

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 210, 245a, 264, and 274a

[INS No. 1399S-94]

RIN 1115-AB73

Control of Employment of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Supplement to proposed rule.

SUMMARY: On November 23, 1993, the Immigration and Naturalization Service (the Service) published a proposed rule in the **Federal Register** at 58 FR 61846-61850, which would reduce the number of documents that were acceptable for purposes of completing the Employment Eligibility Verification Form (Form I-9). A number of significant concerns regarding the agency's proposal were raised by the public and this supplement is being issued to address those concerns before proceeding with final rulemaking. This supplement proposes to simplify compliance with the employment eligibility verification requirements by further reducing the number of Service-issued documents that are acceptable for purposes of completing the Form I-9. It also contains other improvements in the system developed by the Service, including introduction of a new, more secure employment authorization document and related regulatory changes. The aim of these changes, along with reduction in the number of acceptable documents, is to produce an employment eligibility verification system that employers can use more easily and effectively. If this is accomplished, the potential for employment discrimination based on misapplication of the employment eligibility verification requirements should also be reduced.

DATES: Written comments must be submitted on or before July 24, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Director,

Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, please reference INS number 1399S-94 on your correspondence. Comments are available for public inspection at this location by calling (202) 514-3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Cristina Hamilton (General Counsel), telephone (202) 514-2895; David Yost (Investigations), telephone (202) 514-2998; Jackie Bednarz (Adjudications), telephone (202) 514-5014. The street address is: Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

SUPPLEMENTARY INFORMATION: This is a supplement to the proposed rule to reduce the number of Service-issued documents that are acceptable for purposes of completing the Employment Eligibility Verification Form (Form I-9). The proposed rule was published at 58 FR 61846-61850 on November 23, 1993, and provided for a 30-day comment period which expired on December 23, 1993. The rule was proposed to further simplify compliance with the employment eligibility verification requirements and to address the concerns of employers who allege confusion created by the number of acceptable documents on the Form I-9.

During the comment period, questions were raised about retaining Federal identification documents in the employment eligibility verification process and also about sharing burdens between employers and employees in re-verifying employment eligibility.

Since the comment period, a Process Action Team (PAT team) containing representatives of various Service components has continued to discuss methods of reducing the number of documents used to verify employment eligibility. One approach that the Service anticipates will be implemented by January 1, 1996, is the introduction of a new, more secure employment authorization document (EAD), the Form I-766, that will replace two other EADs, the Form I-688A and Form I-688B.

In addition, this supplement addresses other employer sanctions-related issues discussed by the PAT team that have been raised by

legislation, regulatory changes, or Service interaction with the public. These include the changes in the Higher Education Amendments of 1992 for students enrolled in the Federal Work Study Program, and clarification of the "receipt rule" in 8 CFR 274a.2(b)(1)(vi). Also discussed is the fact that an older Alien Registration Receipt Card (Form I-151) may still be used for employment eligibility verification because of a delayed effective date of the rule terminating its validity.

Besides these matters, the supplement proposes various regulatory changes related to the introduction of the new Form I-766. This will include designation in 8 CFR 264.1 of the I-766 as evidence of alien registration for I-688A holders. Changes are proposed in 8 CFR parts 210 and 245a to accommodate changing document numbers. Other revised language in 8 CFR 274a.12(c) clarifies language in the original proposed rule specifying the regulatory basis for work authorization for legalization applicants. Also proposed is regulatory language lifting a stay on the effective date of 8 CFR 274a.14(c) which terminates the validity of various paper work permits issued by the Service before June 1, 1987.

The thrust of these changes, along with reduction in the number of acceptable documents, is to reduce uncertainty on the part of employers and make the employment eligibility verification system more effective. Another benefit of a more effective system would be to reduce the potential for employment discrimination based upon misunderstandings of the employment eligibility verification requirements.

The following is a discussion of proposed changes to the proposed rule as a result of public comments, recent legislation and regulatory changes. Also discussed are changes recommended by the Process Action Team for reducing the number of documents used to verify employment eligibility and otherwise improving the verification system.

Elimination of Federal Identification Documents

The Service has determined that eliminating Federal identification cards from the category of List B identity documents is consistent with its goal of document reduction and also is consistent with its purpose in the original proposed rule of eliminating