

# Rules and Regulations

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 274a

[INS No. 1947-98]

RIN 1115-AE94

#### Interim Designation of Acceptable Receipts for Employment Eligibility Verification

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule amends the regulations of the Immigration and Naturalization Service (Service) relating to acceptable receipts for completion of the Employment Eligibility Verification form (Form I-9). A "receipt" is a document that an employee may present to his or her employer in lieu of a document listed on the Form I-9. The regulations currently provide for three types of receipts: a receipt for the application for a replacement document; the arrival portion of an Arrival-Departure Record, Form I-94, marked with a temporary I-551 stamp and affixed with the individual's picture; and the departure portion of a Form I-94 containing a refugee admission stamp. Presentation of one of these types of receipts satisfies the Form I-9 documentation requirements, but only for a temporary period. At the end of this period, the employee must present the document listed on the Form I-9 that corresponds to the receipt.

This interim rule makes two revisions to the provisions governing receipts. First, this rule revises the validity period of the second type of receipt, the Form I-94 marked with a temporary I-551 stamp and affixed with the bearer's photograph. Second, this rule adds the Employment Authorization Card, Form I-688B, to the list of documents that an

individual can present before the receipt validity period expires for the third type of receipt, the Form I-94 marked with a refugee admission stamp. These changes are being made to facilitate compliance with the regulations pending completion of the Service's comprehensive document reduction effort.

**DATES:** *Effective date:* This interim rule is effective February 9, 1999.

*Comment date:* Written comments must be submitted on or before April 12, 1999.

**ADDRESSES:** Please submit written comments, in triplicate, 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. 1947-98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Marguerite Przybylski, Associate General Counsel, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street NW., Room 6100, Washington, DC, 20536; (202) 514-2895.

#### SUPPLEMENTARY INFORMATION:

#### What are the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) as it relates to documentation of employment?

Section 412 of IIRIRA, Pub. L. 104-208, enacted on September 30, 1996, amended the employment eligibility verification provisions of section 274A of the Immigration and Nationality Act (Act) to require a reduction in the number of documents acceptable for completion of the Form I-9. The Act 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).

#### Which Documents were Removed on September 30, 1997?

On September 30, 1997, an interim rule was published in the **Federal Register** at 62 FR 51001 implementing the IIRIRA amendments to the list of

documents. The September 30, 1997, interim rule removed four documents from List A as follows:

- (1) Certificate of United States Citizenship, Form N-560 or N-561;
- (2) Certificate of Naturalization, Form N-550 or N-570;
- (3) Reentry Permit, Form I-327; and
- (4) Refugee Travel document, Form I-571.

The interim rule also modified the List A document relating to nonimmigrants eligible to work incident to their nonimmigrant status, and revised the "receipt rule."

#### What Changes are Being Made by This Interim Rule?

Under the current regulations at 8 CFR 274a.2(b)(1)(vi), the special rule for receipts requires an employer, or recruiter or referrer for a fee, to accept a receipt in lieu of a List A, List B, or List C document in certain circumstances for completion of the Form I-9. The current regulations authorize the use of receipts in three instances:

- (1) When the individual presents a receipt for the application for a replacement document;
- (2) When the individual presents the arrival portion of Form I-94 which the Service has: (a) marked with a temporary I-551 stamp indicating lawful permanent residence and (b) affixed with the alien's picture; and
- (3) When the individual presents the departure portion of Form I-94 that the Service has marked with a refugee admission stamp.

This interim rule amends the receipt rule as it applies to Forms I-94 that are marked with either a temporary I-551 stamp or a refugee admission stamp. These amendments are necessary to account for procedural delays that have become apparent since publication of the September 30, 1997, interim rule.

#### A. Forms I-94 Marked With a Temporary I-551 Stamp

Current regulations at 8 CFR 274a.2(b)(1)(vi)(B) provide that if an individual presents to his or her employer the arrival portion of Form I-94 that the Service has marked with a temporary I-551 stamp and has affixed the alien's picture in lieu of a Permanent Resident Card, Form I-551, the individual must present the actual Form I-551 within 180 days from the date of hire or, in the case of

reverification, the date employment authorization expires even if the temporary I-551 stamp on the Form I-94 contains a later expiration date. At the time of the September 30, 1997, interim rule, when this provision was added to the regulations, the Service determined that the 180-day validity period would be a sufficient amount of time for an individual to obtain the actual Form I-551. Since the September 30, 1997, interim rule, the Service has determined that in some cases, it may take longer than 180 days to obtain the actual Form I-551. In addition, the Service determined that employers may be confused when the expiration date written on the Form I-94 itself and the regulatory validity period of the receipt are not the same. It is likely that employers will rely upon the expiration date of the stamp on Form I-94, rather than count 180 days from the date the employee presents the receipt, since the date of the stamp is more obvious. To eliminate this confusion, this interim rule amends the regulations to provide that the receipt validity period for the Form I-94 marked with a temporary I-552 stamp and affixed with a picture is to be the same as the expiration date of the temporary I-551 stamp written on Form I-94. The Service issues some Forms I-94 marked with temporary I-552 stamps with a validity period that is less than 1 year. Some are issued with a validity period that is more than 1 year. However, most are issued with a 1-year validity period. Given the Service's current card production capabilities, 1 year is a sufficient amount of time for the individual to obtain the actual Form I-551.

Some Forms I-94 marked with temporary I-551 stamps and affixed with the alien's picture do not have expiration dates. For such Forms I-94, the interim rule amends the validity period from the current 180 days from the date of hire or, in the case of reverification, the date employment authorization expires, to 1 year from the date of issuance of the Form I-94. This amendment comports with the 1-year validity period generally assigned to Forms I-94 marked with stamps and affixed with pictures that do contain expiration dates.

#### *B. Forms I-94 Marked With a Refugee Admission Stamp*

Current regulations at 8 CFR 274a.2(b)(1)(vi)(C) provide that an individual who presents to his or her employer the departure portion of Form I-94 containing a refugee admission stamp as a receipt to complete the Form I-9, must present either Form I-766 (Employment Authorization Document

(EAD)) or an unrestricted social security account number card and a List B document within 90 days of the date of hire or, in the case of reverification, the date employment authorization expires. The Form I-766 was introduced as a new employment authorization document in a final rule published in the **Federal Register** at 61 FR 46534 on September 4, 1996. The Form I-766 will eventually replace Forms I-688, I-688A, and I-688B as evidence of employment authorization. However, Forms I-688B continue to be issued by the Service at this time. Because some refugees will be in possession of Forms I-688B rather than Forms I-766, this interim rule amends the current regulations to add Form I-688B to the list of documents acceptable for presentation upon expiration of the 90-day receipt period. Form I-688A is only issued to legalization applicants and does not apply to refugees. Form I-688 is the Temporary Resident Card and also does not apply to refugees.

#### *What is the status of the Service's plan to make comprehensive revisions to the employment verification process?*

On February 2, 1998, a proposed rule was published in the **Federal Register** at 63 FR 5287 proposing comprehensive changes to the employment verification process, including a reduction in the list of acceptable documents. The comment period closed on April 3, 1998. The Service received many thoughtful and detailed comments from the public. The Service is currently reviewing the comments and will issue a final rule with a revised Form I-9 once this review process is completed. Until that time, Service regulations as amended by this interim rule will remain in effect. As with the September 30, 1997, interim rule, the Service will withhold enforcement of civil money penalties for violations associated with the changes made by the interim rule committed before the effective date of a final rule containing the revised Form I-9.

#### **Good Cause Exception**

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The reason and necessity for this determination is as follows:

The interim rule adding Form I-94 to the receipt rule was issued on September 30, 1997, in order to implement the document reduction provisions of section 412(a) of IIRIRA. This rule relieves restrictions by extending the validity period of one type of receipt in order to provide

adequate time for the issuance of the original document represented by the receipt. The rule also assists refugees by adding the Employment Authorization Card (Form I-688B) to the list of documents acceptable for presentation upon the expiration of the 90-day receipt period for the Form I-94 marked with a refugee admission stamp. Further, the rule makes clarifying and other changes to facilitate compliance with the regulations pending completion of the Service's comprehensive document reduction effort.

#### **Regulatory Flexibility Act**

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this interim rule and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is a short-term measure, which is limited in scope and only modifies a small portion of the entire employment verification process. It does not introduce new forms. As a result, this rule would not require small entities to significantly change established practices.

#### **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 submitted to the Office of Management and Budget for review.

#### **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 interim 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

This rule 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.

### List of Subjects in 8 CFR Part 274a

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

Accordingly, part 274a of chapter I of title 8 of the Code of Federal Regulations is 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.2 is amended by revising paragraphs (b)(1)(vi)(B) and (b)(1)(vi)(C) to read as follows:

#### § 274a.2 Verification of employment eligibility.

\* \* \* \* \*

- (b) \* \* \*  
(1) \* \* \*  
(vi) \* \* \*

(B) *Form I-94 indicating temporary evidence of permanent resident status.* The individual indicates in section 1 of the Form I-9 that he or she is a lawful permanent resident and the individual:

(1) Presents the arrival portion of Form I-94 containing an unexpired "Temporary I-551" stamp and photograph of the individual, which is designated for purposes of this section as a receipt for Form I-551; and

(2) Presents the Form I-551 by the expiration date of the "Temporary Form I-551" stamp or, if the stamp has no expiration date, within 1 year from the issuance date of the arrival portion of Form I-94; or

(C) *Form I-94 indicating refugee status.* The individual indicates in

section 1 of the Form I-9 that he or she is an alien authorized to work and the individual:

(1) Presents the departure portion of the Form I-94 containing an unexpired refugee admission stamp, which is designated for purposes of this section as a receipt for the Form I-766, Form I-688B, or a social security account number card that contains no employment restrictions; and

(2) Presents, within 90 days of the hire or, in the case of reverification, the date employment authorization expires, either an unexpired Form I-766 or Form I-688B, or a social security account number card that contains no employment restrictions, and a document described under paragraph (b)(1)(v)(B) of this section.

\* \* \* \* \*

Dated: November 25, 1998.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 99-3021 Filed 2-8-99; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98-NM-144-AD; Amendment 39-11025; AD 99-04-01]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires repetitive inspections of the outboard nacelle struts to detect fatigue cracking of the strut skin and spring beam support fittings, and to detect cracked or loose fasteners of the support fittings; and corrective actions, if necessary. This amendment also provides for optional terminating action for the repetitive inspection requirements. This amendment is prompted by reports indicating that several cracked or broken spring beam support fittings were found on the outboard nacelle struts. The actions specified by this AD are intended to detect and correct such fatigue cracking and loose fasteners, which could result in failure of the outboard nacelle struts and consequent separation of the engine.

**DATES:** Effective March 16, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2771; fax (425) 227-1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on November 24, 1998 (63 FR 64913). That action proposed to require repetitive inspections of the outboard nacelle struts to detect fatigue cracking of the strut skin and spring beam support fittings, and to detect cracked or loose fasteners of the support fittings; and corrective actions, if necessary. That action also proposed to provide for optional terminating action for the repetitive inspection requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed AD.

#### Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

#### Cost Impact

There are approximately 145 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact