Binder (Types 51-52) Tobacco*. The national acreage factor for the 1998 MY will be 1.0 and the national marketing quota will be approximately 700,000 pounds.

Accordingly, comments are requested with respect to the foregoing issues.

List of Subjects in 7 CFR part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

Accordingly, it is proposed that 7 CFR part 723 be amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311-1314, 1314-1, 1314b, 1314b-1, 1314b-2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372-75, 1421, 1445-1, and 1445-2.

2. Section 723.113 is amended by adding paragraph (f) to read as follows:

§ 723.113 Fire-cured (type 21) tobacco.
* * * * *

(f) The 1998-crop national marketing quota will range from 2.4 million pounds to 3.0 million pounds.

3. Section 723.114 is amended by adding paragraph (f) to read as follows:

§ 723.114 Fire-cured (types 22-23) tobacco.
* * * * *

(f) The 1998-crop national marketing quota will range from 43.0 million pounds to 47.0 million pounds.

4. Section 723.115 is amended by adding paragraph (f) to read as follows:

§ 723.115 Dark air-cured (types 35-36) tobacco.
* * * * *

(f) The 1998-crop national marketing quota will range from 10.0 million pounds to 11.0 million pounds.

5. Section 723.116 is amended by adding paragraph (f) to read as follows:

§ 723.116 Sun-cured (type 37) tobacco.
* * * * *

(f) The 1998-crop national marketing quota will range from 150,000 to 165,000 pounds.

6. Section 723.117 is amended by adding paragraph (f) to read as follows:

§ 723.117 Cigar-filler and binder (types 42-44 and 53-55) tobacco.
* * * * *

(f) The 1998-crop national marketing quota will range from 8.0 million pounds to 8.8 million pounds.

7. Section 723.119 is added (a) to read as follows:

§ 723.119 Maryland (type 32) tobacco.

(a) The 1998-crop national marketing quota will range between 5.0 million pounds to 7.0 million pounds.

(b) [Reserved]

8. Section 723.120 is added (a) to read as follows:

§ 723.120 Pennsylvania filler (type 41) tobacco.

(a) The 1998-crop national marketing quota will range between 1.3 million pounds to 1.5 million pounds.

(b) [Reserved]

9. Section 723.121 is added (a) to read as follows:

§ 723.121 Cigar binder (type 51-52) tobacco.

(a) The 1998-crop national marketing quota will range from 600,000 pounds to 1.0 million pounds.

(b) [Reserved]

Signed at Washington, DC on January 28, 1998.

Keith Kelly,

Administrator, Farm Service Agency.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 274a and 299

[INS No. 1890-97]

RIN 1115-AE94

Reduction in the Number of Acceptable Documents and Other Changes to Employment Verification Requirements

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended existing law by eliminating certain documents currently used in the employment eligibility verification (Form I-9) process. This rule proposes to shorten the list of documents acceptable for verification. Currently, newly hired individuals may choose from among 29 documents to establish their identity and eligibility to work in the United States. The proposed rule cuts that number approximately in half. In addition, the proposed rule clarifies and expands the receipt rule, under which individuals may present a receipt instead of a required document in certain circumstances. It also explains that employers may complete the Form I-9 before the time of hire or at the time of hire, so long as they have made a commitment to hire and provided that the employer completes the Form I-9 at the same point in the employment process for all employees. The proposed rule also details reverification requirements and includes a proposal for a new employment eligibility reverification form (Form I-9A), adds the Federal Government to the definition of "entity," and clarifies the Immigration and Naturalization Service's (Service or INS) subpoena authority. In addition to making those changes, the Service proposes to restructure the rule to make it easier to

understand, use, and cite. A copy of the draft Form I-9, which includes the proposed Form I-9A and an expanded instruction sheet, is being published as an attachment to this rule. This rule is intended to simplify and clarify the verification requirements.

DATES: Written comments must be submitted on or before April 3, 1998. Comments received after this date will be considered if it is practical to do so, but the Service is able to ensure consideration only for comments received on or before this date.

ADDRESSES: *Written comments:* Please submit written comments, one original and two copies, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1890-97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

To assist reviewers, where possible, comments should reference the specific section or paragraph which the comment addresses. Although this is not required, it would assist reviewers if, in addition to the requested copies, a copy of the comments is provided on a floppy disk in plain text or WordPerfect 5.1 format. Written comments should be specific, should be confined to issues pertinent to the rule, and should explain the reason for any recommended change.

Electronic comments: With this proposed rule, the Service is testing for the first time the possibility of accepting comments electronically. Comments may be sent using electronic mail (email) to: I9INFO@usdoj.gov. The need to submit copies of the comments is waived for comments submitted by email. Electronically filed comments that conform to the guidelines of this paragraph will be considered part of the record and accorded the same treatment as comments submitted on paper. Comments should reference INS No. 1890-97 in the subject line and the body of the message. The comments should appear either in the body of the message or in a WordPerfect 5.1 attachment. The Service cannot guarantee consideration of attachments submitted in other formats. Comments submitted electronically must also contain the sender's name, address, and telephone number for possible verification.

FOR FURTHER INFORMATION CONTACT: Marion Metcalf, Policy Analyst, HQIRT, 425 I Street NW., Washington, DC, 20536; (202) 514-2764; or email at

metcalfm@justice.usdoj.gov. Please note that the email address is for further information only and may not be used for the submission of comments.

SUPPLEMENTARY INFORMATION:

Why is the Service Proposing These Changes?

The Service is proposing these changes in response to recent legislation, IIRIRA, and as a result of an ongoing review which was triggered by the rule's having been in effect for 10 years. Many of the proposed changes represent the culmination of a long-term effort to reduce the number of documents acceptable for employment verification.

Which IIRIRA Provisions Does This Rule Implement?

IIRIRA, enacted on September 30, 1996, makes several amendments to the employer sanctions provisions of section 274A of the Act. This rule proposes to implement the amendments in:

- (1) Section 412(a) of IIRIRA, which requires a reduction in the number of documents that may be accepted in the employment verification process;
- (2) Section 412(d) of IIRIRA, which clarifies the applicability of section 274A of the Act to the Federal Government; and
- (3) Section 416 of IIRIRA, which clarifies the Service's authority to compel by subpoena the appearance of witnesses and the production of evidence prior to the filing of a complaint.

What About the Other Employment-Related IIRIRA Amendments?

This is one of four rules the Service is proposing to implement IIRIRA amendments to section 274A of the Act. In addition to this rule, the Service is developing and will publish proposed rules to:

- (1) Implement changes to the application process for obtaining employment authorization from the Service. The proposed rule will include a revision to the Application for Employment Authorization, Form I-765, revisions to Subpart B of Part 274a, and employment verification requirements for F-1 students authorized to work on campus;
- (2) Implement section 411(a) of IIRIRA, which allows employers who have made a good faith attempt to comply with a particular employment verification requirement to correct technical or procedural failures before such failures are deemed to be violations of the Act;

(3) Implement section 412(b) of IIRIRA, which applies to employers that are members of an association of two or more employers. For an individual who is a member of a collective bargaining unit and is employed under a collective bargaining agreement between one or more employee organizations and the multi-employer association, the employer can use a Form I-9 completed by a prior employer that is a member of the same association, within 3 years (or, if less, the period of time that the individual is authorized to work in the United States).

What is the Ten-Year Review the Service Is Conducting?

Section 610 of the Regulatory Flexibility Act (RFA) requires agencies to review rules which have a significant economic impact on a substantial number of small entities every 10 years. Service regulations at 8 CFR 274a, Subpart A—Employer Requirements, fall under this review requirement.

Section 610 of the RCA requires a review of regulations "to minimize any significant economic impact of the rule on a substantial number of small entities in a matter consistent with the stated objectives of applicable statutes." The RFA requires consideration of five factors: (1) Continued need for the rule; (2) nature of complaints or comments received from the public; (3) complexity of the rule; (4) extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with State and local governmental rules; and (5) length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

The Service concluded that it would be in the public interest to conduct the required review in conjunction with implementing the IIRIRA amendments. By coordinating the publication of this notice with the publication of a proposed rule, the Service can give the public a clearer indication of the kinds of changes under consideration and provide an opportunity to submit a single set of comments. The Service began by conducting an internal review of the regulations at 8 CFR part 274a. The Service reviewed past public comment, questions asked of the Service's Office of Business Liaison, issues surfaced by field offices, and similar sources. Through this process, the Service identified areas in the regulations for reconsideration. The results of that internal review are reflected in the proposed rule. This proposed rule, therefore, reflects a

comprehensive reinvention effort, including a restructuring and other changes intended to address concerns raised by the public during the 10 years that these requirements have been in effect.

How Does This Rule Relate to the Service's Earlier Document Reduction Proposals?

The Immigration Reform and Control Act (IRCA), enacted in 1986, amended the Act to require persons or entities to hire only persons who are eligible to work in the United States. The Act, as amended, requires persons or entities to verify the work-eligibility and identity of all new hires. The Employment Eligibility Verification form, Form I-9, was designated for that purpose. Newly hired individuals must attest to the status that makes them eligible to work and present documents that establish their identity and eligibility to work. Employers, and recruiters or referrers for a fee (as defined in section 274A(a)(1)(B)(ii) of the Act and 8 CFR 274a.2(a)), must examine the documents and attest that they appear to be genuine and to relate to the individual. They may not specify a document or combination of documents that the individual must present. To do so may violate section 274B of the Act.

The statutory framework, currently implemented by regulation at 8 CFR 274a.2, provides for three lists of documents: documents that establish both identity and employment eligibility (List A documents), documents that establish identity only (List B documents), and documents that establish work eligibility only (List C documents).

When the law was new, a consensus emerged that a long, inclusive list of documents would ensure that all persons who are eligible to work could easily meet the requirements. When the Service first published implementing regulations in 1987, the Supplementary Information noted that List B, in particular, had been expanded in response to public comment. As early as 1990, however, there was evidence that some employers found the list confusing. In its third review of the implementation of employer sanctions, the General Accounting Office (GAO) reported that employer confusion over the "multiplicity" of acceptable documents contributed to discrimination against authorized workers. See *Immigration Reform: Employer Sanctions and the Question of Discrimination*, March 29, 1990, General Accounting Office (GAO/GGD-90-62).

The first step the Service took to correct this problem was to ensure that

the complete list of documents appeared on the Form I-9 when the form was revised in 1991. In 1993, the Service published a proposed rule to reduce the number of documents acceptable for verification. That proposed rule eliminated numerous identity documents from List B and two employment eligibility documents from List C. Response to the proposed rule among the approximately 35 comments was mixed. Some commenters expressed support for the changes. Others questioned the need to reduce the lists, suggesting that confusion over the lists had been addressed by listing all the documents on the Form I-9.

In 1995, the Service published a supplement to the proposed rule. The supplement proposed a few additional changes to the lists of documents and responded to public comments concerning updating and reverification procedures for the Form I-9. The supplement received only five public comments.

The legislative history for IIRIRA indicates that Congress believed that the changes proposed in the proposed rule and supplement did not go far enough, stating:

The number of permissible documents has long been subject to criticism. The INS published a proposed regulation in 1993 (with a supplement published on June 22, 1995) to reduce the number of documents from 29 to 16. This proposal, however, does not reflect the consensus of opinion that documents should be reduced even further, and that documents that are easily counterfeited should be eliminated entirely. (See H.R. Rep. No. 104-469, at 404-05 (1996).)

Congress recognized that the Service's ability to reduce the list of documents further was constrained by the number of documents listed in the law. In IIRIRA, Congress eliminated several documents while giving the Attorney General discretion to amend the list by regulation. These changes are discussed in more detail in the sections pertaining to the proposed lists of acceptable documents.

On September 4, 1996, the Service published a partial final rule at 61 FR 46534 which added the Employment Authorization Document, Form I-766 (the I-766 EAD), a new, counterfeit-resistant card, to List A. The Service began to issue the I-766 EAD in February 1997. The final rule did not provide sunset dates for any existing List A documents. It did, however, reinstate a provision at 8 CFR 274a.14, which had been stayed and suspended, and that terminated miscellaneous employment authorization documentation issued by the Service

prior to June 1, 1987. The latter step was necessary because in the years prior to IRCA, some of the temporary, non-standard employment authorization documents issued by the Service did not bear an expiration date. Although the Service believes that few, if any, individuals were still in 1996 relying upon pre-1987 temporary documents, this action ensures that such documents are no longer valid.

Comments in response to both the 1993 and 1995 proposals asked the Service to delay publication of a final rule, citing the potential for congressional action. This proposed rule implements section 412(a) of IIRIRA and is separate from the 1993 proposed rule and 1995 supplement. The 1993 proposed rule and 1995 supplement will not be finalized.

On September 30, an interim rule was published in the Federal Register at 62 FR 5100. The interim rule was a stopgap measure, required by the effective date provision for section 412(a) of IIRIRA. The amendments to the list of documents were to take effect "with respect to hiring (or recruitment or referral) occurring on or after such date (not later than 12 months after the date of enactment of [IIRIRA]) as the Attorney General shall designate." Because 12 months after the date of enactment of IIRIRA was September 30, 1997, the interim rule designated September 30, 1997, as the effective date for the amendments. The goal of the interim rule was to maintain the status quo to the extent possible under the IIRIRA document provision. On October 6, 1997, President Clinton signed legislation Pub. L. 105-54 extending the deadline for the designation of the effective date from 12 months to 18 months. Congress and the administration took this action in the interest of minimizing disruption and confusion in the business community. The Service considered withdrawing the interim rule. It decided, however, that the goal of minimizing confusion was better served by leaving the interim rule in place. The Service is withholding enforcement of violations related to the changes while the interim rule is in place.

What Changes are Made by This Proposed Rule?

This proposed rule contains provisions to implement three IIRIRA sections and other amendments to subpart A of part 274a. It also proposes to restructure the regulation to make it easier to use and cite. The Provisions currently contained in subpart A are proposed to be reorganized into the following sections.

Section 274a.1 Definitions.

Section 274a.2 Why is employment verification required and what does it involve?

Section 274a.3 What documents are acceptable for employment verification?

Section 274a.4 How long are employers and recruiters or referrers required to retain the Form I-9 and what must be retained with it?

Section 274a.5 Under what circumstances may employers and recruiters or referrers rely on a Form I-9 that an individual previously completed?

Section 274a.6 What happens when the Government asks to inspect Forms I-9?

Section 274a.7 What is the prohibition on hiring or contracting with unauthorized aliens and what defense can be claimed?

Section 274a.8 What are the requirements of state employment agencies that choose to verify the identity and employment eligibility of individuals referred for employment by the agency?

Section 274a.9 Can a person or entity require an individual to provide a financial guarantee or indemnity against potential liability related to the hiring, recruiting, or referring of the individual?

Section 274a.10 How are investigations initiated and employers notified of violations?

Section 274a.11 What penalties may be imposed for violations?

This reorganization is intended to make the regulation easier to use, understand, and cite. For example, the paragraph that explains that a parent or guardian may attest to the identity of a minor under 18 who cannot present an identity document is currently found at 8 CFR 274a.2(b)(1)(v)(B)(3). The citation for this paragraph becomes 8 CFR 274a.3(b)(2) in the proposed reorganization, a much shorter citation. A table providing a cross-reference from the new to the old sections appears at the end of this supplementary information section for ease of reference.

The Service welcomes comment on this restructuring and suggestions for other ways to make the regulation easier to use and understand. The Service recognizes the widespread impact of this regulation and is committed to making the requirements as straightforward as possible. The public is invited to submit alternative outlines for consideration or to suggest other ways to approach the restructuring.

The Service has taken several steps to adopt a "plain English" approach to this regulation. This effort was focused more intensely on the verification provisions currently at § 274a.2 than on the remainder of the regulation, and the Service is open to comments concerning whether additional changes would be helpful. In addition, the public is encouraged to comment on the practice of using question-and-answer format in

the regulation. The proposed rule states the section headings in question form. The Service seeks comments on whether this practice is useful to persons who use the regulation and whether it should be extended to subheadings.

In addition, this proposal encompasses substantive changes intended to:

(1) Include the Federal Government in the definition of "entity;"

(2) Clarify the definition of "recruit for a fee;"

(3) Clarify the timing permitted for completion of the Form I-9;

(4) Specify reverification requirements, in response to public comment received on the 1993 proposed document reduction rule and 1995 supplement;

(5) Clarify and expand the receipt rule, under which work-eligible individuals who are unable to present a required document may present a receipt under certain circumstances;

(6) Shorten the list of documents acceptable for verification;

(7) Require the attachment and retention of copied documentation to the Form I-9; and

(8) Add a reference to the Service's authority to compel by subpoena the attendance of witnesses and production of evidence prior to the filing of a complaint.

The remainder of this supplementary information describes the changes in the order in which they appear in the proposed rule.

Section 274a.1—Definitions

Entity

The employer sanctions provisions apply to persons and entities. Section 412(d) of IIRIRA includes any branch of the Federal Government in the term "entity." Accordingly, this proposed rule amends the definition of "entity" currently in the regulations at 8 CFR 274a.1(b) to include the Federal Government.

Recruit for a Fee

The proposed rule amends the definition of the term "recruit for a fee" at 8 CFR 274a.1(e) to remove overlap between the definitions of "recruit for a fee" and "refer for a fee." Currently, the definition of "recruit for a fee" includes the act of soliciting a person, as well as the act of referring a person, with the intent of obtaining employment for that person. Thus, for a person or entity to be deemed to be recruiting, the person or entity must both solicit a person and refer that person. This overlap clouds the distinction between the two terms that is carefully maintained in the Act.

The amendment eliminates the overlap by limiting the definition of "recruit for a fee" to the act of soliciting a person for a fee with the intent of obtaining employment for that person.

Recruiter or Referrer for a Fee

The proposed rule adds to 8 CFR 274a.1 a definition for the term "recruiter or referrer for a fee." This language is being moved from 8 CFR 274a.2(a) and does not represent a substantive change.

Employer

The definition of "employer" at 8 CFR 274a.1(g) remains unchanged. However, language from this definition pertaining to an agent or anyone acting directly or indirectly in the interest of the employer is currently repeated in § 274a.2 in certain instances where the term "employer" is used. This rule eliminates such language because it is already a part of the definition of employer and, therefore, unnecessary to repeat.

Section 274a.2—Why is Employment Verification Required and What Does It Involve?

This section now contains a discussion of why verification must be completed on Form I-9, an overview of the verification process, specifications of the time for completing the Form I-9, and reverification requirements.

This rule proposes to amend the general discussion in 8 CFR 274a.2(a) introducing the employment verification requirements in several respects. As proposed, the rule:

(1) Adds references to a form proposed for reverification, the Employment Eligibility Reverification form, Form I-9A. This proposal is discussed in further detail in the reverification discussion;

(2) Adds the information that the Form I-9 may now be downloaded from the Service World Wide Web site; and

(3) Updates the discussion of the beginning date for the verification requirements in 1987.

Section 274a.2(b) previously covered all of the verification process. It now contains only an overview of the process and sets forth the basic requirements for completing Form I-9. It contains language reinforcing that the employee has the choice of which of the acceptable documents to present.

What Are the Requirements for Preparers and Translators?

The rule proposes to simplify the requirements for preparers and translators who assist employees in completing section 1 of the Form I-9.

Current regulations provide that preparers or translators must read the Form I-9 to the individual. The rule proposes to amend the current regulations by providing that the preparer or translator must provide such assistance as is necessary for the individual to understand and complete the form. This change provides needed flexibility for preparers and translators to adequately assist individuals completing section 1 of the Form I-9.

What Are the General Requirements for Documents That May Be Presented in the Verification Process?

The proposed rule includes the statement that only original, unexpired documents that appear on their face to be genuine and to relate to the individual presenting the documents can be accepted by employers and recruiters or referrers for a fee. These requirements apply to all three lists of documents, as well as to acceptable receipts. Currently, the regulations permit use of expired United States passports and expired identity documents. The proposed rule will require any document presented to be unexpired.

Why Is the Service Proposing To Permit Only Unexpired Documents in All Cases?

The Service notes that many states have taken steps to improve the integrity of their document-issuance procedures and the fraud-resistance of the documents they issue. The United States Department of State has taken similar steps with respect to passport issuance. If individuals are allowed to present expired documents, the verification process gains no benefit from those measures. The Service believes that the integrity of the verification process will be improved by a requirement that employees present only unexpired documents.

The Service recognizes that the requirement that individuals present unexpired documents may impose a cost on persons seeking employment. The Service anticipates and encourages public comment on this point. The Service is especially interested in the views of employers and recruiters or referrers for a fee concerning whether such a requirement simplifies verification for them, and of persons involved in assisting welfare recipients in transitioning to work concerning the burden imposed by the requirement. To that end, what follows is some of the analysis underlying our decision.

Replacing an expired United States passport is expensive (\$55, plus an additional \$30 for expedited service).

Because a passport remains valid for 10 years, however, some employers have questioned whether an expired passport is a reliable identification document. They note that a person's appearance can change a great deal in 10 years. In addition, the Service does not believe that continuing to permit employees to present expired passports would be of help to most low income individuals, those for whom the cost of replacement documents would be the most serious issue, because they would be unlikely to have obtained a passport in the first place. Finally, the Service believes that most employers would prefer a simple requirement that documents be unexpired to a list that included exceptions to the rule.

The Service also researched the cost of obtaining an identity document in 10 states representing a wide range geographically and in population size. The cost of an identification card was the primary focus, because an individual who needs to drive must have an unexpired driver's license for that purpose, and otherwise an individual would not need to obtain a driver's license solely for verification purposes. In all but one of the states contacted, the cost of an identification card is lower than the cost of a driver's license. The charge for the card in those states ranges from \$4 to \$15 and averages around \$10. In four states, the identification card does not expire, so it represents a one-time cost and the requirement that documents be unexpired would not be an issue.

§ 274a.2(c)—Time for Completing Form I-9

This section states when the Form I-9 must be completed, with separate paragraphs discussing employers, hires for duration of less than 3 days, recruiters and referrers, and receipts.

May an Employer Require Completion of Form I-9 Before an Employee Starts To Work? Must an Employer Always Give Employees 3 Days To Present Documentation?

This section contains one addition pertaining to when the Form I-9 must be completed. The regulations require section 1 of the Form I-9 to be completed by the individual at the time of hire and section 2 of the Form I-9 to be completed by the employer, or recruiter or referrer for a fee, within 3 business days of the date of hire (unless the duration of employment is less than 3 business days).

Current regulations are silent as to whether an employer, or recruiter or referrer for a fee, may complete the Form I-9 prior to the date that the

individual is hired. In the past, employers have asked if they are permitted to require individuals to present the necessary documentation at the time of hire rather than within 3 business days of the hire. Service policy has been stated in the *Handbook for Employers*, the M-274. The *Handbook for Employers* states that an employer may complete the Form I-9 before the day that an individual starts work, but after the individual has been offered employment and has accepted the job, provided that the employer completes the Form I-9 at the same point in the employment process for all employees. The proposed rule incorporates in the regulations this longstanding Service interpretation of the employment verification requirements. The proposed rule permits the employer, or recruiter or referrer for a fee, to complete the Form I-9 prior to the date that an individual begins work, so long as the Form I-9 is completed after the hiring commitment is made and this practice is uniformly applied to all employees.

Section 274a.2(d)—Reverification of Employment Eligibility When Employment Authorization Expires

Current regulations require employers and recruiters or referrers for a fee to reverify on the Form I-9 if an individual's employment authorization expires. Reverification on the Form I-9 must occur no later than the date work authorization expires. The Service receives numerous questions from the public concerning this requirement. In response to questions and comments, the Service is attempting to clarify the reverification requirements in this proposed rule.

What Is the Form I-9A?

The Service proposes creation of the Form I-9A as a supplement to the Form I-9 which may be used for reverification. Form I-9A is structured similarly to the Form I-9, in that it has a section to be completed by the employee, a preparer/translator block, and a section to be completed by the employer. Form I-9A is shorter, however, containing only the information needed for reverification. The form provides blocks for two reverifications and may be duplicated as needed.

Why Is the Service Proposing Creation of Form I-9A?

The Service does not seek to impose an increased burden on the public by proposing this supplemental form. Rather, the Service is attempting to respond to earlier comments from employers. Currently, the updating and

reverification section on the Form I-9 contains an attestation for the employer only. In response to the 1993 proposed rule, several employers expressed the belief that the employee also should be required to attest to his or her continuing eligibility to be employed. This suggestion was incorporated in the Service's 1995 supplement. Adding an employee attestation to the updating and reverification section, however, also made it necessary to add a preparer/translator block. The result was a form that was crowded and difficult to complete. The Service considered simply requiring employers to complete a new Form I-9 when they reverified. Before doing so, however, the Service wished to obtain suggestions from employers concerning whether a reverification form would be more convenient. It seemed possible that a reverification form would help employers better understand when reverification is—and is not—required. For example, some employers apparently reverify identity documents when they expire, even though this is not required. Form I-9A provides no space for entering information about identity documents, which helps to reinforce that they need not be reverified.

Although Form I-9A is intended to simplify reverification, the Service seeks comment on whether employers would prefer to use the Form I-9 for reverification as well as verification at the time of hire. The proposed rule makes it clear that employers may elect to either use Form I-9A or complete a new Form I-9 for verification. The Service would appreciate comment on whether employers have a preference. If the comments reveal a strong and clear preference to use Form I-9 for reverification, and against creation of an additional form, the Service will not promulgate Form I-9A.

Who Is Exempt From Reverification?

The proposed rule also makes it clear that reverification does not apply to United States citizens or nationals or to lawful permanent residents. There is one exception: lawful permanent residents who present a foreign passport with a temporary I-551 stamp must present the actual Form I-551 when the stamp expires. However, under no other circumstance is reverification necessary for lawful permanent residents, even if their Alien Registration Receipt Card or Permanent Resident Card, Form I-551 expires or they naturalize.

How Does an Employer Know When Work Authorization Expires?

The proposed rule also states that an expiration date for work authorization, triggering the reverification requirement, may appear in either section 1 or section 2 of the Form I-9 or Form I-9A. Some employers have expressed uncertainty about whether they are responsible for information in both sections of the form.

Section 274a.3—What Documents Are Acceptable for Employment Verification?

To implement section 412(a) of IIRIRA, and meet the Service's longstanding document-reduction objectives, this rule proposes to amend the current regulations governing the lists of documents acceptable in the employment verification process.

Section 274a.3(a)—Documents That Establish Both Identity and Employment Authorization (List A)

How Does IIRIRA Affect List A Documents?

Section 412(a) of IIRIRA amends section 274A(b)(1)(B) of the Act, which governs the documents that individuals may present to establish both identity and employment eligibility (List A). Section 412(a) of IIRIRA eliminates three documents from the statutory list: (1) Certificate of United States citizenship; (2) certificate of naturalization; and (3) an unexpired foreign passport with an endorsement that indicates eligibility for employment. The documents remaining on the list by statute are: a United States passport, resident alien card, alien registration card, or other document designated by the Attorney General.

What Conditions Must a Document Meet To Be Added to List A?

IIRIRA restricts the Attorney General's authority to add documents to List A. Each document designated by the Attorney General must meet three conditions. The document must:

- (1) Bear a photograph and personal identification information;
- (2) Constitute evidence of employment authorization, and
- (3) Contain "security features to make it resistant to tampering, counterfeiting, and fraudulent use."

What Documents Will Be on List A Under the Proposed Rule?

The Service proposes to amend the current regulations to limit the documents that establish both identity and employment authorization to the following documents. Documents

preceded by an asterisk are proposed to be added by regulation. The other documents are listed in the law, as amended by IIRIRA. Documents proposed for List A are:

- (1) A United States passport;
- (2) An Alien Registration Receipt Card or Permanent Resident Card, Form I-551;
- * (3) A foreign passport with a Temporary I-551 stamp;
- * (4) An employment authorization document issued by the Service which contains a photograph (Form I-766, Form I-688, Form I-688A, or Form I-688B); and,

* (5) In the case of a nonimmigrant alien authorized to work only for a specific employer, a foreign passport with an Arrival-Departure Record,—Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status and the name of the approved employer with whom employment is authorized, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I-94.

What is the Service's Basis for including INS-Issued Employment Authorization Documents?

This proposed rule designates an employment authorization document, Forms I-766, I-688, I-688A, and I-688B, as an acceptable List A document. Forms I-766, I-688, I-688A, and I-688B meet the three statutory conditions that limit the Attorney General's authority to designate additional List A documents. First, these Service-issued forms all contain a photograph and additional identifying information of the bearer, including a fingerprint of the bearer and the bearer's date of birth. Second, the forms are evidence that the Service has granted employment authorization to the bearer. Third, the Service has designed each of the forms to contain security features that make them resistant to tampering, counterfeiting, and fraudulent use.

What Is the Service's Basis for Including Foreign Passports?

The Service proposes in this rule to designate foreign passports as acceptable evidence of identity and employment authorization, but limited to two instances. The first relates to aliens lawfully admitted for permanent residence under section 101(a)(20) of the Act. Persons newly admitted for or adjusted to lawful permanent residence may receive evidence of that status through a stamp in their passports. The stamp serves as temporary evidence of

permanent resident status until the individual receives Form I-551 from the Service. If the stamped endorsement includes an expiration date, the document must be reverified.

In the newest versions of the Form I-551, the cards also bear an expiration date but need not be reverified when the card expires. Only the stamp must be reverified when expired. (See the discussion of the receipt rule, below, for discussion of the temporary I-551 stamp when it is placed on Form I-94 instead of a foreign passport.)

The second instance in which a foreign passport is designated as a List A document is when it is presented with Form I-94 indicating authorization to work for a specific employer. This will be an acceptable document only for persons whose employment is incident to status and authorized with a specific employer, and may be accepted only by the employer for whom the individual is authorized to work.

Aliens in classes identified in § 274a.12(b) are authorized employment incident to status with a specific employer. The Service does not currently require aliens in these classes to obtain a List A employment authorization document—i.e., an I-688B or I-766 EAD, and does not plan to implement such a requirement at this time. The proposed rule specifies the documentation the Service will issue to nonimmigrant alien classes that will not be issued an I-766 EAD. This documentation will be the Form I-94, with an endorsement that specifies the employer with which work is authorized. The Service will modify its procedures for endorsing the departure portion of nonimmigrants' Form I-94, so that the name of the approved employer will appear on the document. The employer's name will also be noted on the arrival portion of the Form I-94 and entered into Service databases for verification and record-keeping purposes.

The IIRIRA provides that the Attorney General "may prohibit or place conditions on" a specific document if the Attorney General finds that the document "does not reliably establish [employment] authorization of identity or is being used fraudulently to an unacceptable degree." The Service finds that documentation issued to or used by nonimmigrants in these classes does not reliably establish work eligibility except for employment with a specific employer. The proposed rule, therefore, restricts the foreign passport with an I-94 bearing employer-specific work authorization, stipulating that it may be used only for purposes of establishing eligibility to work for the approved

employer. This restriction does not relieve employers of the requirement to abide by any terms or conditions specified on any documentation issued by the Service. Similarly, the restrictions do not permit employers to require individuals to present a specific document. The restrictions do mean that a Form I-94 endorsed to permit employment with a specific employer may not be accepted as evidence of eligibility to work for other employers.

The Service finds that, in those two instances, foreign passports meet the three conditions that authorize the Attorney General to add documents to List A. First, foreign passports bear a photograph and identifying information (such as the birthdate and physical characteristics of the bearer). Second, they are evidence of employment authorization when they bear a temporary I-551 stamp or are presented with a Form I-94 endorsed to authorize employment with a specific employer. Finally, foreign passports contain security features to make them resistant to tampering, counterfeiting, and fraudulent use. Temporary I-551 stamps are made with secure ink and meet internal Service standards. An I-94 is acceptable with a foreign passport only in employer-specific situations in which the employer examining the I-94 for employment verification purposes is the same employer named on the I-94. The Service also notes that, in both these instances, the employers are required to reverify the individual's eligibility to work when the stamped authorization bears an expiration.

The proposed restrictions on Form I-94 pose special issues for two categories of nonimmigrants, students (F-1) and exchange visitors (J-1). Documentation for those categories will be addressed further in the forthcoming proposed amendments to Part 274a, Subpart B.

If the Service Has a New Employment Authorization Document, Why Are the Older Ones Still on This list?

The Service has been planning for several years to phase out use of three documents: (1) Temporary Resident Card, Form I-688; (2) Employment Authorization Card, Form I-688A; and (3) Employment Authorization Document, Form I-688B. As noted, on September 4, 1996, the Service published a final rule adding Form I-766 to List A and began to issue the I-766 EAD in February 1997. Through forthcoming proposed amendments to 8 CFR 274a, Subpart B, the Service will discuss its plans to consolidate card production. This consolidation will allow the Service to replace Forms I-688, I-688A, and I-688B with the I-766

EAD as the earlier documents expire. The Service anticipates phasing out these documents through the normal card replacement process. No document recall is planned. Based upon comments received in response to the 1993 proposed rule and 1995 supplement, the Service is not proposing a termination date for the validity of those documents at this time. The documents remain on List A in this proposed rule. At the appropriate time in the future, the Service will remove these documents from List A through rulemaking and update the Form I-9.

What Documents Are Being Removed From List A and Why?

The proposed rule does not designate the certificate of United States citizenship, certificate of naturalization, re-entry permit, and refugee travel document as acceptable List A documents. These documents were removed by the interim rule. The Service does not believe that these documents meet the three conditions required for the Attorney General to designate them as List A documents. Holders of these documents can easily obtain other acceptable documents which are more readily recognized by employers. Naturalized citizens are eligible for the same documents as other United States citizens, such as a passport and unrestricted social security card. Lawful permanent residents and refugees are eligible for an unrestricted social security card and, respectively, Form I-551 and Form I-688A or Form I-766.

What Happened to the Earliest Versions of the "Green Card," Form I-151?

The Service phased out Form I-151, Alien Registration Receipt Card, as evidence of status as a lawful permanent resident effective March 20, 1996. Currently, Form I-551 is the only valid evidence of lawful permanent resident status. Employers are not required to reverify employees who were hired prior to March 20, 1996, and who presented Form I-151. However, employers and recruiters or referrers for a fee should not have accepted Form I-151 from employees hired after that date.

Section 274a.3(b)—Documents That Establish Identity Only (List B)

Does IIRIRA Affect List B Documents?

The IIRIRA made no statutory changes to List B documents.

Section 274A(b)(1)(D) of the Act specifies the following documents as acceptable documents for establishing identity:

(1) A driver's license or similar identification document issued by a state that contains a photograph or other identifying information, or

(2) For individuals under the age of 16 or in a state that does not issue an appropriate identification document, documentation of personal identity found by the Attorney General to be reliable.

Despite this limited list, current regulations permit a wide range of acceptable documents. List B currently is the longest of the three lists, and many of the documents either are unfamiliar to many employers or vary widely in appearance and the features they contain. In this proposed rule, the Service is retaining documents previously added to List B by regulation only in instances where there is an identifiable class for which elimination of the document could leave the class without an acceptable document to establish identity.

What Documents Will Be on List B Under the Proposed Rule?

The Service proposes to amend the regulations by reducing the list to the following documents:

(1) A state-issued driver's license or identification card;

(2) A Native American tribal document; and

(3) In the case of a Canadian nonimmigrant authorized to work incident to status with a specific employer, a Canadian driver's license or provincial identification card.

What Documents Are Being Retained on List B by Regulation and Why?

The Service identified two documents previously added to List B by regulation for which there is an identifiable class that could be left without an acceptable document to establish identity if the document were removed from the list. The documents are: (1) A Native American tribal document and (2) a Canadian driver's license or provincial identification card.

Why Are Native American Tribal Documents Included on List B?

The proposed rule retains Native American tribal documents on both List B and List C (documents evidencing work authorization only). The removal of Native American tribal documents from the list of acceptable documents would pose a particular problem for Canadian-born American Indians who continue to reside in Canada, but who enter the United States temporarily for employment purposes under the terms of section 289 of the Act. These individuals are not required to present

a passport for admission to the United States and would not necessarily have other identification documents acceptable for employment verification requirements.

Over the years, the Service has received many inquiries concerning why these documents appear on both List B and List C instead of List A. Until the enactment of IIRIRA, the Attorney General lacked the authority to designate List A documents beyond those specifically listed in the Act. Section 412(a) of IIRIRA extends this authority to the Attorney General. However, as noted, documents added to List A must meet three conditions, including that the document must contain security features. The number of authorities issuing tribal documents is too numerous, and the documentation too varied, for the Service to make a finding that tribal documents, as a class, meet all three conditions. Therefore, the Service is continuing the existing practice of including those documents on both List B and List C.

Why are Canadian Driver's Licenses and Identification Documents Included on List B?

The proposed rule includes on List B a driver's license or identification card issued by a Canadian Government authority. This rule proposes to make such documents acceptable only in the case of a Canadian nonimmigrant authorized to work incident to status with a specific employer. Through reciprocal international agreements and under Service regulations at 8 CFR 212.1(a), a visa generally is not required of Canadian nationals and aliens having a common nationality with nationals of Canada, and a passport is required of these aliens only when traveling from outside the Western Hemisphere. However, the Service controls and documents the arrival of Canadian nationals and aliens having a common nationality with nationals of Canada who establish admissibility in a nonimmigrant classification which entitles them to work with a specific employer (for example, as a professional under the North American Free Trade Agreement [TN], or as an intracompany transferee [L-1], or as a temporary worker [H-2B].) The Service issues the Form I-94 to these aliens as a record of lawful admission and as evidence of authorization to work in the United States with a specific employer. The Service also issues the Form I-94 to nationals of all other countries to document and control admission of nonimmigrants. The Form I-94 is generally placed in the passport of the nonimmigrant alien.

Because aliens of Canadian nationality are not required to present a passport for admission to the United States except when traveling from outside the Western Hemisphere, the Service is retaining on List B identity documents issued by Canadian authorities. However, to avoid confusion about the eligibility of Canadian nationals to engage in employment in the United States, the Service is adding language to make it clear that Canadian identification documents may be used only in the limited instance of a Canadian national admitted as a nonimmigrant who is authorized to work incident to nonimmigrant status with a specific employer. In other situations, authorized Canadian nationals would have other acceptable documentation. For instance, Canadian nationals who are lawful permanent residents would have been issued a Form I-551.

Over the years, the Service has received many inquiries concerning why Mexican driver's licenses are not included on List B. No reciprocal agreements exist between the United States and Mexico which would permit the use of Mexican driver's licenses or identification cards as List B documents.

What Documents Are Being Removed From List B and Why?

The Service proposes to remove the following documents from List B:

(1) An identification card issued by Federal or local authorities;

(2) A school identification card with a photograph;

(3) A voter's registration card;

(4) A United States military card or draft record;

(5) A military dependent's identification card;

(6) A United States Coast Guard Merchant Mariner Card; and

(7) For individuals under age 18 who are unable to produce an identity document, a school record or report card, clinic doctor or hospital record, and daycare or nursery school record.

When the Service published the 1993 proposed rule and 1995 supplement, several comments expressed concern about the elimination of specific documents and the special list for minors. Current regulations, however, were developed when not all states issued a non-driver's identification card. At present, all states do so. Therefore, this justification for an expanded list no longer exists. The Service believes that the proposed list will greatly reduce confusion for employers while enabling all work-eligible individuals to establish their identity for verification purposes.

Will It Still Be Possible for Someone Else To Attest to the Identity of a Minor or Person With a Disability if They Cannot Present an Acceptable Identity Document?

Yes. Current regulations permit employers, and recruiters or referrers for a fee, to accept an attestation concerning the identity of minors under the age of 18 and persons with disabilities who are unable to produce one of the acceptable identity documents. The Service is proposing no substantive changes to these provisions. Because the provision for persons with disabilities was developed prior to passage of the Americans with Disabilities Act (ADA), however, the proposed rule replaces terminology that pre-dates the ADA with the terms and definition used in the ADA.

Section 274a.3(c)—Documents That Establish Employment Authorization Only (List C)

How Does IIRIRA Affect List C Documents?

Section 412(a) of IIRIRA amends section 274A(b)(1)(C) of the Act by removing the certificate of birth in the United States (or other certificate found acceptable by the Attorney General as establishing United States nationality at birth) from the list of acceptable documents that may be used to establish employment authorization for compliance with the employment verification requirements. Acceptable List C documents are: a social security account number card (other than one which specifies on its face that the issuance of the card does not authorize employment in the United States) or other documentation found acceptable by the Attorney General that evidences employment authorization.

What Documents Will Be on List C Under the Proposed Rule?

The Service proposes to limit acceptable List C documents to the following:

- (1) A social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States);
- (2) A Native American tribal document; and
- (3) In the case of a nonimmigrant alien authorized to work only for a specific employer, an Arrival-Departure Record, Form I-94, containing an endorsement of the alien's nonimmigrant status and the name of the approved employer with whom employment is authorized, so long as the period of endorsement has not yet

expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I-94.

Why Is the Service Changing the Language Describing an Acceptable Social Security Card?

Current regulations designate the "social security number card other than one which has printed on its face 'not valid for employment purposes'" as an acceptable List C document. In accordance with section 412(a) of IIRIRA this proposed rule retains the social security account number card on List C. The proposed rule, however, amends the language in the regulations so that it mirrors the statutory language. The proposed rule changes the term, "social security number card," to "social security account number card," as is stated in the Act and IIRIRA. In addition, the proposed rule replaces the phrase, "other than one which has printed on its face 'not valid for employment purposes,'" with the statutory language, "(other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States)."

The Social Security Administration (SSA) issues cards with the legend stated in the regulations, "not valid for employment purposes," to individuals from other countries who are lawfully admitted to the United States without work authorization, but who need a number because of a Federal, state, or local law requiring a social security number to get a benefit or service. In 1992, SSA began issuing cards that bear the legend "valid for work only with INS authorization" to people who are admitted to the United States on a temporary basis with authorization to work. This proposed rule amends the language in the regulations to mirror the language in the Act and IIRIRA and to clarify that cards bearing either restrictive legend are not acceptable List C documents.

What Documents Are Being Added to List C by Regulation and Why?

Under section 274A(b)(1)(C)(ii) of the Act, as amended, it is within the Attorney General's authority to designate "other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section." Exercising that authority, the Service finds that the Native American tribal document and Form I-94 with endorsement of employment authorization are acceptable List C documents. As noted in the discussion of Native American

tribal documents under List B, elimination of the documents from List C could leave certain Native Americans without an acceptable document to establish their eligibility to work. As noted in the discussion of Form I-94 under List A, Form I-94 will be the document issued to nonimmigrant aliens who are authorized to work only for a specific employer. Only the employer for whom the work is authorized will be permitted to accept the document.

What Documents Are Being Removed From List C and Why?

The Service proposes to eliminate the following documents as acceptable for establishing employment authorization:

- (1) A Certification of Birth Abroad issued by the Department of State, Form FS-545;
- (2) A Certification of Birth Abroad issued by the Department of State, Form DS-1350;
- (3) A birth certificate issued by a State, county, municipal authority or outlying possession of the United States bearing an official seal;
- (4) A United States citizen Identification Card, INS Form I-197;
- (5) An Identification card for use of a resident citizen in the United States, INS Form I-179; and
- (6) An unexpired employment authorization document issued by the Service.

The IIRIRA provides for additions to List C by regulation of "other documentation found acceptable by the Attorney General that evidences employment authorization." The Service recognizes that elimination of the birth certificate, in particular, may generate public comment.

The Service notes, however, that Congress specifically eliminated this document from the list, based on its concern that, "Birth certificates, even if issued by lawful authority, may be fraudulent in that they do not belong to the person who has requested that one be issued. This problem is exacerbated by the large number of authorities—numbering in the thousands—that issued birth certificates." (See H.R. Rep. No. 104-469, at 404-05 (1996).)

In addition to believing that eliminating the birth certificate is consistent with Congressional intent, the Service has additional reasons for taking this action. Service officers have expressed concern by the lack of uniform controls among the states over the issuance of replacement birth certificates.

Officers are encountering situations in which unauthorized aliens have used fraudulently obtained birth certificates

to falsely claim United States citizenship and gain employment.

The other documents proposed for removal also pose burdens to employers because it can be difficult for employers to assess whether they appear genuine on their face. The certifications of birth abroad, issued by the State Department, are not commonly recognized documents with which the general public is familiar. The Service no longer issues the citizen identification cards which were on the list. Legitimate holders of the documents being removed are all eligible for an unrestricted social security card, which allows them to establish their eligibility to work in the United States. The Service believes that employers will find a shorter list of documents easier to work with.

In this proposed rule, the existing general category of documents characterized as "employment authorization documents issued by the Service" is no longer designated as an acceptable List C document. This general category was included in the current regulations while the Service was taking steps to standardize the employment authorization documents that it issues. The Service has taken several steps to issue uniform documentation. The Service introduced the I-688B EAD in 1989. The I-766 EAD, introduced in February of 1997, represents further improvement because the centralized process is more secure and efficient. These documents are List A documents which establish both identity and eligibility to work. Moreover, with his proposed rule, the Service announces additional steps, such as the endorsement of Form I-94 when it is issued to a nonimmigrant who is authorized to work for a specific employer. The Service believes that a general category for Service-issued employment authorization documents is no longer necessary.

Section 274a.3(d)—Receipts

Current regulations permit individuals to present a receipt showing that they have applied for a replacement document if the individual is unable to provide a required document or documents at the time of hire. This provision provides flexibility in situations where, for example, an individual has lost a document. The Service has received numerous questions about the applicability of this provision to various situations. The proposed rule attempt to clarify the circumstances in which a receipt may be accepted.

The interim rule amended the receipt rule to designate three instances in

which receipts are acceptable and extended the receipt rule to reverification. The proposed rule restructures the receipt rule and moves this provision to the section of the regulations containing the lists of acceptable documents.

Employers have asked whether they must accept a receipt if an employee presents one. In the new structure, receipts are discussed in the same section as Lists A, B, and C to emphasize that the same standards that apply to List A, B, and C documents also apply to receipts. Further, the rule indicates that an employee has the choice of which documents to present. Just as with List A, B, and C documents, if the receipt appears to be genuine and to relate to the individual presenting it, the employer cannot ask for more or different documents and must accept the receipt. Otherwise, the employer may be engaging in an unfair immigration-related employment practice in violation of section 274B of the Act. The receipt presented, however, is only acceptable if it is one that is listed in the regulations.

Like the interim rule, the proposed rule also extends the receipt rule to reverification and identifies circumstances where a receipt is not acceptable.

In What Circumstances are Receipts Acceptable?

The proposed rule permits the use of receipts in three instances:

- (1) a receipt for an application for a replacement document,
- (2) A temporary I-551 stamp on a Form I-94, and
- (3) A refugee admission stamp on a Form I-94.

Receipt for Application for a Replacement Document

The first instance in which a receipt is acceptable is when the individual presents a receipt for the application for a replacement document. An application for an initial or extension List A or C document, however, is not acceptable, except for nonimmigrants as provided under 8 CFR 274a.12(b)(20). The latter provision permits continued employment for a temporary period of certain nonimmigrants authorized to work for a specific employer incident to status, in situations where a timely application has been filed with the Service and has not been timely adjudicated.

Temporary Evidence of Permanent Resident Status on Form I-94

The second instance is the use of Form I-94 as temporary evidence of

permanent resident status. If an alien is not in possession of his or her passport, and requires evidence of lawful permanent resident status, the Service may issue the alien the arrival portion of a Form I-94 with a temporary I-551 stamp and the alien's picture affixed. Although this document provides temporary evidence of permanent resident status, it does not contain security features and, therefore, does not meet the statutory requirements for inclusion on List A. The Services, therefore, proposes to designate Form I-94 with a temporary I-551 stamp as a receipt for Form I-551 for 180 days.

Special Rule for Refugees

The third instance is when the departure portion of Form I-94 contains a refugee admission stamp. The Service recognizes the importance of newly admitted refugees being able to seek employment promptly upon arrival in the United States. The Service has been working with SSA to ensure prompt issuance to refugees of social security cards which carry no employment restrictions. In most instances, the Service believes that refugees will receive social security cards timely and will be able to present them to employers. The Service also intends to give refugees the option of obtaining an I-766 EAD, but recognizes that in most instances refugees will be able to obtain a social security card faster. Refugees may wish to obtain an I-766 EAD so that they will have a Service-issued document with a photograph. In order to ensure that refugees are still able to work if they encounter delays in obtaining cards from either SSA or the Service, the Service proposes a special receipt rule. Under this rule, a Form I-94 with a refugee admission stamp will be a receipt evidencing eligibility to work valid for 90 days from the date of hire. It will not be a receipt for a specific document. The refugees will be permitted to present either an unrestricted social security card or an I-766 EAD at the end of the 90-day receipt period. If the refugee presents a social security card, the refugee will also need to present a List B document. If the refugee presents an I-766 EAD, he or she does not need to present another document.

Are There Circumstances Where a Receipt is not Acceptable?

The proposed rule notes two exceptions in which the special rules for receipts do not apply. These are if:

- (1) The individual indicates or the employer, or recruiter or referrer for a fee, has actual or constructive

knowledge that the individual is not authorized to work; or

(2) The employment is for a duration of less than 3 business days.

The Services considered changing the term "receipt" in light of the expanded definition contained in this proposed rule. The Service's impression, however, is that employers are familiar with this term as it is used in the verification context. The Service seeks comment on whether other terminology would be clearer or the current term is preferred.

Section 274a.4 How long are Employers and Recruiters or Referrers Required to Retain the Form I-9 and What Must be Retained With it?

The proposed rule breaks what was formerly § 274a.2 into two sections, pertaining to retention (§ 274a.4) and inspection (§ 274a.6). The retention section addresses general requirements for employers and recruiters or referrers for a fee, reverification, copying of documentation, and limitations on the use of the Form I-9. Most of these provisions remain unchanged in content with the current rule. One change is to specify that a form used for reverification must be attached to the initial Form I-9 relating to the individual.

Another change relates to photocopies of documents. Employers and recruiters or referrers for a fee may, but are not required to, copy a document presented by an individual solely for the purpose of complying with the verification requirements. Current regulations state both that employers and recruiters or referrers for a fee should retain the copies with the Form I-9 and that the retention requirements do not apply to copies. The proposed rule removes this apparent inconsistency by providing that employers and recruiters or referrers for a fee who elect to photocopy documentation must attach the photocopies to the I-9 and I-9A form and present them with the forms upon inspection. This change is necessary to clarify the retention requirements for photocopies of documentation in response to investigation issues that have confronted the Service and the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).

Section 274a.5 Under What Circumstances may Employers and Recruiters or Referrers Rely on a Form I-9 That an Individual Previously Completed?

This section addresses requirements in the cases of continuing employment (formerly § 274a.2(b)(1)(viii)), hiring an

individual who was previously employed (formerly § 274a.2(c)), and recruiting or referring for a fee an individual who was previously recruited or referred (formerly § 274a.2(d)). The only substantive change the Service proposes is to eliminate language that could be construed as requiring recruiters and referrers to reverify all referred individuals whose work authorization expires. The proposed rule requires reverification only in the instance of an individual who was previously recruited or referred.

Section 274a.6 What Happens When the Government Asks to Inspect Forms I-9?

This section addresses the 3-day notice of inspection, the obligation to make records available, standards for microfilm and microfiche, and the consequences of failure to comply with an inspection. Most of these paragraphs were previously contained in § 274a.2(b)(2).

What Changes are Made in the Proposed Rule?

Section 416 of IIRIRA clarifies the Service's subpoena authority by stating that, "immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint * * *." The current regulations at § 274a.2(b)(2)(ii) include a reference to the Service's subpoena authority, but they refer to the production of documents rather than the production of evidence and do not include a reference to the attendance of witnesses. This rule proposes to amend the current regulations to include a reference to the attendance of witnesses, replace the phrase, "production of documents," with the phrase, "production of evidence," and include a reference to the exercise of the subpoena authority prior to the filing of a complaint with the Office of the Chief Administrative Hearing Officer based upon a request for a hearing made by the employer, or recruiter or referrer for a fee, following service of the Notice of Intent to Fine. The proposed rule also simplifies the statement in the regulations regarding the Service's subpoena authority so that it is clear that the Service has the authority to compel by subpoena: Forms I-9 that a person or entity refuses to produce upon inspection; Forms I-9 that are the subject of an inspection whether or not the person or entity refuses to produce them; the production of any evidence; and the attendance of witnesses.

Will the Service Allow Electronic Storage of the Form I-9?

In the last several years, the Service has been in dialogue with the public over changes in information technology and their possible applicability to the Form I-9. One result of these discussions was the interim rule, published October 7, 1996, permitting electronic generation of a blank Form I-9. Following publication of this rule, the Service began to make the Form I-9 available for downloading from its world wide web site on the Internet (www.ins.usdoj.gov).

Employers have also expressed interest in electronic storage of the Form I-9. The Service is currently preparing to conduct a demonstration project to assess electronic storage of Forms I-9. In reviewing this technology, the Service is aware that many employers now scan and/or electronically store many of their personnel records.

The Form I-9, however, raises special issues because it requires two signatures. Fraudulent preparation of the form is a common issue in the Service's investigations. For example, during an investigation an unauthorized alien may claim that the employer did not complete a Form I-9 at the time of hire, while the employer presents a Form I-9 for the employee and claims that the employee lied about his unauthorized status. The determination of whose account is true is central to the question of liability for penalties. Investigations of such cases may require forensic analysis to determine the authenticity of the signatures. Scanned signatures provide adequate detail for such analysis only at a rate of resolution higher than those used for most records scanning systems. The Service is continuing to monitor developments in scanning and other technology. At present, however, the Service is considering scanned records for purposes of I-9 retention only in the context of the demonstration project.

§ 274a.7 What is the Prohibition on Hiring or Contracting With Unauthorized Aliens and What Defense can be Claimed?

This section contains the following three provisions pertaining to hiring or contracting and unauthorized aliens:

- (1) Prohibition on the hiring and continuing employment of unauthorized aliens, currently at 8 CFR 274a.3;
- (2) Use of labor through contract, currently at 8 CFR 274a.5; and
- (3) Good faith defense to charge of knowingly hiring an unauthorized alien, currently at 8 CFR 274a.4.

The proposed rule amends the paragraph currently at 8 CFR 274a.3 by

adding a reference to the prohibition on the hiring of unauthorized aliens provided by section 274A(a) (1) (A) of the Act. It also clarifies that an employer's "knowledge" that an employee is unauthorized can be either actual or constructive for the provision prohibiting the hiring or continued employment of an unauthorized alien to be violated. Cross-references to the verification sections are amended to reflect the changes proposed by the rule. No other substantive changes were made.

Section 274a.8 What are the Requirements of State Employment Agencies that Choose to Verify the Identity and Employment Eligibility of Individuals Referred for Employment by the Agency?

This section contains the state agency certification requirements currently contained at 8 CFR 274.6. The Service proposes no changes to the contents of this section, in part because the Service is not aware of any state agencies currently issuing certifications under this provision. Under the Act, an employer may rely upon a state agency certification instead of completing Form I-9. The requirements in this section were developed during the first years that the verification requirements were in effect. In light of recent welfare reform efforts, the Service is prepared to revisit the requirements if there is new interest among state agencies in performing verifications for employers. The Service invites comment from state agencies concerning changes to the regulations that would facilitate their ability to provide this service.

Section 274a.9 Can a Person or Entity Require an Individual to Provide a Financial Guarantee or Indemnity Against Potential Liability Related to the Hiring, Recruiting, or Referring of the Individual?

This section contains the prohibition against indemnity bonds currently found at 8 CFR 274.8. No substantive changes have been made to this section.

Section 274a.10 How are Investigations Initiated and Employers Notified of Violations?

This section contains the paragraphs discussing the filing of complaints, investigations, notification of violations, and the procedures for requesting a hearing, which are currently found at 8 CFR 274a.9. No substantive changes have been made to this section.

Section 274a.11 What Penalties may be Imposed for Violations?

This section contains the penalty provisions currently found at 8 CFR 274a.10. It also contains the pre-enactment provision, which exempts employers from penalties for individuals hired prior to November 7, 1987, currently found at 8 CFR 274a.7. Minor language changes have been made to the latter for purposes of clarity. The substance in this section remains unchanged.

How can the Service Best Inform the Public of Changes to the Requirements?

Over the years, the Service has attempted to inform the public of new forms and requirements by mailing information. Mailings were conducted in 1987 to introduce the Form I-9; in 1989 to introduce the Form I-688B Employment Authorization Document (EAD); in 1991 to introduce the revised Form I-9; and in 1997 to introduce the new Form I-766 EAD.

Employers and trade associations have, from time to time, questioned the

effectiveness of such mailings. Three of the mailings were conducted with the assistance of the Internal Revenue Service (IRS). Some of the feedback the Service received following those mailings suggested that many employers have IRS mail directed to attorneys or accountants, which meant that the Form I-9 information did not reach its intended audience. For the 1997 mailing, the Service used a commercial data base and indicated on the front that the material should go to the human resources department. In talking to employers who have called INS for information related to the Form I-9, the Service has identified few instances where the people responsible for Forms I-9 received the mailing.

The Service recognizes the impact that the Form I-9 has on the business community and wants to ensure that the public has ready access to the information it needs. The Service is developing a fax-back capability for employer information and is making increased use of its internet site. All materials related to changes in the requirements will be made available through these channels as they become available. The Service will also work through trade and professional associations and similar organizations to inform the public.

The Service seeks suggestions from the public concerning the most cost-effective means to reach and inform those affected by this rule. Similarly, suggestions concerning the preferred format for instructional materials, such as the *M-274 Handbook for Employers* or suggested alternatives, would be welcome.

Cross-reference table

The following cross-reference table is provided to assist the public in understanding how the Service proposes to restructure 8 CFR 274a, Subpart A.

CROSS-REFERENCE—PROPOSED RESTRUCTURING OF 8 CFR 274A—SUBPART A

Proposed	Current
274a.1 Definitions. Definition of recruiters and referrers moved to this section.	274a.1 and 274a.2(a)
274a.2 Why is employment verification required and what does it involve?	
(a) Why employment verification is required	274a.2(a)
(1) Designation of Form I-9 and Form I-9A	274a.2(a)
(2) Obtaining and duplicating Form I-9 and Form I-9A	274a.2(a)
(3) Limitation on use of Form I-9 and attachments	274a.2(b)(4)
(4) Beginning date for verification requirements	274a.2(a)
(b) How to complete the Form I-9	274a.2(b)
(1) Employee information and documentation	274a.2(a)(b)(1)(i)(A)—responsibility to complete section 1 of Form I-9
(2) Document review and verification	274a.2(b)(1)(i)(B)—responsibility to present documentation
	274a.2(b)(1)(ii)(A)—responsibility to review documentation
	274a.2(b)(1)(ii)(B)—responsibility to complete section 2 of Form I-9
(3) Recruiters or referrers	274a.2(b)(1)(iv)—recruiter/referrer responsibility to complete Form I-9

CROSS-REFERENCE—PROPOSED RESTRUCTURING OF 8 CFR 274A—SUBPART A—Continued

Proposed	Current
(c) Time for completing Form I-9 (new heading)	274a.2(b)
(1) Section 1 of the Form I-9	274a.2(b)(1)(i)(A)—timing to complete section 1
(2) Section 2 of the Form I-9	
(i) Hires for a duration of 3 or more business days	274a.2(b)(1)(ii)—timing to complete section 2 274a.2(b)(1)(iv)—timing for recruiters/referrers
(ii) Hires for a duration of less than 3 business days	274a.2(b)(1)(iii)—timing if hire is for less than 3 business days
(3) Receipts (new)	
(d) Reverification of employment eligibility when employment authorization expires.	
(1) Procedures	274a.2(b)(1)(vii)
(2) Continuing obligation (new)	
(3) Exception to reverification requirement (new)	
274a.3 What documents are acceptable for employment verification?	
(a) Documents that establish both identity and employment authorization (List A).	274a.2(b)(1)(v)(A)
(b) Documents that establish identity only (List B)	274a.2(b)(1)(v)(B)
(1) Acceptable List B documents	274a.2(b)(1)(v)(B)
(2) Special rule for minors	274a.2(b)(1)(v)(B)(3)
(3) Special rule for individuals with disabilities	274a.2(b)(1)(v)(B)(4)
(c) Documents that establish employment authorization only (List C).	274a.2(b)(1)(v)(C)
(d) Receipts	274a.2(b)(1)(vi)
(1) Acceptable receipts and their validity periods (includes new content).	274a.2(b)(1)(vi)
(2) Exceptions (includes new content)	274a.2(b)(1)(iii)—prohibition on receipts if hire is for less than 3 business days
274a.4 How long are employers and recruiters or referrers required to retain the Form I-9 and what must be retained with it?	274a.2(b)(2)—retention of Form I-9
(a) Retention of Form I-9	
(1) Employers	274a.2(b)(2)(i)(A)
(2) Recruiters or referrers	274a.2(b)(2)(i)(B)
(b) Retention of attachments (new)	
(i) Reverification forms (new)	
(ii) Copies of documentation	274a.2(b)(3)
274a.5 Under what circumstances may employers and recruiters or referrers rely on a Form I-9 that an individual previously completed?	
(a) Continuing employment	274a.2(b)(1)(viii)
(b) Employment verification requirements in the case of an individual who was previously employed.	274a.2(c)
(c) Employment verification requirements in the case of recruiting or referring for a fee an individual who was previously recruited or referred.	274a.2(d)
274a.6 What happens when the Government asks to inspect Forms I-9?	274a.2(b)(2)—Inspection
(a) Notice of inspection	274a.2(b)(2)(ii)
(b) Obligation to make records available	274a.2(b)(2)(ii)
(1) In general	
(2) Standards for submitting microfilm or microfiche	274a.2(b)(2)(iii)
(3) Recruiters or referrers	274a.2(b)(2)(ii)
(c) Compliance with inspection	274a.2(b)(2)(ii)
(d) Use of subpoena authority	274a.2(b)(2)(ii)
274a.7 What is the prohibition on hiring or contracting with unauthorized aliens and what defense can be claimed?	
(a) Prohibition on the hiring and continuing employment of unauthorized aliens.	274a.3
(b) Use of labor through contract	274a.5
(c) Good faith defense to charge of knowingly hiring an unauthorized alien.	274a.4
274a.8 What are the requirements of state employment agencies that choose to verify the identity and employment eligibility of individuals referred for employment by the agency?	274a.6
274a.9 Can a person or entity provide a financial guarantee or indemnity against potential liability related to the hiring, recruiting, or referring of the individual?	274a.8
274a.10 How are investigations initiated and employers notified of violations?	274a.9
274a.11 What penalties may be imposed for violations?	
(a) Criminal penalties	b274a.10(a)
(b) Civil penalties	274a.10(b)
(c) Enjoining pattern or practice violations	274a.10(c)

CROSS-REFERENCE—PROPOSED RESTRUCTURING OF 8 CFR 274A—SUBPART A—Continued

Proposed	Current
(d) Pre-enactment provisions for employees hired prior to November 7, 1986.	274a.7

Regulatory Flexibility Act

The Service has examined the impact of this proposed rule in light of Executive Order 12866 and the Regulatory Flexibility Act (RFA) (5 U.S.C. 603, et seq.) and has drafted the rule to minimize its economic impact on small businesses while meeting its intended objectives. The obligations of employment verification have been imposed by Congress since 1987 and for the most part remain unchanged after amendment by IIRIRA. This rule is intended to reduce the burden on small entities by simplifying the procedures for verifying employees' eligibility to work in the United States.

What Are the Reasons for This Regulatory Action?

This rule is necessary to implement certain provisions of IIRIRA, specifically provisions which: (1) Eliminate certain documents currently used in the employment eligibility verification process; (2) include any branch of the Federal Government in the definition of "entity" for employer sanctions purposes; and (3) clarify the Service's authority to compel by subpoena the appearance of witnesses and production of evidence when investigating possible violations of section 274A of the Act. In conjunction with revising the regulations to implement IIRIRA, the Service initiated a comprehensive review of the rule to minimize its impact on small businesses. Through that review, required by the RFA, the Service identified additional changes which are intended to simplify and clarify the requirements.

What Are the Objectives and Legal Basis for the Rule?

The legal basis for the rule is section 274A of the Act. The major objectives of the rule, with respect to its impact on small businesses, include:

(1) Clarifying the timing permitted for completion of the Form I-9. These changes respond to frequent questions from employers concerning their authority to perform verification before an employee actually starts to work, and whether employees must be given 3 days to present documentation in all circumstances;

(2) Specify reverification requirements. These changes respond to concerns expressed by employers and to

their expressed preference that both the employee and the employer should be required to complete an attestation as part of reverification;

(3) Clarify and expand the receipt rule, under which work-eligible individuals who are unable to present a required document may present a receipt under certain circumstances. These changes respond to frequent questions from employers. In addition to revising the receipt rule itself, the Service has moved the discussion of receipts to the section that identifies acceptable documents. The changes are intended to retain the flexibility of the receipt rule, which helps to ensure that work-eligible employees are not prevented from working because their documents have been lost or stolen, while making the rule easier for employers to understand;

(4) Shorten the list of documents acceptable for verification. This is one of the most significant changes for small businesses. A shorter list will mean that employers have to be familiar with fewer documents. The Service has made a particular effort to limit the circumstances in which employers will need to examine a Service-issued "paper" document (e.g., a Form I-94 with a stamped endorsement), because those documents have been the subject of employer confusion; and

(5) Require the attachment to and retention with the Form I-9 of copied documentation, if employers elect to photocopy the documents presented. This is an area that is unclear in the current regulations.

In addition, the proposed rule proposes to restructure the regulation to make it easier to use and cite. This should reduce the need for small entities to rely on outside assistance to understand the basic requirements of the law.

How Many and What Kind of Small Entities Will Be Affected by the Proposed Rule?

The essential requirements in the proposed rule, which have been in place for 10 years, apply to all entities which hire individuals to perform services or labor in return for remuneration. The requirements also apply to recruiters or referrers for a fee which are an agricultural association, agricultural employer, or farm labor contractor (as

defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802). Data obtained from the Bureau of Labor Statistics show the following number of employers in 1994, rounded to the nearest hundred (See Employment and Wages, 1994, Bureau of Labor Statistics):

ESTIMATED NUMBER OF BUSINESSES BY SIZE, 1994

Size of business (number of employees)	Number of employers
< 5	3,614,800
5 to 9	1,200,800
10 to 49	1,248,100
50 to 499	293,700
500 or more	14,700
Total	6,372,100

Although other data sources may provide different estimates of the actual number of small businesses, the distribution shown above indicates that the majority of businesses affected by these requirements are small businesses.

What Are the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule?

The proposed rule continues the existing requirement, imposed by Congress since 1987, for employers to complete the Form I-9 for all new hires and to retain the form for 3 years or 1 year after the employment terminates, whichever is longer. Under the proposed rule, if the employer elects to make photocopies of documentation presented, the employer must attach the photocopies to and retain them with the Form I-9. The requirement to attach and retain the photocopies is new, clarifying an area that is ambiguous under the existing regulation. If the employee's work authorization expires, the employer must reverify the employee's eligibility to work on Form I-9 or Form I-9A and attach the reverification form to and retain it with the Form I-9. Reverification is not a new requirement, but the proposed rule seeks to clarify what is required.

Because employers are already completing and retaining Forms I-9 and conducting reverifications when employees' authorization expires, the rule is not expected to impose significant new costs on small entities.

There will be some cost, however, associated with becoming familiar with the new requirements, obtaining new forms, and retraining employees who are familiar with the existing requirements.

Once the transition to the new forms and requirements is complete, the Service anticipates that the costs of compliance for most businesses will be lower than under the existing rule and Form I-9. Based on informal discussions with a limited number of employers, the Service believes that the smaller number of documents, simplified design of the Form I-9, and more comprehensive instruction sheet provided with the form, all make the verification process faster and easier than it is now.

Additional information on the estimated paperwork burden for the Form I-9 is provided under the discussion of the Paperwork Reduction Act.

Are There Any Federal Rules That May Duplicate, Overlap, or Conflict With the Rule?

The Service is not aware of overlap, duplication, or conflict with other Federal rules. The requirement for employers to verify the identity and eligibility to work is unique to section 274A of the Act and its implementing regulations.

The Service has heard complaints on occasion from employers to the effect that section 274A of the Act and its implementing regulations at subpart A conflict with section 274B of the Act and its implementing regulations at 28 CFR part 44, by on the one hand requiring employers to verify their employees' identity and work eligibility by examining documents, while on the other hand subjecting them to penalties for inquiring into the validity of those documents, particularly in light of the proliferation of false documentation. The Service firmly supports section 274B of the Act and its enforcement, and does not view it as conflicting with section 274A. The Service's proposed rule includes changes intended to clarify how employers may comply with 274A while avoiding practices prohibited by 274B. The Service invites the public to suggest other ways that the regulations could minimize any perceived inconsistency between these two provisions of law.

Are There Any Significant Alternatives That Would Accomplish the Objectives of the Rule and Minimize its Economic Impact?

In enacting the Immigration Reform and Control Act of 1986, Congress

considered exempting employers with three or fewer employees from the requirements of the law. Congress did not do so, however, because of evidence that a significant number of unauthorized aliens are employed by small businesses. The Service believes that having a uniform set of requirements for all businesses, regardless of size, is consistent with congressional intent. What the Service has attempted to do is to take into account the needs of a wide variety of businesses in formulating the proposed rule.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, it has been reviewed by the Office of Management and Budget.

Executive Order 12612

The regulation adopted herein 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 Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

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

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 1 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

The impact of this rule on small businesses is discussed under the Regulatory Flexibility Act. This preliminary analysis is the basis for the Service's finding that this is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement 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.

Paperwork Reduction Act of 1995

This proposed rule contains a revision to an information collection (Form I-9, Employment Eligibility Verification/Form I-9A, Employment Eligibility Reverification) which is subject to review by OMB under the Paperwork Reductions Act of 1995 (Pub. L. 104-13). Therefore, the agency solicits public comments on the revised information collection requirements for 30 days in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Service estimates a total annual reporting burden of 13,153,500 hours. This figure is based on the number of I-9 and I-9A respondents (78,890,000) × 9 minutes per response (.15) for the reporting requirements; of the 78,890,000 respondents, 20,000,000 are involved in record-keeping activities associated with the I-9 and I-9A process. The computation of the annual burden estimate for record-keeping activities is based on 20,000,000 × 4 minutes per response (0.66) equating to 1,320,000.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Service has submitted a copy of this proposed rule to OMB for its review of the revised information collection requirements. Other organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to: Office of Information and Regulatory Affairs

(OMB), 725 17th Street, NW, Washington, DC 20503, Attn: DOJ/INS Desk Officer, Room 10235. The comments or suggestions should be submitted within 30 days of publication of this rulemaking.

List of Subjects

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

1. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

2. Section 274a.1 is amended by revising paragraphs (b) and (e), and by adding a new paragraph (m), to read as follows:

§ 274a.1 Definitions.

* * * * *

(b) The term *entity* means any legal entity including, but not limited to, a corporation, partnership, joint venture, governmental body, agency, proprietorship, or association. For purposes of this part, the term *entity* includes an entity in any branch of the Federal Government;

* * * * *

(e) The term *recruit for a fee* means the act of soliciting a person, directly or indirectly, with the intent of obtaining employment for that person, for remuneration whether on a retainer or contingency basis; however, this term does not include union hiring halls that recruit union members, or non-union individuals who pay membership dues;

* * * * *

(m) The term *recruiter or referrer for a fee* means a person or entity who is either an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802).

3. Section 274a.2 is revised to read as follows:

§ 274a.2 Why is employment verification required and what does it involve?

(a) *Why employment verification is required.* It is unlawful for a person or

entity to hire or to recruit or refer for a fee an individual for employment in the United States without complying with section 274A of the Act and §§ 274a.2 through 274a.5. The Act requires the person or entity to verify on a designated form that the individual is not an unauthorized alien.

(1) *Designation of Form I-9 and Form I-9A.* The Employment Eligibility Verification form, Form I-9, has been designated by the Service as the form to be used in complying with the employment verification requirements. The Employment Eligibility Reverification form, Form I-9A, is an optional supplement to the Form I-9 which may be used instead of Form I-9 when a person or entity must reverify an individual's eligibility to work under paragraph (d) of this section.

(2) *Obtaining and duplicating Form I-9 and Form I-9A.* Forms I-9 and I-9A may be obtained in limited quantities from the Service forms centers or district offices, downloaded from the Service World Wide Web site, or ordered from the Superintendent of Documents, Washington, DC 20402. Employers, or recruiters or referrers for a fee, may electronically generate blank Forms I-9 or I-9A, provided that: the resulting form is legible; there is no change to the name, content, or sequence of the data elements and instructions; no additional data elements or language are inserted; and the paper used meets the standards for retention and production for inspection specified under §§ 274a.4 through 274a.6. When copying or printing Form I-9, Form I-9A, or the instruction sheet, the text may be reproduced by making either double-sided or single-sided copies.

(3) *Limitation on use of Form I-9 and attachments.* Any information contained in the Form I-9, and on any attachments, described in § 274a.4(b), may be used only for enforcement of the Act and 18 U.S.C. 1001, 1028, 1546, or 1621.

(4) *Beginning date for verification requirements.* Employers need to complete a Form I-9 only for individuals hired after November 6, 1986, who continue to be employed after May 31, 1987. Recruiters or referrers for a fee need to complete a Form I-9 only for individuals recruited or referred and hired after May 31, 1987.

(b) *How to complete the Form I-9—(1) Employee information and documentation.* A person or entity that hires, or recruits or refers for a fee, an individual for employment must ensure that the individual properly:

(i) Completes section 1 on the Form I-9. If an individual is unable to

complete the Form I-9 or needs it translated, someone may assist him or her. The preparer or translator must provide the assistance necessary for the individual to understand the Form I-9 and complete section 1 and have the individual initial and sign or mark the Form in the appropriate places. The preparer or translator must then complete the "Preparer/Translator" portion of the Form I-9; and

(ii) Presents to the employer, or recruiter or referrer for a fee, documentation, described in this paragraph, that establishes the individual's identity and eligibility to work. An individual has the choice of which document(s) to present. Acceptable documentation is:

(A) An original unexpired document that establishes both identity and employment authorization (List A document described in § 274a.3(a)); or

(B) An original unexpired document that establishes identity (List B document described in § 274a.3(b)) and a separate original unexpired document which establishes employment authorization (List c document described in § 274a.3(C)); or

(C) If an individual is unable to present a document listed in §§ 274a.3(a), (b), or (c) and is hired for a duration of 3 or more business days, an acceptable receipt (listed in § 274a.3(d)) instead of the required document. A receipt is valid for a temporary period, specified under § 274a.3(d). The individual must present the required document at the end of such period.

(2) *Document review and verification.* An employer, or recruiter or referrer for a fee, must:

(i) Physically examine the documentation presented by the individual establishing identity and employment eligibility as set forth in § 274a.3 and ensure that the document(s) presented appear to be genuine and to relate to the individual. Employers and recruiters or referrers for a fee may not specify which document or documents an individual is to present. To do so may violate section 274B of the Act; and

(ii) Complete section 2 of the Form I-9.

(3) *Recruiters or referrers.* Recruiters or referrers for a fee may designate agents to complete the employment verification procedures on their behalf, including but not limited to notaries, national associations, or employers. If a recruiter or referrer designates an employer to complete the employment verification procedures, the employer need only provide the recruiter or

referrer with a photocopy of the Form I-9 and any attachments.

(c) *Time for completing Form I-9*—(1) *Section 1 of the Form I-9*. An employer, or recruiter or referrer for a fee, must ensure that the individual properly completes section 1 of the Form I-9 at the time of hire.

(2) *Section 2 of the Form I-9*—(i) *Hires for a duration of 3 or more business days*. An employer, or recruiter or referrer for a fee, must examine the documentation presented by the individual and complete section 2 of the Form I-9 within 3 business days of the hire. An employer, or recruiter or referrer for a fee, may require an individual to present documentation listed § 274a.3 at the time of hire or before the time of hire, so long as the commitment to hire the individual has been made and provided that this requirement is applied uniformly to all individuals.

(ii) *Hires for a duration of less than 3 business days*. An employer, or recruiter or referrer for a fee, must examine the documentation presented by the individual and complete section 2 of the Form I-9 at the time of the hire.

(3) *Receipts*. If an individual presents a receipt, as provided in § 274.3(d), for purposes for verification or reverification, the employer must update the Form I-9 (or Form I-9A, if applicable) within the time limits specified in that section.

(d) *Reverification of employment eligibility when employment authorization expires*—(1) *Procedures*. Except as provided in paragraph (d)(3) of this section, if section 1 or 2 of the Form I-9 indicates that the individual's employment authorization expires, the employer must reverify the individual's employment authorization. The employer must, not later than the date that work authorization expires, ensure proper completion of sections 1 and 2 of new Form I-9 or a Form I-9A by:

(i) Ensuring that the individual properly completes section 1 and attests that he or she is authorized to work indefinitely or until a specified date and signs and dates the attestation;

(ii) Examining and unexpired, original document presented by the individual establishing employment eligibility as set forth in § 274a.3(a), (c), or (d), and ensuring that it appears to be genuine and to relate to the individual. An employer should not reverify List B documents;

(iii) Completing section 2; and

(iv) Attaching the new Form I-9 or Form I-9A to the previously-completed Form I-9.

(2) *Continuing obligation*. Except as provided in paragraph (d)(3) of this

section, for as long as the Form I-9 or Form I-9A used for reverification indicates that the individual is not a United States citizen or national, or a lawful permanent resident, and that the individual's employment authorization expires, the employer must reverify the individual's employment authorization as provided in paragraph (d)(1) of this section, no later than the date that employment authorization expires.

(3) *Exception to reverification requirement*. An employer shall not reverify the employment authorization of an individual who attests in section 1 of the Form I-9 or Form I-9A that he or she is a citizen or national of the United States. An employer shall not reverify the employment authorization of an individual who attests in section 1 of the Form I-9 or Form I-9A that he or she is a lawful permanent resident, unless the individual presents a foreign passport that contains a temporary I-551 stamp, provided in § 274a.3(a)(3).

4. Section 274a.3 is revised to read as follows:

§ 274a.3 What documents are acceptable for employment verification?

(a) *Documents that establish both identity and employment authorization (List A)*.

(1) A United States passport;

(2) An Alien Registration Receipt Card or Permanent Resident Card, Form I-551;

(3) A foreign passport that contains a temporary I-551 stamp;

(4) An employment authorization document issued by the Service which contains a photograph, Form I-766, Form I-688 (Temporary Resident Card), Form I-688A, or Form I-688B; or

(5) In the case of a nonimmigrant alien authorized to work only for a specific employer, a foreign passport with an Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status and the name of the approved employer with whom employment is authorized, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I-94.

(b) *Documents that establish identity only (List B)*.

(1) *Acceptable List B documents*.

(i) A driver's license or identification card issued by a state (as defined in section 101(a)(36) of the Act) or an outlying possession of the United States (as defined by section 101(a)(29) of the Act), provided that the document contains a photograph or the following identifying information: name, date of

birth, sex, height, color of eyes, and address;

(ii) A Native American tribal document; or

(iii) In the case of a Canadian nonimmigrant alien or alien with common nationality with Canada who is authorized to work only for a specific employer, a driver's license issued by a Canadian Government authority or a Canadian federal or provincial identification card.

(2) *Special rule for minors*. Minors under the age of 18 who are unable to produce one of the identity documents listed in paragraph (b)(1) of this section are exempt from producing one of the specified identity documents if:

(i) The minor's parent or legal guardian completes section 1 of the Form I-9 and in the space for the minor's signature, the parent or legal guardian writes the words, "minor under age 18";

(ii) The minor's parent or legal guardian completes on the Form I-9 the "Preparer/Translator certification"; and

(iii) The employer or the recruiter or referrer for a fee writes in section 2 under List B in the space after the words "Document Identification #" the words, "minor under age 18".

(3) *Special rule for individuals with disabilities*—(i) *Procedures*. Individuals with disabilities, who are unable to produce one of the identity documents listed in paragraph (b)(1) of this section, and who are being placed into employment by a nonprofit organization or association, or as part of a rehabilitation program, are exempt from producing one of the specified identify documents if:

(A) The individual's parent or legal guardian, or a representative from the nonprofit organization, association, or rehabilitation program placing the individual into a position of employment completes section 1 of the Form I-9 and in the space for the individual's signature, writes the words, "special placement";

(B) The individual's parent or legal guardian, or the program representative, completes on the Form I-9 the "Preparer/Translator certification"; and

(C) The employer or the recruiter or referrer for a fee writes in section 2 under List B in the space after the words "Document Identification #" the words, "special placement".

(ii) *Applicability*. For purposes of this section the term *disability* means, with respect to an individual:

(A) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) A record of such impairment; or

(C) Being regarded as having such an impairment.

(c) *Documents that establish employment authorization only (List C).*

(1) A social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States);

(2) A Native American tribal document; or

(3) In the case of a nonimmigrant alien authorized to work only for a specific employer, an Arrival-Departure Record, Form I-94, containing an endorsement of the alien's nonimmigrant status and the name of the approved employer with whom employment is authorized, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I-94.

(d) *Receipts—(1) Acceptable receipts and their validity periods.* (i) A receipt for an application to replace a document described in paragraph (a), (b), or (c) of this section because the document was lost, stolen, or damaged. Documentation acknowledging receipt of an application for an initial grant or extension of a document described in paragraph (a) or (c) of this section is not a receipt for this purpose, except for a receipt for the application of a timely filed application for an extension of nonimmigrant stay as provided in § 274a.12(b)(2). The individual must present the replacement document within 90 days of the hire or, in the case of reverification under § 274a.2(d) or § 274a.5(b), within 90 days of the date employment authorization expires or the date of rehire.

(ii) The arrival portion of Form I-94 marked with an unexpired Temporary I-551 stamp and affixed with a photograph of the individual. The individual must present the Form I-551 within 180 days of the hire or, in the case of reverification under § 274a.2(d) or § 274a.5(b), within 180 days of the date employment authorization expires or the date of rehire.

(iii) The departure portion of Form I-94 marked with an unexpired refugee admission stamp. The individual must present either an unexpired Employment Authorization Document (Form I-766 or Form I-688B) or a social security account number card that does not contain employment restrictions and an identity document described in paragraph (b) of this section within 90 days of the hire or, in the case of reverification under § 274a.2(d) or § 274a.5(b), within 90 days of the date employment authorization expires or the date of rehire.

(2) *Exceptions.* A receipt described in paragraph (d)(1) of this section is not an acceptable document if:

(i) The individual indicates or the employer, or recruiter or referrer for a fee, has actual or constructive knowledge that the individual is not authorized to work; or

(ii) The employment is for a duration of less than 3 business days.

5. Section 274a.4 is revised to read as follows:

§ 274a.4 How long are employers and recruiters or referrers required to retain the Form I-9 and what must be retained with it?

(a) *Retention of Form I-9—(1) Employers.* An employer must retain the Form I-9 for 3 years after the date of hire or 1 year after the date the individual's employment is terminated, whichever is later.

(2) *Recruiters or referrers.* A recruiter or referrer for a fee must retain the Form I-9 for 3 years after the date of hire.

(b) *Retention of attachments—(1) Reverification forms.* The employer, or recruiter or referrer for a fee, must attach Forms I-9 or I-9A used for reverification, as described in § 274a.2(d), to the initial Form I-9 relating to the individual and retain them with the initial Form I-9.

(2) *Copies of documentation—(i) Option to photocopy.* An employer, or recruiter or referrer for a fee, may, but is not required to, copy a document presented by an individual solely for the purpose of complying with the verification requirements described in § 274a.2. If such a copy is made, it must be attached to and retained with the Form I-9 (or Form I-9A if applicable).

(ii) *Obligation to complete Form I-9.* The copying and retention of any such document does not relieve the employer, or recruiter or referrer for a fee, from the requirement to fully complete section 2 of the Form I-9 or Form I-9A.

(iii) *Discrimination prohibited.* An employer, or recruiter or referrer for a fee, should not copy the documents only of individuals or certain classes of individuals based on national origin or citizenship status. To do so may violate section 274B of the Act.

6. Section 274a.5 is revised to read as follows:

§ 274a.5 Under what circumstances may employers and recruiters or referrers rely on a Form I-9 that an individual previously completed?

(a) *Continuing employment.* An employer will not be deemed to have hired for employment an individual who is continuing in his or her employment and has a reasonable expectation of employment at all times.

Therefore, no verification is necessary for such individuals.

(1) An individual is continuing in his or her employment in one of the following situations:

(i) An individual takes approved paid or unpaid leave on account of study, illness or disability of a family member, illness or pregnancy, maternity or paternity leave, vacation, union business, or other temporary leave approved by the employer;

(ii) An individual is promoted, demoted, or gets a pay raise;

(iii) An individual is temporarily laid off for lack of work;

(iv) An individual is on strike or in a labor dispute;

(v) An individual is reinstated after disciplinary suspension for wrongful termination, found unjustified by any court, arbitrator, or administrative body, or otherwise resolved through reinstatement or settlement;

(vi) An individual transfers from one distinct unit of an employer to another distinct unit of the same employer; the employer may transfer the individual's Form I-9 (and attachments if applicable) to the receiving unit;

(vii) An individual continues his or her employment with a related, successor, or reorganized employer, provided that the employer obtains and maintains from the previous employer records and Forms I-9, and attachments, where applicable. For this purpose, a related, successor, or reorganized employer includes:

(A) The same employer at another location;

(B) An employer who continues to employ some or all of a previous employer's workforce in cases involving a corporate reorganization, merger, or sale of stock or assets;

(C) An employer who continues to employ any employee of another employer's workforce where both employers belong to the same multi-employer association and the employee continues to work in the same bargaining unit under the same collective bargaining agreement. For purposes of this section, any agent designated to complete and maintain the Form I-9 and attachments must record the employee's date of hire and/or termination each time the employee is hired and/or terminated by an employer of the multi-employer association; or

(D) An individual is engaged in seasonal employment.

(2) The employer who is claiming that an individual is continuing in his or her employment must also establish that the individual is expected to resume employment at all times and that the

individual's expectation is reasonable. Whether an individual's expectation is reasonable will be determined on a case-by-case basis taking into consideration several factors. Factors which would indicate that an individual has a reasonable expectation of employment include, but are not limited to, the following:

(i) The individual in question was employed by the employer on a regular and substantial basis. A determination of a regular and substantial basis is established by a comparison of other workers who are similarly employed by the employer;

(ii) The individual in question complied with the employer's established and published policy regarding his or her absence;

(iii) The employer's past history of recalling absent employees for employment indicates a likelihood that the individual in question will resume employment with the employer within a reasonable time in the future;

(iv) The former position held by the individual in question has not been taken permanently by another worker;

(v) The individual in question has not sought or obtained benefits during his or her absence from employment with the employer that are inconsistent with an expectation of resuming employment with the employer within a reasonable time in the future. Such benefits include, but are not limited to, severance and retirement benefits;

(vi) The financial condition of the employer indicates the ability of the employer to permit the individual in question to resume employment within a reasonable time in the future; or

(vii) The oral and/or written communication between the employer, the employer's supervisory employees and the individual in question indicates that it is reasonably likely that the individual in question will resume employment with the employer within a reasonable time in the future.

(b) *Employment verification requirements in the case of an individual who was previously employed*—(1) *Hired within 3 years from the date of the previously completed Form I-9.* An employer that hires an individual previously employed by the employer within 3 years of the date of the initial execution of a previously completed Form I-9 relating to the individual which meets the requirements set forth in §§ 274a.2 through 274a.4 may (instead of completing a new Form I-9) inspect the previously completed Form I-9 and all attachments (described in § 274a.4(b)).

(i) If the Form I-9 and attachments relate to the individual, and the

individual continues to be authorized for employment, the previously completed Form I-9 is sufficient for purposes of section 274A(b) of the Act.

(ii) If the previously completed Form I-9 indicates that the individual is no longer authorized for employment, the employer must reverify in accordance with § 274a.2(d); otherwise, the individual may no longer be employed.

(iii) The employer must retain the previously completed Form I-9 and attachments for a period of 3 years commencing from the date of the initial execution of the Form I-9 or 1 year after the individual's employment is terminated, whichever is later.

(2) *Hired more than 3 years after the date of the previously executed Form I-9.* An employer that hires an individual previously employed by the employer more than 3 years after the date of the initial execution of a previously completed Form I-9 relating to the individual must complete a new Form I-9 in compliance with the requirements of §§ 274a.2 through 274a.4.

(c) *Employment verification requirements in the case of recruiting or referring for a fee an individual who was previously recruited or referred*—(1) *Recruited or referred within 3 years from the date of the previously completed Form I-9.* A recruiter or referrer for a fee that recruits or refers an individual previously recruited or referred by the recruiter or referrer for a fee within 3 years of the date of the initial execution of the Form I-9 relating to the individual which meets the requirements set forth in §§ 274a.2 through 274a.4 may (instead of completing a new Form I-9 inspect the previously completed Form I-9 and all attachments (described in § 274a.4(b)).

(i) If the Form I-9 and attachments relate to the individual, and the individual continues to be authorized for employment, the previously completed Form I-9 is sufficient for purposes of section 274a(b) of the Act.

(ii) If the previously completed Form I-9 indicates that the individual's employment authorization has expired, the recruiter or referrer for a fee must reverify in accordance with § 274a.2(d); otherwise the individual may no longer be recruited or referred.

(iii) The recruiter or referrer for a fee must retain the previously completed Form I-9 and attachments for a period of 3 years from the date of the hire.

(iv) The reverification requirements in § 274a.2(d) do not apply to recruiters or referrers for a fee except as provided in paragraph (c)(1)(ii) of this section.

(2) *Recruited or referred more than 3 years after the date of the previously*

executed Form I-9. A recruiter or referrer for a fee that recruits or refers an individual previously recruited or referred by the recruiter or referrer for a fee more than 3 years after the date of the initial execution of a previously completed Form I-9 relating to the individual must complete a new Form I-9 in compliance with the requirements of §§ 274a.2 through 274a.4.

7. Section 274a.6 is revised to read as follows:

§ 274a.6 What happens when the Government asks to inspect Forms I-9?

(a) *Notice of inspection.* Officers of the Service, the Office of Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor may inspect the Forms I-9, and all attachments described in § 274a.4(b), after providing at least 3 days' notice to any person or entity required to retain Forms I-9.

(b) *Obligation to make records available*—(1) *In general.* At the time of inspection, the Forms I-9 and all attachments must be made available in their original form or on microfilm or microfiche at the location where the request for production was made. If the Forms I-9 and attachments are kept at another location, the person or entity must inform the officer of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor of the location where the forms are kept and make arrangements for the inspection. Inspections may be performed at a Service office.

(2) *Standards for submitting microfilm or microfiche.* The following standards shall apply to Forms I-9 and attachments presented on microfilm or microfiche submitted to an officer of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor: Microfilm when displayed on a microfilm reader (viewer) or reproduced on paper must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral which enables the observer to positively and quickly identify it to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or whole numbers. A detailed index of all microfilmed data shall be maintained and arranged in such a manner as to permit the immediate location of any particular record. It is the responsibility of the employer, or recruiter or referrer for a fee:

(i) To provide for the processing, storage, and maintenance of all microfilm, and

(ii) To be able to make the contents thereof available as required by law. The person or entity presenting the microfilm will make available a reader-printer at the examination site for the ready reading, location, and reproduction of any record or records being maintained on microfilm. Reader-printers made available to an officer of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor shall provide safety features and be in clean condition, properly maintained, and in good working order. The reader-printers must have the capacity to display and print a complete page of information. A person or entity who is determined to have failed to comply with the criteria established by this regulation for the presentation of microfilm or microfiche to the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor, and, at the time of the inspection, does not present a properly completed Form I-9 with attachments for the employee, is in violation of section 274A(a)(1)(B) of the Act and §§ 274a.2 through 274a.6.

(3) *Recruiters or referrers.* A recruiter or referrer for a fee who has designated an employer to complete the employment verification procedures may present a photocopy of the Form I-9 and attachments instead of presenting the Form I-9 and attachments in its original form or on microfiche, as set forth in § 274a.2(b)(3).

(c) *Compliance with inspection.* Any refusal or delay in presentation of the Form I-9 and attachments for inspection is a violation of the retention requirements as set forth in section 274A(b)(3) of the Act.

(d) *Use of subpoena authority.* No subpoena or warrant shall be required for an inspection under this section, but the use of such enforcement tools is not precluded. Any Service officer listed in § 287.4 of this chapter may compel production of the Forms I-9 and attachments by issuing a subpoena if the person or entity has not complied with a request to present the Forms I-9 and attachments. Prior to the filing of a complaint under 28 CFR part 68, any Service officer listed in § 287.4 of this chapter may compel by subpoena the attendance of witnesses and production of any evidence, including but not limited to Forms I-9 and attachments. Nothing in this section is intended to limit the Service's subpoena power

under sections 235(d)(4) or 274A(e)(2)(C) of the Act.

8. Section 274a.7 is revised to read as follows:

§ 274a.7 What is the prohibition on hiring or contracting with unauthorized aliens and what defense can be claimed?

(a) *Prohibition on the hiring and continuing employment of unauthorized aliens.* A person or entity who hires, or recruits or refers for a fee, an individual after November 6, 1986, and who has actual or constructive knowledge that the individual is unauthorized to work, is in violation of section 274A(a)(1)(A) of the Act. A person or entity who continues to employ an individual hired after November 6, 1986, and who has actual or constructive knowledge that the individual is or has become unauthorized, is in violation of section 274A(a)(2) of the Act.

(b) *Use of labor through contract.* Any person or entity who uses a contract, subcontract, or exchange entered into, renegotiated, or extended after November 6, 1986, to obtain the labor or services of an alien in the United States who has actual or constructive knowledge that the alien is an unauthorized alien with respect to performing such labor or services, shall be considered to have hired the alien for employment in the United States in violation of section 274A(a)(1)(A) of the Act.

(c) *Good faith defense to charge of knowingly hiring an unauthorized alien.* A person or entity who shows good faith compliance with the employment verification requirements of §§ 274a.2 through 274a.6 shall have established a rebuttable affirmative defense that the person or entity has not violated section 274A(a)(1)(A) of the Act with respect to such hiring, recruiting, or referral.

9. Section 274a.8 is revised to read as follows:

§ 274a.8 What are the requirements of state employment agencies that choose to verify the identify and employment eligibility of individuals referred for employment by the agency?

(a) *General.* Under sections 274A(a)(5) and 274A(b) of the Act, a state employment agency as defined in § 274a.1 may, but is not required to, verify identity and employment eligibility of individual referred for employment by the agency. However, should a state employment agency choose to do so, it must:

(1) Complete the verification process in accordance with the requirements of §§ 274a.2 through 274a.6 *provided* that the individual may not present receipts, as set forth in § 274a.3(d), in lieu of

documents in order to complete the verification process; and

(2) Complete the verification process prior to referral for all individuals for whom a certification is required to be issued under paragraph (c) of this section.

(b) *Compliance with the provisions of section 274A of the Act.* A state employment agency which chooses to verify employment eligibility of individuals according to §§ 274a.2 through 274a.6 shall comply with all provisions of section 274A of the Act and the regulations issued thereunder.

(c) *State employment agency certification.*—(1) A state employment agency which chooses to verify employment eligibility according to paragraph (a) of this section shall issue to an employer who hires an individual referred for employment by the agency, a certification as set forth in paragraph (d) of this section. The certification shall be transmitted by the state employment agency directly to the employer, personally by an agency official, or by mail, so that it will be received by the employer within 21 business days of the date that the referred individual is hired. In no case shall the certification be transmitted to the employer from the state employment agency by the individual referred. During this period:

(i) The job order or other appropriate referral form issued by the state employment agency to the employer, on behalf of the individual who is referred and hired, shall serve as evidence, with respect to that individual, of the employer's compliance with the provisions of section 274A(a)(1)(B) of the Act and the regulations issued thereunder.

(ii) In the case of a telephonically authorized job referral by the state employment agency to the employer, an appropriate annotation by the employer shall be made and shall serve as evidence of the job order. The employer should retain the document containing the annotation where the employer retains Forms I-9.

(2) Job orders or other referrals, including telephonic authorizations, which are used as evidence of compliance under paragraph (c)(1)(i) of this section shall contain:

(i) The name of the referred individual;

(ii) The date of the referral;

(iii) The job order number or other applicable identifying number relating to the referral;

(iv) The name and title of the referring state employment agency official; and

(v) The telephone number and address of the state employment agency.

(3) A state employment agency shall not be required to verify employment eligibility or to issue a certification to an employer to whom the agency referred an individual if the individual is hired for a period of employment not to exceed 3 days in duration. Should a state agency choose to verify employment eligibility and to issue a certification to an employer relating to an individual who is hired for a period of employment not to exceed 3 days in duration, it must verify employment eligibility and issue certifications relating to *all* such individuals. Should a state employment agency choose not to verify employment eligibility or issue certifications to employers who hire, for a period not to exceed 3 days in duration, agency-referred individuals, the agency shall notify employers that, as a matter of policy, it does not perform verifications for individuals hired for that length of time, and that the employers must complete the identify and employment eligibility requirements under §§ 274a.2 through 274a.6. Such notification may be incorporated into the job order or other referral form utilized by the state employment agency as appropriate.

(4) An employer to whom a state employment agency issues a certification relating to an individual referred by the agency and hired by the employer, shall be deemed to have complied with the verification requirements of §§ 274a.2 through 274a.6 provided that the employer:

(i) Reviews the identifying information contained in the certification to ensure that it pertains to the individual hired;

(ii) Observes the signing of the certification by the individual at the time of its receipt by the employer as provided for in paragraph (d)(13) of this section;

(iii) Complies with the provisions of § 274a.2(d) by either:

(A) Updating the state employment agency certification in lieu of Form I-9, upon expiration of the employment authorization date, if any, which was noted on the certification issued by the state employment agency under paragraph (d)(11) of this section; or

(B) By no longer employing an individual upon expiration of his or her employment authorization date noted on the certification;

(iv) Retains the certification in the same manner prescribed for Form I-9 and attachments in § 274a.4, to wit, 3 years after the date of the hire or 1 year after the date the individual's employment is terminated, whichever is later; and

(v) Makes it available for inspection to officers of the Service or the Department of Labor, according to the provisions of section 274A(b)(3) of the Act, and § 274a.6.

(5) Failure by an employer to comply with the provisions of paragraph (c)(4)(iii) of this section shall constitute a violation of section 274(a)(2) of the Act and shall subject the employer to the penalties contained in section 274A(e)(4) of the Act, and § 274a.11.

(d) *Standards for state employment agency certifications.* All certifications issued by a state employment agency under paragraph (c) of this section shall conform to the following standards. They must:

(1) Be issued on official agency letterhead;

(2) Be signed by an appropriately designated official of the agency;

(3) Bear a date of issuance;

(4) Contain the employer's name and address;

(5) State the name and date of birth of the individual referred;

(6) Identify the position or type of employment for which the individual is referred;

(7) Bear a job order number relating to the position or type of employment for which the individual is referred;

(8) Identify the document or documents presented by the individual to the state employment agency for the purposes of identity and employment eligibility verification;

(9) State the identifying number of numbers of the document or documents described in paragraph (d)(8) of this section;

(10) Certify that the agency has complied with the requirements of section 274A(b) of the Act concerning verification of the identify and employment eligibility of the individual referred, and has determined that, to the best of the agency's knowledge, the individual is authorized to work in the United States;

(11) Clearly state any restrictions, conditions, expiration dates, or other limitations which relate to the individual's employment eligibility in the United States, or contain an affirmative statement that the employment authorization of the referred individual is not restricted;

(12) State that the employer is not required to verify the individual's identity or employment eligibility, but must retain the certification in lieu of Form I-9;

(13) Contain a space or a line for the signature of the referred individual, requiring the individual under penalty of perjury to sign his or her name before

the employer at the time of receipt of the certification by the employer; and

(14) State that counterfeiting, falsification, unauthorized issuance, or alteration of the certification constitutes a violation of Federal law under 18 U.S.C. 1546.

(e) *Retention of Form I-9 by state employment agencies.* A Form I-9 utilized by a state employment agency in verifying the identity and employment eligibility of an individual under §§ 274a.2 through 274a.6 must be retained by a state employment agency for a period of 3 years from the date that the individual was last referred by the agency and hired by an employer. A state employment agency may retain a Form I-9 either in its original form, or on microfilm or microfiche.

(f) *Retention of state employment agency certifications.* A certification issued by a state employment agency under this section shall be retained:

(1) By a state employment agency, for a period of 3 years from the date that the individual was last referred by the agency and hired by an employer, and in a manner to be determined by the agency which will enable the prompt retrieval of the information contained on the original certification for comparison with the relating Form I-9;

(2) By the employer, in the original form, and in the same manner and location as the employer has designated for retention of Forms I-9, and for the period of time provided in paragraph (c)(4)(iv) of this section.

(g) *State employment agency verification requirements in the case of an individual who was previously referred and certified.* When a state employment agency refers an individual for whom the verification requirements have been previously complied with and a Form I-9 completed, the agency shall inspect the previously completed Form I-9:

(1) If, upon inspection of the Form, the agency determines that the Form I-9 pertains to the individual and that the individual remains authorized to be employed in the United States, no additional verification need be conducted and no new Form I-9 need be completed prior to issuance of a new certification *provided* that the individual is referred by the agency within 3 years of the execution of the initial Form I-9.

(2) If, upon inspection of the Form, the agency determines that the Form I-9 pertains to the individual but that the individual does not appear to be authorized to be employed in the United States based on restrictions, expiration dates, or other conditions annotated on the Form I-9, the agency shall not issue

a certification unless the agency follows the updating procedures under § 274a.2(d) of this part; otherwise the individual may no longer be referred for employment by the state employment agency.

(3) For the purposes of retention of the Form I-9 by a state employment agency under paragraph (e) of this section, for an individual previously referred and certified, the state employment agency shall retain the Form for a period of 3 years from the date that the individual is last referred and hired.

(h) *Employer verification requirements in the case of an individual who was previously referred and certified.* When an employer rehires an individual for whom the verification and certification requirements have been previously complied with by a state employment agency, the employer shall inspect the previously issued certification.

(1) If, upon inspection of the certification, the employer determines that the certification pertains to the individual and that the individual remains authorized to be employed in the United States, no additional verification need be conducted and no new Form I-9 or certification need be completed *provided* that the individual is rehired by the employer within 3 years of the issuance of the initial certification, and that the employer follows the same procedures for the certification which pertain to Form I-9, as specified in § 274a.5(b)(1)(i).

(2) If, upon inspection of the certification, the employer determines that the certification pertains to the individual but that the certification reflects restrictions, expiration dates, or other conditions which indicate that the individual no longer appears authorized to be employed in the United States, the employer shall verify that the individual remains authorized to be employed and shall follow the updating procedures for the certification which pertain to Form I-9, as specified in § 274a.5(b)(1)(ii).

(3) For the purposes of retention of the certification by an employer under this paragraph for an individual previously referred and certified by a state employment agency and rehired by the employer, the employer shall retain the certification for a period of 3 years after the date that the individual is last hired, or 1 year after the date the individual's employment is terminated, whichever is later.

10. Section 274a.9 is revised to read as follows:

§ 274a.9 Can a person or entity require an individual to provide a financial guarantee or indemnity against potential liability related to the hiring, recruiting, or referring of the individual?

(a) *General.* It is unlawful for a person or other entity, in hiring or recruiting or referring for a fee for employment of an individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this part relating to such hiring, recruiting, or referring of the individual. However, this prohibition does not apply to performance clauses which are stipulated by agreement between contracting parties.

(b) *Penalty.* Any person or other entity who requires any individual to post a bond or security as stated in this section shall, after notice and opportunity for an administrative hearing in accordance with section 274A(e)(3)(B) of the Act, be subject to a civil fine of \$1,000 for each violation and to an administrative order requiring the return to the individual of any amounts received in violation of this section or, if the individual cannot be located, to the general fund of the Treasury.

11. Section 274a.10 is revised to read as follows:

§ 274a.10 How are investigations initiated and employers notified of violations?

(a) *Procedures for the filing of complaints.* Any person or entity having knowledge of a violation or potential violation of section 274A of the Act may submit a signed, written complaint in person or by mail to the Service office having jurisdiction over the business or residence of the potential violator. The signed, written complaint must contain sufficient information to identify both the complainant and the potential violator, including their names and addresses. The complaint should also contain detailed factual allegations relating to the potential violation including the date, time, and place of the alleged violation and the specific act or conduct alleged to constitute a violation of the Act. Written complaints may be delivered either by mail to the appropriate Service office or by personally appearing before any immigration officer at a Service office.

(b) *Investigation.* The Service may conduct investigations for violations on its own initiative and without having received a written complaint. When the Service receives a complaint from a third party, it shall investigate only those complaints that have a reasonable probability of validity. If it is

determined after investigation that the person or entity has violated section 274A of the Act, the Service may issue and serve a Notice of Intent to Fine or a Warning Notice upon the alleged violator. Service officers shall have reasonable access to examine any relevant evidence of any person or entity being investigated.

(c) *Warning notice.* The Service and/or the Department of Labor may in their discretion issue a Warning Notice to a person or entity alleged to have violated section 274A of the Act. This Warning Notice will contain a statement of the basis for the violations and the statutory provisions alleged to have been violated.

(d) *Notice of Intent to Fine.* The proceeding to assess administrative penalties under section 274A of the Act is commenced when the Service issues a Notice of Intent to Fine on Form I-763. Service of this Notice shall be accomplished according to 8 CFR Part 103. The person or entity identified in the Notice of Intent to Fine shall be known as the respondent. The Notice of Intent to Fine may be issued by an officer defined in § 239.1(a) of this chapter with concurrence of a Service attorney.

(1) *Contents of the Notice of Intent to Fine.* (i) The Notice of Intent to Fine will contain the basis for the charge(s) against the respondent, the statutory provisions alleged to have been violated, and the penalty that will be imposed.

(ii) The Notice of Intent to Fine will provide the following advisals to the respondent:

(A) That the person or entity has the right to representation by counsel of his or her own choice at no expense to the Government;

(B) That any statement given may be used against the person or entity;

(C) That the person or entity has the right to request a hearing before an administrative law judge under 5 U.S.C. 554-557, and that such request must be made within 30 days from the service of the Notice of Intent to Fine;

(D) That the Service will issue a final order in 45 days if a written request for a hearing is not timely received and that there will be no appeal of the final order.

(e) *Request for hearing before an administrative law judge.* If a respondent contests the issuance of a Notice of Intent to Fine, the respondent must file with the Service, within 30 days of the service of the Notice of Intent to Fine, a written request for a hearing before an administrative law judge. Any written request for a hearing submitted in a foreign language must be

accompanied by an English language translation. A request for a hearing is not deemed to be filed until received by the Service office designated in the Notice of Intent to Fine. In computing the 30-day period prescribed by this section, the day of service of the Notice of Intent to Fine shall not be included. If the Notice of Intent to Fine was served by ordinary mail, 5 days shall be added to the prescribed 30-day period. In the request for a hearing, the respondent may, but is not required to, respond to each allegation listed in the Notice of Intent to Fine.

(f) *Failure to file a request for hearing.* If the respondent does not file a request for a hearing in writing within 30 days of the day of service of the Notice of Intent to Fine (35 days if served by ordinary mail), the Service shall issue a final order from which there is no appeal.

12. Section 274a.11 is added to read:

§ 274a.11 What penalties may be imposed for violations?

(a) *Criminal penalties.* Any person or entity which engages in a pattern or practice of violations of section 274A(a)(1)(A) or (a)(2) of the Act shall be fined not more than \$3,000 for each unauthorized alien, imprisoned for not more than 6 months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(b) *Civil penalties.* A person or entity may face civil penalties for a violation of section 274A of the Act. Civil penalties may be imposed by the Service or an administrative law judge for violations under section 274A of the Act. In determining the level of the penalties that will be imposed, a finding of more than one violation in the course of a single proceeding or determination will be counted as a single offense. However, a single offense will include penalties for each unauthorized alien who is determined to have been knowingly hired or recruited or referred for a fee.

(1) A respondent found by the Service or an administrative law judge to have knowingly hired, or to have knowingly

recruited or referred for a fee, an unauthorized alien for employment in the United States or to have knowingly continued to employ an unauthorized alien in the United States, shall be subject to the following order:

(i) To cease and desist from such behavior;

(ii) To pay a civil fine according to the following schedule:

(A) First offense—not less than \$250 and not more than \$2,000 for each unauthorized alien, or

(B) Second offense—not less than \$2,000 and not more than \$5,000 for each unauthorized alien; or

(C) More than two offenses—not less than \$3,000 and not more than \$10,000 for each unauthorized alien; and

(iii) To comply with the requirements of § 274a.2(b), and to take such other remedial action as appropriate.

(2) A respondent determined by the Service (if a respondent fails to request a hearing) or by an administrative law judge to have failed to comply with the employment verification requirements as set forth in §§ 274a.2 through 274a.6, shall be subject to a civil penalty in an amount of not less than \$100 and not more than \$1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, consideration shall be given to:

(i) The size of the business of the employer being charged;

(ii) The good faith of the employer;

(iii) The seriousness of the violation;

(iv) Whether or not the individual was an unauthorized alien; and

(v) The history of previous violations of the employer.

(3) Where an order is issued with respect to a respondent composed of distinct, physically separate subdivisions which do their own hiring, or their own recruiting or referring for a fee for employment (without reference to the practices of, and under the control of, or common control with another subdivision) the subdivision shall be considered a separate person or entity.

(c) *Enjoining pattern or practice violations.* If the Attorney General has

reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of section 274A(a)(1) (A) or (B) of the Act, the Attorney General may bring civil action in the appropriate United States District Court requesting relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

(d) *Pre-enactment provisions for employees hired prior to November 7, 1986.* The penalty provisions set forth in section 274A (e) and (f) of the Act for violations of sections 274A(a)(1)(B) and 274A(a)(2) of the Act shall not apply to employees who were hired prior to November 7, 1986, and who are continuing in their employment and have a reasonable expectation of employment at all times (as set forth in § 274a.5(a)), except those individuals described in §§ 274a.5(a)(vii) and (a)(1)(vii) and (a)(1)(viii)). For purposes of this section, an employee who are hired prior to November 7, 1986, shall lose his or hers pre-enactment status if the employee:

(1) Quits;

(2) Is terminated by the employer; the term termination shall include, but is not limited to, situations in which an employee is subject to seasonal employment.

(3) Is excluded or deported from the United States or departs the United States under a grant of voluntary departure; or

(4) Is no longer continuing his or her employment (or does not have a reasonable expectation of employment at all times) as set forth in § 274a.5(a).

PART 299—IMMIGRATION FORMS

13. Section 299.1 is amended by adding to the listing of forms, in proper numerical sequence, the entry for Form "I-9A" to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
I-9A	xxxxx	Employment Eligibility Reverification.

14. Section 299.5 is amended by adding to the listing of forms, in proper

numerical sequence, the entry for form "I-9A" to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
I-9A	Employment Eligibility Reverification	1115-

Dated: January 22, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

Note: The Form I-9 and Form I-9A will not appear in the Code of Federal Regulations.

BILLING CODE 4410-10-M

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. xxxx-xxxx

Employment Eligibility Verification

INSTRUCTION SHEET- FORM I-9 AND FORM I-9A

PLEASE READ CAREFULLY BEFORE COMPLETING THIS FORM.

THIS INSTRUCTION SHEET MUST BE AVAILABLE TO PERSONS COMPLETING THIS FORM.

Employers are responsible for ensuring that the Employment Eligibility Verification form, Form I-9, is properly completed for all employees, citizens and noncitizens, hired after November 6, 1986. Federal law prohibits employers from knowingly hiring or continuing to employ aliens who are not authorized to work in the United States. Federal law provides for civil money penalties for failure to properly complete or maintain this form.

This version of the Form I-9 replaces earlier versions of the form. Starting xx-xx-xx, this is the only version of the form that may be used. The documents listed in Section 2 of the form are the only documents that employers may accept as evidence of identity and eligibility to work. Either Form I-9 or I-9A may be used if an employee's eligibility to work expires and must be reverified.

Discrimination prohibited: It is illegal to discriminate against any individual, other than an alien not authorized to work in the U.S., in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. Employers cannot specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Form I-9

Section 1 must be completed at the time employment begins. **Section 2** must be completed within three business days of the date employment begins. If the person is being hired for less than three business days, both Section 1 and Section 2 must be completed at the time employment begins. After making the commitment to hire, an employer may require employees to complete the Form I-9 at or before the time employment begins, provided that the employer applies this requirement uniformly.

Employee instructions

(1) Read all the instructions and information on this page and on the Form I-9. (2) Complete the information block in Section 1. (3) Read the attestation. Initial the block indicating the status that makes you eligible to work in the United States.

I attest, under penalty of perjury, that I am (*initial one of the following*):

LMQ A citizen or national of the United States

If you are a Lawful Permanent Resident or other work-authorized alien, provide your A number or admission number in the space indicated.

MJE A Lawful Permanent Resident (A# A00001111)

If you are not a U.S. citizen or national, or a Lawful Permanent Resident, and your work authorization has an expiration date, put that date in the space indicated. (Some aliens, such as refugees, are not permanent residents but have work authorization that does not expire.) (4) Sign and date the Employee signature block. (5) Show your employer one document from List A or one document each from List B and List C in Section 2. You may choose which documents you wish to present from the lists of acceptable documents in Section 2. Also see the "receipts for documents" section on the second page of these instructions. An employer cannot prefer one document over others. If an employer refuses to accept the documents you choose to show, call the Office of Special Counsel for Immigration-Related Unfair Employment Practices at 1-800-255-7688 to ask about your rights.

Warning: Federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form. In addition, aliens who are found to have committed such acts may be subject to removal proceedings.

Preparer/Translator instructions

If the employee needs assistance in completing Section 1, or needs the form translated, someone may assist him or her. The employee must still initial and sign Section 1 personally. If the employee is a minor under age 18 or a

person with a disability who is unable to produce one of the identity documents listed, a parent or responsible person may attest to the person's identity. After providing the needed assistance, the preparer or translator must read the attestation, sign and date the Preparer/Translator signature block, and fill in the requested information. See pub. M-274 for detailed information.

Employer instructions

(1) Read all the instructions and information on this page and on the Form I-9. (2) Review Section 1 to ensure that it is properly completed. If the date of hire (first day of work) is not known when the form is being completed, that date should be entered on the form when it is known, and the change initialed and dated. State employment agencies completing the form may omit the date of hire. (3) Examine the document(s) presented by the employee. The employee may choose which documents to present from the lists of acceptable documents in Section 2. You must accept any document or combination of documents from Section 2 which reasonably appear on their face to be genuine and to relate to the person presenting them. Also see the "receipts for documents" section on the second page of these instructions. You may not prefer one document over others or ask to see a specific document. To do so could constitute discrimination. For more information on how to comply with employment eligibility verification without discriminating, call the Office of Special Counsel for Immigration-Related Unfair Employment Practices at 1-800-255-8155. Employers may, but are not required to, photocopy the document(s) presented. If they do this, they must still complete the Form I-9. The photocopies must be attached to and retained with the form. The copies may be used only for the verification process. (4) Complete Section 2. Fill in the information requested for the document(s) presented. (Two information blocks are provided on the form for List A for use if the employee presents a foreign passport with a stamp or Form I-94.) The example below shows how the blocks would be completed for a driver's license. Other examples are shown in pub. M-274.

- Driver's License issued by a State or outlying possession

State: Virginia

Document # 123-45-6789

Expiration date 12/13/99

(5) Read the attestation. (6) Sign and date the Employer or Authorized Representative signature block, and fill in the requested information.

Note: For the purpose of completing this form, the term "employer" includes those recruiters and referrers for a fee who are agricultural associations, agricultural employers, or farm labor contractors.

For more information see pub. M-274, Handbook for Employers. This publication contains detailed instructions, examples of properly completed forms, and pictures of the documents that may be presented when completing the Form I-9.

Form I-9 and Form I-9A (xx-xx-xx)

Receipts for documents

A person who is eligible to work, but who is unable to provide a required document, may present a receipt. The person must have attested in Section 1 that he or she is eligible for employment. An employer may not accept a receipt if the person indicates or the employer has actual or constructive knowledge that the person is not authorized to work. There are three kinds of acceptable receipts: (1) A person may present a receipt showing that they have applied for a replacement document. The person must present the required document within 90 days of the hire. (2) Immigration and Naturalization Service (INS) Arrival-Departure Record (Form I-94) may be treated as a receipt if it bears a "Temporary I-551" stamp or a refugee admission stamp. The temporary I-551 stamp may be accepted as a receipt for the Permanent Resident Card (Form I-551). The person must present Form I-551 within 180 days of the hire. (3) An INS Form I-94 bearing a refugee admission stamp may be accepted as a receipt for either an Employment Authorization Document (Form I-766 or I-688B) or an unrestricted Social Security card. The person must present the required document within 90 days of the hire.

Note: Employees hired for less than three business days must present the actual document(s) at the time of hire.

Reverification (Form I-9A)

Employers are responsible for reverifying the work authorization for a person if Section 1 or 2 of the Form I-9 indicates that the individual's employment authorization expires. Employers may either complete a new Form I-9 or use Form I-9A for reverification. Whichever form is used, reverification must be completed no later than the date employment authorization expires. If the form used for reverification indicates in Section 1 or 2 that the individual's employment authorization expires, employers must again reverify no later than the expiration date. Employees may present a receipt for reverification, as described above. **Note:** List B documents never need to be reverified. Documents presented by U.S. citizens and nationals and Lawful Permanent Residents are not subject to the reverification requirement, except in the case of Lawful Permanent Residents who present a foreign passport with a temporary I-551 stamp.

Employee Instructions for Form I-9A: (1) Read all the instructions and information on this page and on the form I-9A. (2) Complete the information block in Section 1. (3) Read the attestation. Initial the block indicating the status that makes you eligible to work in the United States. If you are not a Lawful Permanent Resident and your work authorization has an expiration date, put that date in the space indicated. (4) Sign and date the Employee signature block. (5) Show your employer one document from List A or one document from List C in Section 2 of the Form I-9.

Preparer/Translator Instructions for Form I-9A: If someone assists the employee in completing Section 1, or translates the form, that person must read the attestation, sign and date the Preparer/Translator signature block, and fill in the requested information.

Employer Instructions for Form I-9A: (1) Read all the instructions and information on this page and on the form I-9A. (2) Review Section 1 to ensure that it is properly completed. (3) Examine the document(s) presented by the employee. Documents should appear to be genuine and to relate to the person presenting them. (4) Fill in the information requested for the document(s) presented. The example below shows how the blocks would be completed for an I-766 employment authorization document. Other examples are shown in pub. M-274.

Document Title: *I-766 Employment Auth. Document*

Document #: *A12345678* **Expiration Date (if any):** *2/26/99*

(5) Read the attestation. (6) Sign and date the Employer or Authorized Representative signature block, and fill in the requested information.

Note: For as long as the Form I-9 or Form I-9A used for reverification indicates that the individual is not a United States citizen or national, or a lawful permanent resident, and that the individual's employment authorization expires, the employer must reverify the individual's employment authorization, no later than the date that employment authorization expires.

Retaining Forms

Employers must maintain completed Forms I-9 for three years after the date the person begins work or one year after the date employment is terminated, whichever is later. Forms used for reverification (Form I-9 or I-9A) must be attached to and retained with the original Form I-9. Employers who elect to photocopy documents presented must attach the photocopies to and retain them with the Form I-9.

Obtaining and Duplicating Forms

The Form I-9 and the form I-9A may be obtained in limited quantities at INS District Offices, or ordered from the INS at 800-870-3676 or the Superintendent of Documents, Washington, DC 20402. They are also available for downloading from the Internet at <http://www.usdoj.gov/ins/>. Employers may electronically generate blank forms, provided that: the resulting form is legible; there is no change to the name, content, or sequence of the data elements and instructions; no additional data elements or language are inserted; and the paper used meets the standards for retention and production for inspection specified under 8 CFR 274a.2(b). When copying or printing the Form I-9, Form I-9A, or this Instruction Sheet, the text may be reproduced by making either double-sided or single-sided copies. *The instruction sheet must be available to all persons completing this form.*

Privacy Act Notice. The authority for collecting this information is the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a). This information is for employers to verify the eligibility of persons for employment, to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the U.S. This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the U.S. The form will be kept by the employer and made available for inspection by officials of the U.S. Immigration and Naturalization Service, the Department of Labor, and the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. *However, a person may not begin employment unless this form is completed within the time required by regulation since employers are subject to civil or criminal penalties if they do not comply with the Act.* Under the Privacy Act, a person may complete Section 1 without providing the Social Security number.

Reporting Burden. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows. For the Form I-9: 1) learning about this form, 4 minutes; 2) completing the form, 4 minutes; and 3) assembling and filing (record keeping) the form, 4 minutes, for an average of 12 minutes per response. For the Form I-9A: 1) learning about this form, 3 minutes; 2) completing the form, 2 minutes; and 3) assembling and filing (record keeping) the form, 4 minutes, for an average of 9 minutes per response. If you have comments regarding the accuracy of this burden estimate, or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service, 425 I Street, N.W., Room 5307, Washington, D.C., 20536. **Do not mail completed Forms I-9 to this address.**

For more information see pub. M-274, Handbook for Employers. This publication contains detailed instructions, examples of properly completed forms, and pictures of the documents that may be presented when completing the Form I-9.

Form I-9 and Form I-9A (xx-xx-xx)

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. xxxx-xxxx

Employment Eligibility Verification

The instruction sheet must be available to persons completing this form. Please read it carefully before you begin.
For detailed information, see Pub. M-274, Handbook for Employers.

Anti-discrimination notice: It is illegal to discriminate against work eligible individuals. Employers cannot specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Date of hire:
(first day of work)

(month/day/year)

Section 1. To be completed at the time employment begins. Employee must provide the information requested, initial the space showing the status that makes him or her eligible to work in the US, and sign and date the attestation. Employer must review to ensure Section 1 is properly completed.

Federal law provides for imprisonment and/or fines for false statements or use of false documents when completing the Form I-9.

Print Name (Last, First, Middle Initial) Maiden Name
Address Street Number and Name, Apt. # City State ZIP Code
Date of Birth (month/day/year) Social Security # (optional)

I attest, under penalty of perjury, that I am (initial one of the following):

- ___ A citizen or national of the United States
- ___ A Lawful Permanent Resident (A# _____)
- ___ An alien authorized to work (A# or Admission # _____)
until (expiration date, if applicable - month/day/year) ___/___/___

X

Employee's Signature Date (month/day/year)

Preparer/Translator: Complete and sign this section if you assisted in the completion of Section 1.

I attest, under penalty of perjury, that I have assisted in the completion of this form and that, to the best of my knowledge, the information is true and correct.

X

Preparer's/Translator's Signature Date (month/day/year)

Print Name Address (Street Name and Number, City, State, Zip Code)

Section 2. To be completed within three business days of the time employment begins. Employee must choose one document from List A or one document from List B and one from List C and present the document(s) to the employer. Documents must be unexpired. Employer must check the block next to the document(s), fill in the requested information, including the document number and expiration date (if any), and sign and date the attestation.

List A OR List B AND List C
List A: [] United States Passport, [] Permanent Resident Card or Resident alien card (I-551), [] Foreign Passport with temporary I-551 stamp, [] Temporary resident card (I-688), [] Employment authorization document, [] (For aliens authorized to work only for a specific employer) Foreign Passport with Form I-94 authorizing employment with this employer.
List B: [] Driver's License issued by a State or outlying possession, [] ID card issued by a State or outlying possession, [] Native American Tribal Document, [] (For Canadian aliens authorized to work only for a specific employer) Canadian Driver's License or ID card with a photograph.
List C: [] Social Security Account number card without employment restrictions, [] Native American Tribal Document, [] (For aliens authorized to work only for a specific employer) Form I-94 authorizing employment with this employer.

I attest, under penalty of perjury, that I have examined the document(s) presented by the employee, that the document(s) appear to be genuine and to relate to the employee named, and that, to the best of my knowledge, the employee is eligible to work in the United States.

X

Signature of Employer or Authorized Representative Date (month/day/year)

Print Name Company Name and Address (Street Name and Number, City, State, ZIP code)

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. xxxx-xxxx

Employment Eligibility Reverification

This form is for reverification only.

Do not use if the employee has not previously completed a Form I-9. Do not use if the employee previously completed a Form I-9 and was verified as a US citizen or national or a Lawful Permanent Resident (except for a Lawful Permanent Resident who presented an unexpired foreign passport with a temporary I-551 stamp). The instruction sheet and lists A and C must be available to persons completing this form. For details, see Pub. M-274, Handbook for Employers.

Anti-discrimination notice: It is illegal to discriminate against work eligible individuals. Employers cannot specify which document(s) they will accept from an employee. The refusal to continue to employ an individual because of a future expiration date may also constitute illegal discrimination.

Federal law provides for imprisonment and/or fines for false statements or use of false documents when completing the Form I-9A.

Reverification Dated _____ (month/day/year)

Section 1. Employee must complete and sign no later than the date employment authorization expires. Employer must review to ensure Section 1 is properly completed.

Print Name (Last, First, Middle Initial)	Maiden Name
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I attest, under penalty of perjury, that I am (initial one of the following):

- _____ A Lawful Permanent Resident (A# _____)
- _____ An alien authorized to work (A# or Admission # _____)
until (expiration date, if applicable - month/day/year) ____/____/____

X _____
Employee's Signature Date (month/day/year)

Preparer/Translator: Complete and sign this section if you assisted in the completion of Section 1. I attest, under penalty of perjury, that I have assisted in the completion of this form and that, to the best of my knowledge, the information is true and correct.

X _____
Preparer's/Translator's Signature Date (month/day/year)

Print Name	Address (Street Name and Number, City, State, Zip Code)
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Section 2. To be completed and signed no later than the expiration date indicated for the employee's employment authorization on either Section 1 or Section 2 (List A or C) of the Form I-9. Employee must present one document from List A or List C on the Form I-9. Employer must fill in the requested information and sign and date the attestation.

Document Title: _____ **Document #:** _____ **Expiration Date (if any):** ____/____/____

I attest, under penalty of perjury, that I have examined the document presented by the employee, that the document appears to be genuine and to relate to the employee named, and that, to the best of my knowledge, the employee is eligible to work in the United States.

X _____
Signature of Employer or Authorized Representative Date (month/day/year)

Print Name	Company Name and Address (Street Name and Number, City, State, ZIP code)
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Section 1. Reverification Dated _____ (month/day/year)

I attest, under penalty of perjury, that I am (initial one of the following):

- _____ A Lawful Permanent Resident (A# _____)
- _____ An alien authorized to work (A# or Admission # _____)
until (expiration date, if applicable - month/day/year) ____/____/____

X _____
Employee's Signature Date (month/day/year)

Preparer/Translator: I attest, under penalty of perjury, that I have assisted in the completion of this form and that, to the best of my knowledge, the information is true and correct.

X _____
Preparer's/Translator's Signature Date (month/day/year)

Print Name	Address (Street Name and Number, City, State, Zip Code)
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Section 2.

Document Title: _____ **Document #:** _____ **Expiration Date (if any):** ____/____/____

I attest, under penalty of perjury, that I have examined the document presented by the employee, that the document appears to be genuine and to relate to the employee named, and that, to the best of my knowledge, the employee is eligible to work in the United States.

X _____
Signature of Employer or Authorized Representative Date (month/day/year)

Print Name

Form I-9A (xx-xx-xx)